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Foreign relations for the United States 1902. Whaling and sealing claims against Russia.. Appendix I 1902

United States Department of State

Washington, D.C.: U.S. Government Printing Office, 1902

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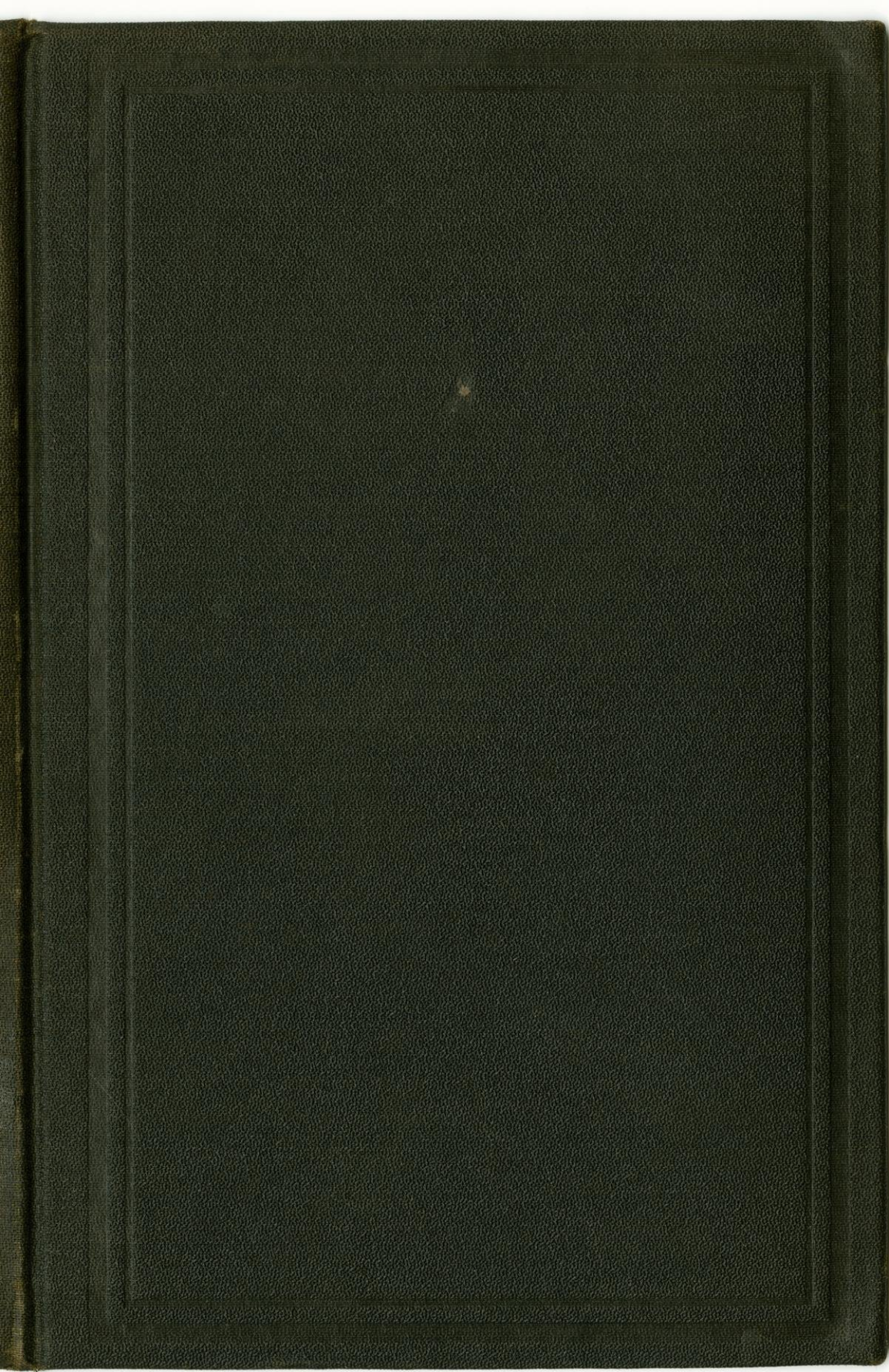
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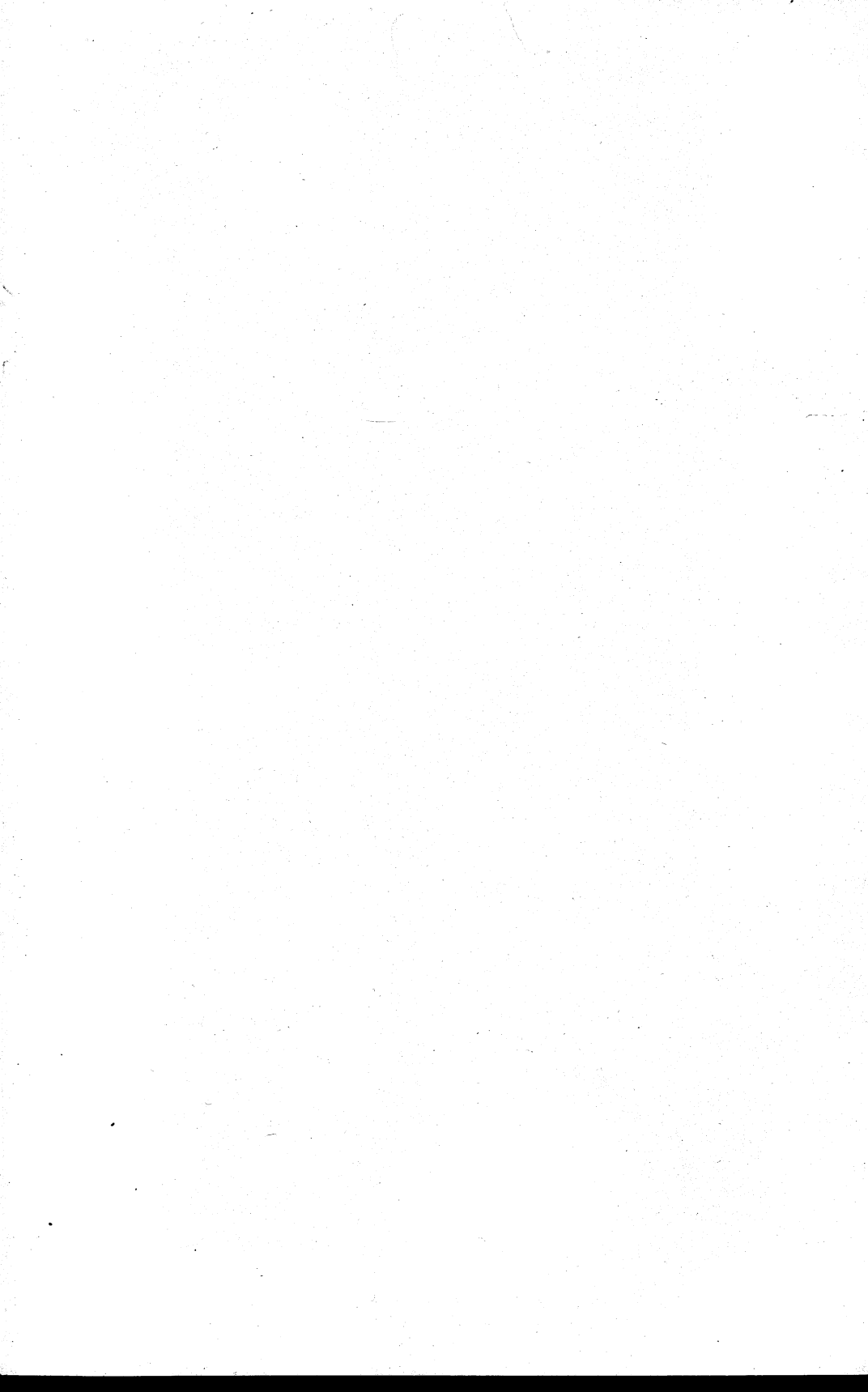
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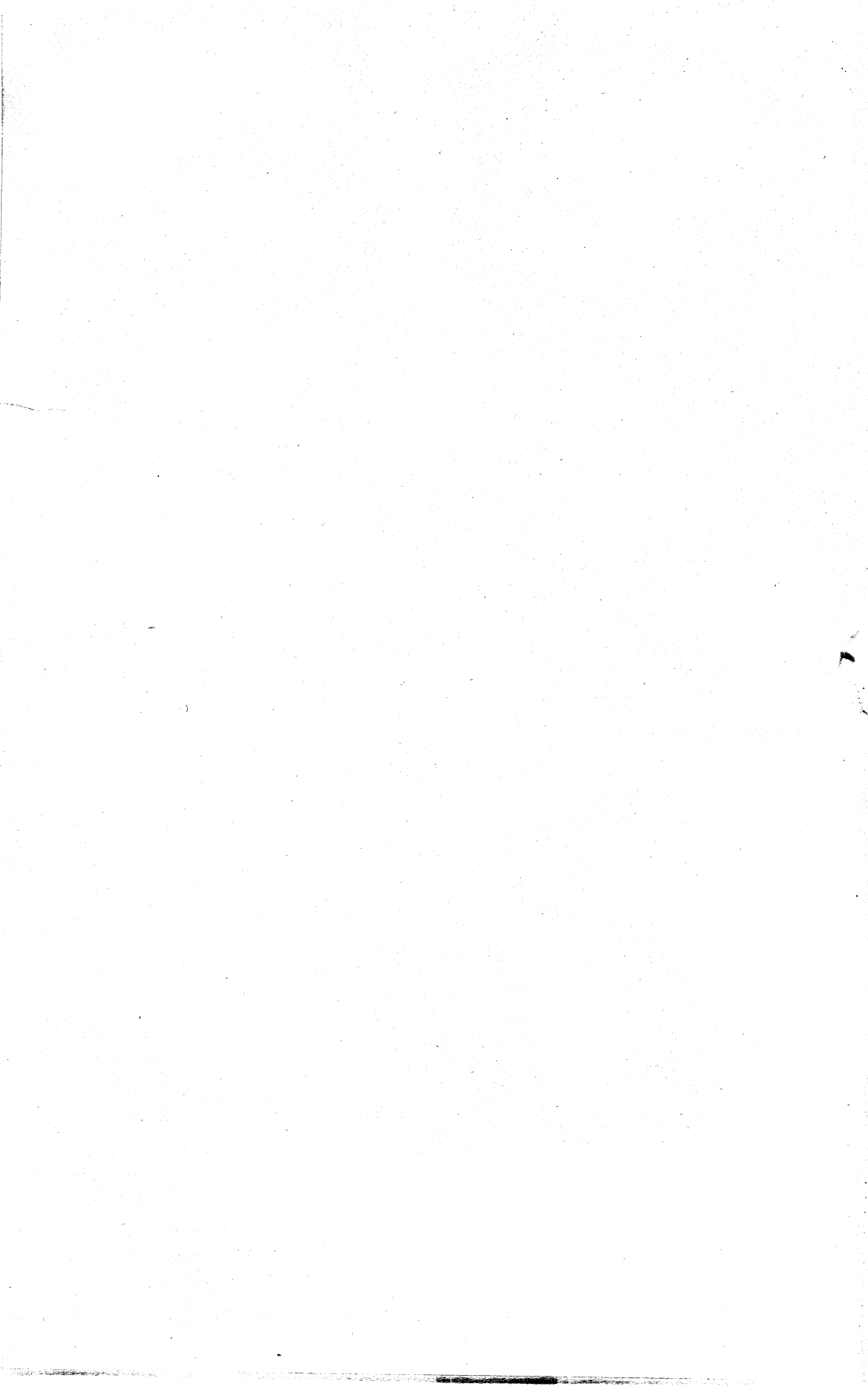


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APPENDIX I.

FOREIGN RELATIONS

OF THE

UNITED STATES,

1902.

WHALING AND SEALING CLAIMS
AGAINST RUSSIA.

ON ACCOUNT OF ARREST AND SEIZURE OF THE
AMERICAN VESSELS "CAPE HORN PIGEON,"
"JAMES HAMILTON LEWIS," "C. H.
WHITE," AND "KATE AND ANNA."

HERBERT H. D. PEIRCE,
Counsel for the United States.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1903.

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TRANSLATION

OF THE

MEMORANDUM OF THE PARTY CLAIMANT

TO THE

HONORABLE ARBITRATOR, MR. T. M. C. ASSER,

*Counselor to the Ministry of Foreign Affairs of the Kingdom
of the Netherlands, etc.,*

IN THE

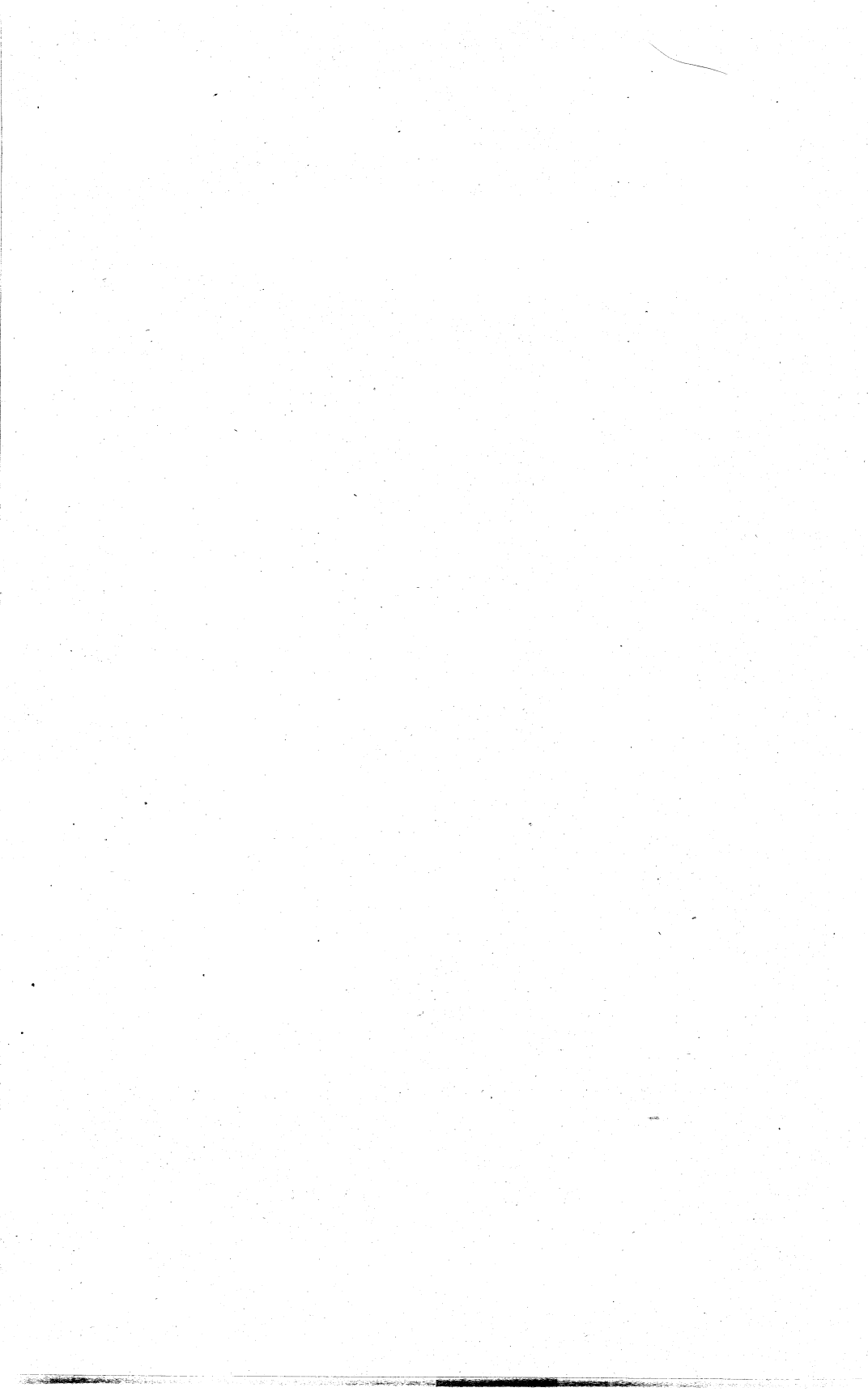
ARBITRATION AGREED UPON BY THE EXCHANGE OF NOTES BETWEEN THE
REPRESENTATIVES OF THE TWO HIGH CONTRACTING POWERS, DULY
AUTHORIZED TO THAT EFFECT, DATED SEPTEMBER 3, 1900, TO
ADJUST THE DIFFERENCES BETWEEN THE GOVERNMENT OF
THE UNITED STATES OF AMERICA, PARTY CLAIMANT,
AND THE IMPERIAL GOVERNMENT OF RUSSIA,
PARTY DEFENDANT, RELATIVE TO THE
ARREST AND SEIZURE OF THE
AMERICAN VESSELS

“CAPE HORN PIGEON,” “JAMES HAMILTON LEWIS,” “C. H. WHITE,”
AND “KATE AND ANNA.”

HERBERT H. D. PEIRCE,

Counsel for the United States.

Serial coll ins Proj of doc 5-6-42 KLM



WHALING AND SEALING CLAIMS AGAINST RUSSIA.

L E T T E R

FROM

THE SECRETARY OF STATE,

TRANSMITTING

A DISPATCH FROM HERBERT H. D. PEIRCE, AGENT OF THE UNITED STATES IN THE MATTER OF THE WHALING AND SEALING CLAIMS AGAINST RUSSIA.

DECEMBER 12, 1901.—Referred to the Committee on Foreign Relations and ordered to be printed.

DEPARTMENT OF STATE,
Washington, March 13, 1901.

SIR: I have the honor to inclose copy of a dispatch from Mr. Herbert H. D. Peirce, counsel and agent for the United States in the matter of the whaling and sealing claims against Russia, transmitting a translation into English of the memorandum presenting the claims to the arbitrator.

The package containing a letter and the translation was forwarded to you under separate cover.

I have the honor to be, sir, your obedient servant,

JOHN HAY.

Hon. H. C. LODGE,
United States Senate.

EMBASSY OF THE UNITED STATES,
St. Petersburg, February 23, 1901.

SIR: I have the honor to transmit herewith a translation into English of the memorandum presenting the claims of the owners, officers, and crews of the *Cape Horn Pigeon*, the *James Hamilton Lewis*, the *C. H. White*, and the *Kate and Anna* to the arbitrator at the Hague.

If the Department sees no objection to it, I would be glad to have this translation delivered to the Hon. H. C. Lodge, United States Senator from Massachusetts, with a view to its being printed, through his good offices, as a public document.

I have the honor to be, sir, your obedient servant,

HERBERT H. D. PEIRCE,

Counsel and Agent for United States Government.

Hon. JOHN HAY,

Secretary of State, Washington, D. C.

A l'Honorable Arbitre, M. T.
M. C. ASSER,

*Conseil du Ministère des Affaires
Étrangères du Royaume des Pays-
Bas, etc., dans l'arbitrage convenu
d'après les notes échangées entre
les représentants des deux hautes
puissances contractantes, dûment
autorisés à cet effet, en date du 3
septembre, 1900, pour régler les
différends entre le Gouvernement
des États-Unis d'Amérique, partie
demanderesse, et le Gouvernement
Impérial de Russie, partie défend-
eresse, relatifs aux arrêts et saisies
des vaisseaux Américains "Cape
Horn Pigeon," "James Hamilton
Lewis," "C. H. White, et "Kate
and Anna."*

PROTOCOL.

MINISTÈRE DES AFFAIRES
ÉTRANGÈRES.

(Premier Département.)

Le Gouvernement Impérial de
Russie et le Gouvernement des
États-Unis d'Amérique s'étant mis
d'accord pour inviter M. Asser,
membre du Conseil d'État des
Pays-Bas, à prononcer comme
Arbitre dans le différend relatif
aux affaires des schooners "James
Hamilton Lewis," "C. H. White,"
"Kate and Anna," leurs arma-
teurs, propriétaires, officiers, et
équipages, arrêtés ou saisis par
des croiseurs Russes sous préven-
tion de s'être livrés à la chasse
illicite des phoques à fourrure, et à
l'affaire du navire baleinier "Cape
Horn Pigeon," ses armateurs, pro-
priétaires, officiers, et équipage,
arrêté ou saisi par un vaisseau

To the Honorable Arbitrator,
Mr. T. M. C. ASSER,

*Counselor of the Ministry for Foreign
Affairs of the Kingdom of the
Netherlands, etc., in the arbitra-
tion agreed in the notes exchanged
between the representatives of the
two high contracting powers, duly
authorized to that effect, dated
September 3, 1900, to adjust the
differences between the Government
of the United States of America,
party claimant, and the Imperial
Government of Russia, party def-
endant, relative to the arrest and
seizure of the American vessels the
"Cape Horn Pigeon," the "James
Hamilton Lewis," the "C. H.
White," and the "Kate and
Anna."*

PROTOCOL.

The Government of the United
States of America and the Impe-
rial Government of Russia, having
agreed to invite Mr. Asser, Mem-
ber of the Council of State of the
Netherlands to act as Arbitrator
in connection with the claim of
the schooners "James Hamilton
Lewis," "C. H. White," "Kate
and Anna," their charterers, own-
ers, officers and crews, arising out
of their detention or seizure by
Russian cruisers on the charge of
having been illegally engaged in
fur-seal fishing and the claim of
the whaling bark "Cape Horn
Pigeon," her charterers, owners,
officers and crew arising out of her
detention or seizure by a Russian
vessel, the undersigned Charge
d'Affaires of the United States of
America, having been duly author-
ized thereto, has the honor to make
hereby the following declaration,

russe, le soussigné, Gérant du Ministère des Affaires Étrangères de Sa Majesté l'Empereur de Russie, dûment autorisé à cet effet, a l'honneur par la présente note de déclarer ce qui suit en échange d'une déclaration identique du Gouvernement des États-Unis d'Amérique.

L'Arbitre aura à prendre connaissance des réclamations d'indemnité qui ont été présentées au Gouvernement Impérial de Russie par le Gouvernement des États-Unis au non des ayants droit.

Il est bien entendu que cette clause doit être interprétée comme admettant la présentation de part et d'autre, dans le témoignage soumis à l'Arbitre, de toute preuve qui a déjà été présentée ou qui a paru dans la correspondance entre les Représentants officiels des Hautes Puissances Contractantes, aussi bien que toute évidence se rapportant aux questions en litige.

La Partie demanderesse remettra à l'Arbitre, dans un délai de trois mois à partir de l'échange de la présente note contre une note identique du Gouvernement des États-Unis, un Mémoire à l'appui de sa demande, et en fera parvenir immédiatement une copie à la Partie défenderesse.

Dans un délai de trois mois après la réception de la dite copie, la Partie défenderesse remettra à l'Arbitre un Contre-Mémoire dont elle fera parvenir immédiatement une copie à la Partie demanderesse.

Endéans trois mois après la réception du Contre-Mémoire susmentionné, la Partie demanderesse pourra, si elle le juge utile, remettre à l'Arbitre un nouveau Mémoire dont elle fera parvenir immédiatement une copie à la Partie défenderesse, laquelle pourra également, endéans trois mois après la réception de cette

in exchange with a similar declaration upon the part of the Imperial Government of Russia.

The arbitrator shall take cognizance of the claims for indemnity which have been presented to the Imperial Government of Russia by the Government of the United States on behalf of the parties in interest.

It is understood and agreed that this provision is to be construed as permitting the introduction, on both sides, into the testimony submitted to the arbitrator, of any and all evidence which may have already been presented or appeared in the correspondence between the official Representatives of the two high contracting Powers, as well as all evidence relating to the questions in litigation.

The Party claimant shall present to the arbitrator, within three months from the date of the exchange of the present note with an identical one of the Imperial Government of Russia, a memorandum in support of its claim, and shall hand immediately a copy thereof to the Party Defendant.

Within three months from the date of the receipt of the said copy, the Party defendant shall present to the arbitrator a contra-memorandum, of which it shall hand immediately a copy to the Party claimant.

Within three months after the receipt of such contra-memorandum, the Party claimant may, if it sees fit to do so, present to the arbitrator a new memorandum, of which it shall hand immediately a copy to the Party defendant, and the latter may also, within three months from the receipt thereof, present to the arbitrator a new

copie, remettre à l'Arbitre, un nouveau Contre-Mémorandum dont elle fera parvenir immédiatement une copie à la Partie demanderesse.

L'Arbitre est autorisé à accorder à chacune des Parties qui le demanderait une prorogation de trente jours au maximum par rapport à tous les délais mentionnés plus haut.

Après l'échange des Mémoires susindiqués, aucune communication ni écrite ni verbale ne pourra être adressée à l'Arbitre à moins que celui-ci ne s'adresse lui-même aux Parties ou à l'une d'entre elles pour obtenir des renseignements supplémentaires par écrit.

Le Partie qui donnera un renseignement à l'Arbitre fera parvenir immédiatement copie de sa communication à l'autre Partie et celle-ci pourra, si bon lui semble, en-deans un mois après la réception de cette copie, transmettre par écrit à l'Arbitre des observations au sujet du contenu de cette communication; ces observations seront immédiatement communiquées en copie à la Partie adverse.

Il appartiendra à l'Arbitre de statuer sur toutes les questions qui pourraient surgir relativement à la procédure dans le cours de l'Arbitrage.

L'Arbitre rendra sa sentence dans toutes les causes de l'Arbitrage dans un délai de six mois à partir de la réception du dernier Mémorandum ou Contre-Mémorandum mentionné dans ce Protocole.

Dans sa Sentence, qui sera communiquée par lui aux deux Gouvernements intéressés, l'Arbitre, en se réglant sur les principes généraux du droit des gens et sur l'esprit des accords internationaux applicables à la matière, devra décider à l'égard de chaque réclamation formulée à la charge du Gouvernement Impérial de Russie, si elle est bien fondée, et, dans

contra-memorandum, of which it shall hand immediately a copy to the Party claimant.

The arbitrator shall be authorized, at the request of either of the Parties, to extend for a period of not longer than thirty days any of the intervals of time hereinabove provided for.

After the exchange of memoranda as hereinabove said no communication, either written or verbal, shall be addressed to the arbitrator, unless he shall request from the Parties, or either of them, supplementary information to be given in writing.

The Party so giving information to the arbitrator shall hand immediately a copy of its communication to the opponent, who may if he thinks fit to do so present in writing to the arbitrator, within one month from the date of his receipt thereof, comments relating to the subject matter of the said communication, and a copy of such comments shall be sent immediately to the Party opponent.

The arbitrator shall have authority to decide all questions that may arise in regard to procedure in the course of the arbitration.

The arbitrator shall render his decisions in all the cases within six months from the date of the delivery to him of the last memorandum or contra-memorandum provided for in this agreement.

In his decision, which shall be communicated by him to each of the two Governments interested, the arbitrator following the general principles of international law and the spirit of international agreements applicable to the subject, shall determine as to each claim brought against the Imperial Government of Russia, whether such claim is well founded; and,

l'affirmative, si les faits sur lesquels chacune de ces réclamations est basée, sont prouvés. Il est bien entendu que cette stipulation n'aura aucune force rétroactive, et que l'Arbitre appliquera aux cas en litige les principes du droit des gens et les Traités Internationaux qui étaient en vigueur et obligatoires pour les Parties impliquées dans ce litige au moment où la saisie des navires susmentionnés a eu lieu.

Dans ce cas l'Arbitre fixera la somme de l'indemnité qui serait due par le Gouvernement Russe pour le compte des réclamations présentées par les ayants droit.

Sans préjudice de l'obligation incombant à la Partie demanderesse de justifier les dommages soufferts, l'Arbitre pourra, s'il le juge opportun, inviter chaque Gouvernement à désigner un expert commercial pour l'aider, en sa dite qualité, à fixer le montant de l'indemnité.

Le Gouvernement Impérial de Russie se déclare prêt, en échange d'un engagement semblable du Gouvernement des États-Unis, à prendre à son compte toutes les dépenses qui seraient faites ou auraient été faites pour soutenir son point de vue dans cette affaire, à payer la moitié de la compensation à l'Arbitre pour ses offices, de même qu'à accepter comme jugement en dernier la décision prononcée par l'Arbitre dans les limites du présent accord et à s'y soumettre sans aucune réserve.

Toute somme décrétée par l'Arbitre aux réclamants, ou à l'un d'entre eux, sera payée par le Gouvernement Impérial Russe au Gouvernement des États-Unis dans un délai d'un an à partir de la date du Décret.

La langue française étant reconnue comme la langue officielle de

if he decides affirmatively, whether the facts upon which each of the said claims is based have been proven.

It is understood and agreed that this stipulation shall have no retroactive force, and that the arbitrator shall apply to the cases now in litigation the principles of international law and of international agreements which were in force and binding upon the Parties to this litigation at the moment when the seizures aforementioned took place.

The arbitrator shall fix the amount of any indemnity to be paid by the Russian Government in respect to the claims presented by the parties in interest.

If he wishes to do so, without, however, lessening the obligation incumbent upon the Party claimant to prove the damage suffered, the arbitrator may invite each Government to appoint a Commercial expert to aid him, in this capacity, in fixing the amount of the indemnity.

The Government of the United States declares itself ready, in exchange with a similar agreement upon the part of the Imperial Government of Russia, to assume all expenses which may or shall be incurred in the presentation of its side of the case in this matter and to pay one-half of the compensation of the arbitrator for his services also to accept as a final judgment the decision pronounced by the arbitrator within the limits of the present agreement, and to submit thereto without any reservation whatsoever.

Any amount awarded by the arbitrator in favor of the claimants, or either of them, shall be paid by the Imperial Government of Russia to the Government of the United States within one year from the date of the award.

French being recognized as the official language of the arbitration

l'Arbitrage, la Sentence Arbitrale devra être rendue dans cette langue.

Fait en quatre exemplaires à Saint-Petersbourg, le 26 Août (8 Septembre), 1900.

(Signé) Comte LAMSDORFF.

the decision of the arbitrator should be rendered in that language.

Done at St. Petersburg in quadruple the 26th day of August (8 September), 1900.

HERBERT H. D. PEIRCE.

MEMORANDUM.

The undersigned, counsel for the Government of the United States of America, has the honor to present to the honorable arbitrator the following memorandum of the Government of the United States of America in support of the claims of the owners, officers, and crews of the American bark *Cape Horn Pigeon* and of the American schooners *James Hamilton Lewis*, *C. H. White*, and *Kate and Anna* for indemnity on account of the arrest and seizure of the said vessels by the agents and officers of the Imperial Government of Russia.

By an exchange of identical notes, dated September 8, 1900, between the representatives of the two high contracting powers, duly authorized to that effect, the Government of the United States of America and the Imperial Government of Russia have agreed to refer to arbitration their differences relative to the claims for indemnity of certain citizens of the United States of America.

This indemnity is claimed on account of the losses and injuries sustained by citizens of the United States by the arrest and seizure of American vessels as well as by reason of other actions committed in relation thereto by the agents and officers of the Government of Russia.

The statement of the facts of these arrests and seizures, with the supporting evidence, the statements of the damages suffered by the claimants, and the arguments in support of the claims are duly set forth in the documents hereto annexed, marked respectively: Case 1, "the *Cape Horn Pigeon*," case 2, "the *James Hamilton Lewis*," case 3, "the *C. H. White*;" case 4, "the *Kate and Anna*."

The Government of the United States of America maintains that the said arrests and seizures, as well as all the other acts relating thereto which resulted in injury to citizens of the United States, were contrary to international law and to the treaty rights of the United States, as well as an invasion of the personal rights of its citizens.

Among the damages sustained by citizens of the United States in this connection, the officers and crews of the vessels *Cape Horn Pigeon*, *James Hamilton Lewis*, and *C. H. White* were unwarrantably held as prisoners.

The Commission appointed to adjust the difference between the United States and Great Britain under the treaty of Washington of 1871 made the following awards of damages:

Case No. 61.—Samuel G. Levy was arrested and detained eight days. He was awarded \$930.

Case No. 97.—William Patrick was arrested on false or erroneous information and detained sixteen days. He was awarded \$5,160.

Case No. 325.—William Ashton was arrested and detained three months and four days, and was awarded \$6,000.

Case No. 192.—Thomas Riley was arrested and detained for six weeks. He was awarded \$890.

Case No. 272.—Joseph M. P. Nolan was arrested in October, 1861, on the charge of disloyalty, and detained until August, 1863. He was awarded \$8,600.

Case No. 285.—John F. Parr was arrested October 20, 1861, and discharged in February, 1862, without trial. He was awarded \$4,800.

Case No. 443.—George F. Canty was arrested December 24, 1863, and was confined in Fort Lafayette until March 4, 1864, when he was discharged without trial. He was arrested upon the ground that he was purchasing arms for the Confederates, but the charge was not sustained. He was awarded \$15,700.

The question of interest on the amount of indemnity arises in all four of the cases. To award to the claimants the amount of the indemnity alone would not be to make to them *restitutio in integrum*. If it is found that indemnity is due to the owners of a vessel for her confiscation, made nine years previously, and it is decided to award to them to-day only the value of the vessel, this would not be to make restitution to them for their entire losses, for they have lost not only the value of the vessel but also the ability to earn, either by means of the services of their vessel or with the equivalent capital.

In cases of this nature the principle of allowing a just rate of interest on the indemnity is so universally recognized as to preclude the necessity of argument upon the subject.

In his award in favor of the *John S. Bryan* for the payment of interest on the amount of the indemnity due by the Brazilian Government the arbitrator said:

“The principle on which this sum is awarded has long been settled.”

Among the numerous cases in which tribunals of arbitration have allowed interest in their awards the following may be cited:

The commission appointed according to the treaty of 1794 between the United States and Great Britain allowed interest on all the claims.

In the Chinese indemnity arbitration the commission allowed interest at the rate of 12 per cent.

The decisions of the American and English claims commission, under the treaty of Washington of 1871, included interest in all the awards, with some few exceptions.

The Geneva tribunal of arbitration in the “Alabama claims” included interest in every case in its award, as also in the arbitration of the claims of the United States against Mexico and against Brazil.

In the case of the *Costa Rica Packet* the distinguished arbitrator awarded to the claimants interest at the rate of 8 per cent.

In the recent arbitration (1897) between the United States of America and Great Britain upon the claims arising out of seizures in the Bering Sea interest was universally allowed.

The Government of the United States of America therefore submits to the honorable arbitrator the following statements of claims, in the full confidence that they are well founded and perfectly just.

HERBERT H. D. PEIRCE.

CASE No. 1.

The Cape Horn Pigeon, American whaling bark, arrested and seized in the Sea of Okhotsk by an armed vessel of the Imperial Russian Government, taken to Vladivostok, detained there until the end of the whaling season, and finally released without trial.

60.

1887

1888

1889

The Cape Horn Pigeon, American whaling bark, arrested and seized in the Sea of Okhotsk by an armed vessel of the Imperial Russian Government, taken to Vladivostok, detained there until the end of the whaling season, and finally released without trial.

STATEMENT OF THE FACTS IN THE CASE.

The *Cape Horn Pigeon* was an American bark, duly registered in accordance with the laws of the United States at the port of New Bedford, in the State of Massachusetts, and owned and officered by American citizens. She was equipped for a whaling voyage in the North Pacific Ocean, upon which she set sail on December 7, 1891, and on the 10th day of September, 1892, while peaceably engaged in the pursuit of her legitimate calling on the high seas in the Okhotsk Sea, many miles from any land and wholly without Russian jurisdiction, she was seized by the Imperial Russian authorities and forcibly distrained and taken to Vladivostok, to the great injury of her owners, officers, and crew.

The agents and managing owners of the vessel were, at the time of the seizure, Joseph Wing and William R. Wing, both of New Bedford, in the said State of Massachusetts, copartners, doing business under the firm name of J. & W. R. Wing.

On the 10th day of September, A. D. 1892, the said *Cape Horn Pigeon*, her outfits and cargo, were owned as follows: J. & W. R. Wing, of New Bedford, Mass., held four sixty-fourths; Thomas M. Hart, of New Bedford, Mass., held two sixty-fourths; John Wing, of New Bedford, Mass., held two sixty-fourths; Edward F. Potter, of Dartmouth, Mass., held eleven sixty-fourths; Edward F. Potter, executor of the will of William Potter, second, of Dartmouth, Mass., deceased, held eight sixty-fourths; Michael Baker, administrator de bonis non with the will annexed of Michael Baker, 3d, of Dartmouth, Mass., deceased, held four sixty-fourths; George W. Collins, of Dartmouth, Mass., held one sixty-fourth; Charles C. Church, of Gosnold, Mass., held two sixty-fourths. The said ownership duly appears in the certificate of the collector of customs of the port of New Bedford, a copy of which is hereto annexed, marked "Exhibit A." By the said certificate it appears that the estate of Alexander H. Seabury was the owner of ten sixty-fourths. Said interest had been conveyed previous to the 10th day of September, A. D. 1892, to Louisa B. Haskell, daughter of the said Alexander H. Seabury, deceased. A certified copy of the last register of the said bark, dated the 30th day of November, 1887, is also hereto annexed, marked "Exhibit B." Subsequent to that date the interest therein specified of Jonathan Bourne, two sixty-fourths, had been conveyed to Joseph and William R. Wing; the three sixty-fourths of Abner Potter, jr., of Portsmouth, R. I., therein stated, had been acquired by Edward F. Potter; the four sixty-fourths of Robert Allen therein stated had also

been acquired by Joseph and William R. Wing, who had conveyed to Thomas Scullun four sixty-fourths, making the interest of the said Joseph and William R. Wing twenty sixty-fourths, as stated in the collector's certificate. All and each of the said owners are native American citizens, and they each claim in their own right were each citizens of the United States when the claim had its origin, and their domicile was then as herein stated.

The officers and crew of the said bark on the 10th day of September, A. D. 1892, were, as stated in the crew list hereto annexed, marked "Exhibit C," stating their names, places of birth, places of residence, of what country citizens or subjects, age, height, complexion, and color of hair. They numbered 30 besides the captain. The officers and crew upon this voyage were shipped in accordance with the provisions of the shipping paper, a copy of which is hereto annexed, marked "Exhibit D," in which the lay or share of each officer and member of the crew is stated, except that of the captain, which was by agreement—and a copy of the said agreement is hereto annexed—marked "Exhibit E." The compensation of the said officers and crew is, by the articles of said shipping paper, fixed as a share of the net proceeds of the voyage, and said proceeds include whatever is recovered by the owners in place of catch from whatever source. The said claims of the said officers and crew are owned by the said officers and crew respectively, except in the cases of some of the crew which have been assigned to the owners in consideration of the advance by the owners of different sums to such of the crew as made request for this to be done. Owing to the small quantity of oil brought in by the bark, as hereinafter stated, most of the seamen are in debt to the ship, their advance and ship's bill amounting to more than their pay, and thereupon payments were made by the owners to such of the crew as requested it, and their claims were assigned to the owners.

The said bark was built in Dartmouth, Mass., in the year 1854, for the whaling business and has always been engaged in the whaling business.

Said bark was purchased by the said Joseph and William R. Wing at the date of the register in the fall of 1887, having been owned and managed previously to that time by William Potter from the time she was built. The said Joseph and William R. Wing were owners in her at the time she was built and have continued so ever since. She was of 201 $\frac{4}{10}$ tons burden, present measurement. She was fitted out at San Francisco, Cal., by the said J. and W. R. Wing, in December, 1891, for a year's whaling voyage in the Japan and Okhotsk seas. She was fully equipped for said whaling voyage, and neither directly or indirectly was fitted for a sealing voyage, or for aiding or assisting others engaged in sealing, and in the equipment and fitting out aforesaid whaling voyage no intention was had of taking any fur seal on land or water on the Okhotsk Sea or elsewhere; no tackle therefor was put on board, and no material for the preservation of seal skins. A certified copy of the clearance of said bark on said voyage is hereto annexed, marked "Exhibit F," and a certified copy of the manifest, marked "Exhibit G," the originals of said papers being duly filed in the custom-house.

As hereinbefore stated, the said bark sailed upon the said whaling voyage on December 7, 1891. The history of the said voyage of the said *Cape Horn Pigeon* is narrated in detail in the affidavit of the cap-

tain of the bark, Thomas Scullun, a duly authenticated copy of which affidavit is hereto annexed, marked "Exhibit H."

From said affidavit it appears that on the 10th day of September, A. D. 1892, the *Cape Horn Pigeon* was in the Okhotsk Sea, upon the high seas, where she had a perfect right to be, engaged in her legitimate calling of whaling; that she had twice previously during the said voyage called at the Russian port of Vladivostok, where her captain had not only publicly announced his intention of whaling in the Okhotsk Sea, but had communicated with the Imperial Russian Government, asking permission to enter and fish for whales in certain bays which he deemed to be within Russian jurisdiction. The reason for preferring this request for permission to visit the said bays was the previous issuance by the Imperial Russian Government of a notice to mariners forbidding them to fish for whales within the limit of 3 miles from the Russian coast or in the bays included within such 3-mile limit, a copy of which notification having been published in the *New Bedford Whalers' List*, a journal devoted to the whaling interest, published in America, on December 7, 1875, a copy of which is annexed to the deposition of W. R. Wing, hereto annexed and hereinafter referred to, said deposition being marked "Exhibit V," and said copy of said notification being marked "Annex 9" thereof. And said assertion as to the issuance of such notification to mariners, forbidding them to fish for whales within said bays, is further supported by the official document of the Imperial Russian ministry of marine, dated 1875, a copy of which is hereto annexed, together with a sworn translation of a paragraph on page 91 of said document, all included in Exhibit C C. This permission to visit the said bays was not granted, but neither was any intimation given to the captain that the Imperial Russian Government claimed jurisdiction over the entire waters of the Okhotsk Sea or the right to prohibit its navigation for any purpose whatsoever beyond the ordinary jurisdiction commonly accepted among nations as appertaining to all countries, namely, a marine league from low-water mark. Yet it appears further from the same affidavit, what is admitted to be the case by the Imperial Russian Government in a note from the Imperial Russian ministry of foreign affairs to the then envoy extraordinary and minister plenipotentiary of the United States of America, dated June 12 (old style), or June 24 (new style), 1893, a certified copy of which is hereto annexed, marked "Exhibit I," namely, that the said bark was arrested and seized upon the open sea of Okhotsk Sea upon the said 10th day of September (new style), or 29th day of August (old style), 1892, by an officer of the Imperial Russian navy, in command of an armed vessel of said navy, by force of arms, and by force of arms taken to Vladivostok. It also appears from the said affidavit that the captain duly protested against the arrest and seizure of his vessel, but that in spite of his protests the seizure was made and the crew of the *Cape Horn Pigeon* was pressed, against their will, into the service of the Imperial Russian Government, and compelled to navigate the vessel of the said officer of the Imperial Russian navy into Vladivostok. And it further appears from said affidavit and from the log book of the said vessel, which is hereto annexed, forming part of the deposition of W. R. Wing, Exhibit V, and marked "Annex 1" of that exhibit, that the said bark was detained by the Imperial Russian authorities until the 1st day of October, 1892. It also appears from the said affidavit that the arresting officer of the Imperial Russian navy set up the claim, in making the arrest, that

the Okhotsk Sea was a closed sea. In the note of the Imperial Russian ministry of foreign affairs, dated June 12/24, 1893, above cited and marked "Exhibit I," no attempt is made to support this claim, nor does it appear that the Russian Government has ever claimed exclusive jurisdiction over that sea.

Upon the arrival of the said bark in the harbor of Vladivostok the captain took the first available opportunity to inform, by telegraph, the legation of the United States of America at St. Petersburg of the seizure of the *Cape Horn Pigeon* in a telegram, a certified copy of which is hereto annexed, marked "Exhibit J."

Upon receipt of the said telegram the then Chargé d'Affaires of the said United States addressed a note to the Imperial Russian ministry of foreign affairs, dated September 9/21, 1892, a certified copy of which is hereto annexed, marked "Exhibit K," and received in reply a note from the said Imperial ministry, dated September 19 (old style), October 1 (new style), 1892, a certified copy of which note is hereto annexed, marked "Exhibit L," informing the said Chargé d'Affaires that the said bark had been released.

And in point of fact the said bark *Cape Horn Pigeon* was released, but not until it was too late to continue her whaling voyage for that season, for, as is shown by the affidavits of three experienced whaling captains familiar with the habits of the whales and with the winds in the said Okhotsk Sea, certified copies of which affidavits are hereto annexed, marked respectively "Exhibit M," "Exhibit N," and "Exhibit O," the whaling season closes in the Okhotsk Sea between the 1st and 10th days of October, while the *Cape Horn Pigeon* was unable to leave Vladivostok before October 1, 1892.

By reason of this seizure by the Imperial Russian Government of the said bark *Cape Horn Pigeon*, and of the subsequent action of the said Government in forcibly taking the said bark away from her fishing grounds just at the most favorable season of the year, when the whales had just begun to strike in to the said fishing grounds, and in detaining her at Vladivostok, a point far removed from said fishing grounds, until it was impossible for her to get back and resume her lawful calling, not only before the season would have terminated, but in time for her to have proceeded to any other whaling waters to resume her calling and arrive at San Francisco within the limit of time specified in the contract with the crew, namely, in the autumn of 1892, thereby depriving the owners, officers, and crew of said bark of the services of the vessel and her outfit for the remainder of the season, as well as in the consumption of the provisions and stores of said bark by the officers and men of the Russian Government, the pressing of the crew into the service of the said Government, compelling them to bring the Russian vessel to Vladivostok against their will, and by reason of the expenses incurred, not only by the captain, officers, and crew at Vladivostok for their maintenance, but by reason of the necessity of sending many and costly telegraphic messages to distant parts of the world, the consultation of legal counsel, the necessary hire of clerical assistance, of boats, and of carriages, the detention of the crew as prisoners, and the failure to provide for said crew's needs, and, finally, by reason of the expense of the present proceedings, the owners, officers, and crew of the said bark *Cape Horn Pigeon* suffered severe damage, for which damage they now seek indemnity.

These damages the said captain of the said bark *Cape Horn Pigeon* estimated, at the time of the arrest and detention at Vladivostok, at

\$49,500, and he presented to the competent officer of the Imperial Russian Government at Vladivostok a claim for that amount of damage in two letters dated at Vladivostok the 15-27th day of September, 1892, copies of which letters are hereto annexed, marked, respectively, "Exhibit P" and "Exhibit P°."

PRESENTATION OF THE CLAIMS TO THE IMPERIAL GOVERNMENT OF RUSSIA.

On the 3d day of May (old style), 1893, the then envoy extraordinary and minister plenipotentiary of the United States near to His Imperial Majesty the Emperor of all the Russias, addressed a note to the Imperial Russian ministry of foreign affairs, a duly certified copy of which is hereto annexed, marked "Exhibit Q," again calling the attention of the Imperial Government to the seizure of the said bark *Cape Horn Pigeon* and requesting that an investigation be made as to the action of the Imperial Russian officials in this regard, and that the legation of the United States be informed as to the results of said investigation. In reply to the said note the said ministry of foreign affairs addressed to the said legation the note, already cited and marked "Exhibit I," under date of June 24 (new style), 1893. In this note it is stated that a commission had been appointed to inquire into the seizure of the said bark *Cape Horn Pigeon*, and that this commission, while practically in accord with the statement made by the captain of the said bark as to the locality of the bark when seized, found that, while the *Cape Horn Pigeon* had navigated within Russian territorial waters, there was no reason for ordering her confiscation, and admitted that the arrest had been made owing to a misunderstanding, and had ordered the release of the vessel. The said note, after expressing the opinion that the item of damages for whales which could have been taken had not the voyage been interrupted, amounting to \$45,000, was excessive, expresses the opinion that \$2,500 would be sufficient to indemnify the parties in interest for their losses, thereby admitting that an indemnity for the seizure was due.

On the 2d day of June (old style), 14th day of June (new style), 1894, the then envoy extraordinary and minister plenipotentiary of the United States of America near to His Imperial Majesty the Emperor of all the Russias, acting under instructions from his Government, addressed a note to the Imperial Russian ministry of foreign affairs, a copy of which is hereto annexed marked "Exhibit R," presenting the claims of the owners, officers, and crew of the said bark *Cape Horn Pigeon* for indemnity for the arrest of the said bark. No answer being received to the said note, the legation of the United States at St. Petersburg, Russia, continued to press for a reply thereto, but it was not until October 12/24, 1895, that the reply of the said ministry of foreign affairs, a copy of which is hereto annexed marked "Exhibit S," was received. In this reply the said ministry already referring to its former expression in the note of the said ministry already referred to and marked "Exhibit I," requests that the Imperial Government be furnished vouchers for the expenses incurred by the captain and owners of the said bark *Cape Horn Pigeon*, which expenditures, amounting to \$3,400, had been included in the claims as presented by the said minister plenipotentiary of the United States in the note before cited and marked "Exhibit S."

As while the Imperial Russian Government recognized the fact that the seizure of the said bark *Cape Horn Pigeon* was unjustifiable, and

that a certain indemnity therefor was due to the owners, officers, and crew thereof, as is shown in the notes of the Imperial ministry of foreign affairs above referred to, but repudiated the principal item of the claim, namely, that for the loss of the services of the said bark, her equipment, and crew during the period of the detention, it did not seem to the claimants expedient to in any way appear to acquiesce in the justice of such repudiation by submitting at that time an account in detail for any minor part of their claim independent of the principal and disputed item thereof. All these items of expense are, however, now submitted in detail in the bill for damages hereto annexed.

On the 27th day of January (8th day of February), 1899, the then Chargé d'Affaires, acting under instructions from his Government, addressed a note to the Imperial Russian ministry of foreign affairs, a copy of which is hereto annexed marked "Exhibit T," offering to accept, on behalf of these claimants, for the damages suffered by them on account of the seizure of the said bark *Cape Horn Pigeon*, and in full settlement therefor, the sum of \$42,000, by way of compromise, but this offer was made by the Government of the United States with the express statement, distinctly set forth in the said note, that the said offer was made with a view to reaching an early settlement of the case, and that, should the said offer of compromise be refused by the Imperial Russian Government, nothing therein should be construed as in any way to prejudice the rights of the said claimants, nor especially their right to recover the full amount of their claims by arbitration or by negotiation.

In reply the embassy of the United States of America received a note from the Imperial Russian ministry of foreign affairs, dated March 13 (old style), March 25 (new style), 1899, a copy of which is hereto annexed marked "Exhibit U," in which the Imperial Russian Government rejected the offer of compromise submitted by the Government of the United States and again offered the sum of \$2,500 indemnity for the aforesaid seizure of the bark *Cape Horn Pigeon*.

In addition to the documents above specified, the following are also hereto annexed and submitted in evidence, marked, respectively, as herein indicated:

Exhibit V.—The sworn deposition of William R. Wing, of New Bedford, Mass., in the United States of America, to which are attached—

Annex 1.—The log book of the bark *Cape Horn Pigeon* upon its voyage in 1892.

Annex 2 and Exhibit 3.—Charts of the North Pacific Ocean.

Annexes 4, 5, 6, and 7.—Accounts of the bark *Cape Horn Pigeon*, showing the cost of the vessel and her outfit.

Annex 8.—Accounts of expenditures paid by J. and W. R. Wing, owing to the seizure of the *Cape Horn Pigeon*.

Annex 9.—Copy of an extract from the New Bedford Whaleman's Shipping List of December 7, 1875.

Exhibit W.—Official Russian map showing the Okhotsk Sea and a line marking the extreme limit of jurisdiction ever claimed therein by Russia.

Exhibit X.—Statement of the officers and crew of the *Cape Horn Pigeon* regarding the arrest of the vessel, dated September 21, 1892, and duly signed and witnessed.

Exhibit Y.—Declaration of the captain and crew of the *Cape Horn Pigeon*, dated September 23, 1892, duly signed by the captain and 29 of the officers and crew.

Exhibit Z.—Copy of a letter, dated Vladivostok, September 27, 1892, from Thomas Scullen, captain of the *Cape Horn Pigeon*, to Commander Charles V. Gridley, of the United States Navy, commanding the U. S. S. *Marion*.

Exhibit AA.—Chart showing the course of the *Cape Horn Pigeon* during her voyage in the Okhotsk Sea in 1892.

Exhibit BB.—Copy of a note from the Imperial Russian ministry of foreign affairs to the envoy extraordinary and minister plenipotentiary of the United States of America at St. Petersburg, dated July 31, 1868.

Exhibit DD.—Document No. 59 of the Senate of the United States of America, Fifty-fifth Congress, second session: Bering Sea Awards.

Exhibit EE.—A copy of a note of the Imperial Russian ministry of foreign affairs, dated May 8, 1882.

Exhibit FF.—A copy of a note of the Imperial Russian ministry of foreign affairs, dated June 1, 1882.

TREATY OBLIGATIONS OF RUSSIA AND THE LAWS OF NATIONS.

The Okhotsk Sea is a great arm of the North Pacific Ocean, from which it is separated by the chain of islands known as the Kuril Islands. Its vast extent precludes the possibility of its effective occupation and control by any single nation. Nor, indeed, has any such occupation ever been attempted, nor has the Imperial Russian Government ever publicly asserted any right to control the navigation of its waters or by any proclamation or other act attempted to prohibit fishing or whaling within its limits beyond ordinary jurisdictional waters. On the contrary, the treaties of 1824 and 1825 with the United States and Great Britain, respectively, as well as the long-continued resort to its waters without molestation of foreign whaling vessels in pursuit of their calling, constitute acts of admission of the absence of any intent to claim a right of prohibition to all men of the free use of its waters beyond the limits of ordinary marine jurisdiction. The affidavits of Ezra B. Lapham, George O. Baker, and B. D. Cleveland, submitted in evidence herewith, show that this sea was a common resort for whalers.

The captain of the *Cape Horn Pigeon* has stated in his sworn affidavit, Exhibit H, and it is to be observed that his credibility is vouched for by several witnesses of good standing, also under oath, that the commander of the arresting Russian vessel declared at the time the seizure was made that the Okhotsk Sea was a closed sea and that he had orders to seize all vessels found taking whales therein and that the seizure of the bark in question was made on that account.

Were this declaration of the Russian commander, that the Okhotsk Sea is a sea closed to the navigation and the pursuit in its open waters beyond ordinary marine jurisdiction of the animals *feræ nature* frequenting it, supported by the claims of the Imperial Russian Government, it is not easy to see how, in the light of present opinions on the subject of ownership of the high seas, that claim could be maintained conformably to the accepted principles of international law, even aside from the treaties of 1824 and 1825, made by the Imperial Russian Government and the United States and Great Britain, respectively.

The first article of the treaty with the United States, of 1824, reads as follows:

It is agreed that, in any part of the great ocean commonly called the Pacific Ocean or South Sea, the respective citizens or subjects of the high contracting powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not have already been occupied, for the purpose of trading with the natives, saving always the conditions determined by the following articles.

The first article of the treaty between the Imperial Russian Government and the Government of Great Britain reads as follows:

Il est convenu que dans aucune partie du grand océan, appelé communément Océan Pacifique, les sujets respectifs des Hautes Puissances contractantes ne seront ni troublés, ni gênés soit dans la navigation, soit dans l'exploitation de la pêche, soit dans la faculté d'aborder aux côtes sur des points qui ne seraient pas déjà occu-

pés, afin d'y faire le commerce avec les indigènes, sauf toutefois les restrictions et conditions déterminées par les articles qui suivent.

In rendering its decision the Paris tribunal of arbitration with regard to the differences between the Governments of Great Britain and the United States a majority of the arbitrators adopted the following decision:

By the ukase of 1821 Russia claimed jurisdiction in the sea known as the Bering Sea to the extent of 100 Italian miles from the coast and islands belonging to her, but in the course of the negotiations which led to the conclusion of the treaties of 1824 with the United States, and of 1825 with Great Britain, Russia admitted that her jurisdiction in the said sea should be restricted to the reach of a cannon shot from the shore, and it appears that from that time up to the cession of Alaska to the United States Russia never asserted in fact or exercised any exclusive rights in the seal fisheries therein beyond the ordinary limit of territorial waters.

In both of these treaties the expression employed is "in any part of the great ocean commonly called the Pacific Ocean." What did the decision of the tribunal mean in this regard? The Bering Sea was and is as much separated from the main ocean as was and is the Okhotsk Sea, and was and is equally distinguished therefrom by name. Both are, however, branches of the great ocean, and the decision which includes the waters of the one as part of that great body of water must necessarily include the other.

A claim of exclusive jurisdiction over gulfs of any such size and extent as the Okhotsk Sea is not in accord with the consensus of opinion of the accepted authorities on international law to-day. A very eminent authority upon the subject has expressed the following view:

In our day legislation and the opinions of jurists are in accord in recognizing the liberty of the ocean, and no people could make pretension of control thereof. Those portions of the sea which are connected with the ocean are admitted to be free and accessible to all the world, even when they are surrounded by the possessions of a single State. Certain restrictions of this principle admitted in practice can only be justified by the necessity of safeguarding the security of the bordering country.

Consequently, from the present point of view, the sovereignty of a State over the seas which bound it can not extend to a distance which would deprive them of their character of open seas. Thus Sweden was in the wrong in claiming sole possession of the Baltic. This sea, communicating with the ocean as it does, ought always to remain open to all States. * * *

The Sea of Kara can not be considered as belonging to Russia. With regard to its geographical position a mere glance at the map shows that the Sea of Kara communicates directly with the Arctic Ocean and that it is entirely open to navigation. If it is alleged that it is covered with ice during nine months of the year and that the ice forms a continuation of Russian territory, it may be objected to that reasoning that ice has never yet been likened to terra firma. Furthermore, the free use of that sea might be necessary to other States for navigation during the three months when it is not frozen. From the judicial point of view it is an open sea. (F. de Martens, *Traite de Droit International*. Translated into French by A. Leo, Vol. I, pp. 494-496.)

The opinion of the distinguished counsel for the Imperial Russian ministry of foreign affairs regarding the Kara Sea applies with equal or even greater force to the Okhotsk Sea, which is connected with an ocean much more frequented than is the Arctic Ocean. Its waters are less closed to navigation by ice, and its area is vastly greater than that of the Kara Sea.

The same high authority states further on in his valuable treatise (Vol. I, sec. 97, p. 497):

The ocean is free for the navigation and communication of all peoples. No nation can be prevented from the enjoyment of fishing or other peaceful enterprises on the high seas. If all enjoy the same rights thereon, it follows that no State can there impose its laws upon the others, pass judgments on foreign navigators or sailors, nor arrest or search the ships of another country.

Vattel says (Book I, Chap. XXIII, secs. 289, 291):

All we have said of the parts of the sea near the coast may be said more particularly and with much greater reason of the roads, bays, and straits as still more capable of being occupied and of greater importance to the safety of the country. But I speak of the bays and straits of small extent, and not of those great parts of the sea to which these names are sometimes given, as Hudson Bay and the Straits of Magellan, over which the empire can not extend, and still less a right of property.

But if the jurisdiction and right of property of the bordering nation can not extend over Hudson Bay, which is surrounded on every side by British possessions, not only as regards the mainland, but as regards the chain of islands stretching across its wide mouth, how much more is this principle applicable to the Okhotsk Sea, across the wide mouth of which extends the chain of the Kurile Islands, belonging to the Empire of Japan?

The American schooner *Washington*, while engaged in fishing in the Bay of Fundy, 10 miles distant from the shore, was seized by one of Her Britannic Majesty's cruisers and taken to Yarmouth, Nova Scotia, and condemned, on the ground that she was engaged in fishing in British waters in violation of the provisions of the convention relative to the fisheries, entered into between the United States and Great Britain on October 20, 1818. A claim for damages was made before the commission of arbitration under the claims convention between the United States and Great Britain of February 8, 1853, on the ground that the seizure was in violation of the provisions of the convention of 1818 and of the law of nations. Hornby, British commissioner, maintained that the seizure was justified, both on the ground that the Bay of Fundy was an indentation of the sea over which Great Britain might by virtue of the law of nations claim jurisdiction, and also on the ground that, by a fair construction of the convention of 1818, the Bay of Fundy was one of the "bays" in which, by that convention, the United States had renounced the right to fish. Upham, the American commissioner, denied both these contentions, citing Vattel I, chapter 20, sections 282, 283; Grotius II, chapter 2, section 3; I Kent's Commentaries, 462; Sabine's Report on the Fisheries, 282, 294.

In rendering his decision in favor of the claimants the umpire said:

The Bay of Fundy is from 65 to 75 miles wide and from 130 to 140 miles long. It has several bays on its coasts. Thus the word bay as applied to this great body of water has the same meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume sovereignty.

RUSSIA'S RESPONSIBILITY.

Indeed, the Russian Government itself had admitted, by the issue of the notice to whalers and sealers, which was copied into the New Bedford Whaleman's Shipping List (Exhibit 9 of Exhibit V), that her jurisdiction in the Okhotsk Sea did not extend beyond ordinary jurisdictional waters. And the same admission is made in the note of the Imperial Ministry of Foreign Affairs to the Envoy Extraordinary and Minister Plenipotentiary of the United States at St. Petersburg, dated July 31, 1868, and submitted in evidence marked "Exhibit BB," as well as in the official publication issued by the Imperial Russian Ministry of Marine for the year 1875, also submitted in the evidence and marked "Exhibit CC," upon page 91, a sworn translation of the paragraph in question being attached to the exhibit.

In any case, however, the *Cape Horn Pigeon* was quite outside of any claimed Russian jurisdiction when the seizure was made. The map

of the Okhotsk Sea, published by the Russian Government, submitted in the evidence for the complainants, marked "Exhibit W," shows a line of demarcation which, as it forms a continuation of a line which it was formerly claimed marked the partition of American and Russian jurisdiction in the Bering Sea—an extent of jurisdiction which the Paris tribunal of arbitration forever disposed of—it doubtless represents some former pretension to jurisdiction, and clearly is the extreme limit to which jurisdiction could be claimed under any theory. Now, the point at which the *Cape Horn Pigeon* was seized was outside of the waters on the Russian side of this line. Moreover, the plotting of the course of the *Cape Horn Pigeon* on the chart, according to the entries in the log book, show that after leaving Vladivostok she never again entered Russian waters until she was brought there after the arrest, contrary to the assertion of the Russian commission of inquiry.

But, in point of fact, the Imperial Government of Russia has not attempted to support the pretension that the seizure of the *Cape Horn Pigeon* was justifiable on the ground that that vessel had not the right to fish for whales in the open sea of the Okhotsk Sea. On the contrary, it appears from the note of the Imperial Ministry of Foreign Affairs to the Minister of the United States to Russia, dated June 12/24, 1893, submitted in the evidence and marked "Exhibit I," that the Imperial Government disclaimed any such pretension to exclusive control, and, while admitting that the seizure was not justified by the fact, puts the ground for such seizure upon certain suspicions entertained by the Russian commander regarding the *Cape Horn Pigeon* and her action.

But whatever may have been the suspicions of the commander of the Russian vessel, in acting upon them and seizing the *Cape Horn Pigeon*, he assumed for his Government full responsibility for all damage directly resulting therefrom, unless some wrongful act on the part of her occupants cognizable by the Russian Government should be established.

M. de Martens says (*Traité de Droit International*, Tome II, § 56, 3°, p. 342):

No government has the right of search of foreign ships nor in general of their arrest on the high seas. The right, however, of arresting a vessel suspected of piracy is generally admitted. It is a corollary of this principle that in its application it is essential to use the greatest circumspection, since a vessel unjustly arrested is entitled to damages.

The *Cape Horn Pigeon* was at the time of her arrest, according to the statement of the Imperial Russian Government itself, in the note of the Ministry of Foreign Affairs of June 12 (24), 1893, above referred to (Exhibit I), in latitude 46° 31', longitude 146° 30' east, a point 125 miles from the nearest Russian land, namely the island of Sagalin, and 84 miles from the Japanese island of Yeratop. She was therefore upon the high seas entirely out of Russian jurisdiction and engaged in her legitimate calling of whaling. Her captain protested against her seizure and warned the commanding officer of the Russian vessel that he would have to pay indemnity for the interruption of his voyage, and the Russian officer replied that if he was wrong in making the seizure his Government would indemnify the losers.

The note of the Russian Ministry of Foreign Affairs just referred to states that the Russian commission of inquiry into the matter of the seizure of the *Cape Horn Pigeon* found that that vessel had navigated within Russian waters, but no evidence has been offered to show upon

what ground the commission had arrived at this finding. In stating this the commission found further that there was no ground for the confiscation of the vessel.

The right of innocent passage of fishing and merchant ships in marginal territorial waters is too well established a principle of international law to permit that to be set up as a claim of any right to interrupt the voyage and employment of this vessel.

For more than two hundred and fifty years no European territorial marine waters which could be used as a thoroughfare, or into which vessels could accidentally stray or be driven, have been closed to commercial navigation; and during the present century no such waters have been closed in any part of the civilized world. The right must, therefore, be considered to be established in the most complete manner. (W. E. Hall, *A Treatise on International Law*, 1895, Part II, Chap. II, sec. 42, p. 165.)

It follows therefore that, both by right of treaty and by every principle of international law, as well as by the admission of the Russian Government, the *Cape Horn Pigeon* was in the pursuit of a calling in which she could not be lawfully interfered with when she was seized by the agents of the Russian Government and taken to Vladivostok, thereby breaking up her voyage and causing great damage upon her owners, officers, and crew in consequence. Her seizure was a violation of the treaty rights existing between her country and Russia as well as of the rights of man.

And in point of fact the Russian Government has acknowledged the illegitimate character of the seizure not only in the statement made in the ministerial note of June 12 (24), 1893, as follows:

Nevertheless, the commission of investigation to which this case was referred, while stating also that the *Cape Horn Pigeon* had navigated within Russian territorial waters, found no cause to order her confiscation. *It was then admitted that the arrest of this vessel had been made as the result of a misunderstanding, and the vessel was returned to her owners without delay.*

but also in the offer of an indemnity, wholly inadequate though it was, for the seizure of the bark.

THE MEASURE OF DAMAGES.

The principal item of damage claimed by the owners, officers, and crew of the *Cape Horn Pigeon* is that amounting to \$45,000 for the loss of the service of the vessel. The captain of the bark formed his estimate of the amount of the damage sustained in this particular by striking an average of the whales taken by him during his several previous voyages in the same waters and deducting from the value of this average the value of the whales already taken by him during the voyage in question. This was an eminently fair and businesslike way of arriving at an estimate of the loss sustained by the breaking up of the voyage. The claim is one for absolutely direct damages arising out of the seizure, whereby a continuance of the whaling voyage was rendered impossible owing to the lateness of the season, the impossibility of getting back to the grounds before its termination, and the approaching termination of the engagement with the crew.

In the case of the United States vessel *Betsey*, unlawfully detained by British authorities, the majority of the board of arbitration decided in favor of allowing to the claimant, not only the value of the vessel and her cargo, but also the profits which would have been derived from the sale of her cargo had she been allowed to continue her voyage. The claims of the owners of the *Neptune* were similarly decided in 1795.

In the case of the American brig *Williams*, seized by the Mexican Government in 1829, the umpire awarded passage money which would have been received if the brig had been permitted to continue her voyage to her immediate destination, where she expected to receive a cargo of passengers.

The damages claimed for the loss of catch of a whaling ship in no sense constitute claims for indirect damages or for speculative profits. They represent the direct loss sustained by the owners, officers, and crew of the *Cape Horn Pigeon* owing to her unlawful seizure and detention at Vladivostok, whereby she was taken away from her lawful calling just at the height of the whaling season, and kept away from its pursuit until it was too late to resume it during that year. They are such damages as are usually allowed in analogous cases for losses which the owners, officers, and crew suffered by the seizure and detention, as measured by the value of the services of the vessel, her outfit and crew, during the time of the detention, and are of the nature of the demurrage usually allowed for the detention of merchant or trading vessels. But the basis of estimate of demurrage upon a trading vessel would not be applicable as the measure of damage suffered by a whaling ship taken from the pursuit of her calling in the height of the brief season during which whales are to be taken in northern latitudes.

The damage sustained by a freighting ship, owing to her detention, may be compensated by the payment of such a sum as may be estimated upon her earning capacity in carrying freight during the period of the detention, on the theory that she can always resume her carrying trade, which has only suffered an interruption not further affecting her earning capacity than as regards the mere loss of time. But in the case of a whaling ship the entire earnings of the vessel during an entire season depend upon her taking advantage of her opportunity when it arrives, and the loss of her service at that moment may deprive her owners of any return upon their investment during the whole year, and her crew, who are paid by lay, of all remuneration for their labor for the voyage and season. Thus the *Cape Horn Pigeon* was gone for very nearly a whole year and brought back an insufficient supply of oil and bone to defray expenses, let alone make a profit, while her crew not only did not make their wages, but remain in debt to the ship for advances made them.

The rule of damages is well settled that in a fishing voyage the loss of the service of a fishing vessel is to be compensated upon the value of the vessel's use during the time of her detention, and this depends upon the character and employment of the vessel. The objection that prospective profits are not admissible as a substantive ground of damage does not apply or exclude the use of the average catch of a fishing vessel as evidence of the value of that vessel's use, but is the best evidence, exactly as it is the evidence used in other cases to determine the injury suffered by a party from the deprivation of the use of his property. The rule is particularly applicable to cases of whale ships, because the crew, being paid by lay and having no ownership of the catch, are to be compensated for their damages by their lay in the damages awarded instead of being allowed to make separate independent claims for themselves.

There is abundant evidence of the application of this rule in estimating the measure of damage caused to a whaling ship by interference with the pursuit of her calling, and it has always been justly considered that the crew, being generally paid by lay or proportion of

the proceeds of the voyage, which involves special hardships and dangers, can only be fairly compensated upon the basis of the estimated value to them of the services of their ship and its equipment during the time of detention. The owners also equip their vessels, at great expense, for long and perilous voyages, in the expectation of commensurate returns in which they must divide the proceeds with the crew, and their loss can only be estimated upon the basis of the use of their ship and her crew and equipment for the purpose for which she was sent out and not upon a percentage upon the capital invested or the value in money of the ship if put to other uses. The only criterion applicable, therefore, is the average catch.

In the case of the *Costa Rica Packet* the distinguished arbitrator, himself a Russian subject and the official and permanent counsel of the Imperial Russian Ministry of Foreign Affairs, in rendering his decision said in the preamble to his award:

Whereas the unjustifiable detention of Captain Carpenter caused him to miss the best part of the whaling season;

Whereas, on the other hand, Mr. Carpenter, on being set free, was in a position to have returned on board the ship *Costa Rica Packet* in January, 1892, at the latest; and

Whereas no conclusive proof has been produced by him to show that he was obliged to leave his ship until April, 1892, in the port of Ternata, without a master, or, till less, to sell her at a reduced price;

Whereas the owners or the captain of the ship being under an obligation, as a precaution against the occurrence of some accident to the captain, to make provision for his being replaced, the mate of the *Costa Rica Packet* ought to have seen fit to take command and to carry on the whaling industry;

And whereas, thus, the losses sustained by the proprietors of the vessel *Costa Rica Packet*, the officers and the crew, in consequence of this precautionary detention.

The principle of admitting the loss of catch in estimating the measure of damage to a whaling vessel by reason of her unjustifiable detention is thus clearly admitted by this high authority on international law.

In the case of the *Potomac*, before the Supreme Court of the United States, Mr. Justice Gray, in delivering the opinion of the court, said:

Both the questions of law presented by the record relate to the amount of the damages that the libellant is entitled to recover.

One question is as to the sum to be allowed for the detention of his vessel while repairing the injuries suffered by the collision. The rules of law governing this question are well settled, and the only difficulty is in applying them to the peculiar facts of the case.

In order to make full compensation and indemnity for what has been lost by the collision, *restitutio in integrum*, the owners of the injured vessel are entitled to recover for the loss of her use, while laid up for repairs. When there is a market price for such use the price is the test of the sum to be recovered. When there is no market price, evidence of the profits that she would have earned, if not disabled, is competent. (United States Reports, vol. 105, p. 630-632.)

In the case of *Williamson v. Barrett*, before the Supreme Court of the United States, Mr. Justice Nelson, in delivering the opinion of the court, said:

As to the question of damages, the jury were instructed, if they found for the plaintiffs, to give damages that would remunerate them for the loss necessarily incurred in raising the boat and repairing her, and also for the use of the boat during the time necessary to make the repairs and fit her for business.

By the use of the boat, we understand what she would produce to the plaintiffs by the hiring or chartering of her to run upon the river in the business in which she had been usually engaged.

The general rule in regulating damages in cases of collision is to allow the injured party an indemnity to the extent of the loss sustained. This rule is obvious enough, but there is a good deal of difficulty in stating the grounds upon which to arrive, in all cases, at the proper measure of that indemnity.

The expenses of raising the boat and of repairs may of course be readily ascertained, and in respect to repairs no deduction is to be made, as in insurance cases, for the new materials in place of the old. The difficulty lies in estimating the damage sustained by the loss of service of the vessel while she is undergoing the repairs.

That an allowance short of some compensation for this loss would fail to be an indemnity for the injury is apparent. This question was directly before the court of admiralty in England in the case of the *Gazelle*, decided by Dr. Lushington in 1844, 2 W. Robinson, 279. That was a case of collision, and in deciding it the court observed: "That the party who has suffered the injury is clearly entitled to an adequate compensation for any loss he may sustain for the detention of the vessel during the period which is necessary for the completion of the repairs and furnishing the new articles."

In fixing the amount of the damages to be paid for the detention, the court allowed the gross freight, deducting so much as would in ordinary cases be disbursed on account of the ship's expenses in earning it.

This rule may afford a very fair indemnity in cases where the repairs are completed within the period usually occupied in the voyage in which the freight is to be earned. But if a longer period is required it obviously falls short of an adequate allowance. It looks to the capacity of the vessel to earn freight, for the benefit of the owner, and consequent loss while deprived of her service. In other words, to the amount she would earn him on hire. (13 Howard, 101.)

(See also the following cases: The *Baltimore*, 8 Wallace, 377-385; *Cayuga*, 14 Wallace, 270; *Freddie L. Porter*, 5 Federal Reports, 1, 822; *Vermont*, 8 Federal Reports, 170; *Brown v. Hicks*, 24 Federal Reports, 811; *Parsons v. Terry*, 1 Lowell, 60; the *Notting Hill*, 9 Pro. Div., 105-113; the *Parana*, 2 Pro. Div., 118; the *Mary Steele*, 2 Lowell, 370-374; the *Risoluto*, 8 Pro. Div., 109; the *Clarence*, 3 William Rob., 283-286; the *Gleaner*, 38 L. T. N. S., 650; the *Marsden Collision*, 2d edition, p. 115.)

This rule was applied in the cases of the whaling ships *James Mavry*, *General Pike*, *Mile*, and the bark *Nile*, captured by the Confederate cruiser *Shenandoah* and compelled to abandon their whaling voyages, in the decision of the Court of Commissioners of Alabama Claims.

(See also the *Walter Phare*, 1 Lowell, 437; *Stormless*, 1 Lowell, 153; *Mayflower*, 1 Brown, Adm., 376; *Transit*, 4 Ben., 138; *Swift v. Brownell*, 1 Homes, 467; the *Antelope*, 1 Lowell, 130; *Bourne v. Smith*, 1 Lowell, 547; *Frates v. Howland*, 2 Lowell, 36; *Hussey v. Fields*, 1 Sprague, 364-396; *Knight v. Parsons*, 1 Sprague, 279; 290 *Barrels of Oil*, 1 Sprague, 279; *Backster v. Rodman*, 3 Pickering (Mass.), 435, 438, 439; *Fletcher v. Taylor*, 17 C. B., 21; *Corey v. Thames Iron Works, L. R.*, 3 Q. B., 181; *Ex parte Cambrian Steam Packet Co., L. R.*, 6 eq., 396; *Cayuga*, 2d Ben., 125; *Jolly v. Terra Haute*, 6 McLane, 237; *Williamson v. Barrett*, 13 Howard, 101.)

Other cases of the application of the rule before international tribunals are those of—

The *Hope On*, detained by the Chilean Government in 1883 at Talcahuano, in which the commission of arbitration in its award said:

On the other hand, the majority of the commission, Mr. Commissioner Gana dissenting, are of the opinion that the claimant is entitled to recover damages on account of the arrest and detention of the vessel. The principle is well established in cases like the present that the loss of the use of the vessel is the proper measure of damages, and the loss of such use is the loss of her probable catch during her enforced absence from the fishing grounds. (G. B. Borden v. Chile.)

In the case of the *Col. Lloyd Aspinwall*, seized by the agents of the Spanish Government, the umpire, in his award in favor of the claimants, allowed for one hundred and fourteen days' interruption of trade.

This subject has recently undergone the most thorough and careful examination by the commission appointed to adjust the claims of the

Canadian sealers against the Government of the United States, commonly known as the Bering Sea claims. It is scarcely necessary to do more than to refer to the arguments submitted before this tribunal on behalf of the English Government for the most complete and exhaustive review of all the decisions upon the subject.

The English Government contended for the rule as claimed in the present case. An examination of the awards made in certain cases before the Bering Sea Commission leaves no room for doubt that in these cases at least the Commission adopted the rule as contended for by the English Government, and as herein stated. For instance, in case No. 4—the *Favorite*—the award was \$3,202. The claim was \$6,202, of which \$5,600 was for the value of the estimated earnings from catch. The interest of Alexander McLean, one-half, was thrown out by the Commission, reducing this claim to \$2,800. The item of \$200, time and expense of owners, was also thrown out as being a duplicate, and thus the claim of \$6,202 was reduced to \$3,202, for which the award was made, and which included \$2,800 belonging to the owner, not excluded for the estimated earnings of the vessel based upon an estimated catch. The same is true of the case of the *Alfred Adams*, where an award of \$10,124 was made, one-half ownership being thrown out, and it appears that at least \$8,428 must have been estimated for catch. The same is also true of No. 13, the *Juniata*; No. 14, *Pathfinder*; No. 15, *The Black Diamond*; No. 16, *The Lily* and others.

If there were any doubt of this, it is relieved by such cases as No. 14, the *Triumph*, where the sole claim was for loss of catch. In the case of the *Triumph*, No. 14, not No. 11 for the same vessel, the award was \$15,500. The original claim was for \$19,624, of which \$250 was for legal and other expenses, \$19,424 being for balance of estimated catch of 2,500 skins, at \$8 each. It was admitted that the *Triumph* had transshipped her part of her season's catch before entering Bering Sea on or about July 4. A considerable part of the season had already therefore elapsed, and it was reasonable to suppose that she had taken a fifth part of her probable catch before entering Bering Sea. Thus 2,000 skins would remain to be taken to make up the season's work of 2,500 skins. She had on board 72 skins when taken, leaving 1,928 skins to be taken to make up the 2,000. One thousand nine hundred and twenty-eight skins at \$8 would amount to \$15,424, and the award was for \$15,450, as has been said. There is no possible escape from the demonstration which this case affords, that this was the rule adapted by the Bering Sea Commission, and a careful examination of each case shows that the rule was universally applied.

It is believed that the principle that an agent of a government may not rightfully, upon the mere suspicion of an act of trespass, enter upon a peaceably engaged ship, sailing under the flag of a friendly nation, and by force of arms enroll the citizens or subjects of that friendly nation into the public service of that government against their wills and oblige them to navigate one of that government's national ships will not be disputed. Hall, citing Bluntcheli, says (International Law, Fourth Edition, Part II, Chap. IV, p. 217):

It is not permissible to enroll aliens, except with their own consent, in a force intended to be used for ordinary national or political objects.

Such an act is an unwarrantable aggression not only upon the flag

of the friendly nation but of usurpation of authority over the citizens of another nationality wholly at variance with the rights of the individuals, and which no government would attempt to practice upon *terra firma*.

The act of compulsion over the crew of the *Cape Horn Pigeon* in taking them from their own ship and by force of arms obliging them, under protest, to navigate a Russian vessel into port, must be considered as, apart from any right or want of it to seize the vessel, a grave infraction of their natural rights. As American citizens no official of the Russian Government could by right compel them against their wills to enter into the service, even temporarily, of the Russian Government. And in doing so the commander of the Russian cruiser laid his Government open to a just claim for damages in excess of the mere value of the labor performed. The fact that these seamen, unprovided with any competent counsel to advise them of their rights, agreed at Vladivostok to accept the mere value of the labor performed in acquittance of any claim for this arbitrary act of impressment should not be permitted to prejudice their claims not only for the services performed but for indemnity for the injury to their national pride and for the violation of their personal liberty.

Furthermore, these men were landed on the beach at Vladivostok and left unprovided for either as regards food or shelter, nor was any suitable provision offered them, so that they were compelled to take refuge in the squalid quarters of a Chinaman significantly called "Cheap John." It is claimed by the Russian Government that quarters were offered them in the jail. Such a lodgment, if it was in fact offered them, can hardly be deemed as suitable or adequate for self-respecting and innocent citizens of a friendly nation, innocent of any wrong, who have been brought to a distant port and compelled to await in enforced idleness permission to resume their occupation. It is confidently believed that full indemnity will be allowed these men for both these wrongs in the final award.

In cases of this nature the principle of allowing a fair rate of interest upon the award is so universally admitted as to preclude the necessity of argument upon the subject. In his award in favor of the *John S. Bryan* for the payment of interest upon the amount of indemnity due from the Brazilian Government the arbitrator stated: "The principle on which this sum is awarded is one which has long been settled."

Among the many cases in which tribunals of arbitration have allowed interest in their awards may be cited the following:

The commission under the treaty of 1794, between the United States and Great Britain, allowed interest on all claims.

In the Chinese indemnity arbitration the commission allowed interest at the rate of 12 per cent.

The decisions of the American and British claims commission under the treaty of May 8, 1871, included interest in their awards with a very few exceptions. The Geneva tribunal of arbitration upon the Alabama claims, the dissenting opinion of Sir Alexander Cockburn shows that interest at the rate of 6 per cent was allowed in the award.

So also in the arbitration of the claims of the United States against Mexico and against Brazil.

In the case of the *Costa Rica Packet* the distinguished arbitrator allowed the claimants interest at the rate of 5 per cent.

In the recent arbitration (1897) between the United States of America and Great Britain, for claims growing out of the Bering Sea seizures, interest was universally allowed.

Estimate of damages.

Item 1, expenses of owners due to seizure.....	\$3,040
Item 2, services of crew in navigating Russian schooner.....	1,200
Item 3, provisions consumed.....	200
Item 4, board of crew.....	210
Item 5, expenses of Captain Scullen.....	50
Item 6, loss of catch.....	45,000
Item 7, indemnity for impressment, at \$1,000 each man.....	31,000
Item 8, interest for nine years, at 6 per cent.....	43,578
Total.....	124,278

Statement of claim.

I. Damages for loss of use of the vessel being measured by the average catch of the vessel, as follows:

8 whales, averaging 1,300 pounds bone, at \$5.....	\$52,000
8 whales, averaging 100 barrels oil, at \$13.....	10,400
	62,400
From which Captain Scullen deducted.....	1,800
	60,600
And credit product of 2 whales which he had taken—2 whales averaging 1,300 pounds bone, at \$5.....	\$13,000
2 whales, averaging 100 barrels oil, at \$13.....	2,600
	15,600
Claim for net loss.....	45,000

GENERAL STATEMENT OF THE CLAIMS.

The number of whales already taken was the basis of Captain Scullun's estimate as his average catch. On this season alone in the conditions in which the vessel was at the time of the seizure he could fairly have claimed a much larger number, but he knew that in four seasons he had taken 28 whales, making for those seasons an average of 7, and with this season's catch he could fairly raise the average to 8, making the deduction which he did of \$1,800. The captains whose affidavits are presented put the average catch from 6 to 10 whales, and their evidence shows that Captain Scullun's estimate of 8 whales is reasonable.

The average amount of bone to a whale is based on the two whales which Captain Scullun had taken and for which credit is given. The evidence of the other captains shows that in their experience the whales which they had taken averaged a little less bone, between 1,100 and 1,200 pounds to a whale, but it is to be remembered that Captain Scullun was there on the ground and saw the whales, and the others are speaking of previous years. Captain Scullun's deduction brings it down to about 1,250 pounds, which, under all the circumstances, renders the claim well supported by the proof.

The average of 100 barrels of oil to a whale is proved by all the witnesses and is a well known average for this class of whales. The price of the bone is shown by the testimony of Mr. Wing and Mr. Philips and the prices current in the market. Bone had ruled at \$5

a pound during August. In September the price was affected by the catch and fell to \$4.25 by the 1st of October. This was the October price and was maintained into November; but by the 1st of December the price further declined to \$4. The seizure was on the 10th of September, and the claimants are entitled to the August price, which, so far as appears, rules until that date, for the testimony shows that the catch would have been sold "to arrive" at the market rate. The price of oil is entirely established by the testimony at \$13 a barrel.

The claim is submitted, therefore, upon this item, as well established by the proof, at \$45,000.

II. Indemnity for impressment of crew of American citizens into the naval service of Russia.

The claim is \$1,000 per man for 31 men, \$31,000.

This claim was not included in the claim presented by Captain Scullun. He was only a whaling master and not a lawyer versed in the rules of international law. His affidavit shows that he felt to the full the indignity which his flag had suffered and the outrage which had been perpetrated on himself and his crew. He shows in his testimony his just indignation at the invasion of his and their rights and the cruel treatment which they received not only at the time of the seizure, but from the abandonment at Vladivostok. They were told that they were to be provided for at the station house like common criminals, but even that refuge from hunger and exposure was denied them, and Captain Scullun had himself to provide quarters for them in a storehouse, and for days they were put off with one excuse and another until they were finally sent back to their own ship without even an apology, and there rested again safely under the flag of their country. The grounds of the claim, as based upon the well-known principles of international law, are set forth in the memorandum, and its allowance is asked in the name of the United States. There were 34, all told, on the *Cape Horn Pigeon*, and all but Captain Scullun, his steward, and boy (3) were put on board the schooner, making 31 officers and men. The rate per man has been fixed at \$1,000 in the claim. It is not a subject of argument, and must be left to the justice of the arbitrator. It is not to be measured by the physical injury or even by the mental suffering of the men, but by what one great, rich, and powerful national should pay to another for an outrage which invaded not only the rights, but the self-respect of the sufferers. It is to be remembered that this was not the act of the respondent nation, but only that of its subjects, for which, however, international law holds it responsible. In such a case a nation, instead of resisting payment, should be eager to make full restitution.

III. Services of the crew in navigating the Russian schooner.

This was enforced labor, which was beneficial to the respondent nation, as it enabled them to bring both vessels to Vladivostok. The claim is at the rate of \$10 a day for the officers and \$5 a day for the men, thus:

Officers, 9, at \$10 a day for six days.....	\$540
Men, 22, at \$5 a day for six days	660
Total	1,200

While the rate per day is more than such men would ordinarily earn, it is not excessive under the circumstances. It may be fairly viewed as analagous to salvage.

IV. The other items are these:

Provisions on the *Cape Horn Pigeon* consumed by the 2 Russian officers and 12 Russian men on the voyage to Vladivostok. \$200.

The voyage lasted nine days, as Captain Scullen testifies that the schooner arrived three days before the ship.

Board of crew at Vladivostok, \$210. This covered the support of 9 officers and 22 men for fourteen days, \$50. At the time Captain Scullen made his claim at Vladivostok the last two sums had to be estimated. The exact figures are found in Mr. Wing's testimony, the first being a part of the (\$268.46 plus \$17.04) \$285.50 paid Cheap Jack, and, the latter a part of Captain Scullen's board bill of \$42 and carriage and boat hire of \$30.

V. Amount claimed for general expenses, \$3,040.

Mr. Wing has annexed to his deposition a statement of his expense account due to the seizure, amounting to \$1,519.47, from which should be deducted the \$210 plus \$50=\$260, claimed in paragraph IV, and leaving \$1,259.47 already expended, in addition to which a much larger sum than the balance of \$1,780.53 will be needed to defray his expenses in the proof of this claim. As the Russian Government has admitted its liability from the beginning, and yet has never offered to pay even an approximately fair compensation for the claim covering that of the owners, officers, and crew, both private and international law require that an allowance should be made to cover the claimant's expenses, in order that he may have "*restitutio in integrum.*"

VI. Interest.

As shown in the memorandum, interest is to be allowed at the rate of 6 per cent per annum from the date of seizure. The decision in the Bering Sea cases, cited in the memorandum, exhausts the law upon this subject and obviates the need of argument. The commission say in their award—

The rate of interest awarded by us is 6 per cent per annum, being the statutory rate at Victoria, British Columbia, during the period could, but being less than the current rate thereat.

And upon each award the interest was figured as a separate item.

Thus, as to the claim of the vessel *Dolphin*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say, \$31,484 with interest from September 10, 1887, until this day, amounting to the sum of \$19,399.38, and making a total of principal and interest of the sum of \$50,883.38.

Of the gross award of \$473,151.26 paid by the United States, \$172,962.35 was for interest.

Summary of claim.

Item I, as stated	\$45,000
Item II, as stated	31,000
Item III, as stated	1,200
Item IV, as stated	460
Item V, as stated	3,040

80,700

Together with interest thereon from September 10, 1892, to the date of the award at the rate of 6 per cent per annum.

No. 5525.—UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof I, John Hay, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 1st day of September, A. D. 1900, and of the Independence of the United States of America the one hundred and twenty-fifth.

[Seal of the Department of State,
United States of America.]

JOHN HAY.

(For certification of Exhibits A, B, and C.)

EXHIBIT A.

OFFICE OF THE COLLECTOR OF CUSTOMS,
Port of New Bedford, Mass., March 7, 1893.

I certify that the records of this office show that the following-named persons were owners of the bark *Cape Horn Pigeon*, of New Bedford, on the 1st day of July, 1892:

J. and W. R. Wing, of New Bedford, Mass	20/64
Thomas Scullen, of New Bedford, Mass	4/64
Thomas M. Hart, of New Bedford, Mass	2/64
Estate of A. H. Seabury, of New Bedford, Mass	10/64
John Wing, of New Bedford, Mass	2/64
E. F. Potter, of Dartmouth, Mass	11/64
William Potter, 2d, of Dartmouth, Mass	8/64
Estate of Michael Baker, 3d, of Dartmouth, Mass	4/64
George W. Collins, of Dartmouth, Mass	1/64
Charles C. Church, of Gosnold, Mass	2/64

64/64

Given under my hand and official seal.

[SEAL.]

JAMES C. HITCH,
Deputy Collector.

EXHIBIT B.

[Temporary register No. 34.—Official number: Numerals 46 14; letters H. D. L. J.]

Copy of certificate of registry.

In pursuance of Chapter I, Title XLVIII, "Regulation of commerce and navigation," Revised Statutes of the United States, William R. Wing, of New Bedford State of Massachusetts, having taken out and subscribed the oath required by law, and having sworn that he, 9/64, together with Joseph Wing, 9/64; Thomas M. Hart, 2/64; Jonathan Bourne, 2/64; John Wing, 2/64; Robert Allan, 4/64; A. H. Seabury, of said place, 10/64; William Potter, 2d, of Dartmouth, 8/64; Edward F. Potter, 8/64; Geo. W. Collins, 1/64; estate of Michael Baker, 3d, 4/64; estate of B. B. Church, of said place, 2/64, all of State aforesaid; and Abner Potter, jr., of Portsmouth, Rhode Island, 3/64, are the only owners of the vessel called the *Cape Horn Pigeon*, of New Bedford, whereof J. S. Layton is at present master, and is a citizen of the United States; and that the said vessel was built in the year 1854 at Dartmouth, Massachusetts, as appears by permanent register No. 2, issued at the port of New Bedford September 1, 1894, now surrendered, new owners in part; and said register having certified that the said vessel has two decks and three masts, and that her length is

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Crew list—List of persons composing the crew of the bark *Cape Horn Pigeon*, etc.—Cont'd.

Names.	Places of birth.	Places of residence.	Of what country citizens or subjects.	Description of their persons.				
				Age.	Height.	Complexion.	Hair.	Eyes.
Peter Layton.....	Cape de Verde Island.	San Francisco.	Portugal.....	25	Fl. In. 5 8	Dark ...	Dark	
Thomas Oliveira.....	do	do	do	26	5 6	do	do	
Nicolas Portu.....	East India.	do	England.	29	5 5	do	do	
Jose Torres.....	Guam	do	Spain	24	5 4	do	do	
Joe Santos.....	do	do	do	21	5 5	do	do	
Felix de Castro.....	do	do	do	24	5 5	do	do	
Marx Pletz.....	Germany	do	United States.	27	5 4	do	do	
Peter Johnson.....	Denmark	do	Denmark	42	5 7	Light	Light	
Joe Costa.....	Guam	do	Spain	21	5 5	Dark	Dark	
Jose Guinata.....	do	do	do	19	5 5	do	do	
John Sablan.....	do	do	do	25	5 9	do	do	
Ben Sigunio.....	do	do	do	21	5 5	do	do	
Jack Kanaka.....	Madagascar	do	do	28	5 5	do	do	
Charles Smith.....	West Indies	do	England	25	5 6	Colored.	Black	
Ben Cantanego.....	Guam	do	Spain	23	5 5	Dark	Dark	
Bernab Ascenscia.....	do	do	do	21	5 7	do	Black	
Mariano Maripesa.....	do	do	do	21	5 10	do	Dark	
P. Maguire.....	Australia	do	England	40	5 7	Light	Light	
John Peters.....	Cape de Verde Island.	San Francisco.	Portugal	30	5 7	Colored.	Black	
John Shopley.....	Pennsylvania	do	United States.	29	5 10	Light	Light	
Andrew Perez.....	Guam	do	Spain	22	5 7	Dark	Dark	
Joseph Carter.....	Java	do	Holland	40	5 6	do	do	
J. E. Smith.....	Massachusetts	do	United States.	56	5 5	Light	Gray	
August Pferrmann.....	Germany	do	do	24	5 8	do	Light	
Chas. Johnson.....	Sweden	do	Sweden	21	5 7	do	Dark	
Manuel January Gonsalves.....	Cape de Verde Island.	do	Portugal	24	5 10	Dark	do	
Mautel Phillips.....	Western Islands.	do	do	21	5 7	do	do	
Arthur H. Taylor.....	England	do	United States.	29	6 0	do	do	
Wm. McDonald.....	Vermont	do	do	21	5 8	do	do	
John McDonald.....	Massachusetts	do	do	25	5 7	Light	Light	
Albert Iffts.....	Pennsylvania	do	do	27	5 8	do	do	
H. Smith.....	Germany	do	do	24	5 9	do	do	
J. McGregor.....	Scotland	do	England	23	5 6	do	do	
Fred Wick.....	Germany	do	Germany	30	5 6	do	do	
Joe Mendioto.....	Guam	do	Spain	23	5 7	Dark	Dark	
W. Shoefter.....	Colorado	do	United States.	25	5 6	Light	do	

DISTRICT AND PORT OF SAN FRANCISCO,
COLLECTOR'S OFFICE,
February 28, 1893.

I hereby certify the above to be a true copy of the original on file in this office.

M. WEBBER, *Deputy Collector.*
(Initialed.) A. W. B.

I, Thomas Scullan, master of the said bark *Cape Horn Pigeon*, do solemnly, sincerely, and truly swear that the within list contains the names of all the crew of the said bark, together with the places of their birth and residence, as far as I can ascertain the same.

THOMAS SCULLUN, *Master.*

PORT OF SAN FRANCISCO.

Sworn to and subscribed this 7th day of December, 1891, before me.

M. WEBBER,
Deputy Collector.

[General customs regulations of 1884, art. 192.]

I do certify that the within is a true copy of the list of the crew of the bark *Cape Horn Pigeon*, New Bedford, whereof Thomas Scullan is master, taken from the original on file in this office.

Given under my hand and seal of office, at the custom-house, this 7th day of December, in the year of our Lord 1891.

[SEAL.]

M. WEBBER,
Deputy Collector.

No. 5528.—UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof, I, John Hay, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 1st day of September, A. D. 1900, and of the independence of the United States of America the one hundred and twenty-fifth.

JOHN HAY.

[Seal of the Department of State of the
United States of America.]

EXHIBIT D.

Whalemen's shipping paper.

1. It is agreed between the owner, master, seamen, and mariners of the bark *Cape Horn Pigeon*, now bound from the port of San Francisco on a whaling, walrusing, and trading voyage to the North Pacific and Arctic oceans, or elsewhere, as the master may direct. Term of service not to exceed twelve (12) calendar months. Officers and crew to pay their respective proportions of freight on whatever catch may be shipped by some other vessel or vessels. Officers and crew to remain by the vessel eight (8) days after her arrival at her final port of discharge, or in default to pay two (2) dollars for each and every day of absence. Interest to be charged on all money advanced at the rate of fifteen (15%) per cent per annum. Officers and crew not to participate in trade.

That, in consideration of the share against each respective seaman or mariner's name hereunder set, they severally shall and will perform the above-mentioned voyage; and the said owner and master do hereby agree with and hire the said seamen or mariners for the said voyage at such shares, to be paid pursuant to this agreement.

2. And they, the said seamen or mariners, do severally hereby promise and oblige themselves to do their duty, and obey the lawful commands of the officers on board said bark or boats thereunto belonging, as become good and faithful seamen or mariners, while cruising for whales, and at all places where the said bark shall put in or anchor at during the said voyage; to use their best endeavours to obtain a cargo of oil; and for the preservation of the vessel and cargo; and not to neglect or refuse doing their duty by day or night; and that they shall not go out of said bark on board any other vessel or be on shore, under any pretence whatever, until the aforesaid voyage be ended and the vessel discharged of her loading without leave first obtained of the captain or commanding officer on board; that in default thereof he or they shall be liable to all the penalties and forfeitures mentioned in the marine law, enacted for the government and regulation of seamen in the merchant service, it being understood that said forfeiture shall be estimated according to his or their respective shares of the voyage and the length of the same conjointly.

3. And it is further agreed by all the parties to this contract that such regulations as a just regard to the good order, effectual government, health, and moral habits of the officers and men shall be established and observed on board the said vessel. And to insure proper attention to this important object it shall be the duty of the officer having the care of the log book to note therein daily all flagrant breaches of the same. It shall especially be his duty to record all instances of drunkenness, all cases of absence from the said bark by any officer or seaman, with or without permission, after sunset or beyond the time prescribed for their absence; every instance of absence by any officer or seaman through the night, whether on shore or on board of any other vessel; every instance of the introduction of any woman or women into the ship for licentious purposes; every instance of disability for ship's duty which may occur, with the cause of it—if occasioned by sickness or infirmity, the nature and origin of the same, if known, to be particularly stated, especially if it be the consequence of their own misconduct. And in the case of the officer who may usually

have charge of the log book being implicated in any of the misdemeanors or disabilities herein mentioned it shall be the duty of the master to make, or cause to be made by another hand, an entry of the same on the log book. And it shall be the duty of the master to see that a proper record is kept therein of all the matters mentioned in this article, according to its true intent and meaning.

4. The officer having charge of the watch on deck for the time being shall be responsible for the maintenance of the regulation in regard to the admission of women, and in case of any getting on board unperceived they shall forthwith be expelled by him, or, if not able to do so, the case shall be immediately reported to the captain or commanding officer on board, whose duty it shall be to enforce their immediate expulsion. On the failure of any officer on this part of his duty, either wilfully or through negligence, each and every officer so failing shall forfeit twenty days' pay for every such offense; and any other officer or seaman who shall abet any breach of said regulation, or refuse, when lawfully called upon to aid in sustaining it, or shall be proved to have had a criminal intercourse with any such woman or women on board, shall forfeit for every such offense five days' pay; for every instance of drunkenness two days' pay shall be forfeited, and a similar forfeiture shall take place for each day that any officer or seaman shall be off duty from sickness or disability caused by intemperance or licentiousness; the forfeitures in all these cases to be estimated as in the second article, and to go to the use of the owners of said bark.

5. All expenses which may be necessarily incurred during the voyage, with direct reference to any of the misdemeanors or disabilities enumerated in the third article, or to any attempt at desertion or other disobedient and mutinous conduct, shall be charged to the individual or individuals by reason of whom they may have been incurred.

6. It is further agreed that if any officer or seaman, after a fair trial, if his abilities and disposition shall be judged by the master incompetent or indisposed to the proper discharge of the duties of his station, the master shall have a right to displace him and substitute another in his stead; a corresponding reduction of the lay of such officer or seaman, with reference to the duty which he may thereafter perform, thenceforth to take effect; and a reasonable increase of the lay of the individual who may thereupon be promoted to a higher station shall be made on the final adjustment of the voyage.

7. It is understood and agreed that if any officer or seaman shall be prevented by sickness or death from performing the voyage, his legal representatives shall be entitled to such part of the whole amount of his stipulated share as the time of his services on board shall be of the whole term of the voyage.

8. It is further agreed that whatever apparel, furniture, or stores belonging to said vessel may be given in charge by the master to any officer or seaman shall be accounted for by him; and in case anything should be lost or damaged through his carelessness or neglect it shall be made good to the owners by such officer or seaman. And whatever officer or seaman the master shall appoint for the duty shall take charge of any portion of the cargo or ship's stores required to be landed or brought on board in any boats or lighter, and faithfully perform the services assigned, and see that the said cargo or stores are safely landed and delivered, or brought on board the said vessel, as the case may be.

9. Each and every officer and seaman who shall have well and truly performed the above-mentioned voyage, complied with the regulations and duties herein specified, and committed no dishonest or unlawful acts, shall, on the return of said vessel to the port of San Francisco, be entitled to be, and shall be, settled with and paid in San Francisco his share of the catch of said vessel at the following rates: Whale oil at 20 cents per gallon; sperm oil at 40 cents per gallon; whalebone (in case the total catch of the whole whaling fleet of vessels sailing from or arriving at ports on the Pacific coast for the season in the Arctic shall exceed 200 whales) at 1 dol. 25 c. per lb., but in case said total catch shall not exceed 200 whales, then at 1 dol. 50 c. per lb; said settlement to be made for oil at the above-named rates, and bone at 1 dol. 25 c. per lb., as soon after the return of the ship as the quantity of her oil and bone can be ascertained, and the 25 cents per lb. in addition thereto as soon as it shall be ascertained that the total catch of the whole of said fleet does not exceed 200 whales.

10. In testimony of our assent, consent, and agreement faithfully to perform the various duties and obligations implied in the preceding articles, and an acknowledgment of their being voluntary and without any compulsory or clandestine means being used, we have each and everyone of us severally hereunto affixed our names on the day and year against them respectively written. And it is hereby understood and mutually agreed, by and between the parties aforesaid, that they, the said seamen and mariners, will render themselves on board the said vessel on or before, as

ordered by the master, —, the — day of —, at — o'clock, in the — noon.

No distilled spirituous liquor will be put on board the vessel by the owner, except for strictly medical use; and by their signatures the other parties to this contract pledge themselves not to take any of those articles with them, as their private stores or for traffic, either from this port or from any other port or place where they may be during the voyage. And in case of a violation of this pledge by the master, or any officer or seaman, his entire share of the voyage shall be thereupon forfeited to the use of the owners of the said vessel.

Shipping paper.—“Cape Horn Pigeon.”

Date of entry.	Names.	Station.	Advances.	Witness to signing.	Lay shares.
1891. Nov. 7	1. Thomas Scullun	Captain .....	.....	L. W. Johnston.	As per agreement.
7	2. W. H. Young	First mate.....	.....	do	1/22 One twenty-second.
14	3. Antonio Margarido.	Second mate .....	.....	do	1/28 One twenty-eighth.
13	4. Geo. H. Peckham	Third mate.....	.....	do	1/45 One forty-fifth.
13	5. Wm. H. Griffiths.	Fourth mate .....	.....	do	1/60 One-sixtieth.
12	6. Chas. F. Koch	Cooper and carpenter.	.....	do	1/50 One-fiftieth.
11	7. Cornelio Eustagio	Boat steerer	\$175.00	do	1/80 One-eightieth.
12	8. Saml. McIntyre.	do	30.00	do	
12	9. Peter (his x mark) Lawton	do	17.00	do	1/80 One-eightieth.
13	10. Thomas Oliveira.	do	150.00	do	
3	11. Nicolas (his x mark) Porter.	Steward and cook	120.00	do	1/90 One-ninetieth.
12	12. Jose Torres	Steward	85.00	do	1/100 One one hundredth.
12	13. Joe (his x mark) Santos.	Steerage boy	25.00	do	1/170 One one hundred and seventieth.
14	14. Felix de Castro	Seaman	50.00	do	1/170 One one hundred and seventieth.
14	15. Marx Pletz.	Prev. boat steerer	65.00	do	1/150 One one hundred and fiftieth.
4	16. Peter Johnson	Sailmaker	75.00	do	1/130 One one hundred and thirtieth.
3	17. Joe Costa	Seaman.....	50.00	do	1/170 One one hundred and seventieth.
4	18. Jose Guinata	do	50.00	do	1/170 One one hundred and seventieth.
5	19. John (his x mark) Sablan.	Seaman	50.00	do	1/170 One one hundred and seventieth.
5	20. Ben (his x mark) Siguino.	do	50.00	do	1/170 One one hundred and seventieth.
5	21. Jack (his x mark) Kanaka.	do	50.00	do	1/170 One one hundred and seventieth.
5	22. Charles Smith	do	60.00	do	1/160 One one hundred and sixtieth.
11	23. Ben (his x mark) Cantanego.	do	50.00	do	1/170 One one hundred and seventieth.
11	24. Bernab (his x mark) Ascensia.	do	50.00	do	1/170 One one hundred and seventieth.
11	25. Mariano (his x mark) Maripesa.	do	50.00	do	1/170 One one hundred and seventieth.
12	26. P. Maguire.	do	60.00	do	1/160 One one hundred and sixtieth.
12	27. John Peters.	do	70.00	do	1/150 One one hundred and fiftieth.
13	28. John Shopley	Prev. boat steerer.	60.00	do	1/150 One one hundred and fiftieth.

Shipping paper.—"Cape Horn Pigeon."

Date of entry.	Names.	Station.	Advances.	Witness to signing.	Lay shares.
1891. Nov. 13	29. Andrew Perez ...	Seaman	\$60.00	L. W. Johnston.	1/160 One one hundred and sixtieth.
13	30. Joseph (his x mark) Carter.	.....do	50.00	.....do	1/170 One one hundred and seventieth.
13	31. J. E. (his x mark) Smith.	Cooper and carpenter.	.....do .....	.....do	1/50 One-fiftieth.
13	32. August (his x mark) Pferrmann.	Seaman	50.00	.....do	1/160 One one hundred and sixtieth.
16	33. Charley Johnson.	Green hand	50.00	.....do	1/170 One one hundred and seventieth.
16	34. Manuel January (his x mark) Gonsalves.	Seaman	80.00	.....do	1/160 One one hundred and sixtieth.
26	35. Manuel (his x mark) Phillips.	.....do	50.00	.....do	1/170 One one hundred and seventieth.
Dec. 5	36. Arthur H. Taylor.	.....do	55.00	.....do	1/150 One one hundred and fiftieth.
5	37. Wm. McDonald..	Blacksmith and green hand.	50.00	.....do	1/165 One one hundred and sixty-fifth.
5	38. John McDonald..	Green hand	50.00	.....do	1/170 One one hundred and seventieth.
7	39. Albert Ifft .....	.....do	50.00	.....do	1/170 One one hundred and seventieth.
7	40. H. Smith .....	.....do	50.00	.....do	1/170 One one hundred and seventieth.
7	41. J. McGregor .....	.....do	50.00	.....do	1/170 One one hundred and seventieth.
7	42. Fred Wick .....	.....do	50.00	.....do	1/170 One one hundred and seventieth.
7	43. Joe (his x mark) Mendiolo.	.....do	50.00	.....do	1/170 One one hundred and seventieth.
7	44. W. (his x mark) Schaeffer.	Seaman	50.00	.....do	1/170 One one hundred and seventieth.

DISTRICT AND PORT OF SAN FRANCISCO,
COLLECTOR'S OFFICE,
February 23, 1893.

I hereby certify the above to be a true copy of the original on file in this office.

M. WEBBER, *Deputy Collector.*
(Initialed) A. W. B.

No. 5527.—UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the documents hereto annexed are true copies from the files of this Department. In testimony whereof I, John Hay, Secretary of State for the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 1st day of September, A. D. 1900, and of the Independence of the United States of America the one hundred and twenty-fifth.

JOHN HAY.

[Seal of the Department of State of the United States of America.]

(For certification of Exhibits F and G.)

EXHIBIT E.

SAN FRANCISCO, *October 31, 1891.*

I hereby agree with J. and W. R. Wing to go master of the bark *Cape Horn Pigeon* on her next contemplated season, to sail from this port by Dec. 1st, 1891, to go east and return as above and join said bark at this port, the said Wings to pay one-half (½) round trip ticket to Boston and back to this port, the other half to be charged to me. Compensation to be the (¼) lay in net proceeds of voyage.

THOMAS SCULLUN.

Approved:

J. and W. R. WING.

I hereby certify that the above is a true and exact copy of the original contract, letter for letter and figure for figure.

[SEAL.]

WM. F. CASWELL, *Notary Public.*

EXHIBIT F.

THE UNITED STATES OF AMERICA.

Clearance of vessel to a foreign port.

DISTRICT OF SAN FRANCISCO, PORT OF SAN FRANCISCO.

These are to certify all whom it doth concern that Thomas Scullun, master or commander of the American bark *Cape Horn Pigeon*, burden 201 tons or thereabouts, mounted with _____ guns, navigated with 44 men, built and bound for whaling voyage, having on board stores, hath here entered and cleared his said vessel, according to law.

Given under our hands and seals, at the custom-house of San Francisco, this 7th day of December, 1891, and in the one hundred and fifteenth year of the Independence of the United States of America.

W. E. HAMILTON, *Deputy Naval Officer.*

M. WEBBER, *Deputy Collector.*

DISTRICT AND PORT OF SAN FRANCISCO, COLLECTOR'S OFFICE,

February 28, 1893.

I hereby certify the above to be a true copy of the original on file in this office.

M. WEBBER, *Deputy Collector.*

EXHIBIT G.

OUTWARD FOREIGN MANIFEST.

[C. D. Bunker & Co., custom-house brokers.]

Report and manifest of the cargo laden at the port of San Francisco on board the bark Cape Horn Pigeon, whereof Thomas Scullun is master, bound for a whaling voyage, December 7, 1891.

Marks.	Numbers.	Packages and contents.	Quantities—pounds, gallons, etc.	No. 1. Value of domestic merchandise.	No. 2. Value of foreign merchandise free.	No. 3. Value of foreign merchandise from bonded warehouse.	No. 4. Value of foreign merchandise not from bonded warehouse, which has paid duties.	No. 5. Value of foreign merchandise on the passage (in transitu) from one foreign country to another.	To be landed at—
.....	Ballast stores and whaling gear.	.....	.....	.....	.....	.....	.....	.....

DISTRICT AND PORT OF SAN FRANCISCO,

COLLECTOR'S OFFICE, *February 28, 1893.*

I hereby certify the above to be a true copy of the original on file in this office.

M. WEBBER, *Deputy Collector.*

(Initialed) A. W. B.

DISTRICT AND PORT OF SAN FRANCISCO.

I, Thomas Scullun, master or conductor of the bark *Cape Horn Pigeon*, bound from the port of San Francisco on a whaling voyage, do solemnly, sincerely, and truly swear that the manifest of the cargo on board the said bark, now delivered by me to the collector of this district and subscribed with my name, contains, according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares, and merchandise now actually laden on board the said vessel or vehicle, and of the value thereof, and if any other goods, wares, or merchandise shall be laden or put on board the said bark previous to her departure from this port I will immediately report the same to the collector.

I do also swear that I verily believe the duties on all foreign merchandise therein specified have been paid or secured according to law, and that no part thereof is intended to be relanded within the United States, and that if by distress or other unavoidable accident it shall become necessary to reland the same I will forthwith make a just and true report thereof to the collector of customs of the districts wherein such distress or accidents may happen, and said cargo is truly intended to be used in whaling. So help me God.

THOMAS SCULLUN, *Master.*

Sworn to before me this 7th day of December, 1891.

M. WEBBER,
Deputy Collector of Customs

EXHIBIT I.

[Translation.]

No. 2187.]

MINISTRY OF FOREIGN AFFAIRS,
ASIATIC DEPARTMENT, *June 12 (24), 1893.*

Mr. ENVOY: In reply to the letter which you had the goodness to address me, dated May 3 (15) last, I have the honor to communicate to you the following data upon the inquiry, made by a commission appointed by the commandant of the Pacific squadron, on the subject of the arrest of the *Cape Horn Pigeon*, flying the American flag, in the Sea of Okhotsk.

Lieutenant of the Imperial navy von Cube, commanding the English schooner *Maria*, seized for illegal sealing in Russian waters, encountered the *Cape Horn Pigeon* on the night of August 20 (September 10), 1892, at 46° 31' north latitude, 146° 30' longitude east. The latter having made signals which seemed to him suspicious, Lieutenant von Cube invited Captain Scullun, of the *Cape Horn Pigeon*, to come on board of his vessel. He declared that he was engaged in whaling in the Sea of Okhotsk, but an examination of the log book and charts caused Lieutenant von Cube to believe that the whaler in question had visited Aniva and Patience bays, where fishing is forbidden to foreign vessels, and decided him to take the *Cape Horn Pigeon* to Vladivostok in order to establish whether he had a right to navigate those waters.

You must admit, Mr. Envoy, that this version differs materially from that of Captain Scullun, according to which he had been arrested for having engaged in whaling in the Sea of Okhotsk, which he says Lieutenant von Cube considered closed to foreign whalers.

Nevertheless the commission of investigation to which this case was referred, while stating also that the *Cape Horn Pigeon* had navigated within Russian territorial waters, found no cause to order her confiscation. It was then admitted that the arrest of this vessel had been made as the result of a misunderstanding, and the vessel was returned to her owners without delay.

With regard to the indemnity claimed by the latter, it is sufficient to point to the figures \$45,000 profit, representing the price of five whales, alleged to have been lost by the interruption of her voyage, to demonstrate the exaggerated estimate of Captain Scullun.

The remainder of his claims are as follows:

Remuneration of the officers and crew who had to follow the schooner <i>Cape Horn Pigeon</i> to Vladivostok	\$1,000
2. Provisions which were on board	200
3. Support of the crew of the <i>Cape Horn Pigeon</i>	210
4. Expenses of Captain Scullun on land	50
5. Various expenses, such as cost of telegraphing, hire of boats and carriages, clerk hire, etc	3,040

This last point in particular requires the production of vouchers, in default of which the Imperial ministry of marine could by no means admit the justice of all its items. The said ministry supposes that in a general way, apart from this, the sum of \$2,500 represents a just and sufficient indemnification for the real losses sustained by Captain Scullen and his crew by reason of the temporary detention of the *Cape Horn Pigeon*.

I will only mention in passing the allegation of Captain Scullun to the effect that the authorities at Vladivostok left him and his men, at the end of the affair, without lodging or food, Mr. Wurts, then chargé d'affaires of the United States, having himself done justice to this allegation in his letter of September 9/21, 1892. I confine myself to the statement that, according to the testimony of the superior authorities of the Navy, it was Captain Scullun himself who declined for himself and his crew the lodgings and food offered to them, according to custom, by the authorities at Vladivostok.

Please to accept, Mr. Envoy, the assurance of my most distinguished consideration.

CHISKINE.

To Mr. WHITE,
Envoy, etc.

EXHIBIT J.

VLADIVOSTOK, 798/133 8 11 35 N.

Bark *Cape Horn Pigeon*, of New Bedford, arrived here yesterday, having been seized by Russian naval officer commanding. Confiscated sealing vessel on September 10, 4 o'clock a. m.; ship was then in latitude 46° 30', longitude 146° 35', and 125 miles off Sagalien Island and 84 miles off Yetarup Island, cruising for whales. Boat came alongside from schooner, and officer demanded my papers and told me that ship was confiscated for whaling in Okhotsk Sea, which was closed. Officer and armed men then took possession of my ship, ordering my officers and crew to take the schooner to Vladivostok, which they did, and arrived here 15th instant, and were put ashore yesterday without food or shelter. United States steamer *Marion* has arrived here—Please send instructions and advise Scullun, master.

Indorsed: United States minister, St. Petersburg.

EMBASSY OF THE UNITED STATES OF AMERICA,
St. Petersburg, Russia.

I, Herbert J. Hagerman, second secretary of the embassy of the United States of America, do hereby certify that I have compared the foregoing copy of a telegram with the original now on file in this embassy, and that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have hereunto set my hand and affixed the seal of the embassy of the United States this 17th day of February, in the year 1900.

[SEAL.]

HERBERT J. HAGERMAN,
Second Secretary, United States Embassy.

EXHIBIT K.

LEGATION OF THE UNITED STATES,
St. Petersburg, September 9 (21), 1892.

YOUR EXCELLENCY: I have the honor to acquaint your excellency with the contents of a telegram received by me last night, as follows:

“Vladivostok, September 8. Bark *Cape Horn Pigeon*, of New Bedford,” etc. (See telegram on file.)

I will be greatly obliged if your excellency will cause an investigation to be made into the circumstances of the seizure of the vessel above indicated for report to the United States Government.

In the meanwhile I beg your excellency to have the kindness to direct that proper help be extended by the authorities at Vladivostok to the master and crew of this vessel. I trust and believe that the description in the telegram of their condition, “without food or shelter,” is an exaggeration, for it is not the custom of the Imperial authorities or of the Russian people to refuse assistance called for by per-

sons in distress, no matter what may have placed them in the predicament. However it may be, in the name of humanity I most respectfully appeal to your excellency that aid may be advanced to the persons in question.

I avail, etc.,

GEORGE W. WURTS.

His Excellency M. CHICKKINE,
Adjoint, etc.

EMBASSY OF THE UNITED STATES OF AMERICA,
ST. PETERSBURG, RUSSIA.

I, Herbert J. Hagerman, second secretary of the embassy of the United States of America, do hereby certify that I have compared the foregoing copy of a note addressed to the Imperial Russian ministry of foreign affairs by the legation of the United States at St. Petersburg, Russia, with the original as entered in the archives of this embassy and now on file, and that the same is a correct transcription of the original as so entered and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of this embassy this 17th day of February, A. D. 1900.

[SEAL.]

HERBERT J. HAGERMAN,
Second Secretary, United States Embassy.

EXHIBIT L.

[Translation.]

No. 3466.]

MINISTRY OF FOREIGN AFFAIRS,
ASIATIC DEPARTMENT,
September 19, 1892.

MR. CHARGÉ D'AFFAIRES:

In reply to the note which you have had the goodness to address to me, dated 9/21 of the current month, I hasten to inform you that the gerant of the ministry of marine has just announced to me the liberation of the American bark *Cape Horn Pigeon*.

The inquiry concerning the deposition of Captain Scullun, that the crew was landed and left without food or shelter, follows its legal course, and I shall not fail to communicate to you the result thereof.

Please to accept, Mr. Chargé d'Affaires, the assurance of my distinguished consideration.

CHICKKINE.

To Mr. WURTS, *Chargé d'Affaires, etc.*

No. 5526.—UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof I, John Hay, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 1st day of September, A. D. 1900, and of the Independence of the United States of America the one hundred and twenty-fifth.

[Seal of the Department of State of the
United States of America.]

JOHN HAY.

(For certification of Exhibits M, N, O, and H.)

EXHIBIT M.

Capt. George O. Baker.

- Q. Your name is George O. Baker?—A. Yes, sir.
 Q. Of Dartmouth?—A. Yes.
 Q. Master mariner?—A. Yes, sir.
 Q. How old?—A. 58.
 Q. When did you first go to sea?—A. 1848.
 Q. As what?—A. Cabin boy.
 Q. And from there all through up to master?—A. Yes, sir.
 Q. How many voyages master?—A. I have been master since 1863.
 Q. How many voyages in round numbers?—A. About 15 voyages.
 Q. And where?—A. All my first going to sea was New Zealand and coast of Chile.
 The last six years in the Ochotsk Sea and Japan Sea.
 Q. Had a large experience in the Ochotsk and Japan seas?—A. As much as any one would have going there six years running.
 Q. Now, Captain, when does the season in the Ochotsk open—when do you look for the opening?—A. We look for it about the middle of August.
 Q. How late do you stay there?—A. Until the 10th or 12th of October.
 Q. What makes you go away?—A. The weather getting a little rough.
 Q. Are they northerly or southerly winds that set in?—A. Mostly northerly and easterly.
 Q. And they commence about the 12th of October?—A. About the middle of October it commences to be very rugged.
 Q. Then the season there lasts from about the middle of August until the middle of October?—A. Yes, sir.
 Q. I suppose it varies with seasons—sometimes commences later and sometimes earlier?—A. Yes, sir; Captain Whiteside cruised up there until the 15th of November. I have read his abstracts.
 Q. How often does that happen?—A. I have read in his abstracts that he cruised there until the 15th of November, and Captain B—— caught a whale there as late as the 9th of October. That is as late as I know of a whale being caught there.
 Q. What is the weather that you call rugged?—A. Well, when we have continuous gales. Have it perhaps moderate one day, and have bad weather for a week so that we couldn't lower for whales.
 Q. So that it would be practically useless to continue whaling after this rugged weather sets in?—A. Yes, sir; it would be unpleasant.
 Q. In regard to the season from the middle of August to the middle of October, when is the best part of that season for whales?—A. From the 1st of September up to the 20th I have seen my best whaling. One season, the 18th of September, I lost all my boats. That was when the rugged weather began earlier.
 Q. What should you say as to the August whaling compared with that of the September?—A. The September whaling is the best. It is just like this—one season the whales might strike by the middle of August and leave the 25th of September, and another time they might strike earlier or later, according to the feed there. September we call the best time for whaling in the southern part of the Ochotsk Sea.
 Q. You know the *Cape Horn Pigeon*?—A. Yes, sir; was in her eight years.
 Q. Who was the agent then?—A. William Potter, 2d.
 Q. And you sailed for him eight years?—A. Yes, sir.
 Q. Well now, Captain, what should you say would be a fair average catch of whales in the Ochotsk Sea for a season; what should you expect, getting up there the 10th or 15th of August and staying until the 10th of October?—A. Seven or eight or ten whales. I should go there with that expectation.
 Q. That, you think from your experience, would be fair?—A. Yes, sir; anywhere from six to ten.
 Q. Suppose you were in the *Cape Horn Pigeon* and were at Vladivostok on the 1st of October, and the northerly winds and rugged weather had commenced, would you consider it expedient to return to the whaling grounds in the Ochotsk Sea?—A. No, sir.
 Q. Why not?—A. Because I should think that by the time I got to the Ochotsk Sea the season would be about up. I should leave for San Francisco.
 Q. It would be useless to go back there?—A. Yes; it would take eight or ten days to get there, and then it would be the middle of October, and I think it would be useless. Of course a man might accidentally take a whale.
 Q. You wouldn't think of making a return?—A. No, sir; I should come down direct for San Francisco.

Q. What would 9 whales make in oil and bone? What would be the average?—
A. Ten thousand pounds of bone and 900 barrels of oil. It might make more, but it would be pretty sure to make that. About 1,100 pounds of bone to a whale, and 100 barrels of oil.

Q. What is the species?—A. Right whales; the same as they catch here in the South Atlantic. Not a bow-head.

GEORGE O. BAKER.

EXHIBIT N.

Captain Cleveland.

- Q. Your full name?—A. Benjamin D. Cleveland.
 Q. You live where?—A. New Bedford.
 Q. You are a master mariner?—A. Yes.
 Q. How old?—A. Forty-eight.
 Q. How long have you been to sea?—A. Since 1862.
 Q. Did you go before the mast?—A. Yes, sir; cabin boy.
 Q. How many voyages have you been master mariner?—A. Five voyages.
 Q. And where have you been whaling?—A. Both in the North and South Atlantic, in the Ochotsk Sea, and the Arctic Ocean.
 Q. How many seasons in the Ochotsk?—A. Two.
 Q. What has been your experience with regard to the weather there? What is the season in the Ochotsk?—A. Well, I found the season from about the middle of August to the 1st of October.
 Q. What ends the season?—A. Well, we experienced a great deal of northerly and easterly winds, gales, making it very rugged indeed, so that we did not consider it suitable to put boats in the water. And another thing, our experience at this time was that the feed seemed to have gone; there were never any whales to be seen.
 Q. The whales follow the feed?—A. Yes, sir.
 Q. And the feed seems to disappear?—A. Yes, sir.
 Q. So that you would say from the middle of August to the 1st of October was the whaling season in the Okhotsk?—A. Yes, sir; to the last of September.
 Q. And what do you consider the best part?—A. Our best time was from the 1st of September to the 18th. It was the principal part in our two seasons.
 Q. Do you know the *Cape Horn Pigeon*; did you ever sail in her?—A. No, sir; but I have cruised with her and know her well.
 Q. What should you say was a fair average catch for a season in the Okhotsk?—A. Well, I always went there with an expectation of from 6 to 10 whales.
 Q. And how would these whales average?—A. Well, those I got for two seasons in succession, from 1,100 to 1,150 pounds of bone to a whale.
 Q. These estimates are based upon your own experience and what you have actually done, Captain?—A. Yes, sir.
 Q. And about the oil?—A. Well, I consider that most of those whales to go just about 100 barrels of oil.
 Q. Some larger and some smaller?—A. Yes.
 Q. Could you make an average out of 7 or 8 whales? Would 7 or 8 whales average that?—A. That is a general average.
 Q. That would apply to a season's work as well as to several season's work?—A. Yes, sir.
 Q. Suppose, Captain, you were at Vladivostok on the 1st day of October with the *Cape Horn Pigeon* and the northerly winds and rugged weather had already set it, would you consider it expedient to return to the Okhotsk for whaling?—A. No, sir.
 Q. What should you do?—A. Go directly for San Francisco.
 Q. Why?—A. Because I should certainly consider then that the rugged weather had set in, and that it would not be using good judgment to go there and attempt to get a season's work after that date. The two seasons that I have been there I have always left the 1st day of October. There were four ships there both seasons that I was there, and I stayed as late as any ship.
 Q. I suppose the seasons vary; some are more open than others?—A. Yes, sir.
 Q. Do you know the place where the *Cape Horn Pigeon* was seized?—A. Very nearly, I think.
 Q. How long would it take to go from Vladivostok there if the northerly winds had set in?—A. It would certainly take twelve days, any ship.
 Q. What were the two seasons you were in the Okhotsk?—A. 1889 and 1890. I did all my business in the Okhotsk Sea; from the 28th of August until the 14th of September I did all my whaling.

Capt. B. D. CLEVELAND.

EXHIBIT O.

Captain Lapham.

- Q. What is your full name, Captain?—A. Ezra B. Lapham.
- Q. Where do you live?—A. South Dartmouth.
- Q. What is your age?—A. Forty-nine.
- Q. Where did you commence going to sea, before the mast?—A. Yes, sir; before the mast.
- Q. How old were you?—A. Thirteen and one-half years.
- Q. Have you been to sea ever since?—A. Yes, sir.
- Q. All the way from the forecastle to captain of a ship?—A. Yes, sir.
- Q. How many voyages did you make as master?—A. I commenced to go as master in '76, and have been every year but two or three since that time.
- Q. Where have you been as master?—A. Mostly in the North Pacific. Have been in the Okhotsk Sea and Japan Sea two seasons.
- Q. How many times in the Okhotsk?—A. Two seasons.
- Q. What seasons were those?—A. '86 and '87.
- Q. What is the season in the Okhotsk?—A. I went in July, about the 25th, and I stopped there until the 10th of October one year. One year I came out the 28th of September, but I was sick that time.
- Q. What did you come away for; what were the reasons?—A. We calculated the season was about up the 10th of October.
- Q. Did the northerly winds and rugged weather set in?—A. Yes, sir.
- Q. And the season would last until the bad weather set in?—A. Until the bad weather set in.
- Q. That is generally about the first part of October?—A. Yes, sir; anywhere from the first to the middle. Sometimes they stop until the 30th, but very seldom.
- Q. Do you know where Vladivostok is?—A. Yes, sir.
- Q. When is the best part of the season? You say the season lasts from the 1st of August until the 1st of October. What is the best part of that season?—A. Well, I found it the best—I did the most of my whaling in August, but one year I struck whales up to the 4th of October. I struck two whales on the 4th of October, but didn't save either of them. I consider September the best month.
- Q. Do you know the *Cape Horn Pigeon*?—A. Yes; she was there the time I was there.
- Q. Whom have you sailed for?—A. I. H. Bartlett, William C. N. Swift, Thomas Nye.
- Q. Do you know the size of the *Cape Horn Pigeon*?—A. Yes, sir.
- Q. What should you say was a fair, average catch for a season in the Okhotsk?—A. That depends a good deal on the season. Some seasons are better than others.
- Q. What should you expect going in there with the *Cape Horn Pigeon*—what should you think was a fair average catch?—A. I should say 10 whales.
- Q. You don't always get 10 whales?—A. No; but that is always what I go for; always calculate that that is a good, fair catch.
- Q. But you feel pretty sure of getting 6 or 7?—A. Yes, sir.
- Q. You wouldn't go unless you thought you were going to get 6 or 7?—A. No, sir.
- Q. Suppose you were at Vladivostok with the *Cape Horn Pigeon* on the 1st day of October, and the northerly winds and rugged weather had commenced, would you consider it expedient to return to the whaling grounds in the Okhotsk Sea?—A. No, sir; I shouldn't give it the second thought. I should leave, certainly.
- Q. Why?—A. Because the season is about up by that time. By the time you got there the season would be gone. Still, of course a ship could go there and take her chances.
- Q. You wouldn't get there until it was time to leave—until after the rugged weather had set in?—A. No, sir.
- Q. How long would it take, if the northerly winds had set in, to go from Vladivostok to where the *Cape Horn Pigeon* was seized?—A. Well, I should think it would take ten days.
- Q. So that by the time you got there the season would be practically over?—A. Practically, yes.
- Q. About what do those whales in the Okhotsk make—oil and bone?—A. Well, you take a whale making 100 barrels of oil and you will get 1,100 pounds of bone.
- Q. That is rather recognized as the average of those whales, isn't it?—A. Yes, sir.
- Q. The question of when the best whaling is, I suppose, depends upon when the whales strike in; it may be August or September?—A. Yes, sir.
- Q. It depends a good deal on the feed?—A. Yes, sir; a good deal.
- Q. The whales follow the feed somewhat?—A. Yes, sir; that is where you find the whales.

Q. And if you see whales for two or three days running you are pretty sure to see them right along; that is, there is some time during the season when the whales strike on, and then when they are gone of course they are gone?—A. Yes, sir; I consider August and September two very valuable months there.

EZRA B. LAPHAM.

UNITED STATES OF AMERICA, *Commonwealth of Massachusetts, Bristol, ss:*

On this 21st day of January, 1893, personally appeared before me, William F. Caswell, a notary public duly commissioned and qualified, the within-named George O. Baker, and on the 27th day of January, before me as aforesaid, personally appeared the within-named Benjamin D. Cleveland, and made solemn oath that the facts stated in the foregoing affidavits, subscribed by each of them in my presence, are true so far as they are stated upon their personal knowledge, and that, so far as they are stated upon hearsay, each affiant believes them to be true. And I further certify that said affidavits were signed by the said Baker, Lapham, and Cleveland in my presence, and that I have no interest in the claim to which these affidavits relate, and that I am not agent or attorney of any person having such interest. I further certify that the affiants are known to me to be credible persons of good character. And I further certify that each affidavit was read to the affiant before he signed the same.

In witness whereof I have hereunto set my hand and official seal this 14th day of February, A. D. 1893.

[SEAL.]

WM. F. CASWELL,
Notary Public.

EXHIBIT H.

I, Thomas Scullun, of Chelsea, county of Suffolk and Commonwealth of Massachusetts, on oath depose and say: My name is Thomas Scullun; I am 39 years of age; by occupation a master mariner. I was born in New Bedford, Massachusetts, and am a native-born citizen of the United States, and my domicile is in Chelsea, Massachusetts. I first went to sea when I was 14 years of age as steerage boy, and have been at sea ever since, going through all the grades to master.

I sailed on my first voyage as master in the fall of 1888 from San Francisco in the bark *Cape Horn Pigeon* for a whaling voyage. I made that voyage, returning to San Francisco in the fall of 1889, refitted, and again sailed. I sailed each fall, returning in the following fall, until the fall of 1891. On the 7th of December, 1891, I again sailed as master of the *Cape Horn Pigeon* from San Francisco on a whaling voyage to the Yellow Sea, Japan Sea, and the Okhotsk Sea. I had a full crew, consisting of thirty-four all told, four officers, four boat steerers, cooper, steward, and two boys. These are all correctly stated upon the crew list, and their lays are set forth correctly. The ship's papers which I had were the articles, register, health certificate, and the manifests. I brought back all these papers to San Francisco when I returned there this fall, 1892, and delivered them to the custom-house officer. They are now in the custom-house at San Francisco. The vessel was fitted for a whaling voyage, with the usual fittings for that purpose. She was in no way fitted for a sealing voyage. She had no salt, no rifles, no sealing boats, and no gunners. There was no intention, in fitting for the voyage or at the time of sailing, of doing any business in sealing. The log book is on board the ship, and before sailing I will give it to Mr. Wing to be brought to New Bedford.

After leaving San Francisco we first went to Ascension, one of the Caroline Islands, and then to Guam, one of the Ladrone Islands. From there we went to the Yellow Sea, and cruised until about the 1st of April. From there we went right to Vladivostok, arriving there about the 26th of April, to repair a slight leak. While I was there I tried to get a permit to go to the Russian bays off the Okhotsk Sea whaling. We telegraphed to St. Petersburg for a permit, for which I offered to make compensation, but could not get a permit to go into the bays for whaling. For the last five seasons I had whaled in the Okhotsk Sea. I understood that we were not permitted to whale in the bays off the sea, but the sea itself was open to us, and it was for the purpose of getting permission to whale in the bays that I sought this permit. After we left Vladivostok we cruised in the Japan Sea until the 26th of June, when we returned to Vladivostok. We went there to recruit ship with fresh provisions. We left Vladivostok the 6th of July and went to the Okhotsk Sea, where I had

prosecuted the whaling until I was taken, on the 10th of September. During this time I had taken two whales, which yielded 2,600 lbs. of bone and 200 barrels of oil. One of these whales was caught about 120 miles from Sagalien Island and about 40 miles off Yetaup Island, and the other 150 miles from Sagalien and 80 miles from Yetaup Island. The night of the 9th, about 7 o'clock, we took in all sail and luffed to on the port tack, with the foreyard back, and about a quarter of 3 a. m. the officer came down and called me, and said there was a schooner coming down off the weather quarter, and he thought it was the *Mary H. Thomas*. It was then dark and foggy. The *Mary H. Thomas* was a whaling schooner, which had been upon the ground with us and which the log book will show we had spoken previously. I went on deck and saw her coming down, and I saw that if she kept coming as she was she would draw aft so that we would not see the red light; so I told the officer of the deck to set a white light so that he would see us, because I wanted to speak him at daylight to find out the whaling news. What I mean by that is, whether he had taken any whales or seen any whales. About a quarter of 4 the officer came down again and said, "That is not the *Mary H. Thomas*. It is some other schooner, and he wants to speak us." So I went on deck, and as I got on deck they lowered a boat down from the schooner, and I saw that the officer was some naval officer by the uniform. This boat came alongside, and a young officer came on board and demanded my ship's papers. I asked him what right he had or what he wanted my ship's papers for. Said I, "I am no sealer, and we are not off Robin Island." He said, "What are you doing here?" and I said, "I am whaling here." He said, "Well, you have no right to whale here, and my captain wants you to come aboard." I saw he could not talk good English, and I said, "Can your captain talk good English?" and he said, "Yes." So I said, "All right," and took up my papers, and he picked up my charts in the cabin, and we went aboard the schooner, and I saw then that she was a sealer, one of the confiscated schooners. So I asked the captain of the schooner what this all meant, and he said, "What are you doing here?" Said I, "I am whaling; it is a whale ship." He said, "Well, you have no right to whale here in the Okhotsk Sea." I said, "Why not?" And he says, "The Okhotsk Sea is a closed sea." Said I, "How long since?" "Why," he says, "it has always been a closed sea." "Well," said I, "that is funny. I have been coming here the last five years whaling, and have been in Vladivostok every year." He says, "Well, we have always overlooked the whalers before, but this year we have got orders to take all the whalers and all the sealers we can find. I have orders from my admiral to take all the whalers and all the sealers I can find." And he said, "What did you set that bright light for?" I said, "I saw you coming down and I thought you were the *Mary H. Thomas*, and I wanted to speak the *Mary H. Thomas*, so I set the bright light so they could see me." He says, "Well, I am going to take you to Vladivostok." I said, "All right, but I think you have no right to take me." "Well," he says, "I am not sure myself whether I have a right to take you, but I am going to take you to Vladivostok." I said, "Well, my whaling has just commenced here, and if you take me down to Vladivostok you make me lose my season's work, and if you do your Government will have to pay for it." "Well, if I am in the wrong my Government will pay for it."

Then he ordered me to stay aboard the *Cape Horn Pigeon* and keep my steward and boy. He says, "Your officers and crew come aboard and take charge of the schooner and myself and crew will come aboard and take the *Cape Horn Pigeon*."

I said, "Where are you going to take my ship?" He said, "Down to Vladivostok." I said, "You have no right to put my officers and crew aboard that schooner and tell them to go to Vladivostok, or anywhere else. If you put my officers and crew aboard there they will go anywhere they have a mind to. They may go to San Francisco or they may go to Yokohama and sell her, and you can not stop them. The schooner has got no papers." "Well," he says, "I am going to put them aboard and I am going to order them to go to Vladivostok." I said, "If you do you will have to pay them for taking the schooner down, whether I am in the right or in the wrong. You make them prisoners." My first officer came to me and wanted to know what he should do, whether to go to San Francisco or to Vladivostok, and I told him to go to Vladivostok and they would pay him for bringing the schooner down. My officers and crew told me that after they went aboard they asked him what right he had to take the ship, and he said he took her for whaling in the Okhotsk Sea; that the Okhotsk Sea was a closed sea, and that we had no right to whale there.

I went back on the *Pigeon* with an officer and five armed men, and they boarded the schooner, and then the crew of the schooner, two officers and twelve men, came on board and took charge of the *Cape Horn Pigeon*. They navigated the *Pigeon* down, and I had nothing to do with the ship on the voyage down to Vladivostok; but I was not restrained of my personal liberty, and I occupied my own stateroom and

had my meals with the officers. On the way down I said one day, "I believe you have made a bad mistake; I believe you had no right to take this ship." He said, "If you hadn't had two whales on board I wouldn't have taken you. I should have simply told you that you had no right to whale in the Okhotsk Sea and ordered you out. But as it is I have got to take you, because I should be afraid my crew would blow on me when I arrived in port if I did not." The schooner got to Vladivostok three days before us, and when we arrived the lieutenant told me to let my crew go aboard of their own ship and his crew would go aboard of the schooner. So I told my first officer to get the crew together and get them aboard and take charge. My crew were then on the schooner. After I went ashore orders came to the schooner for the crew to go ashore, and they were told that they were going to have quarters at the station house. They were landed on the wharf, bag and baggage, without food or shelter.

Nobody was there to receive them, and I found them about 8 o'clock in the evening. I went up to the captain of the port to find out about it, and he said that he gave orders to land the crew and take them up to the station house, and there they would find quarters. So I told him that they were landed there on the wharf and nobody there to receive them or show them where the station house was. He said he could not do anything that night, so I went and got them a place in a Chinaman's storehouse.

The next day the first officer and the second officer went to the station house to find out about the quarters, and they were told they would let them know to-morrow. The next day they went there with an interpreter, and they were told that they had the names of the men, and that money had been sent in for the men, but that the chief of police would not do anything about the affair, and they said again they would let them know to-morrow. So they went there every day until the admiral arrived and the governor. When the admiral and the governor arrived the officers went to the governor, and he put them aboard of their own ship. They went to him about 11 o'clock in the forenoon, and about 5 o'clock in the afternoon they were put aboard the bark. The exact day will be shown by the log book.

While at Vladivostok I stayed at the hotel. I could get no information or directions as to whom I was to apply for release of my ship, and was informed that nothing could be done until the admiral and governor came. When the governor arrived I made a protest to him, demanded monthly wages from the time we were taken until we arrived in San Francisco, and demanded my passage from Vladivostok to San Francisco for myself and officers and crew. We supposed then that they would not restore the ship. He told me as soon as he read it that he would straighten this affair up as soon as they could.

The next day an officer came and took me on board the flagship, where I was informed by the officer who took the ship they were to have a hearing. I was not allowed in to the hearing, but was left on deck about an hour. Then an officer came up to me and said, "Come, Captain, we will go aboard of your bark." I told him who I was, and he told me that he was captain of the flagship. He said, "We are going aboard of your bark to hold a declaration. I said, "I suppose you want my log book, don't you?" He said, "Yes; where is your log book?" I said, "I have got it ashore." He said that he wanted me to go and get it, and they manned a boat and took me ashore. I got the log book and came back on board of the flagship, and then the captain of the flagship, five other captains, a judge, and a lieutenant, and myself got in a steam launch and went aboard of the *Cape Horn Pigeon*, and there they overlooked the log book, and could find nothing wrong in it. They went down in the hold and searched for sealskins or salt, bored into the casks to see if there were any skins or salt, but could find nothing to show that I had been sealing or aiding sealers, and they drew up a declaration in the Russian language to that effect.

I signed that document, and asked them for a copy of it in English, which they gave me the next day with my log book. Then the next day I was sent for again to come on board the flagship, and was told by the judge that I could have my ship and be allowed to go to sea if I would bring no claim against the Russian Government. And I said, "If I bring a claim against the Russian Government, I can not have my ship?" and the judge said, "Well, yes, I guess so." I said, "Well, I am going to bring a claim against the Russian Government for loss of my season's work and my expenses here." So the judge sent in word to the admiral that I was going to enter a claim against them. The admiral sent word back to know what my claim was going to be. I told them, and the admiral sent word for me to send my claim in, and after I sent my claim in that no claims from me or my owners would be recognized afterwards. I asked for two days to make out my claim, and I made it out and sent it in.

The next day after that I had orders to go to sea from the admiral. The Govern-

ment steam launch took the ship in tow and towed her down to the mouth of the harbor. I was not ready to go to sea. The next day I got a letter for the admiral wanting to know why I did not go to sea, and I told him that I was not ready; that I had got to get provisions aboard, and it was bad weather. He wanted to know if he could help me in any way; if I had money enough to get my provisions with, and I wrote back and told him that I had. I sailed on the 1st of October and arrived at San Francisco the 5th of November.

I did not go back to the whaling grounds, because the season was finished. The season for whaling in the Okhotsk closes from the 5th to the 10th of October. It would have taken me at that time about ten to fifteen days to have got back there, as the northerly winds had set in, so that I could not possibly have got there in time to do any whaling. The season in the Okhotsk closes when the heavy gales from the north commence, about the 10th of October, and then we have to leave. The season in the Okhotsk Sea is the months of August, September, and the first part of October. Some seasons are longer than others, depending upon the weather. At the time I left Vladivostok the stormy season had set in this fall. The basis upon which my claim was made up was an average of seven to eight whales. I took my log book and found that in the four seasons I had taken 28 whales, and the average of that would be 7 whales to a season, and this season I had already taken 2 whales when I was captured. The time I was taken was just when the great body of the whales had made their appearance. We saw whales the day we were taken and the next day. This was just the time when the whales came on this ground. My accounts with the owners will show my expenses.

At no time during the voyage in question was the *Cape Horn Pigeon* or myself, either directly or indirectly, engaged in sealing or aiding or assisting others engaged in sealing. Neither the *Cape Horn Pigeon*, myself, or my officers and crew took any seals. We never had any intention of taking any seals, either on the land or water. The ship was not provided with the tackle, furniture, and material necessary therefor, nor for the preservation of seal skins, and in no way was the ship or my officers and crew engaged in any sealing enterprise. Neither I nor, to my knowledge, have any of the officers or crew of the *Cape Horn Pigeon* received any indemnity whatever, in any form, for the loss and damage sustained by the seizure or any part thereof, with the following exception: The day we got the vessel back I was called down in the steerage by the cooper, and he showed me his chest, which had been broken open by the Russian crew. The lieutenant was called down and shown the chest, and he said he was sorry it was done, and for the cooper to make out his bill and bring it to him and he would pay him; that he did not want the admiral to know anything about it. The cooper made out his bill of 39 rubles, and the lieutenant paid him out of his own pocket.

I have left with Mr. Wing copy of a statement made by myself and officers at Vladivostok on the 21st of September, 1892; also declaration of the officers and crew of the *Cape Horn Pigeon* made at Vladivostok on the 23d day of September, 1892; also copy of my letter to the Russian admiral and my claim filed with him. I also refer to my communications to Commander Charles N. Gridley, United States Navy, commanding United States steamer *Marion*, which was at Vladivostok during this time, and which communications I understand have been forwarded to the Department by Commander Gridley. The amount of the claim when recovered will go into the proceeds of the voyage, to be distributed like other proceeds of the voyage, in which the officers and crew will each have his lay as if it had been the proceeds of oil and bone taken. No objection has ever been made during the five seasons that I have been in the Okhotsk Sea whaling until this time to whaling there, and I had received no notice or information of any difference in the law from what it had been in the past seasons until it was stated by the officer. I leave December 14 for San Francisco, and shall probably sail from San Francisco as master of the *Cape Horn Pigeon* upon another whaling cruise on the 22d of December, and expect to return to San Francisco in November, 1893, going to the same places where I have been for the last five seasons.

THOMAS SCULLUN,
Master Bark *Cape Horn Pigeon*.

UNITED STATES OF AMERICA, COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, ss:

On this 14th day of December, A. D. 1892, personally appeared before me, Homer W. Hervey, a notary public duly commissioned and qualified, the within-named Thomas Scullun, and made solemn oath that the facts stated in the foregoing affidavit subscribed by him in my presence are true so far as they are stated upon his personal

knowledge, and that so far as they are stated upon hearsay he believes them to be true. And I further certify that the said affidavit was signed by the said Thomas Scullun in my presence, and that I have no interest in the claim to which this affidavit relates, and that I am not agent or attorney of any person having such interest. I further certify that although not heretofore known to me, I believe the affiant to be a credible person. And I further certify that Leander F. Brightman, who made oath before me to the credibility of said affiant, is well known to me as a credible person of good character. And I further certify that the affidavit was read to the affiant before he signed the same.

In witness whereof I have hereunto set my hand and official seal this 14th day of December, A. D. 1892.

[SEAL.]

HOMER W. HERVEY, *Notary Public.*

UNITED STATES OF AMERICA, COMMONWEALTH OF MASSACHUSETT, *Bristol, ss:*

I, Leander F. Brightman, merchant, of New Bedford, county of Bristol and Commonwealth of Massachusetts, on oath depose and say that I am and have been for many years well acquainted with Thomas Scullun, master of the *Cape Horn Pigeon* and the person who signed the annexed affidavit, and that said Thomas Scullun is of my own knowledge a man of good character and a credible person.

LEANDER BRIGHTMAN.

Subscribed and sworn to this 16th day of December, before me, as hereinbefore certified.

[SEAL.]

HOMER W. HERVEY, *Notary Public.*

EXHIBIT P.

[Copy letter to Russian admiral, 9/15/92.]

VLADIVOSTOK, *September 15, 1892.*

SIR: With reference to our conversation on board of the *Dimitri Donskoi* regarding my claim for the seizure of the *Cape Horn Pigeon* by the Russian authorities, I now beg to inform you that I will agree to an indemnity of \$49,500, payable in United States gold currency.

This represents the proportion of my season's work lost through my seizure and detention, based upon the average of the proceeds of former seasons, including also an indemnity to my officers and crew, as well as their own and my expenses while at this port.

I will agree to this sum provided that I am not put to any further expense and am allowed to proceed at once to the United States, and will guarantee on behalf of myself and owners that no further proceedings will be taken in this matter.

Yours, respectfully,

THOMAS SCULLUN,
Master Cape Horn Pigeon.

Rear-Admiral P. TYRTOW,
Commander in Chief Russian Naval Forces in the Pacific.

EXHIBIT P^o.

[Copy original claim.]

VLADIVOSTOK, *September 15, 1892.*

SIR: With reference to our conversation on board of *Dimitri Donskoi* regarding my claim for the seizure of the *Cape Horn Pigeon* by the Russian authorities, I now beg to inform you that I will agree to the following indemnity:

1. Amount claimed for loss of season (average of 5 seasons' work),	
1 season.....	\$60, 600
Less value of catch on board—2,600 pounds whalebone,	
at \$5.....	\$13, 000
200 barrels of oil, at \$13.....	2, 600
	15, 600
	\$45, 000

2. Amount claimed for services of officers and crew bringing schooner <i>Marie</i> to Vladivostok.....	\$1, 000
3. Amount claimed for provisions and stores used by Russian officers and crew while on board the ship <i>Cape Horn Pigeon</i>	200
4. Expenses, board, and lodging of officers and crew while ashore.....	210
5. Amount of captain's hotel expenses, etc.....	50
6. Amount claimed for general expenses, including cost of cables, fees for legal advice, and clerk hire, boats, carriages, etc.....	3, 040
Total, United States gold.....	49, 500

Total amount being \$49,500, United States gold currency.

I will agree to the above indemnity, provided that I am not put to any further expense and am allowed to proceed at once to the United States, and will guarantee on behalf of myself and owners that no further proceedings will be taken in this matter.

I am, sir, yours, respectfully,
(Signed)

THOMAS SCULLUN, *Master,*
Cape Horn Pigeon.

Rear-Admiral P. TYRTOW,
Commander in chief Russian Naval Forces in the Pacific.

EXHIBIT Q.

LEGATION OF THE UNITED STATES,
St. Petersburg, May 3 (15), 1893.

YOUR EXCELLENCY: I have just received instructions from my Government to call your attention to the matter of the seizure by the Russian authorities of the bark *Cape Horn Pigeon* at Vladivostok on or about September 10, 1891, and especially to ask for the result of the pending investigation by the Russian authorities concerning the seizure and detention of the said bark and the treatment of the officers and crew at Vladivostok, referred to in your note to Mr. G. W. Wurts, Chargé d'Affaires, of September, 1891.

My Government expresses earnest desire for a full and complete investigation in the matter and a communication of all the circumstances in the case, and I respectfully request the result of the investigation above referred to at your earliest convenience.

I avail, etc.,

ANDREW D. WHITE.

EMBASSY OF THE UNITED STATES OF AMERICA,
St. Petersburg, Russia.

I, Herbert J. Hagerman, second secretary of the embassy of the United States of America, do hereby certify that I have compared the foregoing copy of a note addressed to the Imperial Russian Ministry of Foreign Affairs by the Legation of the United States at St. Petersburg, Russia, with the original as entered in the archives of this Embassy and now on file, and that the same is a correct transcription of the original as so entered, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of this embassy this 17th day of February, 1900.

[SEAL.]

HERBERT J. HAGERMAN,
Second Secretary United States Embassy.

EXHIBIT R.

LEGATION OF THE UNITED STATES,
St. Petersburg, June 2 (14), 1894.

YOUR EXCELLENCY: I have the honor, in obedience with instructions from my Government, to inclose sundry papers relative to the seizure of the brig *Cape Horn Pigeon*, in substitution of the claim made by Thomas Scullen, master of the said brig, to the Russian admiral at Vladivostok on September 25, 1892.

You will observe that the statements of the memorial are fully substantiated by affidavits; that the items of damage are the same as those presented by Captain

Scullun to the Russian admiral, but which at the time of that presentation were not sustained by affidavits as they now are.

The *Cape Horn Pigeon* was at the time of seizure, and still is, owned by American citizens.

She cleared from San Francisco December 7, 1891, for a whaling voyage, and the seizure took place on September 10, 1892, in the Sea of Okhotsk on the high seas, not within the jurisdiction of Russia.

The circumstances of the seizure are fully given in Captain Scullun's affidavit.

The brig having been detained practically over the whaling season, great loss was occasioned thereby to the owners of the vessel aforesaid.

I would also call your excellency's attention to the affidavits of Baker, Cleveland, and Lapham, all masters of whaling vessels, with large experience in the Okhotsk Sea, bearing on the above point and showing the loss incurred by the detention.

The other items for which claims are made will also be found among the inclosed papers.

It will also be seen that Captain Scullun, having informed the Russian authorities at Vladivostok that he intended to prefer a claim for damages, was requested by them to send in a claim, which he did, but the next day he was ordered by the Russian admiral to go to sea, and was towed to the mouth of the harbor by a Government tug.

An extract, in copy, from Captain Scullun's log book, covering the period from the 23d of September to the 1st of October, 1892, inclusive, is herewith inclosed, and a copy also of the letter from Captain Scullun to the Russian admiral at Vladivostok submitting his claim.

In presenting this claim I am instructed by my Government to express its hope that an adequate indemnity will be allowed the claimants.

I avail myself of this occasion to return to your excellency the assurance of my most distinguished consideration.

ANDREW D. WHITE.

To His Excellency M. de GIERS,
Imperial Minister of Foreign Affairs, St. Petersburg.

EMBASSY OF THE UNITED STATES OF AMERICA,
ST. PETERSBURG, RUSSIA.

I, Herbert J. Hagerman, second secretary of the embassy of the United States of America, do hereby certify that I have compared the foregoing copy of a note addressed to the Imperial Russian Ministry of Foreign Affairs by the Legation of the United States at St. Petersburg, Russia, with the original as entered in the archives of this Embassy and now on file, and that the same is a correct transcription of the original as so entered, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of this embassy this 17th day of February, 1900.

[SEAL.]

HERBERT J. HAGERMAN,
Second Secretary United States Embassy.

EXHIBIT S.

[Translation.]

No. 4038.]

MINISTRY OF FOREIGN AFFAIRS,
ASIATIC DEPARTMENT,
October 12, 1895.

MR. CHARGÉ D'AFFAIRES: The Imperial Ministry of Foreign Affairs has had the honor to receive the letter you had the goodness to address to it on September 27/October 9, of the current year, requesting information regarding the matter of the seizure for unlawful hunting in Russian waters, of the following-named American vessels: The *Cape Horn Pigeon*, arrested on September 10, 1892; the *James Hamilton Lewis*, August 2, 1891, and the *C. H. White*, July 15, 1892.

I hasten to communicate to you in my turn the following answer:

1. As regards the *Cape Horn Pigeon*, I believe I must refer to the ministerial note of June 12, 1893, No. 2187, in which was exposed the point of view of our marine ministry on the matter of the request of indemnity presented by the captain of the American vessel in question, and which amounted to \$49,500. Putting aside first of all from this total, as being absolutely exaggerated, the sum of \$45,000, representing,

according to the statement of the claimant, the price of the whales which he could have killed during the time of his detention, the Marine Ministry has, moreover, raised objections against another point of the claim. It was the one indicated under the title of minor expenses—charges for telegraph, hire of the boats and cabs, and remuneration of the clerks. The captain requesting an indemnity of \$3,400 on this account; the Marine Ministry found that sum much too high and required that the claimant, if he considers that he has a right to it, should produce at least vouchers confirming this part of the claim.

I must inform you, Mr. Chargé d'Affaires, that the documents transferred by the legation of the United States in its subsequent note of June 2, 1894, do not offer the character of vouchers to the claim in question. We find, indeed, in the Appendix No. 1 particularly a simple reproduction of the primitive request of the captain with regard to these \$3,400, but without indorsing this request with any proof, nor even specifying it in detail, which naturally deprives it of its value from the legal point of view. Consequently, before it will be able to decide in regard to the claim of the captain of the *Cape Horn Pigeon*, it is reasonable to expect the production of formal evidence, already claimed in the above-mentioned ministerial note.

2. As to the case regarding the American schooner *James Hamilton Lewis*, the Imperial Ministry of Marine, with which the Ministry of Foreign Affairs did not fail to enter into communication on this subject, in consequence of the note of the United States Legation of June 30/July 11, 1894, has made known that it has taken the necessary measures to dispatch to St. Petersburg certain documents, which have remained in Petropavlovsk, the examination of which was indispensable, with a view to arriving at a decision. I have, however, renewed our request to the Ministry of Marine in order to hasten the solution of this case, and I shall not fail to inform you of the result of our proceedings.

3. Regarding the case of the American schooner *C. H. White*, the Ministry of Marine has sent us the communication, the tenor of which is as follows, and which serves as an answer to the allegations of the captain of the said vessel, reproduced in the note of the legation of December 12/24, 1894:

The Ministry of Marine insists that the assertion of the captain that he was captured at the point of intersection of 54° 18' latitude north and 167° 15' longitude west is found to be contradicted by the protocol of the capture. Moreover, the captain acknowledged himself, in a memorandum made in his own hand on the protocol, that it was at this last point that he found himself on the day of the arrest. And what proves that the captain understood what he signed and did not suffer in this respect any pressure, is that he accompanied his signature with observations relative to other points of the protocol—as, for example, to the point in regard to the absence of signal lights on the schooner, which he did not find correct. It results, therefore, according to the protocol, that the vessel was arrested at a distance of 23 miles from the nearest Russian coast, and not 80 miles, as is assured hereby by Captain Furman.

The Ministry of Marine states, moreover, that at the moment of the arrest the journal of the vessel was found not kept for two days, and the visit discovered instruments for fishing seals, as well as five seals freshly killed and not yet skinned.

As to the assertions of Captain Furman relative to the conditions under which he arrived in our waters and sailed the previous days, they are contradicted by the journal of the schooner, which shows that during the fifteen days which preceded the capture the vessel remained in the neighborhood of the Commodor Islands—as, for example, on the 18(30) June—when Captain Furman pretends to have hunted at 40 miles from the southern shores of Agatou Island, it is proved in reality that he was at a distance of 11 miles from the isle of Medny (Copper).

Similarly with regard to the declarations of the captain, as well as of the Pilot Ronning and Mr. Wolfgang, concerning the treatment that they had undergone at the same time as the rest of the crew, the inquest established that the treatment, far from giving place to complaints, provoked, on the contrary, from the part of the several persons in question, thanks addressed to the commander of the *Zabiaca*. At Petropavlovsk the crew in question, as well as the others belonging to other captured vessels, were, in want of other premises belonging to the State and to be disposed of in the town, boarded in buildings dependent on the administration of the local police, and each man received the alimentary allowance prescribed by the law.

Finally, it has been established that the captain and the crew of the *C. H. White* were allowed to keep their own clothes as they did not belong to the outfit of the schooner, and that the return to their country on board the *Majestic* of the said crew, together with the others who were in the same case, was executed by order of the commander of the *Zabiaca*.

It follows from all these statements that the capture in question was made under perfectly regular conditions.

The note of the Legation of the United States of September 27 (October 9), mentioning at the same time the case of arrest of the man Robert Ohman, of the American schooner *Emma*, toward which it has the goodness to draw the attention of the Imperial Ministry, I can not but refer to the note that your predecessor addressed to us on July 19 (31), of the present year, informing us that the American citizen in question had already returned to the United States and the case should therefore be considered at an end.

Please to receive, Mr. Chargé d' Affaires, the assurance of my distinguished consideration.

To Mr. PEIRCE, *Chargé d' Affaires*, etc.

LOBANOW.

EXHIBIT T.

EMBASSY OF THE UNITED STATES,
St. Petersburg, January 27 (February 8), 1899.

YOUR EXCELLENCY: The seizure of certain American vessels, namely, the *Cape Horn Pigeon*, the *James Hamilton Lewis*, the *C. H. White*, and the *Kate and Anna*, has long been the frequent subject of voluminous correspondence between the Imperial Government and this embassy in the attempt to reach a settlement of the damages incurred by the vessels and their employees.

Actuated by an earnest desire to definitely settle these cases at an early date, my Government has authorized me to offer, on behalf of the various claimants, terms of settlement which would be accepted by it in their behalf by way of compromise, and which I now have the honor to submit in the hope that, recognizing the friendly spirit of the proposition, the Imperial Government will respond by an acceptance of the terms submitted and agree to thus dispose of these vexatious questions.

It is, however, my duty to say that this offer of compromise is submitted solely for the purpose of obtaining a prompt settlement of these claims, and that, should the terms offered not be acceptable to the Imperial Government, or in case a compromise is not effected, nothing herein is to be considered as in any way prejudicing the rights of the claimants, nor especially their rights to recover the full amounts of their claims by arbitration or negotiation.

The terms of the compromise proposed are as follows:

1. For the *Cape Horn Pigeon*, the original claim in which case was \$49,500, the sum of \$42,000 is proposed. In this case it will be remembered that the Imperial Government has recognized the illegality of the seizure, made more than six years ago, and the question as to the amount of damages has been the sole question.

2. For the *James Hamilton Lewis*, the total original claim in which case was \$123,000, the sum of \$82,000 is proposed.

3. For the *C. H. White*, the total original claim in which case was \$150,000, the sum of \$112,500 is proposed.

4. For the *Kate and Anna*, the total original claim in which case was \$10,000, the sum of \$7,500 is proposed.

In presenting the above I have the honor to specially solicit of your excellency the favor of an early response, the very essence of the proposal being to bring about an early and prompt settlement of these long-disputed claims.

I avail, etc.,

(Signed)

HERBERT H. D. PEIRCE,
Chargé d' Affaires ad interim.

To his Excellency Count MOURAVIEFF,
Imperial Minister of Foreign Affairs, etc.

EMBASSY OF THE UNITED STATES OF AMERICA,
ST. PETERSBURG, RUSSIA.

I, Herbert J. Hagerman, second secretary of the embassy of the United States of America, do hereby certify that I have compared the foregoing copy of a note addressed to the Imperial Russian Ministry of Foreign Affairs by the Embassy of the United States at St. Petersburg, Russia, with the original as entered in the archives of this Embassy and now on file, and that the same is a correct transcription of the original as so entered, and the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of this embassy this 20th day of February, in the year 1900.

[SEAL.]

HERBERT J. HAGERMAN,
Second Secretary United States Embassy.

EXHIBIT U.

[Translation.]

No. 157.]

MINISTRY OF FOREIGN AFFAIRS,
FIRST DEPARTMENT,
March 13, 1899.

Mr. AMBASSADOR: I have not failed to transmit to the competent authorities the contents of the note of the Embassy dated January 27 (February 8), of the current year, on the subject of the affair of the seizure by the Russian cruiser of the American schooners *Cape Horn Pigeon*, *James Hamilton Lewis*, *C. H. White*, and *Kate and Anna*.

It appears from the reply which the Ministry of Marine has just sent me that it does not find it possible to depart from the point of view expressed by it previously, and which the Imperial ministry had the honor to communicate to the Embassy of the United States in its notes of June 12, 1893, No. 2187; of August 26, 1895, No. 3498; of October 12, 1895, No. 4038; as well as of October 19, 1898, No. 4587. The Ministry of Marine considers:

1. That the damages suffered by the owner of the *Cape Horn Pigeon* after the seizure would be reimbursed by a sum not exceeding \$2,500.
2. The compensation for the seal skins confiscated on the *Kate and Anna* ought to be fixed at a sum less than \$1,767, demanded at the commencement of the affair by the proprietor.
3. As to the seizure of the *C. H. White* and *James Hamilton Lewis*, the ministry of marine considers that it was justified, and could not consent to a compromise in settlement of that affair.

Please accept, Mr. Ambassador, the assurance of my high consideration.

COUNT MOURAVIEFF.

His Excellency Mr. CHARLEMAGNE TOWER,
Ambassador of the United States, etc.

EMBASSY OF THE UNITED STATES OF AMERICA,
ST. PETERSBURG, RUSSIA.

I, Herbert J. Hagerman, second secretary of the embassy of the United States of America at St. Petersburg, Russia, do hereby certify that I have compared the foregoing copy of a note received by the said embassy from the Imperial Russian Ministry of Foreign Affairs, dated March 12, 1899, with the original now remaining on file in this said Embassy, and that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have heretunto set my hand and affixed the seal of the embassy of the United States this 20th day of February, in the year 1900.

[SEAL.]

HERBERT J. HAGERMAN,
Second Secretary United States Embassy.

EXHIBIT V.

In the matter of the claim of the United States of America against the Empire of Russia on account of the claim of J. and W. R. Wing, agents and managing owners of the bark *Cape Horn Pigeon*, for damages arising out of the seizure of said bark in the Okhotsk Sea by an officer of the Russian navy on the 10th day of September, 1892.

Deposition of William R. Wing, taken at New Bedford, Mass., 8th January, 1900, before William F. Caswell, a notary public, duly commissioned and qualified, and residing at said New Bedford.

And thereupon the said WILLIAM R. WING, being duly sworn, doth depose and say in answer to questions propounded by Charles W. Clifford, attorney for the complainants:

1. State your name, age, residence, and occupation.—A. William R. Wing; age, 69 years; New Bedford; merchant.
2. Are you the surviving partner of the firm of J. and W. R. Wing?—A. I am.

3. Who was your partner; and if he has deceased, state when.—A. My brother, Joseph Wing, who deceased in 1895.

4. Are you the William R. Wing who signed and verified the memorial in this case?—A. I am.

5. Are the facts stated in that memorial, so far as they are within your personal knowledge, true?—A. They are.

6. And so far as they are stated on information and belief?—A. Yes.

7. Please examine the book now handed you, and state what it is.—A. It is the log book of the bark *Cape Horn Pigeon*, upon its voyage in 1892, upon which it was seized. It sailed from San Francisco on the 7th day of December, 1891, and arrived back there on the 5th of November, 1892.

(Log book presented and marked "Exhibit No. 1, W. F. C.")

8. What are the two papers I now hand you?—A. A chart of the North Pacific Ocean covering the east coast of Asia from Bering Strait to the Philippine Islands.

(Papers produced and marked "Exhibits 2 and 3, W. F. C.")

9. Will you please mark upon this chart the position of the *Cape Horn Pigeon* at the time it was seized?—A. The vessel was seized in latitude 46° 30' north, and longitude 146° 35' east, as stated by Captain Scullun, and as appears in the log book. I have marked upon the chart this position by a cross with my initials. The place is about 90 miles distant from the nearest land in a southeasterly direction, and about 125 miles from the nearest land in a westerly direction.

10. How long have you been in the whaling business?—A. Nearly fifty years, and as manager of whaling enterprises for about forty years.

11. How many whaling vessels have you had under your charge at one time?—A. Fourteen or fifteen.

12. Has your experience covered all kinds and classes of whaling?—A. It has.

13. And in all oceans?—A. Yes; except the Antarctic.

14. Has the management of this business been carried on by you personally?—A. I have always personally managed it.

15. Will you please state, Mr. Wing, what, in your opinion, was the value of the *Cape Horn Pigeon*, with its outfits and equipment, as it was at the time and place of seizure?—A. Upward of \$40,000.

16. Will you please state how you arrive at this valuation?—A. I take the value of the vessel and outfits as it was in January, 1890, at the time when we rebuilt it completely from the water's edge externally, and internally below the water's edge, making it perfect, at \$10,000 before the rebuilding. At that time we expended for the rebuilding and for the outfit account, \$23,064.54, as appears by the account current from our books, a copy of which I hereto annex. Of this amount of \$23,064.54, I have taken \$11,500 as the cost of the rebuilding, that is, of the permanent addition to the vessel, leaving \$11,564.54 as the outfit account for that voyage. This makes a value of \$21,500 of the vessel, with the remains of its old outfit for its voyage of the season of 1890. I then take the average outfit for this voyage and the three subsequent voyages, as appear in the accounts taken from our books, and hereunto annex the four outfit accounts, being marked "Exhibits 4, 5, 6, and 7." These four accounts show as follows:

1890	\$11,564.54
1891	10,053.24
1892	10,208.55
1893	11,415.84
Gross for the four	43,242.17

being an average outfit of \$10,810.54. This, added to the \$21,500, makes \$32,210.54. To this must be added 8 per cent for one season's insurance, and interest for ten months, 5 per cent, making 13 per cent, or \$4,200.37, to ascertain the actual cost value based upon its original value, for which I am confident it could have been sold, but which I would not have taken for it at the time we commenced the rebuilding. To this should be added 12½ per cent for the increased value arising from the consummation of the enterprise, the preparation and outfitting of the vessel, the directing and management of the enterprise, and the added value from the arrival of the vessel at the place of service. This last item has always been taken into account in all the cases of which I have had knowledge, such as the *Alabama* claims and the claims made before the Chilean Commission, etc. This 12½ per cent would amount to \$4,563.86, which, added to the \$36,510.91, gives a value of the vessel at the time it was seized, as it then was, of \$41,074.77. If on the date of its seizure I had known its situation I certainly should not have taken \$40,000 for it.

17. Were you, in 1892, familiar with the price of oil and bone in the market?—

A. Thoroughly. It was my business to keep run of it and know its condition, and I did so. I had oil and bone on hand for sale.

18. What, in your judgment, was the fair market price for Northern whale oil, such as the *Cape Horn Pigeon* was taking, on the date of the seizure of the vessel, the 10th September, 1892?—A. \$13 a barrel.

19. Did this price vary during the fall and winter?—A. Very slightly, if any. It was substantially something better than 40 cents a gallon, which equals \$13 a barrel, there being 31½ gallons to the barrel.

20. What, in your opinion, was the market value of the bone which the *Cape Horn Pigeon* was taking at the time of its seizure?—A. During the month of August this bone was \$5 a pound, sales being made from \$4.90 to \$5.10 per pound. In the month of September sales were made, the price in some cases not being quoted, but through this month and the month of October the price fell to about \$4.25. The price declined during those two months to about \$4.25, sales being made at that figure, and in the month of November there was a further decline to about \$4.

21. In the ordinary course of business, if the *Cape Horn Pigeon* had not been seized when would her catch have reached the market?—A. On her arrival at San Francisco, about the last of October or the first of November, then her catch would have been marketable.

22. In your experience is oil and bone ever sold to arrive?—A. Yes.

23. Would it have been possible for you to have sold in the market the catch of the *Cape Horn Pigeon* subject to arrival?—A. Yes; subject to the condition not to exceed a certain quantity.

24. Would such a sale have commanded the going market price?—A. Substantially.

25. Please examine the paper handed you and state what it is.—A. It is the copy of the account with the *Cape Horn Pigeon* of expenses paid by us on account of the seizure and this claim to the 9th of January, 1899.

26. Have these sums actually been paid?—A. They have.

(Account annexed, marked "Exhibit 8, W. F. C.")

27. Since January, 1899, have you incurred any other expenses?—A. We have. Probably \$200 or \$300, which have not been paid.

28. Are there any other outstanding liabilities on this account already incurred?—A. There is an unsettled account for services and assistance rendered to Captain Scullen at Vladivostok, which we have never settled, awaiting the determination of the claim.

29. Do you know of any notice ever issued by the Russian Government in relation to the closure of the Okhotsk and Bering seas to whalers?—A. I do not. I never heard of any such order. The only order or notice of which I ever knew was a notice given to Captain Spencer, of the British whaling bark *Fairaway*, the 1st of September, 1875, which was printed in the New Bedford Whalers' Shipping List of the 7th of December, 1875, a copy of which I annex to this deposition.

(Exhibit annexed, marked, "9, W. F. C.")

30. Did Captain Scullen know of this notice?—A. He did.

31. What did this notice prohibit?—A. Whale fishery in the gulfs and bays of Bering and Okhotsk seas within 3 miles of the coast and islands.

32. Was it in consequence of this notice that Captain Scullen, as he says, sought to secure a license to carry on the whale fishery in the gulfs and bays within 3 miles of the land?—A. It was.

WM. R. WING.

In the matter of the claim of the United States of America against the Empire of Russia on account of the claim of J. and W. R. Wing, agents and managing owners of the bark *Cape Horn Pigeon*, for damages arising out of the seizure of said bark in the Okhotsk Sea by an officer of the Russian navy on the 10th day of September, 1892.

Deposition of George R. Phillips, taken at New Bedford, Mass., the 8th of January, 1900, before William F. Caswell, a notary public duly commissioned and qualified, and residing at said New Bedford.

And thereupon the said GEORGE R. PHILLIPS, being duly sworn, doth depose and say, in answer to questions propounded by Charles W. Clifford, attorney for the complainants:

1. State your name, age, residence, and occupation.—A. George R. Phillips; age, 69 years; New Bedford; present occupation, secretary and accountant; for forty-four

years I was engaged as a broker in oil and bone, being one of the largest oil brokers in the business.

2. Were you in the habit of keeping a record of sales?—A. I was.

3. Have you refreshed your recollection by a recent examination of your records?—A. I have.

4. Will you state what was the market price of northern oil during the fall of 1892?—A. About 40 cents a gallon. It varies very little.

5. What was the market price of northwest bone during the fall of 1892?—A. In August about \$5. In September and October it declined to about \$4.25, and in November there was a further decline to about \$4.

6. At that time was it possible to sell a cargo to arrive subject to arrival?—A. I think it was.

GEO. R. PHILLIPS.

I hereby certify that on this 8th day of January, A. D. 1900, before me, a notary public, duly commissioned and sworn and residing at New Bedford, county of Bristol and Commonwealth of Massachusetts, personally appeared the within-named William R. Wing and George R. Phillips, well known to me to be the persons described in and who gave the annexed testimony, and, having been duly cautioned and sworn by me, did give the annexed depositions in response to interrogatories propounded by Charles W. Clifford, attorney for claimants. And thereupon said depositions were reduced to writing by my clerk and signed by the said Wing and Phillips in my presence, and have been forwarded by me to the secretary of the United States embassy at St. Petersburg for use in the case of the claim of J. and W. R. Wing, agents and managing owners of the bark *Cape Horn Pigeon*, pending before the arbitration agreed upon between the United States of America and the Empire of Russia.

The interlineation on page 3, marked "W. R. W." and "W. F. C.," was made before signing.

W. F. C., N. P.

In witness whereof I have hereunto set my hand and notarial seal this 12th day of January, 1900.

[SEAL.]

WM. F. CASWELL, *Notary Public,*
New Bedford, Mass.

Case: *Cape Horn Pigeon*.

Deposition: William R. Wing.

Exhibit I.

(Initialed): W. F. C.

EXHIBIT V.

ANNEX 1.

[Bark *Cape Horn Pigeon*—Log book. Season of 1892. Thomas Scullen, master.]

Monday, December 7.—At 1.30 p. m. hove up anchor, and tug *Sea Witch* towed us out to Whising Buoy. At 3.30 tug let go, wind NE., ship steering SW. by S. All sail set at 6 p. m. Farallon light, bearing NW., distant 20 miles.

Tuesday, December 8.—Light breeze from southward, with heavy swell from westward; ship on western tack under short sail. Saw one sail bound to San Francisco. Employed in ship duty. Later on raining. No observations.

Wednesday, December 9.—Fresh breeze from northward, with heavy sail on ship steering SSW. and SW. by S., with topsail and courses and jib. Employed in rigging boats. Lat. 36° 32'; long. 124° 51' W.

Thursday, December 10.—Fresh breeze from NE., ship steering SW. by S., with all sail set. Employed in rigging boats. Lat. 34° 30' N.; long. 126° 30' W.

Friday, December 11.—Light breeze from NE.; ship steering SW., with all sail set. Employed in rigging boats. Lat. 33° N.; long. 129° 12' W.

Saturday, December 12.—Light breeze from NE; ship steering SW., with all sail set. Employed in ship duty. Lat. 32° 18' N.; long. 130° 35' W.

Sunday, December 13.—Fresh breeze from southward; ship heading SW. by W. and WSW. Weather cloudy. No observations.

Monday, December 14.—Fresh gale from southward; ship on western tack under short sail. Later on raining. No observations.

Tuesday, December 15.—Commenced with fresh gale from southward; ship under

mizen staysail. Later on wind from westward; ship on southward tack under short sail. Lat. $31^{\circ} 55' N.$; long. $134^{\circ} 07' W.$

Wednesday, December 16.—Light airs from northward; ship steering SW. by W. Employed in mending fore-gallant sail and rigging boats. Lat. $31^{\circ} 15' N.$; long. $134^{\circ} 50' W.$

Thursday, December 17.—Commenced with calm. Later on light airs from NE.; ship steering SW. Employed in cutting over main topsail. Lat. $30^{\circ} 56' N.$; long. $135^{\circ} 1' W.$

Friday, December 18.—Commenced with calm. Later on light breeze from the NW.; ship steering SW. Later calm. Employed in mending sail. No observations.

Saturday, December 19.—Good breeze from northward; ship steering SW. Employed in mending sails and working in rigging. Lat. $29^{\circ} 55' N.$; no long.

Sunday, December 20.—Fresh breeze from NE.; ship steering SW. Saw one sail steering into the NW. Later on ship steering SW. $\frac{1}{2}$ W. Lat. $28^{\circ} N.$; long. $138^{\circ} 23' W.$

Monday, December 21.—Fresh breeze from NE.; ship steering SW. $\frac{1}{2}$ W. Saw nothing to-day. Lat. $26^{\circ} 26' N.$; long. $42^{\circ} 30' W.$

Tuesday, December 22.—Fresh breeze from ENE.; ship steering SW. $\frac{1}{2}$ W. Later on steering SW. by W., all sail set. Employed in working in rigging and repairing sail. Lat. $24^{\circ} 40' N.$; long. $145^{\circ} 47' W.$

Wednesday, December 23.—Fresh breeze from the ENE.; ship steering SW. by W.; all sail set that will draw. Employed in mending sail and hauling blocks. Lat. $23^{\circ} 19' N.$; long. $149^{\circ} 09' W.$

Thursday, December 24.—Fresh breeze from ENE.; ship steering SW. by W. Employed in repairing sails and hauling blocks. Later ship steering SW. $\frac{1}{2}$ W. Lat. $22^{\circ} N.$; long. $152^{\circ} 34' W.$

Friday, December 25.—Strong breeze from eastward; ship steering SW. $\frac{1}{2}$ W.; all sail set. At 8 a. m. raised Sandwich Islands; at 7 p. m. went through between Hawaii and Maui. Later on ship steering SW.

Saturday, December 26.—Fresh breeze from NE.; ship steering SW. Employed in working rigging. Later calm. Later light breeze from NE. Lat. $19^{\circ} 20' N.$; long. $137^{\circ} 38' W.$

Sunday, December 27.—Fresh breeze from ENE., with rain; ship steering SW.; all set sail that will draw. Lat. $18^{\circ} 06' N.$; long. $159^{\circ} 12' W.$

Monday, December 28.—Fresh breeze from ENE., with rain; ship steering SW., with all sail set that will draw. Lat. $16^{\circ} 21' N.$; long. $162^{\circ} 57' W.$

Tuesday, December 29.—Fresh breeze from ENE.; ship steering SW., with all sail set. Employed in working in rigging. Saw blackfish. Lat. $14^{\circ} 35' N.$; long. $164^{\circ} 39' W.$

Wednesday, December 30.—Fresh breeze from ENE.; ship steering SW., with all sail set; weather rainy. Employed in working in rigging. Lat. $12^{\circ} 49' N.$; long. $167^{\circ} 21' W.$

Thursday, December 31.—Fresh breeze from ENE.; ship steering SW. $\frac{1}{2}$ W.; all sail set. Employed in working in rigging and sailmaking. Lat. $11^{\circ} 04' N.$; long. $170^{\circ} 04' W.$

Friday, January 1, 1892.—Fresh breeze from NE.; ship steering SW. $\frac{1}{2}$ W.; all sail set. Employed in working in rigging and sailmaking. Lat. $9^{\circ} 21' N.$; long. $172^{\circ} 50' W.$

Saturday, January 2.—Fresh breeze from NE.; ship steering SW. $\frac{1}{2}$ W., all sail set. Employed in breaking out pronions. Weather rainy. Lat., $7^{\circ} 55' N.$; long., $175^{\circ} 14' W.$

Sunday, January 3.—Fresh breeze from NE.; ship steering SW. $\frac{1}{2}$ W., all sail set that will draw. Weather rainy. Lat., $6^{\circ} 24' N.$; long., $177^{\circ} 21' W.$

Monday, January 4.—Fresh breeze from NE.; ship steering SW. $\frac{1}{2}$ W., all sail set. Weather rainy. Employed in working in rigging. Lat., $5^{\circ} 00' N.$; long., $179^{\circ} 28' W.$

Wednesday, January 6.—Light breeze from E.; ship steering W. by S., all sail. Employed in working in rigging. Weather rainy. Lat., $4^{\circ} 24' N.$; long., $178^{\circ} 21' E.$

Thursday, January 7.—Light breeze from NE.; ship steering W. by S., all sail set. Employed in working in rigging. Saw one finback. Lat., $4^{\circ} 20' N.$; long., $176^{\circ} 22' E.$

Friday, January 8.—Fresh breeze from NE. at times, with heavy rain squalls; ship steering W. by S., with all sail set. Lat., $4^{\circ} 27' N.$; no longitude.

Saturday, January 9.—Light breeze from ENE., with heavy rain; ship steering W., later on steering W. by S., all sail set. Employed in washing blankets. No observations.

Sunday, January 10.—Good breeze from NE.; ship steering W. by S., later steering W., with all sail set. At 2 p. m. raised Boston Island. Lat., $4^{\circ} 30' N.$; long., $168^{\circ} 21' E.$

Monday, January 11.—Good breeze from NE.; ship steering W. $\frac{1}{2}$ N., all sail set. Employed in working in rigging, sailmaking, and painting. Lat., $5^{\circ} 05' N.$; long., $165^{\circ} 21' E.$

Tuesday, January 12.—Good breeze from NE.; ship steering W. At 7 p. m. raised Strong Island, bearing SW., distant 20 miles. Employed in ship duty. Lat., $5^{\circ} 48' N.$; long., $162^{\circ} 36' E.$

Wednesday, January 13.—Strong breeze from NE.; ship steering W. $\frac{1}{2}$ N. At 6 a. m. raised Mac Askill Island. Stopped there to trade; at 12.30 finished. Later on steering W. $\frac{1}{2}$ N. Lat., $6^{\circ} 20' N.$; long., $160^{\circ} 8' E.$

Thursday, January 14.—Good breeze from NE., ship steering W. $\frac{1}{2}$ N. At 6 a. m. raised Ascension. At 9 a. m. anchored in Kitty Harbor in 5 fathoms of water. *Lydia* and *Abraham Barker* in dock.

Friday, January 15.—Ship at anchor in Kitty Harbor in 5 fathoms of water.

Saturday, January 16.—Ship at anchor in Kitty Harbor in 5 fathoms of water. Employed in cleaning ironwork. Sent a raft ashore for water.

Sunday, January 17.—Ship at anchor in Kitty Harbor in 5 fathoms of water.

Monday, January 18.—Ship at anchor in Kitty Harbor in 5 fathoms of water. Received two boats of wood and one raft of water. Captain went on board the *Abraham Barker* to-day.

Tuesday, January 19.—Ship at anchor in Kitty Harbor in 5 fathoms of water. Received on board two boats of wood and sent a raft on shore.

Wednesday, January 20.—Ship at anchor in Kitty Harbor in 5 fathoms of water. Received two boats of wood and a raft of water.

Thursday, January 21.—Ship at anchor in 5 fathoms of water. Received four boats of wood.

Friday, January 22.—Ship at anchor in Kitty Harbor in 5 fathoms of water. Received one boatload of wood. Ship ready for sea.

Saturday, January 23.—Ship at anchor in Kitty Harbor in 5 fathoms of water. At 8 a. m. hove up anchor and went to sea, later steering WNW. Later on strong breeze from NNE. Lat., $60^{\circ} 50' N.$; long., $158^{\circ} 01' E.$

Sunday, January 24.—Good breeze from NNE.; ship steering NW. by N., later steering NW. by W. $\frac{1}{2}$ W. Lat., $8^{\circ} 33' N.$; long., $155^{\circ} 34' E.$

Monday, January 25.—Good breeze from NNE.; ship steering NW. by W. $\frac{1}{2}$ W., with all sail set. Employed in making new main royal. Lat., $10^{\circ} 21' E.$; long., $152^{\circ} 49' E.$

Tuesday, January 26.—Good breeze from NNE.; ship steering WNW. and W. by N. $\frac{1}{2}$ N., all sail set. Lat., $12^{\circ} 06' N.$; long., $149^{\circ} 30' E.$

Wednesday, January 27.—Good breeze from the NNE., ship steering W. by N. $\frac{1}{2}$ W. At 5 p. m. raised Guam Island.

Thursday, January 28.—Ship at anchor in Guam in 16 fathoms. Employed in painting ship and repairing boat.

Friday, January 29.—Ship at anchor in Guam in 16 fathoms of water. Employed in painting yards and trading.

Saturday, January 30.—Ship at anchor in Guam in 16 fathoms of water. Weather rainy.

Sunday, January 31.—Ship at anchor in Guam in 16 fathoms of water.

Monday, February 1.—Ship at anchor in Guam in 16 fathoms of water.

Tuesday, February 2.—Ship at anchor in Guam in 16 fathoms of water. Captain ashore sick. *Abraham Barker* arrived to-day.

Wednesday, February 3.—Ship at anchor in Guam in 16 fathoms of water. Weather rainy.

Thursday, February 4.—Ship at anchor in Guam in 16 fathoms of water. Captain sick.

Friday, February 5.—Ship at anchor in Guam in 16 fathoms of water. Captain better.

Saturday, February 6.—Ship at anchor in 16 fathoms of water in Guam. At 8 a. m. hove up anchor and went to sea; later, ship steering NW. $\frac{1}{2}$ W. under short sail. Lat., $13^{\circ} 40' N.$; long., $144^{\circ} 37' E.$

Sunday, February 7.—Good breeze from NE.; ship steering NW. $\frac{1}{2}$ W. under short sail. Lat., $15^{\circ} 30' N.$; long., $142^{\circ} 13' E.$

Monday, February 8.—Strong breeze from NE.; ship steering NW. $\frac{1}{2}$ W. under lower topsail and foresail and jib. Broke out slabs to-day. Lat., $16^{\circ} 55' N.$; long., $140^{\circ} 14' E.$

Tuesday, February 9.—Light breeze from NE., ship steering NW. $\frac{1}{2}$ W. with all sail set. Employed in sending down foreallant yard and sending up the crow's nest. Lat., $18^{\circ} 21' N.$; long., $188^{\circ} 30' E.$

Wednesday, February 10.—Light breeze from NE., ship steering NW. $\frac{1}{2}$ W. with all

sail set. Later on strong breeze from northward. Took in sail and fore topsail. Lat., $19^{\circ} 19' N.$; long., $137^{\circ} 11' E.$

Thursday, February 11.—Fresh breeze from NE., ship steering NW. $\frac{1}{2}$ W. with all sail set. Employed in repairing foresail. Lat., $20^{\circ} 40' N.$; long., $135^{\circ} 05' E.$

Friday, February 12.—Light breeze from the ESE., ship steering NW. $\frac{1}{2}$ W., all sail set. Employed in repairing foresail and picking over potatoes. Lat., $22^{\circ} 22' N.$; long., $132^{\circ} 56' E.$

Saturday, February 13.—Light breeze from the SE., ship steering NW. $\frac{1}{2}$ W., all sail set. Employed in breaking out to find the leak. Lat., $23^{\circ} 05' N.$; long., $131^{\circ} 41' E.$

Sunday, February 14.—Good breeze from SE., ship steering NW. by W., with all sail set. At 12 o'clock wind haul from NW. with heavy rain. Ship under low topsails. Later calm. Lat., $23^{\circ} 17' N.$; long., $130^{\circ} 44' E.$

Monday, February 15.—Commenced with light breeze from northward, ship heading WNW., all sail set. Later on fresh gale from NNE., ship under short sail. Lat., $24^{\circ} 10' N.$; long., $129^{\circ} 17' E.$

Tuesday, February 16.—Commenced with fresh gale from northward; ship on western tack. Later on fresh breeze from NE., ship heading NW. by W. and WNW., with all sail set. Later strong breeze. Took in light sails, fore topsail, and mainsail. Lat., $23^{\circ} 51' N.$; long., $128^{\circ} 16' E.$

Wednesday, February 17.—Fresh breeze from NNE., ship heading NW. and NW. by W., all sail set. At 2 p. m. saw a steamer going to SW.; at 5 p. m. raised the island of Loo-choo, bearing north; at sunset shortening sail. No observations.

Thursday, February 18.—Commenced with strong breeze from SE., ship steering NW. by W. At 10 a. m. wind hauled to NW. with rain. Took in all sail, ship heading NE. No observations.

Friday, February 19.—Commenced with light breeze from northward, ship on eastern tack. Island of Choo-boo in sight. At 9 a. m. wore ship heading WN. by W. and WNW. Lat., $26^{\circ} 88' N.$; long., $126^{\circ} 12' E.$

Saturday, February 20.—Fresh breeze from northward; ship on western tack, heading NW. and NW. by W. Weather thick and rainy. Lat. $27^{\circ} 30' N.$; no longitude.

Sunday, February 21.—Light breeze from ENE., with smoky weather; ship on the western tack. At 10 a. m. spoke a steamer and got his latitude and longitude. Saw two junks and a humpback. Lat. $28^{\circ} 40' N.$; long. $124^{\circ} 20' E.$

Monday, February 22.—Good breeze from eastward with thick, smoky weather, ship heading NNE. and NE. by N., all sail set. Saw one steamer and a schooner. Could not make her out. Lat. $29^{\circ} 46' N.$; long. $124^{\circ} 22' E.$

Tuesday, February 23.—Fresh breeze from NE.; ship on western tack, heading NNW. Weather cloudy and foggy. At 11.30 sounded; got 26 fathoms of water. At 11.45 wore ship, hauling to northward. At 4 p. m. gale. At sunset ship under short sail. Saw five junks. No observations.

Wednesday, February 24.—Fresh gale from northward; ship on eastern tack under short sail. Saw a small finback. Lat. $40^{\circ} 46' N.$; long. $125^{\circ} 15' E.$

Thursday, February 25.—Light breeze from the northward, ship heading E. by N. and E. by S., all sail set. Saw three junks. No observations.

Friday, February 26.—Fresh breeze from northward; ship on eastern tack under short sail. Gained *Charles W. Morgan*. Had seen nothing but humpbacks. No observations.

Saturday, February 27.—Fresh breeze from northward; ship on eastern tack, heading east; ship under short sail. Saw a master schooner bound to the westward. At 12 o'clock wore ship, heading NW. and NNW. No observations.

Sunday, February 28.—Fresh breeze from eastward, ship steering NNW. and NW. by W. and W. At dark luffed-to on eastern tack. Saw jumpers and finbacks. Lat. $31^{\circ} N.$; long. $126^{\circ} 51' E.$

Monday, February 29.—Fresh gale from NE. with rain; ship on northern and western tack under short sail. No observations.

Tuesday, March 1.—Fresh breeze from northward; ship on western tack. At 7 a. m. wore ship. Saw plenty of feed and one finback. Lat. $30^{\circ} 50' N.$; long. $126^{\circ} 13' E.$

Wednesday, March 2.—Fresh breeze from eastward, with thick weather and rain; ship steering N. by E. At 3 p. m. took in sail; at 6 p. m. wore ship. No observations.

Thursday, March 3.—Light airs from all around the compass, and foggy. Lat., $31^{\circ} 11' N.$; long., $126^{\circ} 17' E.$

Friday, March 4.—Fresh gale from NNE., with thick weather and heavy rain. Plenty of starue gen-eyes (sic) around the ship. Later on ship on western tack. No observations.

Saturday, March 5.—Strong breeze from NE., with rain and thick, cloudy weather; ship lying around. No observations.

Sunday, March 6.—Fresh gale from NW., with cold rain; ship on eastern tack under bare poles. No observations.

Monday, March 7.—Fresh gale from northward; ship on western tack under short sail. Later on moderated down some. Set foresail and jib. Lat., 30° 08' N.; long., 126° 25' E.

Tuesday, March 8.—Strong breeze from northward; ship on western tack with all sail set. At 3.30 p. m. tacked ship; at 6 p. m. took in sail. Saw four junks. No observations.

Wednesday, March 9.—Strong breeze from ENE., with rain and thick weather; ship on northern and western tack under short sail. Saw one steamer and one junk. No observations.

Thursday, March 10.—Strong breeze from northward, with heavy weather. Ship on eastern tack under short sail. Saw two fin-backs. Lat. 30° 30' N.; long. 125° 33' E.

Friday, March 11.—Fresh breeze from eastward. Ship on northward tack, with all sail set. Saw two steamers. Killed four hogs. Lat. 30° 51' N.; long. 125° 28' E.

Saturday, March 12.—Commenced with calm and raining hard. At 12 o'clock wind hauled out from NW., with thick weather and rain, ship steering E. At 6 p. m. hove to on northern and eastern tack under short sail. No observations.

Sunday, March 13.—Fresh breeze from NW. Ship on eastern tack under short sail. No observations.

Monday, March 14.—Strong breeze from NW., with snow squalls. Ship on eastern tack heading NE. Ship under short sail. Lat. 31° 03' N.; long. 126° 30' E.

Tuesday, March 15.—Fresh breeze from northward. Ship steering SW. and S. At 3 p. m. raised the *Charles W. Morgan*. At 5.30 gained the *Morgan*. Had not seen any whales. Lat. 31° N.; long. 127° 08' E.

Wednesday, March 16.—Fresh breeze from NE., with rainy weather. Ship steering W. and S. and NW., all sail set. At 4 p. m. commenced raining; took in sail. Ship on northern tack; *C. W. Morgan* in sight. Lat. 30° 40' N.; long. 126° 30' E.

Thursday, March 17.—Fresh breeze from eastward, with cloudy weather. Ship on northern tack. At 4 p. m. wore ship. Later on raining. Saw one junk. No observations.

Friday, March 18.—Strong breeze from NW., with cloudy weather. Ship lying around under short sail. Later on raining. Parted the fore-topmast head stay. No observations.

Saturday, March 19.—Fresh gale from NW. Ship on eastern tack under short sail. Lat. 30° 53' N.; long. 126° 38' E.

Sunday, March 20.—Fresh breeze from eastward. Ship steering W. and NW. Saw nothing. At sunset luffed to on northern tack. Lat. 30° 43' N.; long. 126° 55' E.

Monday, March 21.—Fresh breeze from eastward. Ship steering N. and NNW. Employed in breaking out provisions. At 12 o'clock wore ship. At 1 p. m. raised the brig *W. H. Myers*, Captain Hallett. At 3.30 gained the *Myers*. Later on fresh gale from the eastward, with rain. Ship on southern tack under bare poles. No observations.

Tuesday, March 22.—Fresh gale from eastward. Ship on southern tack under short sail. Brig *W. H. Myers* in sight. No observations.

Wednesday, March 23.—Fresh breeze from NNE. Ship on eastern tack. Brig *Myers* in sight. Lat. 30° 53' N.; long. 126° 18' E.

Thursday, March 24.—Strong breeze from northward. Ship on eastern tack under short sail. At 3.30 wore ship. Saw nothing. Lat. 30° 56' N.; long. 127° 30' E.

Friday, March 25.—Fresh breeze from eastward. Ship cruising. At 1 p. m. gained the *C. W. Morgan* and *M. H. Thomas*. They are clean. Lat. 31° N.; long. 126° 23' E.

Saturday, March 26.—Commenced with a calm; at 8 a. m. light breeze from northward. Ship on eastern tack; all sail set. *C. W. Morgan* and *M. H. Thomas* in sight. Lat. 30° 40' N.; long. 126° 48' E.

Sunday, March 27.—Strong breeze from eastward. Ship on northern tack under short sail. Saw nothing. No observations.

Monday, March 28.—Fresh gale from northward, with rain. Ship on eastern tack under short sail. No observations.

Tuesday, March 29.—Fresh gale from northward. Ship on eastern tack under short sail. Nothing in sight. Lat., 30° 40' N.; long., 126° 18' E.

Wednesday, March 30.—Fresh breeze from northward. Ship on the eastern tack, all sail set. *C. W. Morgan* in sight. At 9 p. m. tacked ship. Saw nothing. Lat., 30° 34' N.; long., 126° 54' E.

Thursday, March 31.—Light breeze from eastward. Ship on northward tack. All sail set first time for six weeks. Have seen a steamer. Lat., 31° 24' N.; no long.

Friday, April 1.—Fresh gale from southward. Ship on western tack. At 10 p. m. wind hauled to westward, blowing hard. Ship on northward tack. No observations.

Saturday, April 2.—Commenced with strong breeze from westward, with smoky weather. Air is full of dust. Ship on southern tack under short sail. Later strong breeze. Lat., $31^{\circ} 16' N.$; long., $126^{\circ} 56' E.$

Sunday, April 3.—Commenced with strong breeze from northward. Ship steering E. and S. At 12 o'clock luffed to on western tack. Later, light wind. Saw one finback and water full of grit and fish. Lat., $30^{\circ} 40' N.$; long., $127^{\circ} 14' E.$

Monday, April 4.—Strong breeze from southward and westward. Ship steering NNW. and N. and on western tack. Saw one finback. Employed in filling salt water in main hatch. Saw one steamer bound to SW. Lat. $30^{\circ} 59' N.$; long. $126^{\circ} 45' E.$

Tuesday, April 5.—Fresh breeze from northward. Ship on western tack. At 7 p. m. steered S., all sail set. At 3 p. m. steered E. Saw nothing. Lat. $31^{\circ} 10' N.$; long. $126^{\circ} 33' E.$

Wednesday, April 6.—Light breeze from northward and eastward. Ship steering W. and WSW., all sail set. At 3 p. m. commenced thawing and raining. Took in all sail, luffed-to on northward tack. Saw nothing. Lat. $31^{\circ} 03' N.$; no longitude.

Thursday, April 7.—Light breeze from northward. Ship steering WNW. and W., with all sail set. At 3 p. m. steered E. Saw humpbacks to-day. Lat. $31^{\circ} 00' N.$; long. $125^{\circ} 24' E.$

Friday, April 8.—Light breeze from SW. Ship steering E., all sail set. At 3 p. m. steered NE. Saw nothing. Lat. $31^{\circ} 00' N.$; long. $126^{\circ} 32' E.$

Saturday, April 9.—Light breeze from southward. Ship on western tack with all sail set. Saw one finback. At 3.30 p. m. hauled out from northward, ship steering S. Lat. $31^{\circ} 20' N.$; long. $126^{\circ} 22' E.$

Sunday, April 10.—Strong breeze from NE. Ship steering SE. and SW., under short sail. Lat. $30^{\circ} 55' N.$; long. $126^{\circ} 06' E.$

Monday, April 11.—Strong breeze from eastward, with fog. Ship steering N., with all sail set. At 4 p. m. took in all sail. Ship on eastern tack. Wind SE. Lat. $31^{\circ} 34' N.$; long. $125^{\circ} 54' E.$

Tuesday, April 12.—Fresh gale from NW., with rain. Ship on western tack under bare poles. No observations.

Wednesday, April 13.—Light breeze from northward. Ship on eastern tack. All sail set. Lat. $31^{\circ} 33' N.$; long. $126^{\circ} 54' E.$

Thursday, April 14.—Fresh breeze from SW. Ship steering NNE., all sail set. At 5 p. m. steering NE. by E. ——— in sight. Lat. $32^{\circ} 53' N.$; long. $127^{\circ} 18' E.$

Friday, April 15.—Commenced with strong breeze from westward. Ship in Korea Straits on eastern tack. Later, wind very light from NE. Lat. $33^{\circ} 41' N.$; long. $129^{\circ} 18' E.$

Saturday, April 16.—Commenced with a calm. At 9 a. m. light breeze from eastward. Ship heading NE. Later on ship SW. Ship steering NE. and NE. by N., bound through the Korea Straits, eastern passage. Saw plenty of junks. Lat. $34^{\circ} 09' N.$; long. $129^{\circ} 44' E.$

Sunday, April 17.—Fresh breeze from SW. with heavy rain. Ship steering NE. by N. All sail set that will draw. At 3 p. m. wind hauled out from northward and westward. Took in light sails. No observations.

Monday, April 18.—Light breeze from NE. Ship on western tack heading NW. and NW. by N. All sail set. Saw one bark merchantman and finbacks. Lat. $36^{\circ} 12' N.$; long. $131^{\circ} 45' E.$

Tuesday, April 19.—Light breeze from SW. Ship steering NE. by E., all sail set. At 12.30 raised Daletts Island. At 4 p. m. raised Laincourt Rock. Ship steering E. by N. Employed in repairing mainsail. Later on ship steering NE. by N. Lat. $37^{\circ} 00' N.$; long. $131^{\circ} 32' E.$

Wednesday, April 20.—Fresh breeze from southward. Ship steering NE. by E. All sail set. At 8 a. m. raised the brig *William H. Myers*. Gave her report; seen one whale. *Morgan* clean; seen nothing. Saw plenty of finbacks. Later on ship steering N. for Vladivostock. Lat. $38^{\circ} 15' N.$; long. $133^{\circ} 37' E.$

Thursday, April 21.—Strong breeze from NE., with rain. Ship on northern and western tack. Saw a sail; did not make her out. No observations.

Friday, April 22.—Light breeze from southward. Ship steering N. and N. by E., all sail set. Saw plenty of finbacks, and brig *Myers* in sight, bound for Vladivostock. Lat. $40^{\circ} 20' N.$; long. $132^{\circ} 32' E.$

Saturday, April 23.—Light breeze from SW., W., and NW., with thick fog. Ship steering N. and N. by W. At 12 o'clock fog; cleared up at 3 p. m. Raised Asolk [sic] Island at 7 p. m., ship heading NE. by E. Askold Island [sic] light bearing N. No observations.

Sunday, April 24.—Commenced with thick fog, and heavy rain, and hail squalls.

Ship working in to Vladivostock. At 3.30 p. m., calm. Anchored the ship outside Vladivostock. Swell heaving the ship on rocks. At 5 p. m. got a breeze; hove up anchor. At dark off light-house, lying aback.

Monday, April 25.—Strong breeze from northward. Ship working in to Vladivostock. At 2 p. m. anchored outside the harbor in 13 fathoms of water. The brig *William Myers* is anchored here.

Tuesday, April 26.—Ship at anchor in Vladivostock. Employed in breaking out fore peak looking for the leak; found it on the port side.

Wednesday, April 27.—Ship at anchor in Vladivostock. Employed in breaking out forehold.

Thursday, April 28.—Ship at anchor in Vladivostock. Weather thick, fog and rain. Ship ready for sea.

Friday, April 29.—Ship at anchor in Vladivostock. Weather thick and foggy.

Saturday, April 30.—Ship at anchor in Vladivostock. At 8 p. m. hove up anchor and went to sea. Wind from northward. Later on ship steering S. by E. *William H. Myers* went to sea to-day.

Sunday, May 1.—Light breeze from northward; ship steering S. by E. and S. All sail set that will draw. Brig. *W. H. Myers* in sight. Lat., $41^{\circ} 52' N.$; long., $132^{\circ} 39' E.$

Monday, May 2.—Light breeze from eastward; ship on southern tack. Saw several finbacks. Later on wind southward; ship on eastern tack. Lat., $39^{\circ} 36' N.$; long., $132^{\circ} 39' E.$

Tuesday, May 3.—Fresh breeze from southward; ship on eastern tack, all sail set. *W. H. Myers* in sight. Saw plenty of finbacks. Lat., $39^{\circ} 22' N.$; long., $134^{\circ} 05' E.$

Wednesday, May 4.—Light breeze from southward; ship steering different courses to northward and eastward. Saw brig *W. H. Myers* and a merchantman brig. Saw several finbacks. Lat., $39^{\circ} 22' N.$; long., $134^{\circ} 05' E.$

Thursday, May 5.—Light breeze from NE; ship steering SW. All sail set. Employed in cleaning ironwork and making lower fore-top sail. Saw one junk and several finbacks. Lat., $39^{\circ} 16' N.$; long., $135^{\circ} 04' E.$

Friday, May 6.—Commenced with light breeze from eastward, with fog at times; ship steering SW. At 2 p. m., wind hauled to NW; ship on western tack. Saw finbacks. Lat., $38^{\circ} 17' N.$; long., $133^{\circ} 46' E.$

Saturday, May 7.—Fresh breeze from southward; ship steering different courses to westward. All sail set. Saw a few finbacks. Lat., $37^{\circ} 51' N.$; long., $134^{\circ} 22' E.$

Sunday, May 8.—Fresh breeze from SW; ship cruising. Saw several finbacks. Lat., $38^{\circ} 10' N.$; long., $133^{\circ} 46' E.$

Monday, May 9.—Light airs all round the compass; ship cruising. Saw nothing. Employed in breaking out provisions. Lat., $38^{\circ} 22' N.$; long., $133^{\circ} 03' E.$

Tuesday, May 10.—Calm all day. Saw plenty of finbacks and killers. No observations.

Wednesday, May 11.—Light breeze from NE. Ship steering NW. by N. All sail set. Saw several finbacks and seals. Later on, calm. Lat. $39^{\circ} 38' N.$; long. $132^{\circ} 15' E.$

Thursday, May 12.—Light breeze from southward. Ship steering NW. All sail set. At 12.30 raised the schooner *Mary H. Thomas* clean. Saw several finbacks. Lat. $39^{\circ} 59' N.$

Friday, May 13.—Light breeze from southward. Ship steering SW. by W., WSW. Saw several finbacks. Lat. $40^{\circ} 17' N.$; long. $130^{\circ} 44' E.$

Saturday, May 14.—Light breeze from southward, with thick fog at times. Saw several finbacks and land—Cape Bruite. Lat. $40^{\circ} 26' N.$; long. $130^{\circ} 33' E.$

Sunday, May 15.—Commenced with a calm, and thick fog at times. At 4 p. m. a light breeze from SW. Ship cruising. Cape Broat and with rock in sight. Saw plenty of finbacks and sulphur-bottoms. Lat. $40^{\circ} 42' N.$; long. $130^{\circ} 06' E.$

Monday, May 16.—Commenced with light breeze from southward, with light fog. Ship steering NW. by N. and NNW. At 2 p. m. ship off Cape Korzakov, and steering E. Wind SW. and breezing up. Took in light sails. Saw a few finbacks. Lat. $41^{\circ} 24' N.$; long. $130^{\circ} 12' E.$

Tuesday, May 17.—Strong breeze from SW. Ship steering E. by N. and NNE.; all sail set. At 6 p. m. luffed-to on southern tack under short sail. Saw a few finbacks. Lat. $41^{\circ} 50' N.$; long. $132^{\circ} 58' E.$

Wednesday, May 18.—Commenced with a calm, and thick weather. At 3 p. m. light breeze from SW. and S. Ship steering N. by W. At sunset luffed-to on the western tack. Saw a few finbacks. Lat. $42^{\circ} 10' N.$; long. $133^{\circ} 22' E.$

Thursday, May 19.—Commenced with light airs from northward. Ship cruising off Mexican Bay. Saw two junks, spoke one. Later on fresh breeze from southward. Lat. $42^{\circ} 40' N.$; long. $133^{\circ} 13' E.$

Friday, May 20.—Commenced with light breeze from eastward, with thick fog.

Ship steering W. All sail set. Later on calm and thick fog and rain. At sunset light breeze from northward. Ship steering SE. with topsails and jib. No observations.

Saturday, May 21.—Commenced with a calm and thick fog. At 12 o'clock light breeze from SE. Ship on southern and western tack. Later fresh breeze and clear. No observations.

Sunday, May 22.—Strong breeze from SE., with thick, wet fog. Ship on northern and eastern tack under short sail. No observations.

P. S.—At 9.30 p. m., while taking in the foresail, Albert Iffts, man forward, struck Peter, a boat steerer. Mr. Griffiths, fourth officer, had to use force to stop them from fighting. Put Albert Iffts in irons from 10 p. m. till 6.30 a. m.

Monday, May 23.—Light breeze from ESE., with thick fog at times. Ship on southern tack under short sail. Saw nothing. Lat. $41^{\circ} 27' N.$; long. $132^{\circ} 02' E.$

Tuesday, May 24.—Light breeze from SE., with clear weather. Ship on northern and eastern tack; all sail set. Later on wind to southward. Saw nothing. Lat. $41^{\circ} 7' N.$; long. $132^{\circ} 06' E.$

Wednesday, May 25.—Light breeze from eastward, with thick fog. Ship on northern tack. No observations.

Thursday, May 26.—Light breeze from all round the compass, with thick fog at times. Lat. $42^{\circ} 10' N.$; long. $132^{\circ} 10' E.$

Friday, May 27.—Light breeze from northward and eastward, with rain all day. Ship heading SE. and E. Saw small seals. No observations.

Saturday, May 28.—Fresh breeze from the westward. Ship steering E. and SE. All sail set. Saw two merchantmen brigs and several finbacks. Lat. $41^{\circ} 27' N.$; long. $133^{\circ} 24' E.$

Sunday, May 29.—Light breeze from westward. Ship steering E. by S. All sail set; weather clear. Saw few finbacks. Lat., $41^{\circ} 5' N.$; long., $135^{\circ} 9' E.$

Monday, May 30.—Light breeze from westward, with clear weather. Ship steering E. by S. and E and E. by N. Saw nothing. Lat. $40^{\circ} 46' N.$; long. $137^{\circ} 09' E.$

Tuesday, May 31.—Light breeze from southward. Ship steering E. by N. At 1 p. m. raised C. W. Morgan. At 5 p. m. gained the Morgan. Reports two sperm whales, 180 pounds, seen. Right whales four times outside. Lat. $41^{\circ} 10' N.$; long. $137^{\circ} 10' E.$

Wednesday, June 1.—Light breeze from SE. Ship off Oe Island. On eastern tack. Employed in [illegible] ship and gaining C. W. Morgan and brig *Hidalgo*; two sperm whales, 50 pounds. No observations.

Thursday, June 2.—Fresh gale from S. and SW., with rain. Ship on western tack under short sail. C. W. Morgan and brig *Hidalgo* in sight. No observations.

Friday, June 3.—Light breeze from southward and westward. Ship on westward tack; weather foggy. Saw nothing. No observations.

Saturday, June 4.—Light airs around the compass with thick fog. Employed in rigging new mainstay. No observations.

Sunday, June 5.—Fresh gale from NE. Ship steering W. Weather thick and raining at times. At 5.30 p. m. luffed-to on eastern tack. Saw three finbacks. No observations.

Monday, June 6.—Fresh breeze from WSW. with thick fog at times. Ship on northern and western tack. At 3.30 p. m. raised land bearing NW. by N. Later on thick fog. Lat. $42^{\circ} 11' N.$; long. $134^{\circ} 20' E.$

Tuesday, June 7.—Fresh gale from SW. with thick fog. Ship on northern and western tack under short sail. At 6.30 wore ship. Lat. at noon $42^{\circ} 02' N.$

Wednesday, June 8.—Commenced with a calm. A thick fog at 8 a. m.; light breeze from eastward. Ship steering W. and WNW. Weather foggy at times. Saw nothing. At sunset ship on southern tack. Lat. $41^{\circ} 57' N.$; long. $134^{\circ} 38' E.$

Thursday, June 9.—Light breeze from all round the compass, and thick fog at times. Saw nothing. Ship cruising for clear weather. Lat. $42^{\circ} 14' N.$; long. $133^{\circ} 56' E.$

Friday, June 10.—Good breeze from westward with thick fog. Ship steering WNW. with top sails and courses and jib. Saw several finbacks and humpbacks. At 5 p. m. wore ship, took in sail. Ship heading SSW. Lat. $42^{\circ} 22' N.$; no long.

Saturday, June 11.—Fresh breeze from WSW. Ship on different tack under short sail. Weather, thick fog. No observations.

Sunday, June 12.—Light breeze from southward with thick fog and rain. Ship on eastern tack under short sail. Saw several finbacks and sulphur bottoms. No observations.

Monday, June 13.—Fresh gale from eastward. Ship on southern tack. Saw two white waters. Lat. $41^{\circ} 56' N.$; no long.

Tuesday, June 14.—Fresh gale from eastward. Ship on southward tack under short sail. At 12 o'clock wore ship. No observations.

Wednesday, June 15.—Fresh gale from eastward. Ship off Aslok Island. *C. W. Morgan* in sight, and a merchantman brig and schooner. Later on wind moderated down to light breeze from ESE. Ship on southern tack. All sail set. *Morgan* out of sight. Saw plenty of finbacks. No observations.

Thursday, June 16.—Dead calm all day. Land, *C. W. Morgan*, three-masted schooner, and a brig in sight. Saw several finbacks. Employed in breaking out provisions. Lat. $42^{\circ} 16' N.$; long. $132^{\circ} 14' E.$

Friday, June 17.—Light breeze from SW. with clear weather. Ship steering E. All sail set. Gaining the *Charles W. Morgan*. Land in sight. No observations.

Saturday, June 18.—Light breeze from westward. Ship steering ENE. Weather hazy. Land in sight, *C. W. Morgan*, two schooners, steamer, and a square rigger. Lat. $42^{\circ} 24' N.$; long. $133^{\circ} 01' E.$

Sunday, June 19.—Light breezes from southward and westward and calm at times and thick fog. At 9 a. m. saw the land and one sail. Later on ship heading SE. No observations.

Monday, June 20.—Light breeze from eastward with thick fog and light rain. Ship lying around. No observations.

Tuesday, June 21.—Fresh breeze from NE. with thick fog and heavy rain. Ship on eastern tack. No observations.

Wednesday, June 22.—Good breeze from westward. Ship steering N. All sail set. Weather clear. Land and *C. W. Morgan* in sight; few finbacks. Lat. $42^{\circ} 30' N.$; long. $133^{\circ} 10' E.$

Thursday, June 23.—Light breeze from all round the compass, with thick fog and rain and thunder. Ship lying around under short sail. *C. W. Morgan* and land in sight. No observations.

Friday, June 24.—Light breeze from all round the compass, with clear weather. Ship cruising off America Bay. Have seen two sulphur bottoms. *C. W. Morgan* in sight. No observations.

Saturday, June 25.—Light airs from southward. Ship cruising. Later on light breeze from NNW. and W. Gained the *Morgan*. Have seen nothing. Ship off Aslok Island. No observations.

Sunday, June 26.—Light breeze from SW. Ship steering into Vladivostok. At 3 p. m. anchored in Vladivostok. *C. W. Morgan* at anchor.

Monday, June 27.—Ship at anchor in Vladivostok. Employed in getting water.

Tuesday, June 28.—Ship at anchor in Vladivostok. Employed in getting water.

Wednesday, June 29.—Ship at anchor in Vladivostok.

Thursday, June 30.—Ship in Vladivostok. Employed in giving liberty.

Friday, July 1.—Ship at anchor in Vladivostok. Employed in giving liberty. Weather, thick fog and blowing fresh gale from SE.

Saturday, July 2.—Ship at anchor in Vladivostok. Weather, thick fog and rain. Mail steamer came in to-day.

Sunday, July 3.—Ship at anchor in Vladivostok. Crew ashore on liberty.

Monday, July 4.—Ship at anchor in Vladivostok. Ship ready for sea. John McDonald deserted to-day.

Tuesday, July 5.—Ship at anchor in Vladivostok. Ready for sea. Fresh gale from SE., with thick fog at times and rain.

Wednesday, July 6.—Ship at anchor in Vladivostok. At 5 a. m. hove up anchor and went to sea, and *C. W. Morgan*. Later on light breezes from southward and eastward. Ship off Aslok Island.

Thursday, July 7.—Fresh breeze from northward. Ship off Aslok Island steering S. by E. At 9 a. m. raised right whale, island bearing NE., distant 5 miles. Lowered twice; did not get him. *C. W. Morgan* in sight. No observations.

Friday, July 8.—Very light breeze from westward. Ship steering E. Land, *C. W. Morgan*, and plenty of finbacks in sight. No observations.

Saturday, July 9.—Very light breezes from westward, with thick smoky weather. Ship steering NE. and ENE. and W., with all sail set. Land in sight. Lat., $42^{\circ} 42' N.$; long., $133^{\circ} 57' E.$

Sunday, July 10.—Strong breeze from SW., with thick fog at times. Ship steering ENE. and NE. by E. All sail set that will draw. Lat., $43^{\circ} 18' N.$; long., $136^{\circ} 48' E.$

Monday, July 11.—Light breeze from SW., with clear weather. Ship steering NE. by E. All sail set. Have seen nothing. No observations.

Tuesday, July 12.—Light breeze from northward and eastward. Ship on eastern and northern tack. Land in sight. Lat., $45^{\circ} 06' N.$; long., $140^{\circ} 03' E.$

Wednesday, July 13.—Light breeze from SW. Ship steering ENE. and E. by N. and E., going from Japan Sea into Okhotsk Sea. Lat., $45^{\circ} 34' N.$; long., $140^{\circ} 45' E.$

Thursday, July 14.—Light breeze from eastward and southward. Ship working into Okhotsk Sea. At sunset ship off Cape Siretoko. No observations.

Friday, July 15.—Very light breezes from southward and eastward. Ship working to the eastward. Cape Siretoko in sight. Brig *Myers* in sight. Lat., 45° 33' N.; long., 143° 28' E.

Saturday, July 16.—Light breeze from southward. Ship on different tacks. At 9 a. m. gained the brig *Myers*. At 1 p. m. raised two right whales going quick to the eastward. Lowered, but no chance. Siretoko in sight, bearing N. by E., distant 40 miles. No observations.

Sunday, July 17.—Fresh breeze from southward. Ship steering NNE. At 3 p. m. hauled on eastern tack. Weather rainy. Cape Siretoko in sight and *Myers*. No observations.

Monday, July 18.—Strong breeze from SW. Ship on northern tack under short sail. Later wind moderated down to a calm. Cape Siretoko in sight, bearing W., distant 30 miles. Have seen few finbacks. Lat., 45° 59' N.; no longitude.

Tuesday, July 19.—Light breeze from westward. Ship on different tacks, working to the westward. Have seen a few finbacks and sulphur-bottoms. Lat., 45° 42' N.; long., 144° 24' E.

Wednesday, July 20.—Light breeze from southward. Ship on western tack. At 7 p. m. gained the *Myers* and *Mary H. Thomas*. She has 31 seal skins. No observations.

Thursday, July 21.—Fresh breeze from southward and eastward. Ship on eastern tack under short sail. *Myers* and *Mary H. Thomas* in sight. Later on raining. Lat., 45° 25' N.; long., 144° 04' E.

Friday, July 22.—Light breeze from eastward. Ship on northern tack. Have seen a few finbacks. Lat., 45° 25' N.; long., 145° 17' E.

Saturday, July 23.—Light airs from SE. with thick fog. At 11.30 a. m. cleared up, and light breeze from SE. Ship steering ENE. and NE. and N. Have seen a few finbacks. Lat., 45° 36' N.; long., 145° 29' E.

Sunday, July 24.—Fresh breeze from southward. Ship steering NE. and E. and NE. and W. and WSW. Weather foggy at times. Have seen a few finbacks. Lat., 46° 40' N.; long., 146° 40' E.

Monday, July 25.—Fresh breeze from southward. Ship steering WSW., all sail set. At 8 p. m. wore ship. Cape Siretoko in sight, bearing W. by S., distant 20 miles. Have seen a few finbacks. 3 p. m. Lat., 46° 28' N.; long., 144° 18' E.

Tuesday, July 26.—Fresh breeze from southward. Ship on different tacks, cruising. Have seen a few finbacks. Cape Siretoko in sight. No observations.

Wednesday, July 27.—Fresh breeze from southward. Ship on western tack. Weather foggy with rain. At 3 p. m. fog cleared up. Wind light, from southward. Cape Siretoko in sight. No observations.

Thursday, July 28.—Light breeze from southward and eastward. Ship on southern and western tack. Weather foggy and raining at times. At 4.30 p. m. raised *C. W. Morgan* and brig *Myers*. Cape Siretoko in sight, bearing W., distant 20 miles. No observations.

Friday, July 29.—Fresh breeze from westward. Ship on southern tack. Gained the *C. W. Morgan* and brig *Myers*. Cape Siretoko in sight. Received 50 pickled potatoes. No observations.

Saturday, July 30.—Fresh breeze from SW. at times, and calm. Brig *Myers* and schooner *M. H. Thomas* and *C. W. Morgan*; spoke her. Cape Siretoko and *Yesdo* in sight. Have seen a few finbacks and sulphur bottoms. No observations.

Sunday, July 31.—Light breeze from southward and eastward. Ship steering W. by N. and NW. Land in sight and plenty of finbacks. Lat. 44° 47' N.; long. 144° 22' E.

Monday, August 1.—Light breeze from SW. Ship cruising. Cape Siretoko in sight. *C. W. Morgan*, brig *Myers*, and *Mary H. Thomas* had her boats down. Seen plenty of finbacks. Lat. 45° 24' N.; no long.

Tuesday, August 2.—Light breezes from all round and calm at times, and foggy weather. *C. W. Morgan* and schooner and brig in sight. Cape Siretoko in sight, bearing NNW., distant 40 miles. At 4.30 raised right whale; lowered four boats. At 7 o'clock boats came on board; whale showed no chance. No observations.

Wednesday, August 3.—Light breeze from southward and eastward. Ship on northern tack. Have seen a few finbacks. No observations.

Thursday, August 4.—Fresh breeze from NE., with thick rainy weather. Ship on eastern tack. Have seen *C. W. Morgan* and a few finbacks. No observations.

Friday, August 5.—Calm about all day. Saw Cape Siretoko. At 3 p. m. light breeze from southward. Ship steering NE. At 4 p. m. raised *C. W. Morgan* and brig *Myers*. Lat. 45° 30' N.; long. 144° 35' E.

Saturday, August 6.—Fresh breeze from southward. Ship steering NE. and ENE. and E. and NNE. Have seen nothing. Lat. 46° 30' N.; long. 146° 48' E.

Sunday, August 7.—Good breeze from southward. Ship steering W.; all sail set. Have seen a few finbacks. Lat. $46^{\circ} 57' N.$; long. $145^{\circ} 37' E.$

Monday, August 8.—Fresh breeze from southward and eastward. Ship on western tack. Have seen nothing. No observations.

Tuesday, August 9.—Light breeze from southward. Ship on eastern tack. Have seen several finbacks to-day. Lat., $46^{\circ} 27' N.$; long., $145^{\circ} 7' E.$

Wednesday, August 10.—Fresh breeze from southward. Ship on western tack. Have seen several finbacks, and Cape Siretoko in sight at 7 p. m., distant 30 miles. At sunset shortening sail; 3 p. m., so end this day. Lat., $46^{\circ} 10' N.$; long., $144^{\circ} 40' E.$

Thursday, August 11.—Fresh breeze from SW., with rain, ship steering E. At 8 a. m. raised right whale going quick to E. by N. Lowered three boats. Long boat struck and lost him; iron drew; poor chance. No observations.

Friday, August 12.—Good breeze from NE., ship steering to eastward. At 10 a. m. raised right whale. Lowered four boats. Boats struck and took his line. Waist boat struck him; got him. At 4 o'clock commenced cutting. Got his head off and made fast for the night. Cape Siretoko in sight. Lat., $45^{\circ} 54' N.$; long., $144^{\circ} 52' E.$

Saturday, August 13.—Commenced cutting at 5 a. m. At 6 raised two whales. Let whale go and lowered four boats. At 11 a. m. boats came on board. Commenced boiling. Have seen three whales and plenty of finbacks, and whalebirds and blackbirds. Cape Siretoko in sight, bearing WNW., distant 60 miles. Lat., $45^{\circ} 37' N.$; long., $144^{\circ} 49' E.$

Sunday, August 14.—Light breeze from westward, and calm at times, ship steering E. At 10 a. m. raised right whale. Lowered four boats. At 11.30 boats came on board. Employed in boiling. Lat., $45^{\circ} 56' N.$; long., $144^{\circ} 51' E.$

Monday, August 15.—Good breeze from eastward. Ship on northern tack. Employed in boiling. At 10.30 raised a right whale. Lowered four boats. At 4 p. m. came on board. Employed in boiling and stowing down. No observations.

Tuesday, August 16.—Strong breeze from eastward, ship steering W. Weather rainy. Employed in stowing down. At 10 a. m. raised the *C. W. Morgan* chasing whales; did not get any; gained the *Morgan*. No whales yet. No observations.

Wednesday, August 17.—Light breeze from westward, ship steering E. Employed in scraping bone. *C. W. Morgan* in sight. At 3.30 p. m. raised two whales. Lowered four boats. 4 p. m. thick fog. Wind from eastward. Boats came on board. Lat., $45^{\circ} 57' N.$; long., $144^{\circ} 50' E.$

Thursday, August 18.—Commenced with a strong breeze from southward. Ship steering W. Employed in washing bone. At 8 a. m. raised two whales going quickly to southward. Did not lower our boats. Later fresh gale from SW., heavy rain squalls. At sunset wind moderated down. Cape Siretoko in sight, bearing WNW., distant 20 miles. Have seen plenty of finbacks. No observations.

Friday, August 19.—Commenced with light airs from all around the compass, with light rain. Employed in washing bone. Ship lying around. Cape Siretoko in sight, bearing W. by N., distant 25 miles. No observations.

Saturday, August 20.—Commenced with a calm. Employed in breaking out sail and rigging. Bent new fore-topsail and rove off new main gallant and main royal braces. Later on light breeze from eastward. Ship on southern tack. Cape Siretoko in sight. Lat. $46^{\circ} 07' N.$; long. $144^{\circ} 27' E.$

Sunday, August 21.—Fresh breeze from SE. Ship on southern tack. Weather foggy. At 11 a. m. wore ship. At 4 p. m. raised the *Morgan*. At 6.30 gained her; clean. No observations.

Monday, August 22.—Commenced with strong breeze from southward, with thick weather. Later on calm, with heavy rain. *C. W. Morgan* and Cape Siretoko in sight, bearing WSW., distant 30 miles. No observations.

Tuesday, August 23.—Fresh breeze from westward. Ship steering E. Employed in filling casks with salt water for ballast. Can't get whales enough to ballast the ship. At 2 p. m. raised dead sulphur bottom. At 3.30 p. m. raised two right whales. Lowered four boats. S. boat and W. boat darted. Did not get fast. So ends. Lat. $46^{\circ} 11' N.$; long. $145^{\circ} 52' E.$

Wednesday, August 24.—Fresh breeze from eastward, with thick, rainy weather at times. Ship steering west and south. Employed in repairing main gallant sail. At 4.30 p. m. raised right whale. Lowered four boats. Waist boat struck and killed him. Got him alongside sinking. Fluke rope parted, and we lost the whale. So ends having good luck. No observations.

Thursday, August 25.—Light breeze from eastward, with thick fog and rain. Later on wind from west, with thick fog. Ship on northern tack under short sail. So ends. No observations.

Friday, August 26.—Light breeze from southward. Ship steering NE. At 11.30 raised right whale. At 12 o'clock lowered four boats. Waist darted; did not get fast;

whale heard the boat before he darted. Gained the schooner *Mary H. Thomas*. One whale, and sunk one.

Saturday, August 27.—Light breeze from westward. Ship steering E. *Mary H. Thomas* in sight. At 9.30 *Thomas* lowered her boats for a whale. Don't know

whether he got him or not. Employed in drying bone. At 1 p. m. weighed the bone, 1,300 pounds. At 3 p. m. raised whale. Lowered four boats. Did not get him. So ends. Lat. 46° 37' N.; long. 145° 54' E.

Sunday, August 28.—Light breeze from southward. Ship steering E. At 8 p. m. raised whale. Lowered three boats. At 10 a. m. boats came on board. Ship steering E. At 2 p. m. thick fog with rain. Lat. 46° 57' N.; no long.

Monday, August 29.—Fresh breeze from NE. Ship steering SW. At 2.30 p. m. raised whale. Lowered four boats. At 6.30 boats came on board. No observations.

Tuesday, August 30.—Strong breeze from SE. and S. Ship steering W. All sail set. At 12.30 raised right whale, going quickly to ESE. Did not lower. So ends. No observations.

Wednesday, August 31.—Strong breeze from SW. Ship steering E. under lower topsail and foresail. At 3 p. m. spoke the *Mary H. Thomas*. One whale. At 6 p. m., raised whale. Lowered larboard and waist boat. Waist boat struck and got him alongside at 9 o'clock. Lat. 47° 00' N.; long. 146° 10' E.

Thursday, September 1.—Strong breeze from SW. with heavy swell on. Employed in cutting. Have seen two whales to-day. Did not lower. Lat. 47° 16' N.; no long.

Friday, September 2.—Fresh breeze from northward with heavy swell on. Ship on western tack under short sail. Employed in boiling. Have seen a few finbacks. Lat. 47° 10' N.; long. 146° 52' E.

Saturday, September 3.—Strong breeze from SE. with heavy swell on. At 8 a. m. raised whales. Lowered four boats. At 11.30 came on board. At 2 p. m. lowered two boats. At 3 p. m. boats came on board. Whales wild. Have seen four whales to-day. Lat. 46° 47' N.; no long.

Sunday, September 4.—Strong breeze from SE. with rain and fog and heavy thunder and lightning. Ship on eastern tack. Employed in boiling. At 7 p. m. finished; 125 barrels. Have seen a few finbacks. No observations.

Monday, September 5.—Fresh breeze from southward with fog and rain. Ship on eastern tack under short sail. Employed in stowing down. At 4 p. m. finished; 134 barrels. So ends. Lat. 47° 34' N.; no long.

Tuesday, September 6.—Calm all day with thick rainy weather. Employed in scraping bone and soaking it. Lat. 47° 28' N.; no long.

Wednesday, September 7.—Very light breeze from southward and eastward with thick cloudy and rainy weather. Ship on western and southern tack. Employed in washing bone. At 11.30 finished washing. Have seen (illegible). Lat. 47° 28' N.; long. 146° 43' E.

Thursday, September 8.—Fresh breeze from SSW. and SW. with thick cloudy weather. Ship on the eastern tack. All sail set. Have not seen anything. No observations.

Friday, September 9.—Commenced with light breeze from SW. with thick fog at times. At 11.30 wind NE. Ship steering W. Have seen plenty of finbacks. Lat. 46° 57' N.; long. 147° 16' E., 9 a. m.

Saturday, September 10.—Commenced with a calm, with a thick fog at times. At 3.30 a. m. a Russian officer from the schooner *Marie* came on board and ordered Captain Scullen on board the schooner *Marion*, and was told that we had no right to whale it in the Ochotsk Sea. Took crew and officers and put them on board the schooner. Captain Cobey and officers and crew of the schooner came on board the *Cape Horn Pigeon* and took charge. Later on at 10 a. m. made sail and steered WSW. bound for Vladivostock. Time ship was taken. Lat. 46° 30' N.; long. 146° 35' E.

Sunday, September 11.—Fresh breeze from northward and eastward. Ship steering W. by S. and WSW. All sail set. At 11 a. m. raised Cape Siretoko bearing W. At 7 p. m. Cape Siretoko bearing N. Ship steering W. by S. $\frac{1}{2}$ S.

Monday, September 12.—Strong breeze from eastward. Ship steering WNW. At 3.30 a. m. came into Japan Sea. At 2 p. m. ship steering SW. by W. for Vladivostock. Later on weather thick, and rain. No observations.

Tuesday, September 13.—Fresh breeze from eastward, with rain. Ship steering SW. by W. All sail set. Later on wind from northward, with rain. No observations.

Wednesday, September 14.—Commenced with strong breeze from northward and westward. Ship steering SW. by W. At 10 a. m. wind moderated down to light breeze. At 1 p. m. ship steering W. by N. and N. Lat. 42° 23' N.; long. 136° 48' E.

Thursday, September 15.—Commenced with light airs from NE. At 11 a. m. light breeze from southward and westward. Ship steering NW. All sail set. Lat. 42° 56' N.; long. 135° 51' E.

Friday, September 16.—Strong breeze from WSW. Ship on different tack, working to westward. Land in sight. Later, wind west and very light. Ship on southern tack under short sail. Lat. 42° 58' N.; long. 134° 27' E.

Saturday, September 17.—Commenced with light airs from westward. At 8 a. m. strong breeze from NE. Ship steering NW. by W. At 10 a. m. back rope parted. At 11.30 calm and raining. At 5 p. m. light breeze from NNE. Ship steering WNW. Coast in sight, and one steamer seen going west. Lat. 42° 20' N.; long. 143° 13' E. at 4 p. m.

Sunday, September 18.—Strong breeze from northward and westward. Ship working up to the island of Askold. At sunset Askold bearing NNW., distant 10 miles off. Ship heading WNW. with topsails and courses and jib. No observations.

Monday, September 19.—Commenced with a calm. At 7 a. m. light breeze from westward. Ship heading N. At 10 a. m. fresh breeze from WSW. Ship steering N. by W. and NNW. for Vladivostock. At 4 p. m. anchored in 8 fathoms of water. Found schooner *Marie* had arrived with the crew all on board. Had taken one man to the hospital to be treated for sore hand. Found the U. S. S. *Marion* in port.

Tuesday, September 20.—Ship at anchor in Vladivostock in 8 fathoms of water in charge of the Russian naval officer. Last night the crew was landed ashore from the schooner *Marie*, and left without food or shelter, and finally was taken in by a Chinaman, who let them sleep in his storehouse. Cabled the report of the seizure of the ship to owners at 4 p. m., and to the United States minister at St. Petersburg. Wrote to the captain of the *Marion* protesting against the seizure of the ship, and asking his assistance and advice in the matter. Was this day asked for my log book by the officer in charge of my ship. He told me the admiral of the port wished to see it. The crew are still with the Chinaman, who is feeding them. Sick man still in hospital. So ends this day.

Wednesday, September 21.—Ship still at anchor in Vladivostock in 8 fathoms of water, and was shifted farther up the harbor during the day; and I went on board the ship at 4.30 p. m. and found my log book on board and took charge of the same. The men are complaining of want of food and proper shelter, but I can do nothing, as they are in the hands of the Russian authorities, who do nothing for them. Made out another protest in behalf of myself and officers and crew, setting forth a full statement of the facts of the seizure, which I took on board the *Marion*. This was signed by myself and officers and witnessed by T. A. Herber, surgeon, and W. M. Crose, ensign, as the captain was not on board at this time. The captain of the *Marion* informed me that he could not act in this matter, as it was now in the hands of the United States minister to Russia, as I had cabled a report of the seizure to him. Waiting for instructions from him and owners. So ends this day.

Thursday, September 22.—Ship still at anchor in Vladivostock with a Russian officer in charge. Received a cable from the owners at 8 a. m., as follows:

“Draw on us for your needs. Have communicated Washington for release of your ship.

“WING.”

The crew are still in the Chinaman's care. Mr. Smith and chief officer, Mr. Young, went this day to the jail to inquire why the crew had not been provided with food and quarters, as I was informed by the naval officer in charge of my ship that money had been provided for this purpose. The jail officials said that they had no room for the men, and admitted that they had received the money, but said that they would make arrangements to-morrow for them. About 2.30 p. m. the admiral, under whom the officer who seized my ship was serving, arrived in the port. About 10 a. m. today the U. S. S. *Marion* went to sea for target practice. Will be back Sunday.

Friday, September 23.—Ship still at anchor at Vladivostock with Russian officer in charge. I was asked to come on board my ship with several Russian officers, who signed a declaration that nothing was found on board for unlawful purposes, and gave me a translation of same.

Saturday, September 24.—Ship still at anchor in Vladivostock with Russian officer in charge. At 4 p. m. crew had orders to go on board. Ship is not allowed to leave the harbor, but took charge of the ship, but did not receive ship papers. Signed a document that I would not leave the harbor until I received permission.

Sunday, September 25.—Ship still at anchor in Vladivostock in charge of the crew and officers. Was sent for to go on board the Russian flagship, and was told to make out a claim for damages for seizing the ship.

Monday, September 26.—Ship still at anchor in Vladivostock in charge of the officers and crew. I bent new main topsail and foresail.

Tuesday, September 27.—Ship still at anchor in Vladivostock in charge of officers and crew. This day handed in the claims to the admiral, amounting to \$49,500 gold. Watch came on shore on liberty.

Wednesday, September 28.—Ship still at anchor in Vladivostock. About 9 a. m. an officer came on board and said that the ship was free to go to sea. Floated the ship down the harbor. Larboard watch came on shore on liberty.

Thursday, September 29.—Ship still at anchor in Vladivostock getting ready for sea. Received a letter from the admiral stating that I could go to sea. Sent on board 12 pickles of potatoes, 200 cabbages, and 2 cords of wood.

Friday, September 30.—Ship still at anchor in Vladivostock, all ready for sea.

Saturday, October 1.—Ship still at anchor in Vladivostock, ready for sea. At about 2 p. m. hove up anchor and went to sea. U. S. S. *Marion* went to sea to-day. At 7 p. m. off Askold Island, bearing SE. by E., distant 15 miles. Later on strong breeze from westward. Ship steering SE. by E. with topsails and courses.

Sunday, October 2.—Strong breeze from westward, with heavy sea on. Ship steering E. by S., with all sail that will draw. Bent new main lower topsail. Rove new wheel rope. Lat. $41^{\circ} 47' N.$; long. $134^{\circ} 31' E.$

Monday, October 3.—Fresh breeze from NW. Ship steering E. by S., with all sail set. Employed in repairing lower main topsail, rove off new lower fore topsail brace. At 12 o'clock ship steering E. by N. At 2.30 raised Osima Island, bearing ENE. Later on at 11.20 Oe Island, bearing N., distant 5 miles. Wind light. Ship steering SE. by E. Lat. $41^{\circ} 10' N.$; long. $138^{\circ} 29' E.$

Tuesday, October 4.—Commenced with light breeze from westward. Ship off Sugarloaf Island and Ko Island, distant 4 miles, steering E. by N. for Isugar Strait. At 2 p. m. off Hakodate. At 5.30 p. m. ship through the strait. Ship steering E., with a good breeze from NW. At 3 p. m., lat. $41^{\circ} 40' N.$; long. $140^{\circ} 38' E.$

Wednesday, October 5.—Fresh breeze from northward and westward. Ship steering ENE. and E., with all sail set. Cape Yerimo in sight bearing WNW., distant 40 miles. At 4 p. m. land out of sight. Have seen plenty of sulphur bottoms to-day. Lat. $41^{\circ} 35' N.$; long. $144^{\circ} 44' E.$

Thursday, October 6.—Commenced with light breeze from NE. Ship on eastern tack, heading ESE. and SE. by E. All sail set. Later on calm. At 7 p. m. light breeze from NW., ship steering NE. At 12 o'clock wind from northward. Ship heading E. Lat. $41^{\circ} 03' N.$; long. $146^{\circ} 29' E.$

Friday, October 7.—Light breeze from northward. Ship heading E. and E. by S. All sail set. Have seen school of blackfish. Employed in scraping irons and spades and painting them. Lat. $41^{\circ} 24' N.$; long. $148^{\circ} 28' E.$

Saturday, October 8.—Fresh breeze from ESE. Ship on northern tack, heading NNE. and NE. All sail set. Later on wind SE. Ship steering NE. Lat. $42^{\circ} 00' N.$; no long.

Sunday, October 9.—Strong breeze from southward. Ship steering NE. by E. All sail set. Later on at 3 p. m. took in light sails. At sunset wind the same. Later on raining. Lat. $44^{\circ} 07' N.$; long. $151^{\circ} 34' E.$

Monday, October 10.—Fresh breeze from southward and westward, with rain and thick fog. At 10 a. m. wind NW. and very light. Ship steering E. by N. $\frac{1}{2}$ N. with all sail set. Lat. $45^{\circ} 48' N.$; long. $155^{\circ} 20' E.$

Tuesday, October 11.—Strong breeze from westward. Ship steering E. by N. All sail set. At 3 p. m. had a heavy rain squall, took in light sails. Later on ship steering E. by N. with whole main topsail and foresail. Lat. $46^{\circ} 28' N.$; long. $158^{\circ} 17' E.$

Wednesday, October 12.—Commenced with a fresh gale from WNW., with heavy rain squalls. Ship steering N. by E. and E. $\frac{1}{2}$ N., with light sails furled. Lat. $46^{\circ} 45' N.$; long. $163^{\circ} 06' \frac{1}{2} E.$

Thursday, October 13.—Strong breeze from WNW. and NW. Ship steering E. $\frac{1}{2}$ N. and E. by N., with all sail set. Had several heavy rain squalls to-day. Lat. $46^{\circ} 30' N.$; long. $168^{\circ} 00' E.$

Friday, October 14.—Light breeze from NW. and W. Ship steering N. by E. All sail set. Lat. $46^{\circ} 34' N.$; long. $171^{\circ} 48' E.$

Saturday, October 15.—Commenced with fresh — from southward. Ship steering E. by N. Later on fresh gale from SE. Ship under lower topsails and staysails. Ship heading ENE. and NE. by E. Later raining. At 9.30 p. m. wind hauled to westward. No observations.

Sunday, October 16.—Fresh gale from westward with rain and heavy sea on. Ship steering E. by N., with topsails and foresail and main gallantsail. Later, wind SE. and blowing hard. Lat. $47^{\circ} 14' N.$; long. $178^{\circ} 24' E.$

Monday, October 17.—Commenced with fresh gale from SE. with heavy rain. At 8. a. m. wind died out to a calm. At 12.30 wind NW. and blowing hard, with rain. Ship steering E. by N., with lower main topsail and staysail. Later on fresh gale from NW. Cross the meridian to-day. Lat. $46^{\circ} 21' N.$; long. $178^{\circ} 47' W.$

Monday, October 17.—Strong breeze from NW. and N., with clear weather. Ship steering E. by N. and E. by N. $\frac{1}{2}$ N., with all sail set. Lat. $47^{\circ} 00' N.$; long. $174^{\circ} 44' W.$

Tuesday, October 18.—Commenced with a calm. At 11 a. m. light breeze from SW. Ship steering E. by N. $\frac{1}{2}$ N. All sail set. At 4 a. m. fresh gale from SW. Ship steering E. by N. $\frac{1}{2}$ N., with lower topsails and foresail. Raining hard at 9 p. m. Wind SE. and blowing hard. Lat. $47^{\circ} 01' N.$; long. $170^{\circ} 50' W.$

Wednesday, October 19.—Strong breeze from westward. Ship steering E. by N., with all sail set that will draw. At 7 p. m. ship steering E. by N. $\frac{1}{2}$ N. Lat. $47^{\circ} 10' N.$; long. $167^{\circ} 48' W.$

Thursday, October 20.—Light breeze from SW. Ship steering E. by N. $\frac{1}{2}$ N., with all sail set. Lat. $47^{\circ} 06' N.$; long. $164^{\circ} 23' W.$

Friday, October 21.—Fresh breeze from SW. Ship steering E. by N. $\frac{1}{2}$ N., with all sail set. Later on ship steering E. Wind WNW., with hail squalls. Lat. $47^{\circ} 16' N.$; long. $160^{\circ} 48' W.$

Saturday, October 22.—Strong breeze from WNW. Ship steering E., with all sail set that will draw. Later on the wind moderated down to a calm. At 7.30 p. m. light airs from southward. Later on wind NE. and N. and blowing hard, with heavy rain. Lat. $46^{\circ} 17' N.$; long. $156^{\circ} 45' W.$

Sunday, October 23.—Heavy gale from northward and westward with heavy rain squalls. Ship steering E. by S. and E., with lower main topsail and staysails. Later on wind NW. and W., and moderating down to a strong breeze. No observations.

Monday, October 24.—Strong breeze from SSW., with rain squalls. Ship steering E., with all sail set. Lat. $45^{\circ} 00' N.$; long. $151^{\circ} 58' W.$

Tuesday, October 25.—Fresh breeze from westward. Ship steering E., all sail set. Later on wind SSE. and SE. and light. Ship heading E. by N. $\frac{1}{2}$ N. Lat. $44^{\circ} 00' N.$; long. $148^{\circ} 07' W.$

Wednesday, October 26.—Fresh breeze southward. Ship heading NE. under short sail. At 2 p. m. wind hauled to SE., with rain. At 7 p. m. wind hauled to NE., with heavy rain. Ship heading SE. by E. No observations.

Thursday, October 27.—Commenced with fresh breeze from westward. Ship steering E. All sail set that will draw. Later on light breeze from northward and eastward. Ship heading E. by S. with clear weather. Lat. $44^{\circ} 07' N.$; long. $144^{\circ} 19' W.$

Friday, October 28.—Fresh breeze from NE. and N., and NW. and W., with thick fog. Ship heading SE. by E. and E. At 11 a. m. fog cleared up with a good breeze from SW. Ship steering E. by compass. Lat. $43^{\circ} 00' N.$; long. $142^{\circ} 22' W.$

Saturday, October 29.—Strong breeze from WSW. and SW. Ship steering E. by compass with all sail set, with rain squalls. Later on fresh breeze from WNW. with clear weather. Lat. $42^{\circ} 05' N.$; long. $137^{\circ} 54' W.$

Sunday, October 30.—Light breeze from WNW. with clear weather. Ship steering E. by compass with all sail set that will draw. Lat. $41^{\circ} 07' N.$; long. $135^{\circ} 18' W.$

Monday, October 31.—Light breeze from SE. Ship heading ENE. with all sail set. Lat. $40^{\circ} 47' N.$; long. $133^{\circ} 43' W.$

Tuesday, November 1.—Light breeze from SSW. and SW. with cloudy weather. Ship heading E. by N. and E. At 4 p. m. ship steering E. by S. All sail set. Lat. $40^{\circ} 35' N.$; no long.

Wednesday, November 2.—Light airs from southward and westward. Ship steering E. by S. and E. $\frac{1}{2}$ S. with all sail set. Lat. $40^{\circ} 10' N.$; long. $130^{\circ} 50' W.$

Thursday, November 3.—Fresh breeze from NW. and N. Ship steering E. by S. and E. $\frac{1}{2}$ S. and E., with all sail set. Employed in washing ship. Have seen one merchantman bound to the NE. Lat. $39^{\circ} 35' N.$; long. $129^{\circ} 22' W.$

Friday, November 4.—Fresh breeze from northward, with wet fog at times. Ship steering E. and E. by N., all sail set. Have seen nothing. Hauled up the cable, and bent it forward the windlass to trim ship. Lat. $38^{\circ} 30' N.$

Saturday, November 5.—Light breeze from NW., with foggy weather. Ship steering E. by N., all sail set. At 7 a. m. steering E. At 1 p. m. captain went on board *Mary H. Thomas*. At 2 p. m. came on board again. Steered E. At 2.30 heard fog whistle on Point Ray. At 4 p. m. saw Point Ray, bearing N. At 6 p. m. took tug to go into San Francisco Harbor. At anchor in ————. So ends this season with 2 whales and 2,600 pounds bone and 200 barrels oil.

T. SCULLUN.

Case: *Cape Horn Pigeon*.
Deposition of William R. Wing.
Exhibit 4.

(Initialed) W. F. C.

CHINA
HONGKONG.

From Det. Surveys, corrected to 1932

Collected from the Survey of the Hydrographic Office, and other sources

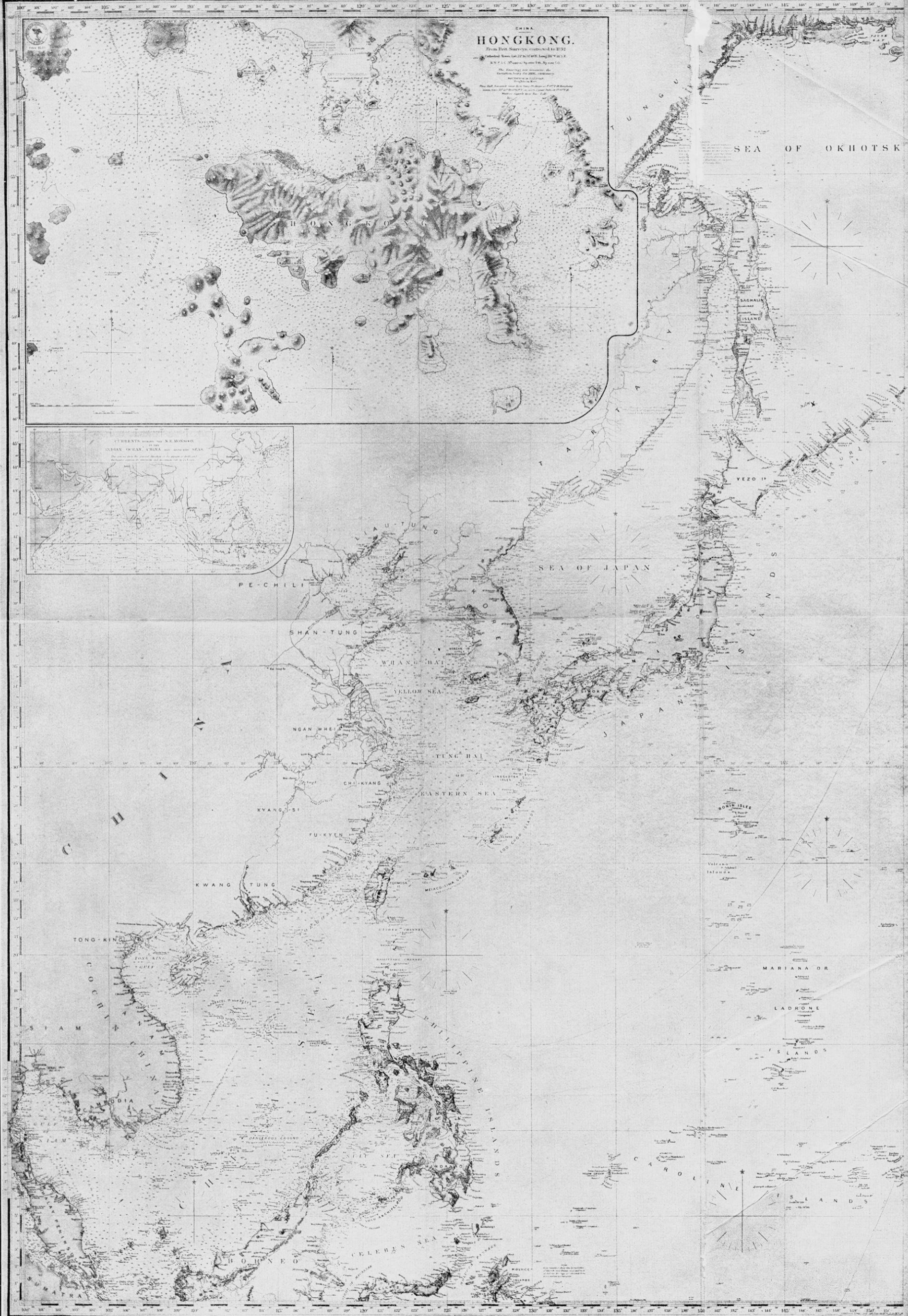
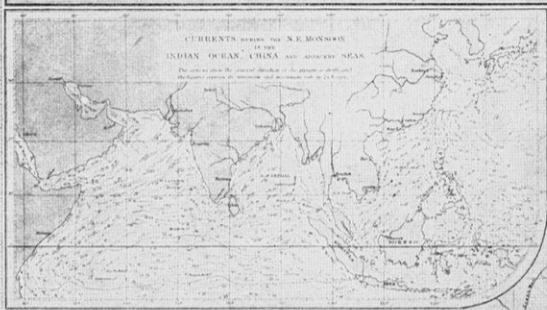
W. W. C. Brown, Hydrographer, R. N.

The bearings are measured by the magnetic force of the ship, and are not corrected for variation.

For full particulars see the Survey of the Hydrographic Office, and other sources.

SEA OF OKHOTSK

SEA OF JAPAN



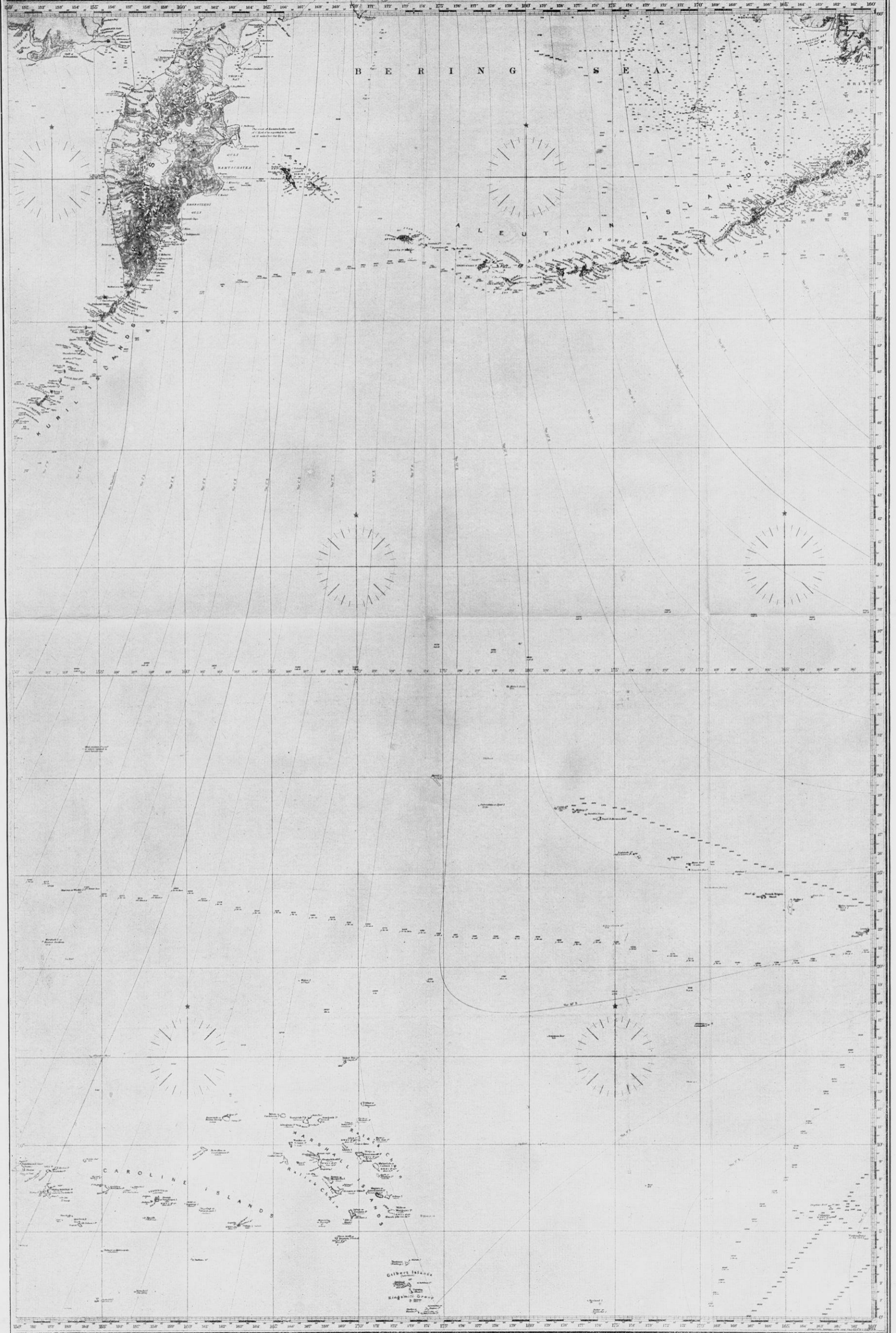


EXHIBIT V.

(Annex 2 and Annex 3, charts.)

ANNEX 4.

Bark Cape Horn Pigeon—Owners' outward account, 1890, inward account, and interest account to January 30, 1890, with J. and W. R. Wing.

CR.

1889. Aug. 22 ^a	By freight collected ship Syren, paid on two boats sent to California, and ship condemned at Rio Janeiro		\$76.00	\$5.08	\$2.00
	Sale old metal, nails, etc.	\$316.83			
	Sale oakum and pitch	34.26			
	Sale old metal, sail, boat boards.	32.30			
	Sale 1 second-hand boat	50.00			
	1 chain cable to bark Triton	204.00			
	Discount on L. Ford's bill .....	.60			
	Casks to different vessels	264.98			
			962.97	2.29	14.28
1890. Jan. 30	By 1 box whale craft on hand at California, transferred to new account		30.00		
1889. Nov. 1	By sale lances to Wright, Bame & Co		105.00	2.29	1.56
	Balance, interest account				441.06
1890. Jan. 30	By balance to debit owner account, this date.		23,064.54		
			24,238.51		458.90

^a Interest Jan. 1, 1889.

DR.

1889. Jan. 15	To 2 boats left at San Francisco from last outward account		\$275.00	\$12.15	\$17.19
Mar. 26 ^a	To paid goods sent to San Francisco; Wm. Bayliss, provisions sent California.	\$588.80			
	Labor, \$2; E. B. and F. Macey, whalecraft, \$34.36.	36.36			
	R. Allan, casks sent to California	753.34			
	J. and W. R. Wing & Co., clothing, etc	442.69			
	T. M. Hart & Co., duck and twine	48.12			
	Wharfage goods, shipped	5.07			
	Weighing meat, 30 cents; nails, \$5.85	6.15			
	Share expenses New York account freight	3.00			
	Pemmican meat, \$19.87; N. B. Cordage Co., \$291.34.	311.21			
	E. Peirce, bomb lances and guns	100.00			
	1 chain cable	204.00			
	Insuring goods to California	32.40			
	E. S. Taber, blocks sent California	13.86			
	Ship B. F. Packard, freight goods to California.	369.50			
	Paid ship Syren, special averages on 2 boats sent in Syren, and vessel condemned at Rio Janeiro.	75.54			
	Boat boards sent California	11.25			
	Freight and expenses on boat, originally shipped by ship Lycen	76.07			
	Nails and labor on goods .....	.23			
	Ship Jas. Drummond, freight goods California	40.00			
	Ship Jas. Drummond, chain cable	39.60			
			3,157.19	10.40	159.95
	Paid telegram account, officer, 63 cents; bomb lances, \$2	2.63			
	Capt. T. Scullen, passage to Chicago	20.00			
	Telegrams account, captain and merchandise account	1.57			
	Paid extra passage Captain Scullen to Chicago.	2.00			
	Telegram account master, 33 cents; 1 chronometer, \$75	75.33			
	Insuring goods in storehouse California	14.26			
	Excess on 1 case yellow metal	1.00			
	Cartage goods at California, sent in spring, 1889	30.00			
	Storage boat sent in 1889	3.00			
	W. H. Crook, ship carpenter, services	187.90			
	B. F. Wing, services fitting vessel	94.69			

^a Interest from Nov. 1, 1889.

EXHIBIT V—Continued.

ANNEX 4—Continued.

Bark Cape Horn Pigeon—Owners' outward account, 1890, inward account, and interest account to January 30, 1890, with J. and W. R. Wing—Continued.

DR.

1889. Mar. 26*	To use horse and carriage for business	\$21.00			
	Haslett & Bailey, storage goods at California	70.35			
	H. Kissane, carting	15.50			
	Exchange on drafts, \$1.40; sundry telegrams, \$24.98	26.38			
	Paid Weed & Kingwell, copper nails, etc.	260.69	\$565.61	\$2.29	\$8.40
	Share W. R. Wing, traveling expenses to and from California, and while there on business	102.00			
	Paid 4,485 gallons oil, shooks, at 2½ cents	100.91			
	Paid piece oak	6.00			
	Paid new casks, bark Triton	22.90			
	Paid labor, \$27.21; W. Lewis, guns and lances, \$69 ..	96.21			
	Legal services account, repairs, etc.	5.50			
	1 pair opera glasses sent by Captain Scullen	19.00			
	Paid salt, \$3.75; telegram, \$1.95	5.70			
	Kanakas, board, \$3.25; labor, week, \$117	125.25			
	Denham, Carrigan & Co., iron spikes	52.50			
	Andrews & Cornell, cooperage	63.98			
	Telegram, \$1.95; lag screw, etc., \$3	4.95			
	Oak timbers, \$5; repairs, \$2; carting, 50 cents	7.50			
	Telegram, \$1.72; blocks, \$5.45	5.17			
	Telegram, \$1.35; carting old metal, 50 cents	1.85			
	Carting and wharfage, \$2; labor, \$77	79.00			
	Ticket, Captain Scullen, home and return	120.00			
	Telegram, 75 cents; watching, \$3	3.75			
	Telegram, \$2.53; G. M. Josselyn & Co., \$5.15	7.68			
	S. H. Frank & Co., carting casks	6.20			
	Telegram, \$1.30; watching, \$1	2.30			
	Carting, 50 cents; labor and watchman, \$48	48.50			
	Cornelius Holmes, tryworks	20.55			
	Rigging leather, \$2.25; M. E. Mayhew, medicines, \$23.10	25.35			
	Mr. Cudworth, watching	3.00			
	G. M. Josselyn & Co., spikes, etc	5.15			
	Labor, \$51.50; T. Ogden, watching, \$3	54.50			
	Antone Lopez, labor	18.00			
	Telegram, \$1.30; C. L. Le Gal, blocks, etc., \$2.75 ..	4.55			
	Labor, \$55.75; telegram, 85 cents	56.60			
	Denham, Carrigan & Co., spikes and chandlery ..	127.40			
	Cooper labor, \$3; L. Ford, sail, etc., \$19.60	22.60			
	Cooper bolt and turpentine, \$2; medicine, captain, \$0.50	2.50			
	Rope, hooks, and thimbles	10.62			
	Tacks, 50 cents; pitch mops, \$2.10	2.60			
	Labor, \$73.75; turpentine, 75 cents	74.50			
	Main Street Iron Works, pumps	40.50			
	Hooks and thimbles, 50 cents; S. E. Slade, lumber, \$7.70	8.20			
	Paid S. E. Slade & Co., lumber	4.65	1,626.10	2.29	24.12
	Christoffersen & Tway, blacksmithing, etc	382.57			
	A. M. Skiff, painting cabin	18.35			
	John Wigmore & Son, plank	29.63			
	Labor, \$36.25; J. W. Ganin & Co., hose, \$12.50 ..	108.75			
	Clabrough, Golcher & Co., powder, etc	19.60			
	S. S. Arnheim, stationery, etc	2.10			
	Oilcloth	6.00			
	Painting, \$5; medicine, man hurt, \$1.25	6.25			
	S. Ransom, repairing sofa	6.25			
	E. H. Bucknam & Co., hose pipe, leads, etc	26.51			
	Telegram, \$1; iron tacks, 50 cents	1.50			
	Carting, \$1.25; Lynde & Hough, fish, \$22	23.25			
	David Woerner, oil tank	48.96			
	G. M. Josselyn & Co., bar copper and plugs	7.76			
	Socks for natives, 75 cents; carting dirt, \$1.15	1.99			
	Stockton Milling Company, flour	261.00			
	Roth, Blum & Co., beef and pork	237.50			
	Roth, Blum & Co., pigs and provisions	54.50			
	Carting metal, 50 cents; marking irons, \$1	1.50			
	Tacks, 55 cents; labor, \$1.25	1.80			
	Labor, week, \$133.65; Murphy-Grant, dry goods, \$43.70	177.45			
	Carting metal, 50 cents; iron rods, \$1.10	1.60			
	Carrying natives to hospital	5.00			
	Whittier, Fuller & Co., paints, etc	98.90			
	A. Crawford & Co., boat compass, etc	15.00			

*Interest from Nov. 1, 1889.

EXHIBIT V—Continued.

ANNEX—Continued.

Bark Cape Horn Pigeon—Owners' outward account, 1890, inward account, and interest account to January 30, 1890, with J. and W. R. Wing—Continued.

DR.

1889. Mar. 26 ^a	To Horn & Co., tobacco	\$151.20			
	Watching dry dock, \$3; repairing clock, \$1.25	4.25			
	Simpson & Fisher, labor on sails	50.00			
	Charcoal	1.25			
	Bread, tea, and coffee, 35 cents; expense, captain, trunk, 50 cents	0.85			
	F. Gregg, sawdust, \$2.50; Tubbs & Co., cordage, \$65.31	67.81			
	Labor, \$1; specie sent in ship, \$100	101.00			
	Messenger, 50 cents; boating, \$5	5.50			
	S. Ransom, watchman	225.75			
	A. Crawford, iron pump	25.00			
	S. S. Arnheim & Co., glass, etc.	11.50			
	Eureka Restaurant, board, 5 Kanakas came and went in ship	112.50			
	W. E. Maher, oil clothing	29.10			
	H. L. Bunker, custom-house clearance	10.00			
			\$2,343.99	\$2.29	\$34.77
	Paid Andrews & Cornell, cooperage	52.15			
	Paid L. Levy, tablecloths and boots	30.07			
	Christoffersen & Tway, blacksmithing	110.47			
	Telegram, \$1; S. E. Slade & Co., lumber, etc., \$12.95	13.95			
	A. H. Keys, meat, \$9.24; Goodall & Perkins, water, \$70.55	79.79			
	Dry Dock Company, dockage	204.80			
	Eclipse Cracker Company, bread	158.10			
	California Cap Company, bomb lances	38.22			
	Macpherson & Recker, vegetables, etc.	86.68			
	L. Ford, bill chandlery, etc	104.92			
	Dillon & Co., repairing chronometer and barometer	21.00			
	T. P. H. Whitelaw, cordage, spikes, etc	123.70			
	Delano Bros., tinsmith and plumbers	205.00			
	Telegram, \$1; labor for week, \$209.25	210.25			
	Accidental Hotel, board, \$53	53.00			
	L. Foster & Co., groceries, etc	564.25			
	State board harbor commissioners, dockage	61.00			
	Wharfage, \$3.25; Simmons & Meyer, riggers, \$391.50	394.75			
	Towage, \$100; galvanized iron, \$18.50	118.50			
	Telegram, \$1.20; Antone Lopez, \$4	5.20			
	Paid Wright, Bame & Co., chandlery, cordage, etc	704.78			
	Captain Scullun, board, \$5; S. Sachman, liquors, \$16.45	21.45			
	American Oil Company, white lead	19.50			
	Paid Clark & Webster, bill repairs:				
	San Francisco Lumber Company, stock	\$631.89			
	Chas. F. Doe, lumber	290.73			
	White Bros., oak lumber, etc	558.22			
	Simpson Lumber Company	19.17			
	S. E. Slade Lumber Company	10.87			
	Ship carpenter, labor	4,761.75			
	Ship calker, labor	1,191.75			
	Spinning oakum	72.25			
	Use pitch heater	35.75			
	Ship joiners, labor	520.00			
	Sundry mill work	67.23			
		8,159.61			
	Paid James Safin, advances	1,685.00			
	Paid advances additional by W. R. Wing	1,232.75			
			14,458.89	2.29	214.47
1890. Jan. 30	N. B. Copper Company, yellow metal on bottom	790.25	790.25		
	Balance interest account		441.06		
	2½ per cent commission on outfits, \$23,217.03		580.42		
			24,238.51		458.90

^aInterest from Nov., 1889.

EXHIBIT V—Continued.

ANNEX 5.

Bark Cape Horn Pigeon—Owners' outward account, 1891, inward account, and interest account to February 10, 1891, with J. and W. R. Wing.

Cr.

(*)	By sale goods at San Francisco, Cal.:				
	815 gallons new casks	\$48.90			
	1 davit, bark B. Billow (secondhand)	16.00			
	1 old boat	40.00			
	Sale oil casks	204.26			
	Sale 6 barrels pork and casks	82.58			
	Boat boards	11.90			
	1 darting gun	25.00			
			\$428.64	\$3.90	\$7.08
1891.	For goods left over at San Francisco, transferred to				
Feb. 10	account outward, 1892:				
	Old oil casks	124.94			
	1 chain cable	110.62			
	3 gangs new shooks, 10, 224 gallons	511.20			
	30 bomb lances	60.00			
			806.76		
	Sale 1, 220 gallons new casks		70.16	3.90	1.16
	Balance interest account to debit				182.33
	By balance to debit owners' account	10,053.24			
			10,053.24		
	One-thirty-second share	\$314.16			
	One-sixteenth share	628.33			
	One-eighth share	1,256.66			
	One-fourth share	2,513.31			
	Eleven-sixty-fourths share	1,727.90			
			11,358.80		190.57

Dr.

1890.	To 1 box whale craft at San Francisco		\$30.00	\$12.10	\$1.85
Jan. 30	To goods sent to San Francisco, Cal.:				
Apr. 1	Paid W. H. Crook, boat davit	\$17.50			
	Painting davits .....	.75			
	W. Bayliss, beef, pork, and hams	513.88			
	Beetle Bros., 1 boat	90.75			
	Geo. W. Farnham, 1 boat	95.00			
	T. M. Hart & Co., ducks, etc.	46.51			
	Sullings, Kingman & Co., nails	5.71			
	J. and W. R. Wing & Co., clothing, etc.	454.76			
	Cedar boards	11.25			
	Casks for meat, \$9.60; pemmican, \$21.60	31.20			
	N. B. Cordage Company, cordage, etc.	198.15			
	E. Pierce, 1 darting gun	25.00			
	Robt. Allan, casks and labor	754.00			
	J. Hall & Sons, chain cable	110.62			
	Labor on boat boards .....	.90			
	Wharfage goods shipped, \$3.87, 15 cents, 30 cents.	4.32			
	1 marking iron	1.00			
	Insurance goods to San Francisco, \$31.05, \$1.25	32.30			
	James Duddy, carting	2.25			
	Boat bushings	\$1.90			
	Ship C. Denniss, freight, 1 boat	40.00			
	Ship Alex. Gibson, freight, goods	336.85			
	Boat bushings	1.86			
	Storage goods .....	.75			
			2,777.21	10.90	143.02
Nov. 18 ^b	Telegram account, officers	1.83			
	Ticket and expense, first mate, to California	76.50			
	Expense account, officer	7.56			
	Paid wharfage, goods at California	2.05			
	Carting goods, \$36.05, \$22.10	58.15			
	Tax, 58 cents; fire insurance, \$5.72	9.30			
			155.39	2.22	2.12

^a Interest from Jan. 11, 1891.^b Interest from Nov. 1, 1890.

EXHIBIT V—Continued.

ANNEX 5—Continued.

Bark Cape Horn Pigeon—Owners' outward account, 1891, inward account, and interest account to February 10, 1891, with J. and W. R. Wing—Continued.

DR.

1890. Nov. 18 ^a					
	To goods sent to San Francisco, Cal.—Continued.				
	Paid expenses at San Francisco in refitting vessel:				
	Weed & Kingwell, repair pump	\$4.00			
	Wright, Bame & Co., wire rigging	7.50	\$11.50	\$3.90	\$0.20
	Wright, Bame & Co., towlines, oars, cordage, chandlery, etc	531.83			
	2,723 gallons new casks	156.56			
	1 lot secondhand sails	39.00			
	Storage at California .....	.75			
	Paid A. Crawford, chandlery	6.00	728.14	3.90	12.01
	1/2 round-trip ticket, captain, to Boston	93.00			
	Paid Hanks, \$1.50; Hanks, \$6.30	7.80			
	Carting, 75 cents; rigging leather, \$5	5.75			
	Andrews & Cornell, shocking casks	23.65			
	Andrews & Cornell, setting up shooks	47.28			
	Labor, \$149; sawdust, \$2.50	151.50			
	Clabrough, Golcher & Co., ammunition	7.28			
	Hose coupling, 25 cents; medicine, 50 cents .....	.75			
	Paid steward, labor, \$5; telegram, \$1.08	6.08			
	W. H. Young, watchman	12.00			
	Boating, \$3; hay fenders, \$3	6.00			
	Twist drills, \$2; boating, \$2.50	4.50			
	Labor, cook in stream, \$3; \$2	5.00			
	Specie sent in vessel	100.00			
	Board State harbor commissioners, dockage	23.00			
	H. Peterson, boating, \$4; telegram, \$1	5.00			
	Labor, week, \$31; boating, 50 cents; carting, \$2	33.50			
	Captain Scullun, board	3.00			
	Watchman	12.00			
	S. E. Slade & Co., lumber, \$12.10	12.10			
	Wilson & O'Brien, coal	1.50			
	J. W. Ganin & Co., suction hose, etc	31.85			
	Stockton Milling Company, flour	193.50			
	Whittier, Fuller & Co., paints, oils, etc	58.11			
	Murphy, Grant & Co., dry goods	71.81			
	Clark & Webster, ship carpenters and calkers, on repairs	201.28			
	Wharfage, \$4.25; hardware, etc., \$14.10	18.35			
	Christoffersen & Tway, blacksmithing	66.55			
	Captain Scullun, board, Russ. House	5.00			
	Goodall, Perkins & Co., water	37.00			
	Lynde & Hough, bill fish	10.00			
	C. L. Legal, repair pumps	10.25			
	J. Wigmore & Sons, oak boards, etc	35.61			
	California Cap Company, filling bomb lances	30.13			
	S. S. Arnheim, stationery and glasses	15.50			
	O. H. Keys, provisions in stream	10.24			
	James Henry Wood	17.00			
	Dillon & Co., glasses, charts, and repairs, etc	51.50	1,440.37	3.90	23.76
	Paid American Biscuit Company, bread	114.49			
	W. E. Mayhew, replenishing medicines	22.00			
	E. H. Bucknam & Co., lanterns, etc	8.25			
	Delano Bros., caboose tinware, etc	26.80			
	McPherson & Rucker, potatoes and vegetables	120.55			
	L. Foard, manila rope	5.60			
	S. Lachman & Co., liquors	16.45			
	Merchant tugboat, towage	40.00			
	Wilde & Spear, repair stoves, etc	22.42			
	Simpson & Fisher, topsail, etc	59.10			
	H. S. Bunker, custom entry	10.00			
	Roth, Blum & Co., beef, bacon, etc	137.50			
	L. Levy, oil clothes and boots	60.00			
	S. Foster & Co., groceries, etc	788.72			
	C. E. Haseltine & Co., carting	2.50			
	Bill, carting casks	6.60			
	Share telegrams, \$22.07; H. Kissane, carting, \$12	34.07			
	Use horse and carriage, \$21.98; labor, \$7.68	29.66			
	Haslett & Bailey, storage	28.25			
	W. H. Crook, carpenter, labor	60.04			
	B. F. Wing, shipkeeper, labor	88.88			
	Bomb lances, \$75; oil casks, \$172.67	247.67			
	Yellow metal, \$5.58	5.58			
	10 bomb lances	20.60			
	30 bomb lances	75.00			
	900-gallon oil cask, 1 1/2 cents	11.25			
	Sundry labor, etc., at times	38.57			

^a Interest from Nov. 1, 1890.

EXHIBIT V—Continued.

ANNEX 5—Continued.

Bark Cape Horn Pigeon—Owners' outward account, 1891, inward account, and interest account to February 10, 1891, with J. and W. R. Wing—Continued.

DR.

1890.					
Nov. 18 *	To goods sent to San Francisco, Cal.—Continued.				
	Advances, officers and crew.....	\$3,212.62			
	Drawbill, C. T. Berse, first mate, accepted.....		\$5,293.17	\$3.90	\$4.84
	Paid share Wm. R. Wing expenses to and from California, account ship business.....		300.00		
Feb. 10	To balance interest account to date.....		168.09	3.90	2.77
	To 2½ per cent on payments \$10,903.87.....		182.33		
			272.60		
			11,358.80		190.57

* Interest from Nov. 1, 1890.

(E. & O. E.)

NEW BEDFORD, February 10, 1891.

Case: *Cape Horn Pigeon.*

Deposition of William R. Wing.

Exhibit 6.

(Initialed) W. F. C.

ANNEX 6.

Bark Cape Horn Pigeon—Owners' outward account, 1892, inward account, and interest account to January 20, 1892, with J. and W. R. Wing.

CR.

1891.					
Apr. 22 *	By allowance on bill paid.....		\$0.88	\$8.28	\$0.04
May 29 *	Rebate on freight, 1 boat.....		2.00	7.21	.08
	Sales at San Francisco, Cal:				
	Old cable.....	\$27.90			
	Old rope, etc.....	3.70			
	1 pair opera glasses.....	10.00			
	New casks to C. W. Morgan.....	238.43			
	New casks to Alice Knowles.....	17.11			
	New casks to Alen Barker.....	77.44			
	2 casks pork and casks.....	123.90			
	Balance interest to debit.....		498.48	2.19	6.56
1892.					267.72
Jan. 20	By balance to debit owners' account due this date.....		10,208.55		
			10,709.91		274.40
	One sixty-fourth share.....	\$159.51			
	One thirty-second share.....	319.02			
	One-eighth share.....	1,276.07			
	Eleven sixty-fourths shares.....	1,754.58			
	Sixteen sixty-fourths shares.....	2,552.13			
	Ten sixty-fourths shares.....	1,595.08			

* Interest from Jan. 11, 1891.

[Sailed from San Francisco, Cal., December 7, 1891.]

DR.

1891.					
Feb. 10	To transfer oil casks at San Francisco, from last outward account, on hand.....		\$124.94	\$11.10	\$7.09
Mar. 6	3 gangs new shocks, chain cable, bomb lances.....		681.82	11.10	38.65
	To paid labor packing boat boards, \$1.20; boat boards, \$13.50.....	\$14.70			
	Paid 1 boat, \$100; painting davits, 20 cents.....	100.20			
	Wm. Bayliss, beef and pork.....	460.00			
	2 boat davits, \$32; hams, \$37.....	69.00			
	Storage goods (marine) at California to January 3, 1891.....	18.37			
	Insuring fire to California, \$2.02; nails, \$5.71.....	7.73			

EXHIBIT V—Continued.

ANNEX 6—Continued.

Bark Cape Horn Pigeon—Owners' outward account, 1892, inward account, and interest account to January 20, 1892, with J. and W. R. Wing—Continued.

DR.

1891.				
Mar. 6	To telegram, 7 cents; pemmican meat, \$20.16	\$20.23		
	N. B. Cordage Company, cordage.....	250.04		
	Wharfage goods, \$3.53; duck and twine, \$44.74 ..	48.27		
	Whalecraft, \$32.08; carting, \$8.10	40.18		
	Paid Cornell & Co., coopers, at California, labor making over 10,975 gallons oil shooks, and shocking 1 gang shooks (stored free expense) ..	341.25		
	1 whaleboat, \$90; shiving 2 davits, \$4	94.00		
	J. and W. R. Wing & Co., clothing, etc	496.78		
	\$2,000, insuring goods to California (marine).....	27.00		
	Robert Allan, shooks and labor.....	338.38		
	Bomb gun, \$25; boat trimmings, \$3.26	82.26		
	Boat trimming, \$2.15; wharfage goods, \$1.50	3.65		
	Ship Com. T. Hallen, freight goods	10.00		
	Ship Parthia, freight goods.....	42.00		
	Ship Iroquois, freight goods	272.75		
			\$2,682.79	\$10.14
Oct. 5	To storage goods at California to Jan. 10, 1892		19.27	3.15
Nov. 10	To paid telegrams at times, account business		15.46	2.10
	To paid sundry bills at San Francisco:			
	Wharfage, 45 cents; towage boats, \$2	2.45		
	Cornell & Co., coopering goods	10.70		
	McNab & Smith, carting goods to store.....	18.72		
	Insuring goods, fire in storehouse.....	9.00		
	City tax, 33 cents; storage boats, \$3	3.33		
	Bomb lances, \$41.20; office rent, \$2.84	44.04		
	Wright, Bane & Co., chandlery, etc.....	171.15		
	H. Kissane, carting bill.....	16.00		
	Storage goods to December, 1891, \$13.75, \$34.67 ..	48.42		
	Whittier, Fuller & Co., paint and oil	150.20		
	Cornell & Co., storage and freight paid	15.15		
	Use team, \$13.45; labor, B. F. Wing, \$60.77	79.22		
	Share expenses, Wm. R. Wing, to and from California	146.75		
	Labor, \$3.05; E. Pierce, gun and lances, \$50	58.05		
	A. B. Copper Co., metal used at California	81.05		
	Paid share ticket and expenses Captain Scullun, home and return.....	117.00		
	Telegram, \$1.50; carting, 50 cents; hay fenders, \$3 ..	5.00		
	Coopering, \$12; old lumber at wharf, \$8	20.00		
	J. W. Shieve, powder	7.00		
	Labor for week.....	208.00		
	Tubbs & Co., cordage	137.25		
	Cornell & Co., coopering on shooks	72.77		
	James Henry, oak wood.....	17.00		
	State board harbor coms., dockage	16.40		
	J. W. Gawin and Co., hose, etc	11.85		
	Labor, \$37.50; carving name on bow, \$5	42.50		
	Watchman, \$3; watchman, \$3	6.00		
	H. N. Cook, oil hose	23.00		
	Mr. Peckham, labor	36.00		
	Murphy Grant Company, recruits	92.87		
	Tablecloth, \$2.35; cook in stream, \$10.50	12.85		
	Clark & Webster, carpenters and calkers	162.22		
	American Lumber Company, pine	10.18		
	California Cap Company, filling lances.....	50.00		
	Goodal, Perkins & Co., water	38.55		
	J. C. Wilson & Co., coal.....	4.80		
	White Brothers, oak lumber	8.12		
	Christoffersen and Tway, blacksmiths	44.63		
	Sail needles, palms, etc., \$1; boating, \$2	3.00		
	Telegram to master, \$1.50; cooking in stream, \$7 ..	8.50		
	Specie sent in ship	100.00		
	Paid balances, \$1.25; labor in stream, \$6	7.25		
	Boating, \$1.50; watchman in stream, \$72	73.50		
	Dillon & Co., marine glass and rep. glasses.....	33.55		
	L. Foard, mast hoops and blocks	17.07		
	Delano Brothers, coppersmiths' bill	73.93		
	Russ House, master's board	12.50		
	O. H. Keys, meats and vegetables in stream.....	31.64		
	Telegram, \$1; stationery, etc., \$3.85	4.85		
	Lynde & Hough, codfish	21.00		
	Boating, \$6; labor, \$1	7.00		
	E. E. Hitch, sail bill	59.58		
	Paid Simpson & Fisher, mates' boat sail	20.00		
	Stockton Milling Co., flour.....	153.00		

* Interest from Jan. 11, 1891.

EXHIBIT V—Continued.

ANNEX 6—Continued.

Bark Cape Horn Pigeon—Owners' outward account, 1892, inward account, and interest account to January 20, 1892, with J. and W. R. Wing—Continued.

DR.

1891.					
Nov. 10 ^a	To paid sundry bills at San Francisco—Continued.				
	Clabrough, Golcher & Co., repairs to gun	\$0.97			
	W. E. Mayhew, medicines	25.20			
	S. Lachman & Co., liquors	16.45			
	Macpherson & Rucker, potatoes and vegetables	92.04			
	C. D. Bunker, custom entry	10.00			
	Roth, Blum & Co., provisions	175.09			
	American Biscuit Co., bread	246.12			
	L. Levi, oil clothing	46.08			
	Merchants' Tow Boat Co., towage	90.00			
	S. Foster & Co., groceries, etc	754.90			
	Weed & Kingwell, coppersmiths' bill .....	.75			
	Labor, looking after goods, free, N. B.	1.00			
	Paid Cornelius Eustacia, account advance	30.00			
	Paid advances to officers and crew	2,550.00			
1892.			\$4,211.60	\$2.19	\$55.46
Jan. 20	To paid balance interest account to date		267.72		
	To paid 2½ per cent commissions on outfits, say, \$10,187.50		254.69		
			10,709.91		274.40

^a Interest from Jan. 11, 1891.

(E. & O. E.)
 NEW BEDFORD, *January 20, 1892.*
 Case: *Cape Horn Pigeon.*
 Deposition of William R. Wing.
 Exhibit 7.
 (Initialed) W. F. C.

ANNEX 7.

Bark Cape Horn Pigeon and owners. Outward account, 1893, inward account, and interest account to February 1, 1893, with J. and W. R. Wing.

CR.

1892 ^a					
	By sale old junk	\$9.50			
	Clothing sold at California returned, less freight expenses on same	340.69			
	442 feet cedar boards	26.52			
	Sale casks to different vessels	516.14			
	Sale 1 gang shooks, new	228.54			
	Sale 2 boat davits	56.00			
	Balance interest account to debit		\$1,177.39	\$2.11	\$13.96
1893					214.66
Feb. 1	By balance to debit, owners' account		11,415.84		
	One sixty-fourth share	\$178.88			
	One thirty-second share	356.74			
	One sixteenth share	713.49			
	Eight sixty-fourth share	1,426.98			
	Eleven sixty-fourth share	1,962.10			
	Twenty sixty-fourth share	3,567.45			
			12,593.23		228.00

^a Interest from Nov. 20, 1892.

EXHIBIT V—Continued.

ANNEX 7—Continued.

Bark Cape Horn Pigeon and owners. Outward account, 1893, inward account, and interest account to February 1, 1893, with J. and W. R. Wing—Continued.

[Sailed from San Francisco, Cal., December 30, 1892.]

Dr.

1891. Dec. 31	To paid whaleboat, trimmings sent out.....		\$1.25	\$13.00	\$0.07
1892. Mar. 17	To paid insuring goods to California, ship A. Obrig....	\$2.70			
	Paid 2 whaleboats, \$215; nails, \$5.71.....	220.71			
	Paid Wm. Bayliss, provisions.....	460.00			
	Paid labor on boat, boards, and davits.....	3.21			
	Cedar boards, \$9.48; paint on davits, \$7 cents.....	10.35			
	2 davits, \$34; R. Allan, shooks, \$196.65.....	230.65			
	Duck, twine, etc., \$36.14; wharfrage goods, \$3.10.....	39.24			
	Paid J. and W. R. Wing & Co., clothing, etc.....	445.02			
	N. B. Cordage Co., cordage.....	278.22			
	Insuring goods to California, ship Bohemia.....	20.25			
	E. B. and F. Macey, whalecraft.....	27.26			
	Pemican meat, \$20.16; T. A. Chadwick, casks, \$46.37.....	66.53			
	Shelving davits, \$4; E. Pierce, guns, lances, \$25.....	29.00			
	Jas. Buddy, carting, \$6.25.....	6.25			
			1,839.39	10.14	96.24
June 1	To paid Cornell & Co., labor remaking over oil casks at California, stored there.....		200.64	8.00	8.04
Aug. 1*	To paid freight goods California, ship A. Obrig.....	40.00			
	Paid freight goods California, ship Bohemia.....	261.51			
			301.51	6.00	9.60
	To paid expenses at San Francisco in refittifg vessel, etc.:				
	Paid half expenses Captain Scullun home.....	108.50			
	Diaphragm pumps, \$9.80; hay fenders, \$3.....	12.80			
	Labor, Griffiths, \$3.50; charcoal, \$1.20.....	4.70			
	S. H. Frank, leather, \$5; C. Holmes, tug works, \$12.....	17.00			
	Blocks, \$5; labor, week, \$73.25.....	78.25			
	2 pairs opera glasses, \$23; coopering, \$64.66.....	87.66			
	Coopering, \$43.64; ironwork for topmast, \$35.....	76.64			
	W. E. Mayhew, medicines, \$21.90; labor, week, \$66.....	87.90			
	California Cap Company, filling bomb lances.....	50.00			
	Freight on lances, \$1.49; plank, 85 cents.....	2.34			
	Milton Andros, blank forms.....	5.00			
	Miller, Sloss, & Scott, hardware, etc.....	36.21			
	San Francisco Lumber Co., lumber.....	4.16			
	Murphy, Grant & Co., recruits.....	59.85			
	Labor, week, \$59.50; Phelps, labor, \$2.....	61.50			
	Goodal, Perkins & Co., water.....	43.38			
	Whittier, Fuller & Co., paints, etc.....	75.63			
	Cornell & Co., cooperage, \$20.77; fish bill, \$45.....	65.77			
	Wood, \$26; bread, \$152.26.....	178.26			
	Flour, \$231; labor, \$4.....	235.00			
			1,290.55	2.11	15.28
	Paid freight 1 cask clothing, per A. B., adjusted in payment new cask clothing.....	26.06			
	Paid watching, \$18; labor, \$17.50.....	35.50			
	Clabrough, Golcher & Co., powder.....	8.55			
	Labor, streaming vessel, \$5; telegram, 50 cents.....	5.50			
	Specie sent in ship.....	100.00			
	Labor, Margaritta, \$5; sailmaker, \$5.....	20.00			
	Paid, Steward, labor.....	5.00			
	Cook, labor, \$5; boating, \$1.....	6.00			
	Carting, \$1; watching, \$3.....	4.00			
	Captain Robinson, watching.....	12.00			
	Delano Bros., ship plumbers.....	66.92			
	Clark & Webster, ship carpenters.....	660.83			
	Boating, \$8; stationery, \$3.30.....	11.30			
	Board harbor coms., dockage.....	74.00			
	Tools, \$5.25; S. Ransom, watching, \$2.63.....	7.88			
	Board, captain and mate, waiting for ship.....	15.00			
	Christoffersen & Tway, blacksmithing.....	48.89			
	Custom-house clearance.....	10.20			
	J. C. Wilson & Co., coal.....	22.50			
	Liquors, \$16.12; meat, etc., \$13.40.....	29.52			
	Dillon & Co., rating chronometers, etc.....	33.75			
	L. Levy, oil suits and boots.....	46.08			
	J. J. Haverside, riggers' bill.....	42.37			
	Cottell, for labor on goods sent out.....	1.00			
	L. Foard, ship chandlery, etc.....	227.00			

*Interest from Nov. 20, 1892.

EXHIBIT V—Continued.

ANNEX 7—Continued.

Bark Cape Horn Pigeon and owners. Outward Account, 1893, inward account, and interest account to February 1, 1893, with J. and W. R. Wing—Continued.

DR.

1892. Aug. 1*	To paid expenses at San Francisco in refitting vessel, etc:				
	S. Foster & Co., groceries, etc	\$767.89			
	W. Deacon, repairs to machinery, etc	42.35			
	W. Deacon, labor on boiler and pump	810.29			
	Ship-owners' Tug Company, towage	50.00			
	Macpherson & Rucker, vegetables	103.17			
	Roth, Blum & Co., provisions, etc	235.00			
	Roth, Blum & Co., provisions	71.97			
	Dillon & Co., 1 chronometer	115.00			
	Cook, labor, \$5; labor, week, \$172	177.00			
	Tax, goods California, 54 cents; insurance, fire, goods at California, \$6.49	7.03			
	Carting goods, \$15.85; storage boats, \$1.50	17.35			
	Wright, Bame & Co., chandlery	295.56			
	J. and W. R. Wing & Co., clothing sent by rail	251.89			
	Carting, 75 cents; telephone service, 95 cents	1.70			
			\$4,466.05	\$2.11	\$52.84
	Paid office rent, \$4; carriage hire, \$18	22.00			
	Freight, lances, 85 cents; cartage goods, \$3	3.85			
	Storage goods, 1892, in warehouse	27.78			
	Paid E. Pierce lances and guns	110.00			
	Paid 1 pair opera glasses, first mate	16.00			
	Paid T. A. Chadwick, 1 cask for clothing	7.58			
	Paid ticket expenses, first mate to California	135.00			
	Paid sleeper, Boston to Chicago, first mate	5.50			
	Paid casks transferred from other vessels	303.96			
	Paid share, W. E. Wing, expenses to and from San Francisco, and while there on business connected with ship	153.68			
	Paid B. F. Wing, services at California	58.56			
	Paid sundry telegrams to and from California on account ship's business	51.74			
	Paid sundry items to balance cash account shortage of Wm. R. Wing, payments	19.66			
	Paid advance orders to J. Laffin, officers, and crew	2,000.00			
	Paid additional advances to officers, etc., by Wm. Wm. R. Wing	1,064.95			
			3,977.26		
1893. Feb. 1	To balance interest to date			214.66	
	To 2½ per cent commission on disbursements account \$12,076.65			301.92	
			12,593.23		228.59

* Interest from Nov. 20, 1892.

(E. & O. E.)
NEW BEDFORD, February 1, 1893.

ANNEX 8.

Captain and owners *Cape Horn Pigeon* in account with the undersigned:

DR.

	Roubles.
To bill cheap jack for expenses of officers and crew while on shore	388.88
To bill cheap jack for provisions	108.27
To cash to captain	520.00
To ditto	535.50
To telegrams	229.53

1,482.18

Roubles 1,482.18 at exchange 54 per cent = gold dollars 800.38.

VLADIVOSTOCK, September 30, 1892.

I certify that the above account is correct.

THOMAS SCULLUN,
Master *Cape Horn Pigeon*.

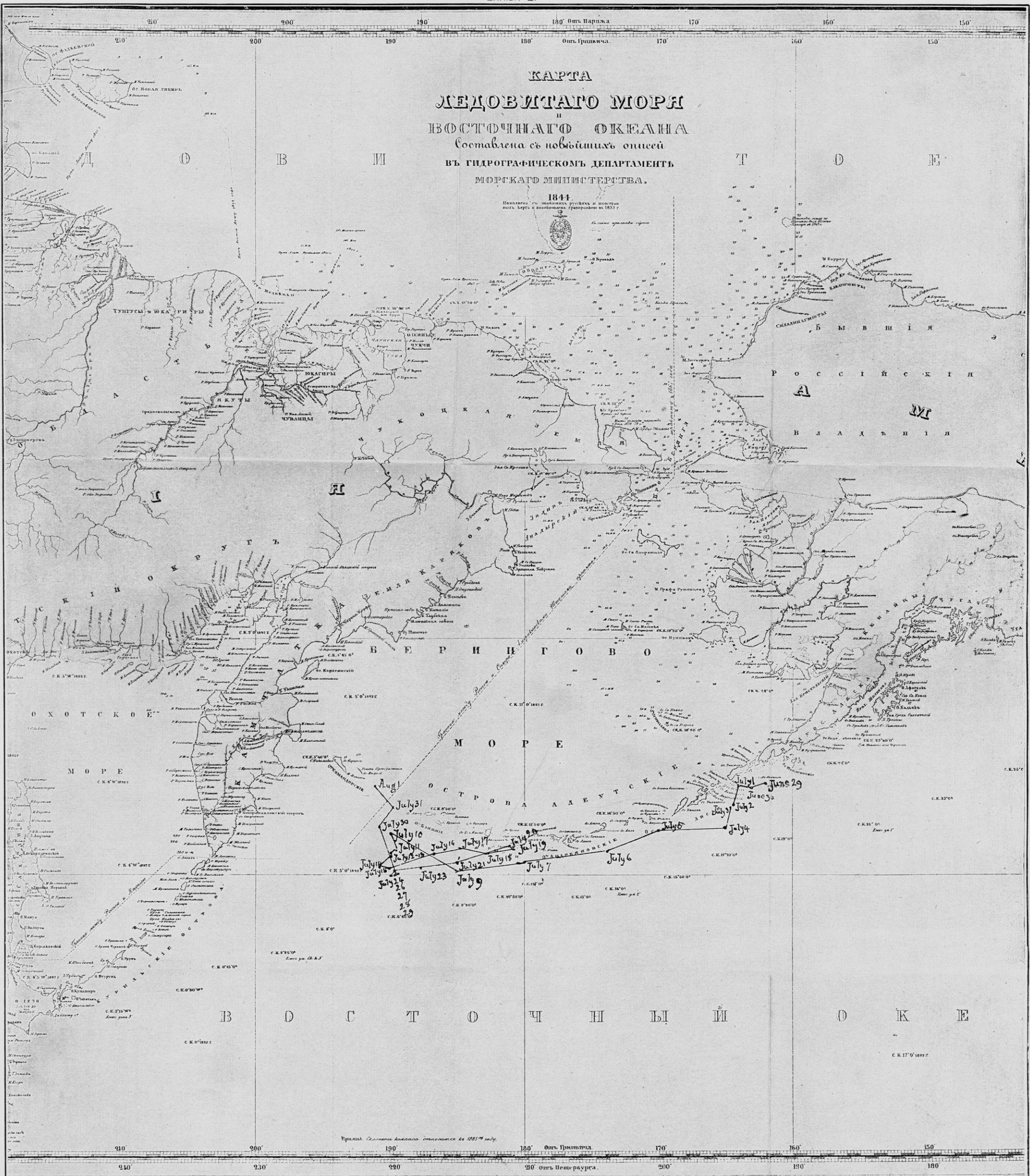


EXHIBIT V.

ANNEX 9.

[Copied from New Bedford Whalemens's Shipping List of December 7, 1875.]

"Important to whalers: Captain Spencer, of the British whaling bark *Faraway*, at Shantan Bay, September 1, was boarded by a Russian war steamer and served with the following notice:

"1. Foreign whaling vessels can not enter into any of the gulfs or bays, nor approach nearer than 3 miles to the coasts and islands belonging to us in the seas of Bering and Ochotsk, for the whale fishery in the gulfs, bays, and straits, and within a distance of three miles from the coasts and islands mentioned is granted exclusively to Russians.

"2. Foreigners can not land on our coasts or islands without the permission of the chief of the place, neither for supplies or wood nor to melt down the fat of whales. This permission should be obtained from the governor-general of the Primorskara Ablast at Vladivostock or Petropavlovski.

"3. Captains of foreign vessels are forbidden under any circumstances to leave their sailors in any uninhabited place within Russian territories as a punishment for breaches of discipline. For this purpose, and for repairs, for victualling, and for other necessities, Petropavlovski, the port of Kamschatka, is open to foreign vessels. During their anchorage in that port they are forbidden to carry on the whale fishery, and they should submit themselves to and carry out all the regulations and laws of that port."

Captain Spencer reports that the water was alive with whales, and he urgently solicited the privilege of remaining twenty days, but the commander of the war steamer replied that his orders were peremptory, and he had no discretion in the matter—that licenses to whale in the Ochotsk would be granted to foreign applicants for \$250 at Petropavlovski. Under the circumstances Captain Spencer had no alternative other than to recall his boats, which had lowered for a chase, and leave the ground.

Case: *Cape Horn Pigeon*.

Deposition of William R. Wing.

Exhibit 9.

(Signed) W. F. C.

EXHIBIT W.

Chart of the Sea of Okhotsk, showing the course of the *Cape Horn Pigeon* as plotted according to the entries in the log book.

EXHIBIT X.

Statement of Capt. Thomas Scullun, captain of the whaling bark *Cape Horn Pigeon*, of the port of New Bedford, in the State of Massachusetts, of the United States of America, and of the officers thereof, with reference to the illegal seizure of the above-named vessel by the Russian authorities.

We, Thomas Scullun, master; William H. Young, chief mate; Antonio Margurita, second mate; George H. Peckham, third mate; William H. Griffith, fourth mate; John H. Smith, cooper and carpenter, and Samuel Mackintyre, Peter Layton, and Thomas Oliver, boat steerers or harpooners, all of the American whaling bark *Cape Horn Pigeon*, of the port of New Bedford, Mass., do solemnly declare upon our honor that all the statements herein made are true and without exaggeration or malice.

We declare that we sailed from the port of San Francisco on December 7, 1891; bound on a whaling voyage, and that we cruised in the Yellow Sea and Japan Sea until the beginning of July, when we called at the Russian port of Vladivostock, in eastern Siberia, on our way to the Okotchk Sea, for the purpose of laying in a stock of fresh provisions and to give liberty to our crew.

Up to this time we had caught no whales, and while in port permission was asked of the Russian authorities by Captain Scullun to enter the bays along the Siberian coast to hunt for whales, but this permission was refused.

We sailed from the port of Vladivostock on the 6th of July for the Okotchk Sea, and on the 12th of August caught our first whale about 120 miles from Sagalien Island and about 40 miles off Yetarup Island. Our second whale was taken on the 31st of August, the position of the ship then being about 150 miles from Sagalien Island and about 80 miles off Yetarup Island.

We further declare that about 4 a. m. on the morning of the 10th of the present month, while cruising for whales in latitude $46^{\circ} 30'$ and longitude $146^{\circ} 35'$, and being then about 126 miles from Sagalien Island and Yetarup Island being about 84 miles distant, we were boarded by a sealing schooner called the *Marie*, which had been confiscated by the Russian authorities, and was then manned by Russian sailors and commanded by a Russian naval officer.

The said Russian naval officer came on board of our vessel and demanded the ship's papers from the captain, and informed him that he had seized the ship for whaling in the Okotchk Sea, and that this was contrary to the Russian law, as the Okotchk was a closed one. The captain protested against the seizure of the ship, and told the officer that he had never been informed that the Okotchk Sea was closed, nor had he ever been warned not to enter it. No attention was paid to the protest, however, and the said officer, with another officer and twelve armed Russian sailors, there and then took possession of the ship.

We furthermore declare that the said officer never asked to see the log book, and that while in conversation with the captain he expressed doubts as to his legal right to seize the ship, but said that he was acting under instructions from his admiral, and that if any mistake was made his Government would rectify it.

We further declare that the said officer then ordered all hands, excepting the captain and the steward and a boy, to proceed on board of the schooner *Marie* and to take her to Vladivostock.

We proceeded on board of the said schooner and brought her to Vladivostock and arrived on the 15th instant. On the 18th instant the *Cape Horn Pigeon* arrived in the harbor flying the Russian naval flag. At about 5 p. m. a steam launch came alongside of the *Marie* and ordered us to take our effects and get into her, and we were then landed on the beach without food or shelter, and had it not been for a Chinaman, who took us in and allowed us to sleep in a storehouse, we should have had to sleep in the streets.

We were told when we landed from the schooner that quarters and food would be supplied to us in the gaol, but although we have applied there several times we can learn nothing.

We furthermore declare that we believe the seizure of the ship to be unjust and illegal, as the vessel has not visited the bays, nor have we fished inside the limit of 3 marine leagues, as the log book can testify.

VLADIVOSTOCK, *September 21, 1892.*

THOMAS SCULLUN, *Master.*

WILLIAM H. YOUNG, *First Mate.*

ANTONIO MARGARIDA, *Second Mate.*

GEORGE H. PECKHAM, *Third Mate.*

WILLIAM H. GRIFFITH, *Fourth Mate.*

JOHN E. (his x mark) SMITH, *Carpenter and Cooper.*

SAMUEL MCINTYRE, *Boat Steerer.*

PETER (his x mark) LAYTON, *Boat Steerer.*

THOS. (his x mark) OLIVER, *Boat Steerer.*

JOE M. SAUZA, *Boat Steerer.*

Witnesses:

F. A. HERBER, *P. A. Surgeon, U. S. Navy.*

W. M. CROSE, *Ensign, U. S. Navy.*

EXHIBIT Y.

Declaration.

We, the undersigned, master, officers, and crew of the bark *Cape Horn Pigeon*, of New Bedford, Massachusetts, U. S. A., hereby declare and make statement as follows:

The said bark sailed from the port of San Francisco on the 7th of December, 1891, on a cruise for whales, the ship being solely and exclusively fitted for that pur-

pose, and all of us having agreed to go on shares in the oil and bone caught during the cruise, which was to terminate at said port this autumn.

Sailing across the Pacific Ocean, the ship cruised in the Yellow and Japan Sea, and called at the port of Vladivostock in the beginning of July for provisions and water. Leaving that port on the 6th July we proceeded to the Okotchk Sea, passing the Laparouse Straits on the 13th July, nearest land on Sagalien Island, Cape Crillon bearing N. by E. and Cape Siretoko bearing due N., the former being 20 miles and the latter cape 30 miles distant. Since that date until the date of our seizure we cruised between latitudes 47° 34' and 44° 47', and distant from land 30 to 100 miles, catching two whales.

On the 10th day of September at 4 a. m., the ship lying-to under small sails, and being then in latitude 46° 30' and longitude 146° 35', the nearest part of Sagalien Island being 126 miles and Yetarup Island being about 84 miles distant, a boat from a schooner came alongside, and a Russian naval officer came on board and demanded the ship's papers and the captain's presence on board of the schooner. The captain accompanied the officer accordingly, and soon returned on board of our ship with two Russian naval officers and armed Russian sailors, who then took possession of the ship and sent all of us on board of the schooner with the exception of the captain, steward, and a boy, ordering us to proceed to Vladivostock, which we did, arriving there on September 15th.

We were left on board of the schooner lying in the harbor until the arrival of the *Cape Horn Pigeon*, on the 18th instant, with our captain on board. On the evening of that date we were taken on shore and landed on the beach without food and shelter.

The above statement we declare to be true, and are ready at any time to confirm the same by oath before any authority or court.

We further declare the seizure of our ship to be illegal, believing it to be an act not sanctioned by international law, and, in our opinion, unwarranted and unjustified, and we therefore believe that we are entitled to compensation and indemnity, which we hereby declare that we shall demand from the Government concerned.

1st. For the loss of the ship and cargo.

2nd. For the loss of the season.

3rd. Compensation for bringing the Government schooner to Vladivostock; and

4th. For wages from the date of seizure until our arrival at San Francisco with a free passage to that port.

Done at Vladivostock this 23rd day of September, 1892, which witness our signatures affixed below.

THOMAS SCULLUN, *Master.*
 WILLIAM H. YOUNG, *Chief Mate.*
 ANTONIO MARGARIDA, *Second Mate.*
 GEORGE H. PECKHAM, *Third Mate.*
 WILLIAM H. GRIFFITH, *Fourth Mate.*
 JOHN E. (his x mark) SMITH, *Carpenter.*
 PETER JOHNSON, *Sailmaker.*
 SAMUEL MCINTYRE, *Boat steerer.*
 THOMAS OLIVER, *Boat steerer.*
 PETER (his x mark) LAYTON, *Boat steerer.*
 JOSE (his x mark) SUZA, *Boat steerer.*
 JAMES MCGREGOR, *Seaman.*
 WILLIAM MACDONALD, *Seaman.*
 FELIX DE CASTRO, *Seaman.*
 JOAQUIN PANGENAN, *Seaman.*
 JOSE GUINATA, *Seaman.*
 JOHN PETERS, *Seaman.*
 MARANA MANALOUA, *Seaman.*
 JOSE (his x mark) MENZALA, *Seaman.*
 JOHN (his x mark) SABLAN, *Seaman.*
 BEN (his x mark) CHICKENO, *Seaman.*
 BEN (his x mark) KINTENELIOR, *Seaman.*
 BONAVIN (his x mark) ASCENCION, *Seaman.*
 PEDRO (his x mark) DE BONHA, *Seaman.*
 PEDRO (his x mark) LA CROIDE, *Seaman.*
 FELICE (his x mark) DO CASTRO, *Seaman.*
 JOSEPH (his x mark) CARTER, *Seaman.*
 NICOLAS (his x mark) PORTER, *Cook.*
 MANUEL (his x mark) FELIX, *Seaman.*
 MANUEL (his x mark) JANUARY, *Seaman.*

EXHIBIT Z.

VLADIVOSTOCK, *September 27, 1892.*

SIR: Supplementary to my letter to you of the 20th instant, having heard that the seizure of my ship was made on suspicion of my having aided vessels engaged in sealing in the Okotchk Sea, I beg to state again that the Russian officer (Lieutenant Coule) who seized my ship stated distinctly at the time of seizure that I was taken for whaling in the Okotchk Sea, and my officers and crew declare that he specially stated and declared the same to them when they were transferred to the schooner *Marie* from my ship.

Furthermore, I declare that on the passage down to this port he again explicitly stated that he made the seizure on account of whaling in the Okotchk, and said that if I had not had two whales on board he would have released me and simply warned me to leave the sea.

Respectfully, yours,

THOMAS SCULLUN,
Master, "*Cape Horn Pigeon*."

Commander CHARLES V. GRIDLEY, U. S. N.,
Commanding U. S. S. "*Marion*," Vladivostock.

VLADIVOSTOCK, *September 20, 1892.*

I have the honor to address you with reference to the illegal seizure of the American bark *Cape Horn Pigeon*, of New Bedford, by the Russian authorities.

I sailed from San Francisco in command of the *Cape Horn Pigeon* on the 7th of December last on a whaling voyage, and cruised in the Yellow Sea and Japan Sea until the beginning of July, when I visited this port on my way north to the Okotchk Sea, and applied to the authorities here for permission to enter the bays along the coast of Siberia to hunt for whales; but this was refused.

I then proceeded on my way to the Okotchk Sea, and up to the time of my seizure had taken two whales. On the 10th of this month, while cruising for whales in latitude 46° 30' and longitude 146° 35', and being then 126 miles from Sagalien Island, and Yeterup Island being 84 miles distant, we were boarded by a boat from a sealing schooner called the *Marie*, which had been confiscated by the Russian authorities, and was then manned by Russian sailors and commanded by a Russian naval officer.

The said officer came on board and demanded my papers, and then informed me that he had seized the ship for whaling in the Okotchk Sea, and that the same was contrary to the Russian law, as this was a closed sea.

I protested against the seizure of my ship, and told the officer that I had never heard of the Okotchk being a closed sea. No attention was paid to my protest, however, and said officer and his armed crew then took possession of my ship, and ordered my officers and crew to go on board of the schooner and to take her to Vladivost ck, which they did, arriving here on the 15th instant.

Yesterday evening they were ordered on shore, and left without food or shelter. Some of the men's effects are still on board, but they are not allowed to go and get them.

I have been on board of the Russian man-o'-war and to the various officials on shore, but can get no satisfaction or information from any of them.

My log book is in the possession of the authorities, or I should submit it to you for examination.

I submit that the seizure of my vessel was illegal and unjustified and without precedent. I have visited the Okotchk Sea five consecutive seasons, but have never heard of any objection before, nor have I ever been warned not to go, although I have visited this port four different times.

I have always been careful not to infringe the Russian law in any respect, and have carefully abstained from entering the bays or whaling within the 5-mile limit.

As there are no United States consular authorities at this port, I must request your assistance and advice in this matter, and would ask you to address the proper authorities with a view to having some decision arrived at as speedily as possible.

I have this day cabled a report of my seizure to the United States minister at St. Petersburg, a copy of which I inclose.

I remain, sir, your obedient servant,

THOMAS SCULLUN, *Master.*

Commander CHARLES V. GRIDLEY, U. S. N.,
Commanding U. S. S. "*Marion*," Vladivostock.

I certify that the above report is true.

WILLIAM H. YOUNG.

КАРТА
 ЛЕДОВИТАГО МОРЯ
 ВОСТОЧНАГО ОКЕАНА,
 Составлена съ новейшихъ описаній
 въ ГИДРОГРАФИЧЕСКОМЪ ДЕПАРТАМЕНТѢ
 МОРСКАГО МИНИСТЕРСТВА.

1844
 Издана съ исправленіями и дополненіями
 на основаніи описаній, полученныхъ въ 1853 г.

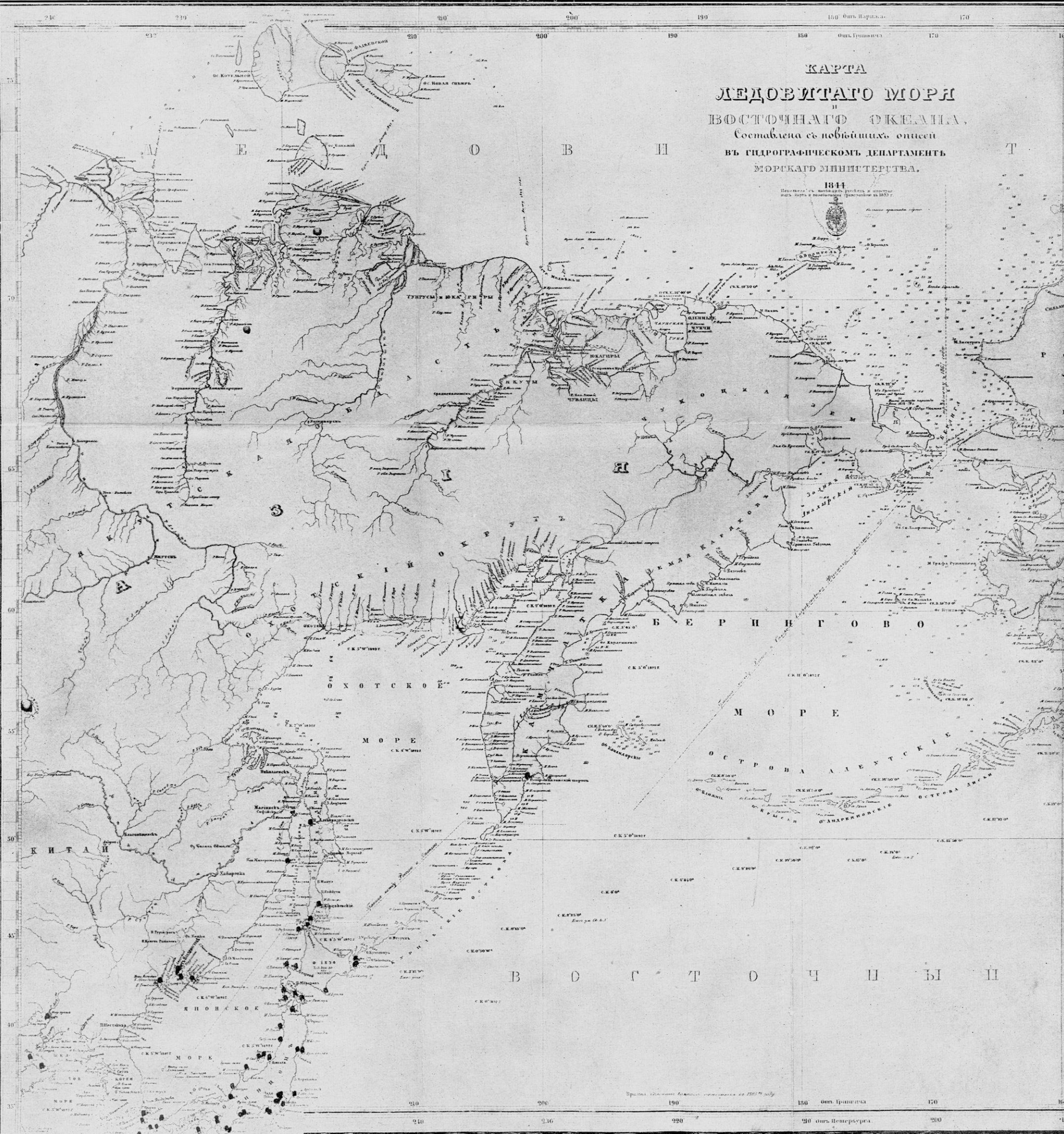


EXHIBIT AA.

Russian chart of the Sea of Okhotsk.

EXHIBIT B B.

[Translation.]

No. 2530.]

Note.

The undersigned, gerant of the Imperial ministry of foreign affairs, referring to the note which General Clay, envoy extraordinary and minister plenipotentiary of the United States of America, had the goodness to address to the chancellor of the Empire, dated March 4 (16) last, has the honor to inform him that he has just been put in possession of information which, according to the desire of the Federal Government, the Imperial cabinet had hastened to request from the ministry of marine, concerning the incident which occurred in the Sea of Okhotsk between an American whaler and a vessel of the Imperial navy.

Here is what appears from this information:

The schooner *Aleoute*, under the command of Lieutenant Etoline, had been sent on a mission from Nicolaievsk to Oudsk to revictual that country. He was obliged by the great quantity of floating ice to enter the Gulf of Tougoursk; there he encountered on July 14, at about 20 miles south of the Strait of Chantarsk, near the eastern coast, the American whaler *Java* occupied in melting the fat of a whale which it had just captured. Considering that, according to the laws in force, foreign whalers are interdicted from fishing in the Russian bays and gulfs at a distance less than 3 miles from shore, where the right of fishing is reserved exclusively to Russian subjects, Lieutenant Etoline requested the captain of the *Java* to leave the Gulf of Tougoursk, which he thereupon did.

The same day the *Aleoute* set sail for the Bay of Mangou, where she arrived the day following the American whaler *Caroline Foot*, the captain of which, accompanied by the captain of the *Java*, presented himself before Lieutenant Etoline and declared that he had no right to interdict his fishing for whales wherever he thought fit. Lieutenant Etoline replied that there were established rules in regard to the matter, and that if they insisted on infringing them he would find himself obliged to prevent them from so doing.

The captain of the schooner *Caroline Foot* having stated that he came into the Gulf of Tougoursk on account of injuries, Lieutenant Etoline offered him every assistance in his power, and on his request delivered him 7 poods of biscuits from the stores of the *Aleoute*, after which the two vessels went to sea.

The 19th of July, that is to say, four days after, the schooner *Aleoute* encountered a whale, at which the commander fired a practice shot. At this moment he perceived at about 16 miles distance an unknown sail and a little after three boats, of which the nearest was at least 3 miles away, in the direction in which the shot had been fired. That night all these disappeared.

This incident is entered in the log book of the *Aleoute* in the following terms:

"July 19, at 9 o'clock at night, at anchor in the Bay of Mongou; fired a trial shot at a whale."

From these data General Clay may easily convince himself that the incident in question must have been greatly exaggerated and perverted to make it to be represented as a grievance on the part of the American whaler in regard to the commander of the *Aleoute*.

Following the statements exchanged between them of the pretention of right on the part of the captain of the *Java* to fish wherever he found it convenient and of the necessity under which Lieutenant Etoline found himself to remind him of the existence of laws governing the right of fishing in the territorial waters of a foreign State, it is possible that the commander of the *Java* may have in fact taken as a menace directed against him the practice shot fired from the *Aleoute*.

But it is incontestable that the commander of the *Aleoute* was within his rights when he reminded the American captains of the laws in force and of the obligation he was under to cause them to be respected. He certainly did not pass the limits of his right in firing, four days after, a cannon shot at a whale floating in Russian waters. He had not the least intention of giving to the American whalers useless

notice, since they went away without difficulty, and the distance which separated the *Aleoute* from the vessel and boats at that moment in sight excluded all such idea.

Lieutenant Etoline proceeded in regard to them conformably to the good relations between the two countries, since he offered his assistance in repairing their injuries and provided them with supplies. Finally the commander of the *Aleoute* did not believe it his duty to inform the Russian authorities of this incident, since it seemed to him insignificant, and since for his part his conscience was clear that he had not passed the limits of his rights nor failed in his duties.

The undersigned flatters himself with the hope that the Federal Government, being informed of these details, will consider the incident closed.

Meanwhile he seizes the occasion to renew to General Clay the assurance of his most distinguished considerations.

WESTMANN.

St. PETERSBURG, July 31, 1868.

EXHIBIT C C.

[Translation.]

Report of Vice-Admiral Wevel von Kruger, director of the hydrographic department, for the year 1875, page 91, lines 9 to 21 inclusive:

Short hydrographic apercu of the cruise of the schooner *Vostok* in the Sea of Okhotsk in 1875. The screw propeller schooner *Vostok* left June 4, 1875, from Vladivostok for the purpose of cruising along the shores of the Sea of Okhotsk to notify foreign vessels of our regulations concerning that fishery. The cruise of this schooner was to guarantee the fisheries of our whaling ships from the vast gulfs of the Sea of Okhotsk with the engagement not to fish within 3 miles distance from our shores. At the same time with the schooner *Vostok* the clipper *Haidamax* left Vladivostok on the same mission along the eastern coast of Kamtchatka and the Bering Sea.

To all to whom these presents shall come greeting:

I certify that the document hereto annexed is a true copy of a translation in French prepared by the sworn translator at the district court of St. Petersburg.

In testimony whereof I, Herbert H. D. Peirce, first secretary of the embassy of the United States, have hereunto subscribed my name and caused the seal of the embassy of the United States to be affixed.

Done at St. Petersburg this 23d day of November, A. D. 1900.

[EMBASSY SEAL.]

HERBERT H. D. PEIRCE.

EXHIBIT D D.

[Senate Document No. 59, Fifty-fifth Congress, second session.]

BERING SEA AWARDS.

Message from the President of the United States transmitting a report from the Secretary of State in regard to the award of the commissioners appointed pursuant to the stipulations of the convention of February 8, 1896, between the United States and Great Britain, providing for the settlement of the claims presented by the latter against the former in virtue of the convention of February 29, 1892.

JANUARY 14, 1898.—Read, referred to the Committee on Appropriations, and ordered to be printed.

To the Congress of the United States:

I transmit herewith a report from the Secretary of State in regard to the award of the commissioners appointed pursuant to the stipulations of the convention of February 8, 1896, between the United States and Great Britain, providing for the settle-

ment of the claims presented by the latter against the former in virtue of the convention of February 29, 1892.

The report of the Secretary of State presents a clear epitome of the award, and renders unnecessary any extended observations on my part, further than to say that I cordially coincide with his recommendation and that our treaty obligations demand prompt and favorable action by Congress, which I urgently hope may be taken, to the end that these long-pending questions may be finally and satisfactorily terminated.

The total amount necessary to satisfy the award of the commissioners is \$473,151.26, which I recommend to be appropriated.

WILLIAM MCKINLEY.

EXECUTIVE MANSION,
Washington, January 14, 1898.

The PRESIDENT: A convention between the United States and Great Britain was concluded in this city on February 8, 1896, providing for the settlement of claims presented by Great Britain against the United States in virtue of the convention of February 29, 1892. I transmit herewith, for greater convenience, a copy of the convention of February 8, 1896, Article I of which reads as follows:

"The high contracting parties agree that all claims on account of injuries sustained by persons in whose behalf Great Britain is entitled to claim compensation from the United States, and arising by virtue of the treaty aforesaid, the award and the findings of the said tribunal of arbitration, as also the additional claims specified in the fifth paragraph of the preamble hereto, shall be referred to two commissioners, one of whom shall be appointed by the President of the United States and the other by Her Britannic Majesty, and each of whom shall be learned in the law. Appended to this convention is a list of the claims intended to be referred."

In virtue of this provision the President appointed the Hon. William L. Putnam, of Maine, the commissioner of the United States.

After determining where the meetings of the commission shall take place (see Article II), the convention (Article III) provides as follows:

"The said commissioners shall determine the liability of the United States, if any, in respect of each claim, and assess the amount of compensation, if any, to be paid on account thereof—so far as they shall be able to agree thereon—and their decision shall be accepted by the two Governments as final.

"They shall be authorized to hear and examine, on oath or affirmation, which each of said commissioners is hereby empowered to administer or receive, every question of fact not found by the tribunal of arbitration, and to receive all suitable authentic testimony concerning the same; and the Government of the United States shall have the right to raise the question of its liability before the commissioners in any case where it shall be proved that the vessel was wholly or in part the actual property of a citizen of the United States.

"The said commission, when sitting at San Francisco or Victoria, shall have and exercise all such powers for the procurement or enforcement of testimony as may hereafter be provided by appropriate legislation."

It also provides in Article V that in the cases, if any, in which the commissioners shall fail to agree, they shall transmit to each Government a joint report stating in detail the points on which they differ and the grounds on which their opinions have been formed; and any such difference shall be referred for final adjustment to an umpire, "to be appointed by the two Governments jointly, or, in case of disagreement, to be nominated by the President of the Swiss Confederation."

With this brief explanatory statement, I now transmit a copy of the report or award of the commissioners, Mr. Putnam, and Mr. George E. King, the commissioner appointed by Her Britannic Majesty. It is dated December 17, 1897.

I have made an extract from the award, which will show at a glance the name of the vessel, the principal, interest, and total sum awarded, and the same thing with reference to the personal claims. It reads as follows:

	Principal.	Interest.	Total.
Name of vessel:			
Carolina.....	\$13,341.72	\$9,020.71	\$22,362.43
Thornton.....	13,521.10	9,142.53	22,663.63
Onward.....	9,376.00	6,339.74	15,715.74
Favourite.....	3,202.00	2,165.08	5,367.08
W. P. Sayward.....	12,537.50	7,725.22	20,262.72
Anna Beck.....	21,692.50	13,366.19	35,058.69
Alfred Adams.....	10,124.00	6,238.07	16,362.07
Grace.....	26,213.50	16,125.67	42,339.17
Dolphin.....	31,484.00	19,399.38	50,883.38
Ada.....	20,902.69	12,880.01	33,782.70
Triumph.....	1,750.00	1,078.29	2,828.29
Juanita.....	11,493.00	5,702.44	17,195.44
Pathfinder.....	13,796.00	6,845.12	20,641.12
Triumph.....	15,450.00	7,665.77	23,115.77
Black Diamond.....	15,173.00	7,528.32	22,701.32
Lily.....	11,739.00	5,832.48	17,571.48
Ariel.....	4,950.00	2,456.03	7,406.03
Kate.....	3,050.00	1,513.31	4,563.31
Minnie.....	8,460.00	4,197.57	12,657.57
Pathfinder.....	800.00	370.67	1,170.67
Winnifred.....	3,283.05	1,061.52	4,344.57
Henrietta.....	9,599.85	2,421.19	12,021.04
Oscar and Hattie.....	2,250.00	715.05	2,965.05
	264,188.91	149,790.36	413,979.27
Personal claims:			
Daniel Munroe.....	3,000.00	2,028.50	5,028.50
John Margotich.....	2,500.00	1,690.42	4,190.42
Hans Gutformsen.....	3,000.00	2,028.50	5,028.50
Harry Norman.....	2,500.00	1,690.42	4,190.42
James Ogilvie.....	3,000.00	2,028.50	5,028.50
James Blake.....	2,500.00	1,690.42	4,190.42
James D. Warren.....	2,000.00	1,232.33	3,232.33
John Reilly.....	1,500.00	924.25	2,424.25
George P. Fesey.....	2,000.00	1,232.33	3,232.33
A. B. Laing.....	1,500.00	924.25	2,424.25
Louis Olsen.....	2,000.00	1,232.33	3,232.33
Michael Keefe.....	1,500.00	924.25	2,424.25
W. Petit.....	2,000.00	1,232.33	3,232.33
C. A. Lundberg.....	1,000.00	616.17	1,616.17
Total.....	294,188.91	169,265.36	463,454.27

It will be perceived that the commissioners say in their report, under the head of personal claims:

"Her Majesty also presented for our consideration the following claims, that is to say: In behalf of the *Black Diamond*, warned by the collector at Unalaska, on July 1, 1886, and also on behalf of James Gaudin, master of the *Ada*, as to each of which we determine and award that we have no jurisdiction, and we dismiss the same."

Subsequently the commissioners recommend in regard to these two claims as follows:

"Respecting the claims mentioned in the award of the commissioners as having been presented on behalf of Great Britain and dismissed as not being within our jurisdiction, namely, the claims of the *Black Diamond*, arising in the year 1886, and the personal claim of James Gaudin, the commissioners, in pursuance of the communication to them from the Secretary of State for the United States and Her Britannic Majesty's ambassador at Washington, dated at Washington, January 26, 1897, and appearing in the protocol of February 2, 1897, beg to report as follows:

"We find that damages were sustained by the owners, master, officers, and crew of the *Black Diamond* in connection with the notice given by the collector of customs at Unalaska on July 1, 1886, to the amount of \$5,000, with interest at the rate of 6 per cent per annum from September 10, A. D. 1887.

"And as to the personal claims of James Gaudin, master of the *Ada* in 1887, we report that the amount of damages sustained by him was \$1,000, with interest at the rate of 6 per cent per annum from September 10, 1887."

A copy of the communication of the then Secretary of State and the British ambassador, referred to by the commissioners, is appended hereto.

I am of opinion that the amount of damages assessed by the commissioners respecting the last-named claims should be included in the sum appropriated by Congress to satisfy the award under the convention of February 8, 1896. This Government would then be enabled to reach an agreement with that of Great Britain for the final discharge of the claims in question.

The amount to satisfy the claims of the *Black Diamond* is as follows: \$8,080.83 being the principal, \$5,000 and interest, \$3,080.83, at 6 per cent per annum from September 10, 1887, to December 17, 1897. The amount to liquidate the personal claim of James Gaudin, master of the *Ada*, is as follows: \$1,616.16 being principal, \$1,000, and interest, \$616.16, at the rate of 6 per cent per annum from September 10, 1887, to December 17, 1897.

Including these claims, the total sum necessary to be appropriated to satisfy the award would be \$473,151.26.

Should you coincide with my views, I respectfully recommend that this report and a copy of the award of the commissioners be promptly laid before Congress, with an urgent request for early and favorable consideration.

Upon this subject Article VIII of the convention of 1896 says:

“The amount awarded to Great Britain under this convention on account of any claimant shall be paid by the Government of the United States to the Government of Her Britannic Majesty within six months after the amount thereof shall have been finally ascertained.”

Respectfully submitted.

JOHN SHERMAN.

Convention between the United States and Great Britain for the settlement of claims presented by Great Britain against the United States in virtue of the convention of February 29, 1892.

[Concluded February 8, 1896; ratification advised by the Senate, with amendments, April 15, 1896; ratified by the President, April 23, 1896; ratified by Her Britannic Majesty, May 14, 1896; ratifications exchanged, June 3, 1896; proclaimed, June 11, 1896.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a convention between the Governments of the United States of America and Great Britain providing for the settlement of claims presented by Great Britain against the United States in virtue of the convention of February 29, 1892, between the same high contracting parties was concluded and signed by their respective plenipotentiaries at the city of Washington on the 8th day of February, 1896, which convention, being in the English language, and as amended by the Senate of the United States, is word for word as follows:

Whereas by a treaty between the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, signed at Washington on February 29, 1892, the questions which had arisen between their respective Governments concerning the jurisdictional rights of the United States in the waters of Bering Sea, and concerning also the preservation of the fur seal in, or habitually resorting to, the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur seal in, or habitually resorting to, the said waters, were submitted to a tribunal of arbitration as therein constituted;

And whereas the high contracting parties, having found themselves unable to agree upon a reference which should include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented and urged by it, did, by Article VIII of the said treaty, agree that either party might submit to the arbitrators any questions of fact involved in said claims, and ask for a finding thereon, the question of the liability of either Government on the facts found to be the subject of further negotiation;

And whereas the agent of Great Britain did, in accordance with the provisions of said Article VIII, submit to the tribunal of arbitration certain findings of fact which were agreed to as proved by the agent of the United States, and the arbitrators did unanimously find the facts so set forth to be true, as appears by the award of the tribunal rendered on the 15th day of August, 1893;

And whereas in view of the said findings of fact and of the decision of the tribunal of arbitration concerning the jurisdictional rights of the United States in Bering Sea, and the right of protection of property of the United States in the fur seals frequenting the islands of the United States in Bering Sea, the Government of the United States is desirous that in so far as its liability is not already fixed and determined by

the findings of fact and the decision of said tribunal of arbitration the question of such liability should be definitely and fully settled and determined, and compensation made, for any injuries for which, in the contemplation of the treaty aforesaid, and the award and findings of the tribunal of arbitration compensation may be due to Great Britain from the United States;

And whereas it is claimed by Great Britain, though not admitted by the United States, that prior to the said award certain other claims against the United States accrued in favor of Great Britain on account of seizures of or interference with the following-named British sealing vessels, to wit: The *Wanderer*, the *Winifred*, the *Henrietta*, and the *Oscar and Hattie*, and it is for the mutual interest and convenience of both the high contracting parties that the liability of the United States, if any, and the amount of compensation to be paid, if any, in respect of such claims and each of them should also be determined under the provisions of this convention—all claims by Great Britain under Article V of the *modus vivendi* of April 18, 1892, for the abstention from fishing of British sealers during the pendency of said arbitration having been definitely waived before the tribunal of arbitration:

The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, to the end of concluding a convention for that purpose, have appointed as their respective plenipotentiaries:

The President of the United States, the Honorable Richard Olney, Secretary of State, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honorable Sir Julian Pauncefote, G. C. B., G. C. M. G., Her Majesty's ambassador extraordinary and plenipotentiary to the United States;

Who, after having communicated to each other their respective full powers, which were found in due and proper form, have agreed to and concluded the following articles:

ARTICLE I.

The high contracting parties agree that all claims on account of injuries sustained by persons in whose behalf Great Britain is entitled to claim compensation from the United States and arising by virtue of the treaty aforesaid, the award and the findings of the said tribunal of arbitration, as also the additional claims specified in the fifth paragraph of the preamble hereto, shall be referred to two commissioners, one of whom shall be appointed by the President of the United States and the other by Her Britannic Majesty, and each of whom shall be learned in the law. Appended to this convention is a list of the claims intended to be referred.

ARTICLE II.

The two commissioners shall meet at Victoria, in the Province of British Columbia, Canada, as soon as practicable after the exchange of the ratifications of this convention, and, after taking an oath that they will fairly and impartially investigate the claims referred to them and render a just decision thereon, they shall proceed jointly to the discharge of their duties.

The commission shall also sit at San Francisco, California, as well as Victoria, provided either commissioner shall so request if he shall be of opinion that the interests of justice shall so require, for reasons to be recorded on the minutes.

ARTICLE III.

The said commissioners shall determine the liability of the United States, if any, in respect of each claim and assess the amount of compensation, if any, to be paid on account thereof—so far as they shall be able to agree thereon—and their decision shall be accepted by the two Governments as final.

They shall be authorized to hear and examine, on oath or affirmation, which each of said commissioners is hereby empowered to administer or receive, every question of fact not found by the tribunal of arbitration, and to receive all suitable authentic testimony concerning the same; and the Government of the United States shall have the right to raise the questions of its liability before the commissioners in any case where it shall be proved that the vessel was wholly or in part the actual property of a citizen of the United States.

The said commission, when sitting at San Francisco or Victoria, shall have and exercise all such powers for the procurement or enforcement of testimony as may hereafter be provided by appropriate legislation.

ARTICLE IV.

The commissioners may appoint a secretary and a clerk, or clerks, to assist them in the transaction of the business of the commission.

ARTICLE V.

In the cases, if any, in which the commissioners shall fail to agree, they shall transmit to each Government a joint report stating in detail the points on which they differ and the grounds on which their opinions have been formed; and any such difference shall be referred for final adjustment to an umpire to be appointed by the two Governments jointly, or, in case of disagreement, to be nominated by the President of the Swiss Confederation at the request of the two Governments.

ARTICLE VI.

In case of the death, or incapacity to serve, from sickness or any other cause, of either of the two commissioners, or of the umpire, if any, his place shall be filled in the manner herein provided for the original appointment.

ARTICLE VII.

Each Government shall provide for the remuneration of the commissioner appointed by it.

The remuneration of the umpire, if one should be appointed, and all contingent and incidental expenses of the commission, or of the umpire, shall be defrayed by the two Governments in equal moieties.

ARTICLE VIII.

The amount awarded to Great Britain under this convention on account of any claimant shall be paid by the Government of the United States to the Government of Her Britannic Majesty within six months after the amount thereof shall have been finally ascertained.

ARTICLE IX.

The present convention shall be duly ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty, and the ratifications shall be exchanged either at Washington or at London within six months from the date hereof, or earlier if possible.

In faith whereof we, the respective plenipotentiaries, have signed this convention and have hereunto affixed our seals.

Done in duplicate at Washington, the 8th day of February, 1896.

RICHARD OLNEY. [SEAL.]
 JULIAN PAUNCFOTE. [SEAL.]

APPENDIX OF CLAIMS.

Claims submitted to the tribunal of arbitration at Paris.

Name of vessel.	Date of seizure.	Approximate distance from land when seized.	United States vessel making seizure.
Carolina.....	Aug. 1, 1886	75 miles	Corwin.
Thornton.....	.....do.....	70 miles	Do.
Onward.....	Aug. 2, 1886	115 miles	Do.
Favorite.....	.....do.....	Warned by Corwin in about same position as Onward.	
Anna Beck.....	July 2, 1887	66 miles	Rush.
W. P. Sayward.....	July 9, 1887	59 miles	Do.
Dolphin.....	July 12, 1887	40 miles	Do.
Grace.....	July 17, 1887	96 miles	Do.
Alfred Adams.....	Aug. 10, 1887	62 miles	Do.
Ada.....	Aug. 25, 1887	15 miles	Bear.
Triumph.....	Aug. 4, 1887	Warned by Rush not to enter Bering Sea	
Juanita.....	July 31, 1889	66 miles	Rush.
Pathfinder.....	July 29, 1889	50 miles	Do.
Triumph.....	July 11, 1889	Ordered out of Bering Sea by Rush. Query as to position when warned.	
Black Diamond.....	.....do.....	35 miles	Do.
Lily.....	Aug. 6, 1889	66 miles	Do.
Ariel.....	July 30, 1889	Ordered out of Bering Sea by Rush	
Kate.....	Aug. 13, 1889	.....do.....	Do.
Minnie.....	July 15, 1889	65 miles	Do.
Pathfinder.....	Mar. 27, 1890	Seized in Neah Bay	Corwin.

Personal claims.....	1886
Personal claims.....	1887
Costs in "Sayward" case.	
Additional claims:	
Wanderer.....	1887-89
Winifred.....	1891
Henrietta.....	1892
Oscar and Hattie.....	1892

And whereas the said convention has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the city of London on the 3d day of June, 1896;

Now, therefore, be it known that I, Grover Cleveland, President of the United States of America, have caused the said convention to be made public, as amended, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this 11th day of June, in the year of our Lord 1896, and of the Independence of the United States the one hundred and twentieth.

[SEAL.]

GROVER CLEVELAND.

By the President:

RICHARD OLNEY, *Secretary of State.*

Mr. Olney and Sir Julian Pauncefote to Bering Sea Claims Commission.

WASHINGTON, *January 26, 1897.*

GENTLEMEN: In view of the fact that the "added" claims of the *Black Diamond* and of Capt. James Gaudin, master of the *Ada*, now pending before you, subject to a motion to dismiss on behalf of the counsel for the United States, were clearly intended to be submitted to and decided by the commissioners; in view of the further fact that if the motion of the counsel for the United States prevails the claims in question must be settled by diplomatic negotiations or by another commission or arbitral tribunal, so that it is for the interests of both Governments that the merits of said claims should now be investigated, and as far as practicable determined, the undersigned, on behalf of their respective Governments, respectfully request that the commission, leaving the pending motion undecided, will see fit to investigate and pass upon these claims as if the same were legitimately before them, with the exception, of course, that their conclusions are not to be regarded as binding awards, but that the facts involved are to be reported to the two Governments for their information and for such action as they may deem appropriate.

Fully appreciating that the request herein preferred can not be made as a matter of right, but is to be regarded solely as a suggestion for such voluntary action by the commissioners as in view of the circumstances the interests of all parties seem to require,

We have the honor to remain, gentlemen, your most obedient servants,

RICHARD OLNEY,
Secretary of State of the United States.
JULIAN PAUNCEFOTE,
Her Britannic Majesty's Ambassador.

Bering Sea Claims Award.

Whereas by a convention between the United States of America and Great Britain, signed at Washington on February 8, 1896, it was, among other matters, agreed and concluded that "all claims on account of injuries sustained by persons in whose behalf Great Britain is entitled to claim compensation from the United States, and arising by virtue of" a certain treaty between the United States and Great Britain, signed at Washington on February 29, 1892, the award and the findings of the tribunal of arbitration constituted thereunder, as also certain additional claims specified in the preamble of the convention first above mentioned, should be referred to two commissioners, one of whom should be appointed by the President of the United States and the other by Her Britannic Majesty, and each of whom should be learned in the law, and it was further agreed and concluded in the convention first herein named that said commissioners should determine the liability of the United States, if any, in respect of each claim, and assess the amount of compensation, if any, to be paid on account thereof;

And whereas the President of the United States of America appointed the Hon. William L. Putnam, a judge of the circuit court of the United States for the first circuit, one of said commissioners, and Her Britannic Majesty appointed the Hon.

George Edwin King, a justice of the supreme court of Canada, the other of said commissioners; and we, the said commissioners, having met at Victoria, in the Province of British Columbia, Canada, on the 23d day of November, A. D. 1896, and our respective powers having been found to be duly authenticated, and each of us having duly taken the oath prescribed by the convention, proceeded jointly to the discharge of our duties thereunder; and having heard and examined on oath or affirmation every question of fact not found by the tribunal of arbitration under the treaty between the United States of America and Her Britannic Majesty, signed at Washington on the 29th of February, 1892, and having received all suitable authentic testimony concerning the same, and being attended by counsel on behalf of the United States and by counsel on behalf of Great Britain, who were duly heard before us, and having impartially and carefully examined the question submitted to us.

Now, therefore, we, the said commissioners, do hereby determine, adjudge, and award as follows:

The rate of interest awarded by us is 6 per cent per annum, being the statutory rate at Victoria, British Columbia, during the period covered, but being less than the current rate thereat.

As to the claim in respect of the vessel *Carolina*, it is determined that the United States are liable to Great Britain, in respect thereof, and we assess the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows: \$13,341.72, with interest from September 10, 1886, until this day, amounting to \$9,020.71, and making a total of principal and interest of \$22,362.43.

As to the claim in respect of the vessel *Thornton*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel as follows, that is to say: \$13,521.10, with interest from September 10, 1886, until this day, amounting to \$9,142.53, and making a total of principal and interest of \$22,663.63.

As to the claim in respect of the vessel *Onward*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel (exclusive of the net interest of Alexander McLean, who, at the time of the convention, was a citizen of the United States and domiciled therein, and has so remained), as follows, that is to say: \$9,376, with interest from September 10, 1886, until this day, amounting to \$6,339.74, and making a total of principal and interest of the sum of \$15,715.74.

As to the claim in respect of the vessel *Favourite*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel (exclusive of the net interest of said Alexander McLean), as follows, that is to say: \$3,202, with interest from September 10, 1886, until this day, amounting to \$2,165.08, and making a total of principal and interest of the sum of \$5,367.08.

As to the claim in respect of the vessel *W. P. Sayward*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$12,537.50, with interest from September 10, 1887, until this day, amounting to \$7,725.22, and making a total, principal and interest, of the sum of \$20,262.72.

As to the claim in respect of the vessel *Anna Beck*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$21,692.50, with interest from September 10, 1887, until this day, amounting to \$13,366.19, making a total of principal and interest of the sum of \$35,058.69.

As to the claim in respect of the vessel *Alfred Adams*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, exclusive of the net interest of Alexander Frank, who, at the time of the convention, was a citizen of the United States and domiciled therein, and has so remained, as follows, that is to say: \$10,124, with interest from September 10, 1887, until this day,

amounting to \$6,238.07, and making a total of principal and interest of the sum of \$16,362.07.

As to the claim in respect of the vessel *Grace*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$26,213.50, with interest from September 10, 1887, until this day, amounting to \$16,125.67, and making a total of principal and interest of \$42,339.17.

As to the claim in respect of the vessel *Dolphin*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$31,484, with interest from September 10, 1887, until this day, amounting to the sum of \$19,399.38, and making a total of principal and interest of the sum of \$50,883.38.

As to the claim in respect of the vessel *Ada*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$20,902.69, with interest from September 10, 1887, until this day, amounting to \$12,880.01, and making a total of principal and interest of the sum of \$33,782.70.

As to the claim in respect of the vessel *Triumph*, warned or seized August 4, 1887, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$1,750, with interest from September 10, 1887, until this day, amounting to \$1,078.29, and making a total of principal and interest of the sum of \$2,828.29.

As to the claim in respect of the vessel *Juanita*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$11,493, with interest from September 10, 1889, until this day, amounting to \$5,702.44, making a total of principal and interest of the sum of \$17,195.44.

As to the claim in respect of the vessel *Pathfinder*, seized or warned July 29, 1889, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$13,796, with interest from September 10, 1889, until this day, amounting to \$6,845.12, and making a total of principal and interest of the sum of \$20,641.12.

As to the claim in respect of the vessel *Triumph*, seized or warned July 11, 1889, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$15,450, with interest from September 10, 1889, until this day, amounting to \$7,665.77, and making a total of principal and interest of the sum of \$23,115.77.

As to the claim in respect of the vessel *Black Diamond*, seized or warned July 11, 1889, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$15,173, with interest from September 10, 1889, until this day, amounting to \$7,528.32, and making a total of principal and interest of the sum of \$22,701.32.

As to the claim in respect of the vessel *Lily*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$11,739, with interest from September 10, 1889, until this day, amounting to \$5,832.48, and making a total of principal and interest of the sum of \$17,571.48.

As to the claim in respect of the vessel *Ariel*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$4,950, with interest from September 10, 1889, until this day, amounting to \$2,456.03, and making a total of principal and interest of the sum of \$7,406.03.

As to the claim in respect of the vessel *Kate*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$3,050, with interest from September 10, 1889, until this day, amounting to \$1,513.31, and making a total of principal and interest of the sum of \$4,563.31.

As to the claim in respect of the vessel *Minnie*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$8,460, with interest from September 10, 1889, until this day, amounting to \$4,197.57, and making a total of principal and interest of the sum of \$12,657.57.

As to the claim in respect of the vessel *Pathfinder*, seized March 27, 1890, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$800, with interest from March 27, 1890, until this day, amounting to \$370.67, and making a total of principal and interest of the sum of \$1,170.67.

As to the claim in respect of the vessel *Wanderer*, it is adjudged and determined that there is no liability on the part of the United States of America in respect of such claim.

As to the claim in respect of the vessel *Winnifred*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners thereof, as follows, that is to say: \$3,283.05, with interest from July 27, 1892, until this day, amounting to \$1,061.52, and making a total of principal and interest of the sum of \$4,344.57.

As to the claim in respect of the vessel *Henrietta*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: \$9,599.85, with interest on \$2,437 from September 2, 1892, until this day, and upon the balance from February 17, 1894, until this day, making the entire interest \$2,421.19, making a total of principal and interest of the sum of \$12,021.04.

As to the claim in respect of the vessel *Oscar and Hattie*, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners thereof, as follows, that is to say: \$2,250, with interest from August 30, 1892, until this day, amounting to \$715.05, and making a total of principal and interest of the sum of \$2,965.05.

As to the personal claims we adjudge and determine that the United States of America are liable on account of the following persons, and assess and award the amount of compensation to be paid to Great Britain on account of each of them, as follows:

Daniel Monroe, master of the *Onward*, the principal sum of \$3,000, with interest from September 10, 1886, to this day, making a total amount of \$5,028.50.

John Margotich, mate of the *Onward*, the principal sum of \$2,500, with interest from September 10, 1886, to this day, making a total amount of \$4,190.42.

Hans Guttormsen, master of the *Thornton*, the principal sum of \$3,000, with interest from September 10, 1886, to this day, making a total amount of \$5,028.50.

Harry Norman, mate of the *Thornton*, the principal sum of \$2,500, with interest from September 10, 1886, to this day, making a total amount of \$4,190.42.

James Ogilvie, master of the *Carolina*, the principal sum of \$3,000, with interest from September 10, 1886, to this day, making a total amount of \$5,028.50.

James Blake, mate of the *Carolina*, the principal sum of \$2,500, with interest from September 10, 1886, to this day, making a total amount of \$4,190.42.

James D. Warren, master of the *Dolphin*, the principal sum of \$2,000, with interest from September 10, 1887, to this day, making a total amount of \$3,232.33.

John Reilly, mate of the *Dolphin*, the principal sum of \$1,500, with interest from September 10, 1887, to this day, making a total amount of \$2,424.25.

George P. Fesey, master of the *W. P. Sayward*, the principal sum of \$2,000, with interest from September 10, 1887, to this day, making a total amount of \$3,232.33.

A. B. Laing, mate of the *W. P. Sayward*, the principal sum of \$1,500, with interest from September 10, 1887, to this day, making a total amount of \$2,424.25.

Louis Olsen, master of the *Anna Beck*, the principal sum of \$2,000, with interest from September 10, 1887, making a total amount of \$3,232.33.

Michael Keefe, mate of the *Anna Beck*, the principal sum of \$1,500, with interest from September 10, 1887, to this day, making a total amount of \$2,424.25.

W. Petit, master of the *Grace*, the principal sum of \$2,000, with interest from September 10, 1887, to this day, making a total amount of \$3,232.33.

C. A. Lundberg, mate of the *Ada*, the principal sum of \$1,000, with interest from September 10, 1887, to this day, making a total amount of \$1,616.17.

As to "costs in *Sayward* case," it is adjudged and determined that there is no liability on the part of the United States of America in respect of such claim.

Her Majesty also presented for our consideration the following claims, that is to say, in behalf of the *Black Diamond*, warned by the collector at Unalaska on July 1, 1886, and also in behalf of James Gaudin, master of the *Ada*, as to each of which we determine and award that we have no jurisdiction, and we dismiss the same.

Made in duplicate and signed by us this seventeenth day of December, A. D. 1897.

WILLIAM L. PUTNAM,

Commissioner Appointed by the President of the United States.

GEORGE E. KING,

Commissioner Appointed by Her Britannic Majesty.

Respecting the claims mentioned in the award of the commissioners as having been presented on behalf of Great Britain and dismissed as not being within our jurisdiction, namely, the claims of the *Black Diamond*, arising in the year 1886, and the personal claim of James Gaudin, the commissioners, in pursuance of the communication to them from the Secretary of State for the United States and Her Britannic Majesty's ambassador at Washington, dated at Washington, January 26, 1897, and appearing in the protocol of February 2, 1897, beg to report as follows:

We find that damages were sustained by the owners, master, officers, and crew of the *Black Diamond*, in connection with the notice given by the collector of customs at Unalaska on July 1, 1886, to the amount of \$5,000, with interest at the rate of 6 per cent per annum from September 10, A. D. 1887.

And as to the personal claims of James Gaudin, master of the *Ada*, in 1887, we report that the amount of damage sustained by him was \$1,000, with interest at the rate of 6 per cent per annum from September 10, 1887.

December 17, 1897.

WILLIAM L. PUTNAM,

Commissioner Appointed by the President of the United States.

GEORGE E. KING,

Commissioner Appointed by Her Britannic Majesty.

EXHIBIT E E.

[Translation.]

No. 1912.]

MINISTRY OF FOREIGN AFFAIRS,

Asiatic Department, May 8, 1882.

MR. CHARGÉ D'AFFAIRES: In continuation of the exchange of communications which has taken place between us on the subject of a notification published by our consul at Yokohama relative to fishing, hunting, and commerce in the Russian waters of the Pacific, and in reply to the note which you have had the goodness to address me, dated March 15/27, I am now in a position to give you the following information:

A notification of the tenor of that annexed to your note of March 15 was in fact published by our consul at Yokohama, and our consul-general at San Francisco is also authorized to publish it.

This measure related only to prohibited industries and contraband trade; the restrictions which it makes known extend absolutely to the territorial waters of Russia. It was necessitated by the many abuses reported during these last years which fell heavily upon the population of our coasts and islands, whose sole means of existence is hunting and fishing; the abuses are equally prejudicial to the interests of the company to which the Imperial Government has conceded the monopoly of the exploitation of the Commodore and Seal islands.

Outside of the new regulation, the essential point of which is the obligation imposed upon captains of vessels who wish to fish and hunt in the Russian waters of the

Pacific, to provide themselves at Vladivostok with permits or licenses from the Government of Eastern Siberia, the right of fishing, hunting, and trading by foreigners in our territorial waters is regulated by Articles 560, et sequitur, of Heading XIII, part 2, of the code of laws.

In informing you of the foregoing I have the honor, Mr. Chargé d'Affaires, to reiterate to you the assurance of my most distinguished consideration.

GIEERS.

To Mr. W. HOFFMAN,
Chargé d'Affaires.

EXHIBIT F F.

[Translation.]

No. 2218.]

MINISTRY OF FOREIGN AFFAIRS,
Asiatic Department, June 1, 1882.

MR. CHARGÉ D'AFFAIRES: In reply to the note which you had the goodness to address me on May 13/25 relative to fishing and hunting in our waters of the Pacific, and in which you have expressed a desire to have a translation of the articles of our Code which govern the subject, I have the honor to send you herewith the translation of articles 560 et sequitur of the Code T. XII, part 2.

Please to accept, Mr. Chargé d'Affaires, the assurance of my distinguished consideration.

GIEERS.

To Mr. W. HOFFMAN,
Chargé d'Affaires, etc.

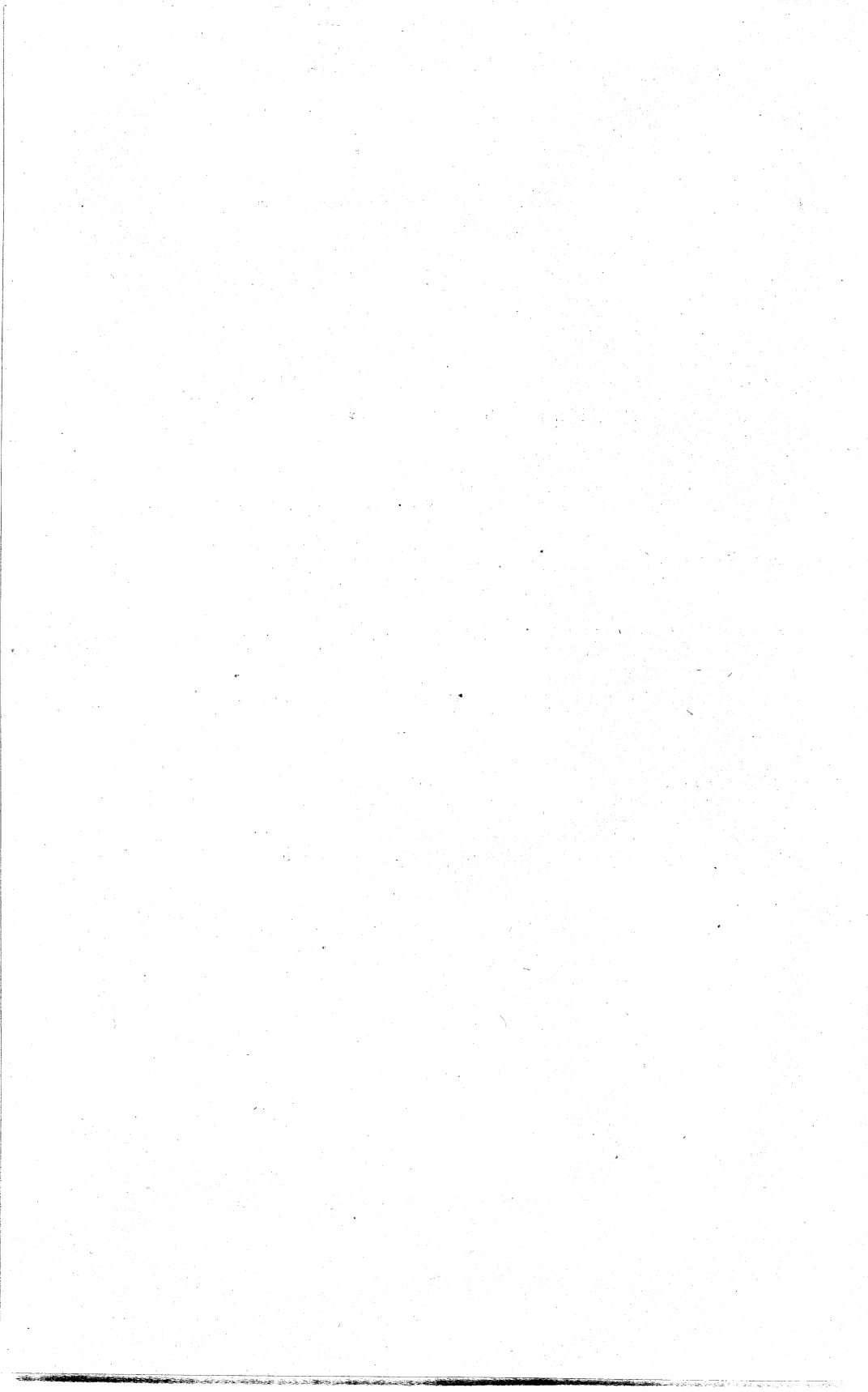
ART. 560.—The waters of the sea, even when they wash the coasts having a stable population, can not be subject to private ownership; they are free to the use of one and all.

ART. 561.—No exception is admitted to this general rule except under the form of special privileges accorded for the right of fishing in certain localities and during a specified time.

ART. 562.—The above rule relative to the freedom of fishing and analogous industries pertains equally with regard to all lakes forming part of private domains.

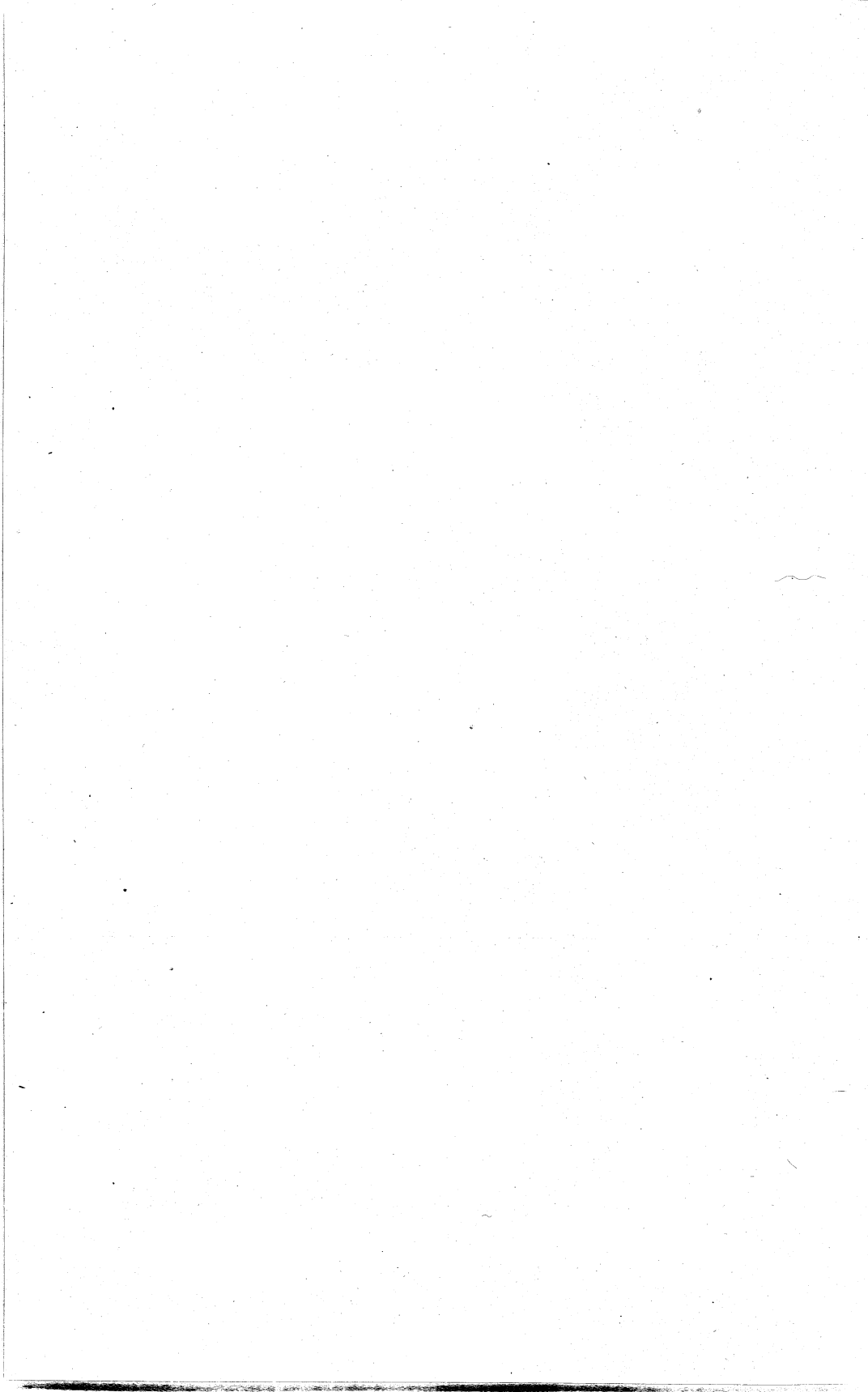
ART. 565.—No restriction shall be imposed as to the nature of apparatus employed in fishing and other analogous industries on the high sea, and it shall be permissible to each and all to employ for that purpose such instruments as they may judge the most suitable for the conditions of the locality.

ART. 571.—Ships in quarantine are forbidden to fish. The same interdiction applies in general to all individuals in localities where ships are under quarantine.



CASE No. 2.

The American Schooner "James Hamilton Lewis" arrested
and seized in the Bering Sea by a Cruiser of the
Imperial Government of Russia and confis-
cated by said Imperial Government.



CASE No. 2.

The American Schooner "James Hamilton Lewis" Arrested and Seized in the Bering Sea by a Cruiser of the Imperial Government of Russia and confiscated by said Imperial Government.

STATEMENT OF THE FACTS.

The *James Hamilton Lewis* was an American schooner, duly registered in accordance with the laws of the United States, at the port of San Francisco, in the State of California. She was owned, officered, and manned by citizens of the United States of America.

She sailed from San Francisco on the 7th day of March, 1891, with her clearance and ship's papers in proper and lawful form, with a full complement of officers and men, destined for a cruise in the North Pacific Ocean on a hunting and fishing expedition, with Alexander McLean as master, Joseph McDonald as mate, 1 second mate, 1 cook, 1 cabin boy, 6 hunters, and 14 able-bodied seamen, well and sufficiently manned, victualed, and furnished with all things necessary for a vessel in the merchant service, and particularly for the voyage she was about to undertake.

In support of these allegations the following documents are hereto annexed and submitted in evidence, marked respectively as herein stated:

Exhibit A.—A duly authenticated copy of the certificate of the collector of the port of San Francisco, showing the ownership of the said *James Hamilton Lewis*.

Exhibit B.—A duly certified copy of her clearance papers from the said port of San Francisco.

Exhibit C.—A duly certified copy of the manifest of the said vessel.

Proceeding on her voyage, she arrived at Sand Point, Alaska, on June 27, 1891, where she came to anchor and took in fresh water and supplies. On the following day she proceeded on her voyage.

On July 4, 1891, she reached latitude $52^{\circ} 10'$ north, longitude 165° west; July 9, latitude $50^{\circ} 10'$ north, longitude 170° west; July 13, latitude $51^{\circ} 10'$ north, longitude 170° east; July 20, latitude $51^{\circ} 35'$ north, longitude $179^{\circ} 10'$ east; July 25, latitude $50^{\circ} 15'$ north, longitude $170^{\circ} 20'$ east; July 28, latitude $50^{\circ} 20'$ north, longitude $170^{\circ} 20'$ east; July 30, latitude $52^{\circ} 40'$ north, longitude $169^{\circ} 20'$ east; July 31, latitude $53^{\circ} 10'$ north, longitude 169° east; August 1, latitude 54° north, longitude $168^{\circ} 10'$ east; August 2, latitude $55^{\circ} 35'$ north, longitude $169^{\circ} 21'$ east, where she was seized early in the morning of that day by the Russian cruiser *Aleut*, the said *James Hamilton Lewis* being at the time of the seizure about 20 miles distant from and to the east of Copper Island, the nearest land.

The position of the schooner on the day of the seizure is stated in the log book or journal of the said vessel, which is hereto annexed, marked "Exhibit D," and the same is attested by her crew. By the record contained in the said log book the course of the schooner can be traced during her whole voyage, which is graphically illustrated in the plotting of the course of the vessel, according to the data given in said log book, upon the sailing chart hereto annexed, marked "Exhibit E."

An examination of these documents shows that the *James Hamilton Lewis* never in the course of this voyage entered Russian territorial waters.

A statement upon the last page of the log book shows where she had killed all the seals she had taken during the voyage, and it shows, further, that none of the seals taken by her had been caught within Russian jurisdiction. All had been taken on the high seas and had been shot with shotguns, as is the common practice in so-called pelagic sealing or sealing upon the high seas. The greater part of the seals taken by the vessel were females, as is shown by the depositions of Thomas F. Morgan and John Malowansky, submitted before the Paris tribunal of arbitration under the treaty between the United States and Great Britain, concluded at Washington February 29, 1892, and published in the official account of the proceedings by the Government of the United States. A copy of the said official publication of the said proceedings, Volume III, Appendix II to the case of the United States, is hereto appended and submitted in evidence, marked "Exhibit F," reference upon the point in question being made on page 65, lines 14 to 20, and page 197, lines 38 to 42.

There were also among the catch of the vessel some young seals or pups, which had been taken from the bellies of their dead mothers. The skins from these young seals or pups form a separate article of commerce in sealskin market, as is shown on page 503, lines 5 to 8, of Exhibit F.

On August 2, 1891, having on board 424 sealskins, the captain of the *James Hamilton Lewis* deemed it necessary to make land in order to test his chronometer, and he accordingly headed for Copper Island.

Having approached sufficiently near to land for his purpose, he put his vessel about, intending to make for waters more favorable to the pursuit of the vessel's calling, outside the Bering Sea in the Pacific Ocean and in the track of the seals leaving the seal islands for their feeding grounds, and also on his way homeward. Upon coming about, however, he was brought to by a shot from the Russian cruiser *Aleut*. Supposing that the commander of the Russian vessel desired to speak with him, the captain of the *James Hamilton Lewis* hoisted the American flag to indicate his nationality and that of his vessel, as is customary, and came to, awaiting the arrival of a boat from the Russian cruiser.

On the arrival of the boat a Russian naval officer came on board the schooner and demanded the official log book of the vessel, which was given him by Captain McLean, as well as all other documents necessary to establish the nationality and identity of the vessel. Every facility was given to the Russian officer in his examination of the vessel, the captain having nothing to conceal, but apparently his search was not conducted with great thoroughness, for he failed to find 424 sealskins, which were on board and easily discoverable.

The officer having made the examination, left the *James Hamilton Lewis*, taking with him the official log book of the vessel, which he refused to give up.

Soon afterwards the officer returned with an armed crew and ordered Captain McLean to leave his vessel and go on board the *Aleut* as a prisoner, with all his ship's company except seven. This command the captain, well knowing that he had violated no law within Russian jurisdiction and that he was subject to no orders from Russian officials, refused to obey, and he thereupon put his vessel on her course, steering east.

Upon this the commander of the Russian cruiser commenced a pursuit, and, overhauling the *James Hamilton Lewis*, by force of arms and by violence captured her, overpowering the crew and making them and the captain prisoners.

Captain McLean was taken as a prisoner on board the Russian cruiser and there informed that his vessel was confiscated, and he thereupon entered a protest against the seizure, a copy of which protest is to be found duly entered in his log book or journal of the voyage.

In this protest Captain McLean stated that his vessel was illegally seized and without right upon the high seas and not within 20 miles of land; that neither the captain nor any member of the ship's company had touched land since they left Sand Point, Alaska, on June 28, 1891; that all seals on board had been taken on the high seas and killed with shotguns; that the skins of the two pups were taken from animals unborn which had been found in the bellies of their mothers, and that no seals had been taken within forty hours previous to the seizure.

At the time of the seizure and thereafter the captain of the *James Hamilton Lewis* was compelled under duress to sign papers in the Russian language, of the contents of which he could have no knowledge, not understanding Russian.

On August 3, 1891, the schooner and her crew were taken to Bering Islands, and from thence to Petropavlovsk, and from thence to Vladivostock, all in the Russian dominions. The vessel with her cargo and equipment and the personal property of the crew was confiscated, and her captain, officers, and crew held as prisoners and subjected to indignity and harsh treatment and the crew put to hard labor. They were miserably lodged in an unwholesome and vermin-infested building and inadequately fed, and in consequence of this treatment they all suffered permanent injury to their health, became emaciated in form, depressed in spirit, and undermined in constitution, and finally two of them contracted smallpox, from which disease one of them died.

All the facts regarding the said seizure are duly set forth in the documents attached to the note of the envoy extraordinary and minister plenipotentiary of the United States of America at St. Petersburg to the Imperial Russian ministry of foreign affairs dated July 11, 1894, a duly certified copy of which is hereto annexed, together with copies of said documents thereto attached marked "Exhibit G."

These said documents consist of the following: A memorial on behalf of the owners, master, and crew of the American schooner *James Hamilton Lewis* to the honorable Secretary of State of the United States; the affidavit of Alexander McLean, master of the said schooner; the affidavit of Joseph McDonald, mate of said schooner; the affidavit of Albert Leslie Donaldson, officer and hunter on said

schooner during said voyage; the joint affidavit of Oren Simons and Andrew C. Simons, officers and hunters on said schooner during said voyage; a copy of a marine protest against the loss of the said vessel, her cargo and equipment, on file at the consulate-general of the United States of America at Kanagawa, Japan.

In addition to the documents herein previously enumerated as part of the evidence in this case, the following documents are also hereto annexed and submitted in evidence, marked respectively as herein indicated:

Exhibit H.—A duly certified copy of a note from the Imperial Russian ministry of foreign affairs to the then envoy extraordinary and minister plenipotentiary of the United States of America at St. Petersburg, dated May 18 old style, May 30 new style, 1896, inclosing a copy of a memorandum from the Imperial Russian ministry of the marine upon the subject of the seizure of the *James Hamilton Lewis*, all forming parts of the same exhibit.

Exhibit I.—A duly certified copy of a letter from Mr. George R. Tingle, attorney for the claimants in this case, to the honorable Secretary of State of the United States, and inclosing copies of the affidavits of A. C. Simons and A. L. Donaldson, all forming parts of the same exhibit.

Exhibit J.—A duly certified copy of a note from the then chargé d'affaires of the United States of America at St. Petersburg to the Imperial Russian ministry of foreign affairs, dated January 9 (21), 1897.

Exhibit K.—A duly certified copy of a memorandum (undated) left in a personal interview by the then ambassador of the United States of America at the Imperial Russian ministry of foreign affairs.

Exhibit L.—A duly certified copy of a note from the then ambassador of the United States of America at St. Petersburg to the Imperial Russian ministry of foreign affairs, dated May 16 (28), 1898.

Exhibit M.—A duly certified copy of a note from the then ambassador of the United States of America at St. Petersburg to the Imperial Russian ministry of foreign affairs, dated July 23 (August 4), 1898.

Exhibit N.—A duly certified copy of a note from the Imperial Russian ministry of foreign affairs to the United States embassy at St. Petersburg, dated October 19 (31), 1898, and inclosing a copy of a memorandum from the Imperial Russian ministry of marine, all forming one exhibit.

Exhibit O.—A printed copy of the report of the director of the hydrographic department of the Imperial Russian ministry of marine, Vice-Admiral Wewel von Kruger, for the year 1875. (Printed in the Russian language at St. Petersburg, in the printing office of the ministry of marine.) The marked paragraph on page 91 is especially cited, and a sworn translation of said paragraph is attached to the exhibit, forming one with it. This exhibit is Exhibit C C in the case of the Cape Horn Pigeon in arbitration, together with the present case, and is now referred to in this case as here stated.

Exhibit P.—A duly certified copy of a note from the Imperial Russian ministry of foreign affairs to the then chargé d'affaires of the United States of America at St. Petersburg, dated May 8, 1882.

Exhibit Q.—A duly certified copy of a note from the Imperial Russian ministry of foreign affairs to the then chargé d'affaires of the United States of America at St. Petersburg, dated June 1 (13), 1882, together with its inclosure, all forming one exhibit.

Exhibit R.—A certified copy of a memorandum showing the speed of some of the best yachts in the world.

Exhibit S.—A certified copy of the last registry of the *James Hamilton Lewis* at the custom-house at San Francisco.

Exhibit T.—The sworn statement of Max Waizman to the effect that he was the owner of the *James Hamilton Lewis* and a citizen of the United States when that vessel was seized.

Exhibit U.—The sworn statement of Alexander McLean, captain of the *James Hamilton Lewis*, to the effect that he and all the crew of that vessel were citizens of the United States of America at the time of the seizure, and that they continue to be at the present time.

Exhibit V.—The sworn statement of A. P. Lovenstein that he considers the value of the *James Hamilton Lewis* to have been \$25,000 at the time of her seizure.

Exhibit W.—The sworn statement of Michael White to the same effect.

Exhibit X.—The sworn statement of William Bendt to the same effect.

Exhibit Y.—The sworn statement of George E. Dodge to the same effect.

Exhibit Z.—The sworn statement of Charles F. Rudell concerning the speed of the *James Hamilton Lewis*.

Exhibit A A.—The sworn statement of Andrew P. Lovenstein to the same effect.

Exhibit B B.—The sworn statement of M. I. James, marine surveyor, to the same effect.

Exhibit C C.—The sworn statement of Leon Blum to the same effect.

Exhibit D D.—The sworn statement of George E. Dodge to the same effect.

Exhibit E E.—The sworn statement of E. I. Ezekiel to the same effect.

Reference is also made to the following portions of Exhibit F, volume 3 of the Proceedings of the Tribunal of Arbitration, convened at Paris under the treaty between the United States of America and Great Britain, concluded at Washington February, 1892, for the determination of questions between the two Governments concerning the jurisdictional rights of the United States in Bering Sea. (Washington, Government Printing Office.) Appendix to the case of the United States, volume 11, page 65, lines 14 to 20, inclusive; page 197, lines 38 to 42, inclusive, both already cited as evidence of the nature of the seals taken by the *James Hamilton Lewis*. Page 503, lines 5 to 8, inclusive; page 359, lines 31 to 36, inclusive; page 39, lines 26 to 30, inclusive; page 139, lines 17 to 36, inclusive; page 140, lines 41 to 50, inclusive; page 189 entire; page 211, last seven lines; page 212, first two lines; page 271, deposition of Peter Trearshheit; pages 315 and 316, deposition of Niels Bonde; page 317, deposition of Henry Brown; pages 318 and 319, deposition of Thomas Brown; page 322, deposition of Alfred Dardean; page 325, deposition of Arthur Griffin; page 326, deposition of James Harrison; pages 329, 330, and 331, deposition of James Jamieson; pages 334 and 335, deposition of Andrew Laing; pages 345 and 346, deposition of Charles Peterson; pages 346 and 347, deposition of Edwin P. Porter as evidence of the character of seals taken in pelagic sealing, the distance from land at which such sealing may be and is practiced, and the greater value of sealskins from seals taken on or near land over those taken on the high seas. Pages 512, 513, and 514, deposition of Herman Liebes; pages 518, 519, and 520, deposition of John J. Phelan; pages 424 and 425, deposition of Henry Treadwell; pages 554, 555, 556, 557, and 558, deposition of Alfred Fraser; pages 570, 571, and 572, deposition of Henry Poland; pages 574, 575, and 576, deposition of W. C. B. Stamp; pages 576 to 582, deposition of Emil Teichman as to the character, quality, and relative value of the skins of seals taken on the high seas as compared with those taken on or near land. Pages 61 to 65, inclusive, deposition of Thomas Morgan; pages 93 and 94, deposition of William H. Williams; pages 99, 100, and 101, deposition of Kerrick Artomanoff; pages 107, 108, and 109, deposition of John Fratis; pages 111, 112, and 113, deposition of Charles A. Goff; pages 128, 129, and 130, deposition of Agei Kushen; pages 140 and 141, testimony of J. C. Redpath; pages 142 to 145, inclusive, deposition of Anton Melovedoff; pages 147 to 152, inclusive, deposition of Samuel Falconer; pages 175, 176, and 177, deposition of W. B. Taylor as to the habits of seals as bearing on pelagic sealing and the character of seals so taken. And page 189, lines 1 to 24, inclusive, as to the nature of skins taken in pelagic sealing and the fact that skins of pups or young seals taken from the bellies of their mothers are not infrequently found among the skins secured in pelagic hunting expeditions.

TREATY OBLIGATIONS OF RUSSIA AND THE LAWS OF NATIONS.

By article 1 of the treaty of 1824 between the United States and Russia it was declared as follows:

It is agreed that in any part of the great ocean, commonly called the Pacific Ocean or South Sea, the respective citizens or subjects of the high contracting powers shall be neither disturbed nor restrained, either in navigation or in fishing or in the power of resorting to the coasts upon points which may not already have been occupied for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following articles.

This treaty, as well as that of 1825 between Russia and Great Britain, was the result of the protests of the Governments of the United States and Great Britain against so much of the ukase of the Emperor of Russia of 1821 as might be interpreted as giving to the Imperial Government of Russia the right to claim exclusive jurisdiction in the Bering Sea beyond the limits of ordinary territorial waters.

These two treaties must be regarded, and, indeed, it has been decided that they do, as admitting the limitation of jurisdiction in the Bering Sea to that which is conceded to maritime states generally. In sup-

port of this view that the marine jurisdiction of the states bordering on the Bering Sea is subject to the same limitations as that which maritime states generally are competent to claim and to exercise upon the sea, the case presented on the part of Her Britannic Majesty in the proceedings before the Paris tribunal of arbitration, convened under the treaty between the United States and Great Britain concluded at Washington February 29, 1892, for the determination of questions between the two Governments concerning the jurisdictional rights of the United States in the waters of Bering Sea, forming Volume IV of the publication of the Government of the United States under the above heading, is hereby cited, pages 5 to 69, inclusive; pages 84 and 85, "Seal hunting," and pages 120, 121, and 122, Chapter X.

The decision adopted by a majority of the tribunal was as follows:

By the ukase of 1821 Russia claimed jurisdiction in the sea now known as the Bering Sea to the extent of 100 Italian miles from the coasts and islands belonging to her, but in the course of the negotiations which led to the conclusion of the treaties of 1824 with the United States and of 1825 with Great Britain Russia admitted that her jurisdiction in the said sea should be restricted to the reach of a cannon shot from shore, and it appears that from that time up to the time of the cession of Alaska to the United States Russia never asserted in fact or exercised any exclusive jurisdiction in Bering Sea or any exclusive rights in the seal fisheries therein beyond the ordinary limit of territorial waters.

It was also unanimously decided by the tribunal that—

The body of water now known as Bering Sea was included in the phrase "Pacific Ocean" as used in the treaty of 1825 between Great Britain and Russia.

A majority of the tribunal further agreed upon the decision that—

No exclusive rights of jurisdiction in Bering Sea and no exclusive rights to seal fisheries therein were held or exercised by Russia outside of ordinary territorial waters after the treaty of 1825.

A majority of the tribunal also adopted the following decision:

The United States has not any right of protection or property in the fur seals frequenting the islands of the United States in Bering Sea when such seals are found outside the ordinary 3-mile limit.

The Bering Sea is an open sea, "the common highway of all nations," and the resort thereof for purposes of navigation can not be interdicted to vessels of every nation.

Chancellor Kent has said:

The open sea is not capable of being possessed as private property. The free use of the ocean for navigation and fishing is common to all mankind, and the public jurists generally and explicitly deny that the main ocean can ever be appropriated.

Vattel states:

The whole space of the sea within cannon shot of the coast is considered as making a part of the territory; and for that reason, a vessel taken under the guns of a neutral fortress is not a good prize.

All we have said of the parts of the sea near the coast may be said more particularly, and with much greater reason, of the roads, bays, and straits, as still more capable of being occupied, and of greater importance to the safety of the country. But I speak of the bays and straits of small extent, and not of those great parts of the sea to which these names are sometimes given, as Hudson's Bay and the Straits of Magellan, over which the Empire can not extend, and still less a right of property. (Law of Nations, book 1, chapter XXIII, sections 289, 291.)

Ortolan expresses the following opinion:

As to interior seas, a right of exclusive domain and sovereignty on the part of a nation over such a sea is only incontestable when that sea is totally included within the territory so as to form an integral part of it and so that it can absolutely only serve as a means of communication between the citizens of the nation in question

alone. Then indeed none of the conditions obstructive to ownership or to empire of the seas are applicable. But the moment that several different States possess the shores of such a sea, none of them can call itself the owner or sovereign to the exclusion of the others. (International Regulations and Diplomacy of the Sea, 4th edition, Vol. I, p. 147.)

The very eminent jurist, M. de Martens, counsel for the Imperial Russian ministry of foreign affairs, writes:

In our day legislation and the opinions of jurists are in accord in recognizing the liberty of the ocean, and no people could make pretention of control thereof. Those portions of the sea which are connected with the ocean are admitted to be free and accessible to all the world even when they are surrounded by the possessions of a single State. Certain restrictions of this principle admitted in practice can only be justified by the necessity of safeguarding the security of the bordering country.

Consequently, from the present point of view, the sovereignty of a State over the seas which bound it, can not extend to a distance which would deprive them of their character of open seas. Thus Sweden was in the wrong in claiming sole possession of the Baltic. This sea communicating with the ocean, as it does, ought always to remain open to all States. (A Treatise on International Law by F. de Martens, vol. 1, p. 494.)

Continuing the citation of this authority (tome 1, p. 497):

The ocean is free for the navigation and communication of all peoples. No nation can be prevented from the enjoyment of fishing or other peaceful enterprises on the high seas. If all enjoy the same rights thereon it follows that no State can there impose its laws upon the others, pass judgments on foreign navigators or sailors, nor arrest or search the ships of another country.

The American schooner *Washington*, while engaged in fishing in the Bay of Fundy, 10 miles distant from the shore, was seized by a British cruiser and taken to Yarmouth and condemned, on the ground that she was fishing in British waters in violation of the provisions of the convention relative to the fisheries between the United States and Great Britain. A claim for damages was made before the commission of arbitration. In rendering his decision in favor of the claimants the umpire said:

The Bay of Fundy is from 65 to 75 miles wide and from 130 to 140 miles long. It has several bays on its coasts. Thus the word bay as applied to this great body of water has the same meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume sovereignty.

Phillimore says:

It is sufficient to say that the reason of the thing, the preponderance of authority, and the practice of nations have decided that the main ocean, inasmuch as it is the necessary highway of all nations and is from its nature incapable of being possessed, can not be the property of any one State. (Commentaries on International Law. Third edition, vol. 1, chap. v, p. 247-248, CLXXII.)

The *James Hamilton Lewis* was therefore within her rights in navigating in the Bering Sea and in taking seals there, so long as she did not take them within the jurisdictional waters of any bordering State. Thus, so far as the present controversy is concerned, we have to do only with any encroachment there may have been within the territorial waters of Russia as regards any right to arrest her.

THE HABITS OF SEALS.

The sworn statement of the captain and several of the officers and crew of the *James Hamilton Lewis*, as well as the log book of the vessel, show that all the seals taken by her during the voyage in question were taken on the high seas. This evidence is supported by a study of the habits of seals in the Bering Sea as set forth in the portions of the appendix to the case of the United States in the arbitration before the Paris tribunal upon the Bering Sea questions relating to the habits

of the seals, the character of skins taken from seals caught in pelagic sealing, and the testimony of Thomas Morgan on page 65 and of John Malowansky on page 97 of the volume. It is to be noted in regard to the testimony of these deponents before the Paris tribunal, that one was the agent of the lessees of the Pribilof Islands, belonging to the United States, and the other the lessees of the Commander Islands, belonging to Russia, and that the testimony of each is in accord that a very large preponderance of the skins of the seals taken by the *James Hamilton Lewis* were those of females. Now, the whole tenor of the evidence presented to the Paris tribunal on the subject of the habits of seals is to the effect that the male seals, seldom leave the islands, while the female seals frequently go to great distances in search of food; and these distances extend to 30, 40, and even 200 miles from land. The evidence regarding the character of the seals taken in pelagic sealing is that from 70 to 95 per cent of those taken on the high seas are females. Finally, the evidence of Mr. Morgan and of Mr. Malowansky shows that from 80 to 95 per cent of the seal skins seized on the *James Hamilton Lewis* by the Russian cruiser *Aleut* in 1891 were those of female seals. Thus, therefore, the catch of this vessel was preeminently a pelagic one—that is to say, caught on the high seas.

The deposition of Herman Liebes, presented to the Paris tribunal in the case of the United States, and printed on pages 512 to 514 of volume 3 of the publication of the United States Government of the proceedings, shows that this deponent had offered special inducements to the pelagic hunters to bring in male skins, but that each and all of the men approached on the subject stated that it was impossible to obtain male seals in any quantity on the high seas. It is clear, therefore, that it was to the interest of the captain of the *James Hamilton Lewis* to obtain male seals. This, however, he could only do by taking them on or near the islands. Had he been hunting near the islands he would certainly have taken pains to secure male seals, as he could easily have done. Why should he run all the risks incident to hunting in forbidden waters for what he could procure as well or better in safety on the open sea? That he did not procure male seals, but on the contrary had an unusually large percentage of female skins in his catch is of itself proof, therefore, that he was not fishing near land, and this is substantiated by the evidence of the log book.

It has been claimed by the Russian Government that the skins of two "pups," or young seals, found on board the *James Hamilton Lewis* could only have been taken on land.

The testimony submitted by the United States before the Paris tribunal shows incontestably that young seals are very frequently taken from the bellies of their mothers, and not unfrequently alive. See the following pages of the volume of the proceedings of the tribunal quoted above: 189, 211, 241, 258, 260, 261, 262, 264, 266, 267, 268, 269, 270, 271, 273, 274, 275, 277, 278, 279, 282, 286, 315, 320, 321, 322, 323, 324, 325, 326, 329, 330, 331, 340, 347, 348, 349, 350, 370, 371, 374, 377, 379, 380, 385, 387, 388, 395, 397, 398, 401, 402, 407, 411, 419, 421, 423, 463, 464, 468, 470, 490, 503. Attention is particularly called to the deposition of Alfred Dardean, page 322:

Of the seals that we caught off the coast fully 90 out of every 100 had young pups in them. The boats would bring the seals caught on board the vessel and we would take the young pups out and skin them. If the pup was a good nice one we would skin it and keep it for ourselves. I had 8 such skins myself. Four out of 5, if caught in May or June, would be alive when we cut them out of their mothers. One of

them we kept for pretty near three weeks alive, on deck, by feeding it on condensed milk.

The deposition of Peter Brown, page 377:

Cows caught in the latter part of May or June have black pups in them, which we sometimes cut out and skin.

The deposition of Thomas Brown, page 407:

We had 250 seals before entering the sea, the largest per centage of which were females, most of them having young pups in them. I saw some of the young pups taken out of them.

The deposition of Joseph Dennis:

I have seen a live young pup taken out of its mother and kept alive for three or four days.

The deposition of George Fairchild, page 423:

We took some of the pups alive out of the bodies of the females.

The deposition of Michael White:

In my captures off the coast between here and Sitka 90 per cent of my catch were females, but off the coast of Unamack Pass there was a somewhat smaller percentage of females, and nearly all the females were cows heavy with pup, and in some instances the period of gestation was so near at hand that I have frequently taken the live pup from the mother's womb.

And the deposition of T. Williams, page 503.

In the list of skins offered for sale in the London market there appears the classification "black pups." These are the skins of unborn seals torn from the wombs of their dead mothers.

The explanation given by Captain McLean, therefore, as to the presence of the two skins of young seals on the *James Hamilton Lewis* at the time of her capture, namely, that the animals had been taken out of the bellies of their mothers, is entirely reasonable and in accord with the well known facts in regard to sealing on the high seas, that young seals are frequently taken from the bellies of their mothers and if their skins are good they are saved. This circumstance of finding these small skins in the catch of the *James Hamilton Lewis*, far from being evidence of her having trespassed within Russian territory, is in itself evidence of her having been engaged in hunting on the high seas.

RUSSIA'S RESPONSIBILITY.

The Russian Government has not adduced the slightest evidence to show that the *James Hamilton Lewis* ever had been within Russian territorial waters at any time. The commander of the Russian cruiser stated in his report that she was not more than 6 miles from Copper Island when first seen and at a distance which he has variously given as 11 and 12 miles therefrom when overhauled. The statement of the captain of the *James Hamilton Lewis* is that the point of arrest was 20 miles from Copper Island, the nearest land.

In default of evidence to show that she was nearer than 6 miles from Russian land when seen, it must be accepted that she was not, and that she was therefore without Russian jurisdiction.

Various claims have been made and various opinions pronounced at different epochs of history as to the extent to which territorial property and jurisdiction may be extended. But the rule of law may now be considered as fairly established, namely, that this absolute property and jurisdiction does not extend, unless by the specific provisions of a treaty or an unquestioned usage, beyond a marine league (being 3 miles), or at a distance of a cannon shot from the shore at low tide, et seq.

(Phillimore, Commentaries on International Law, 3d edition, Vol. I, Chap. VIII, CXCVIII.)

In any case, the custom of regarding a line 3 miles from land as defining the boundary of marginal territorial waters is so far fixed that a state must be supposed to accept it in the absence of express notice that a larger extent is claimed. (Hall, Treatise on International Law, 4th edition, p. 160.)

At present the greater number of treaties and the majority of authors on international law regard as the extreme limit of coast seas a line distant 3 English miles from low-water mark. This is the distance adopted by the legislations of western Europe. (F. de Marten's Treatise on International Law, Vol. I, p. 501.)

In the memorandum of the Russian ministry of marine, communicated to the embassy of the United States in the note of the ministry of foreign affairs, dated October 19, 1898, the claim is set up that the *James Hamilton Lewis* was about 5 miles from land when sighted, and that she was seized at 11 miles from land instead of 12, as first stated by Captain Brandt of the *Aleut*. It is to be noted that this memorandum was sent in reply to the note of the embassy of July 23–August 4, 1898, in which the physical impossibility of the *James Hamilton Lewis* having been 3 miles from land when sighted and 12 miles therefrom when overhauled is set forth. It is to be noted that these changes exactly fill the physical conditions marked out as possible in the embassy's note, namely, giving the sailing vessel thirty minutes, which is the speed mentioned in the embassy's note as having been attained by a racing yacht; but it must be borne in mind that this is not a speed attainable by fishing and sealing schooners. The speed mentioned is that attained under favorable conditions by a racing yacht with her bottom freshly cleaned for the purpose. The *Encyclopædia Britannica*, in its article on yachting, states that the yacht *Enchantress* made 50 miles in four hours eighteen minutes in 1895. This was then the fastest recorded time for an English yacht, and it is at the rate of a mile in five and five-eighths minutes; and Exhibit R shows the recorded performances of some of the fastest racing yachts in the world, and the best of these demonstrates a rate of speed of four and seven-tenths minutes per mile, while the best time made in the celebrated race between the *Vigilant* and the *Valkyrie* was six and eight-tenths minutes to the mile. It is wholly without the range of probability that the sealing schooner *James Hamilton Lewis* was able to make a mile in anything like that time. If her speed is put at a mile in eight or even nine minutes, it will be much more within the probabilities. This, even allowing her to have gone about within five minutes from the time when she was first sighted, which seems hardly credible, and conceding the point as to her having been only 11 miles from land when overhauled, would make her more than 6½ miles from Copper Island when sighted by the *Aleut*.

The arguments presented by the imperial ministry of marine, in the memorandum above referred to, can hardly be accepted as sound international law. In section 1 the assertion is made that the presence in Russian waters of a vessel presumed to be engaged in illicit hunting justifies her pursuit into nonjurisdictional waters and her arrest there. This is exactly parallel with the principle of the British "Hovering act," in regard to which Phillimore says:

Nevertheless it can not be maintained as a sound proposition of International Law that a seizure for the purposes of enforcing municipal law can be lawfully made beyond the limits of territorial waters, though in these hovering cases judgments have been given in favor of seizures made within a limit fixed by municipal law, but exceeding that which has been agreed upon by International Law. Such a judg-

ment, however, could not have been sustained if the foreign state whose subjects' property had been seized had thought proper to interfere.

The limit of territorial waters has been fixed at a marine league. The great improvements recently effected in artillery seem to make desirable that this distance should be increased, but it must be so by the general consent of nations or by specified treaty with particular States. (Commentaries on International Law, third edition, vol. 1, CXCVIII, p. 276.)

This high opinion seems to cover the whole argument contained in this portion of the memorandum except the attempt to apply the principle of an international agreement made subsequently to the seizure of the property of the citizens of a foreign State in its justification. This of course can not for a moment be admitted. No law can be retroactive in its force. The agreement between the United States and Russia for the protection of the seal fisheries forms no basis for justification of the seizure and confiscation of a vessel engaged in a pursuit which was previous to this agreement, however unfortunate from an economical point of view, perfectly legitimate at the time.

The second section of the memorandum is devoted to a justification of the suspicion that the *James Hamilton Lewis* had been or intended to be poaching within Russian jurisdiction. The allegations set forth to justify these suspicions are as follows: Going about on being perceived; persistent refusal to permit a search; incorrect information as to the object of his course and as to the composition of his crew; haste to set to rights what was inside the vessel; fact of concealing 424 skins the results of hunting; presence on board of utensils used in hunting fur seals, as well as two skins of young seals which could only have been killed on shore; refusal to produce the authentic documents of the vessel; vague declarations as to previous hunt on the high seas, etc. Not one of these allegations is basis for a suspicion of guilt, nor is the whole assemblage of them.

"*Going about on being perceived.*"—The vessel having approached sufficiently near to the coast to answer the captain's purpose, and, according to the Russian statement itself, as near as was wise in view of territorial limits, he put about. That at about that time the *Aleut* started in pursuit is a mere coincidence.

"*Persistent refusal to permit a search.*"—There has been no evidence to show any such. On the contrary, all the testimony on both sides indicates that the captain brought his vessel to at once on being signaled to do so, and that he gave every assistance in facilitating a search. It may, however, be questioned by what right the commander of the *Aleut* proceeded to make a search under the conditions existing, and whether the captain of the *James Hamilton Lewis* would not have been justified in refusing to permit a search of his vessel. As to the purpose of his cruise and the composition of his crew, they were matters subject perhaps to the municipal laws of the United States, but not of Russia. One is at a loss to understand what is meant by "haste to set things to rights within the vessel." There has been a statement that something was thrown overboard from the vessel, but what, no one has undertaken to say, and the fact is denied by the captain and crew.

"*Fact of concealing 424 skins.*"—There is no evidence of this, and it is submitted that it would not be easy to conceal such a mass of salted skins. It seems more probable that there was no very close scrutiny during the first search.

"*Presence on board of utensils used in hunting seals.*"—This is true. The avowed object of the cruise of the *James Hamilton Lewis* was the

hunting of seals and for this purpose she was fully equipped. But she was equipped for hunting seals on the high seas, not on land, and the list of utensils specified as being found upon her are just those used in pelagic sealing; namely, shot guns and bamboo spears for taking wounded seals. There is, however, no mention of weapons for killing seals on land; this is done with clubs, not guns. The presence of the skins of two young seals has already been fully accounted for, reasonably and conclusively.

“*Refusal to produce the authentic documents of the vessel.*”—The captain did produce, and at once, all that could be required of him on the high seas, namely, the evidence of his nationality and identity.

The remainder of the memorandum is taken up with an attempt to refute the evidence of the log book. The claim that it is invalid as evidence, because it was not submitted to the ministry of marine until six years and ten months after the seizure, can not be admitted in refutation. Had a court of admiralty been held upon the seizure the log book would have been produced in that court. That such a court was not held is no fault of the claimants', whose agent, the captain, repeatedly demanded one. The confiscation of a foreign vessel by administrative process, especially when seized upon the high seas, is not in accordance with international rights, and the concurrence of various ministries of the Russian Government in regard to the sale of the vessel in no sense takes the place of a prize court.

The memorandum concludes with the startling statement that “admitting the authenticity of the log-book it does not invalidate the incontestable facts on which was based the decision taken by the Russian maritime authorities.” That is to say, that direct evidence proving an alibi does not refute mere suspicions of guilt unsupported by a single piece of affirmative evidence.

Russia's claim to a jurisdiction of 5 miles over its marginal waters can not be accepted in justification of the seizure. Were the *James Hamilton Lewis* first seen at any distance between 3 and 5 miles from Russian land this claim of jurisdiction would not be applicable to the case, for Russia has never by any proclamation or other act given notice to the world of any such claim to marine jurisdiction in the Bering Sea. On the contrary, as shown by the publication of the ministry of marine for 1875, p. 91, submitted in the evidence, the Russian Government sent out a vessel in that year to warn foreign fishing and whaling vessels not to practice their calling within 3 miles of Russian territory.

The *James Hamilton Lewis* would, therefore, have been justified in taking seals at 6 miles from Copper Island. But in point of fact she was not, nor had she taken any seals for forty hours before the seizure.

And even had the vessel in question been within Russian territorial waters when seen, the purpose for which she had approached Russian land was one, for which she could not be interdicted the use of such waters. She had come in toward land for the purpose of verifying her observations before starting on her homeward voyage. The right of innocent passage by fishing and merchant vessels in territorial waters is incontestable.

In all cases in which territorial waters are so placed that a passage over them is either necessary or convenient for the navigation of open seas, as in that of marginal waters, or of an appropriated strait connecting unappropriated waters, they are subject to the right of innocent use by all mankind for the purposes of commer-

cial navigation. The general consent of nations, which was seen to be wanting to the alleged right of the navigation of rivers, may fairly be said to have been given to that of the sea. Even the earlier and more uncompromising advocates of the right of appropriation reserved a general right of innocent navigation; for more than two hundred and fifty years no European territorial marine waters, which could be used as a thoroughfare, or into which vessels could accidentally stray or be driven, have been closed to commercial navigation; and during the present century no such waters have been closed in any part of the civilized world. The right must, therefore, be considered to be established in the most complete manner. (Hall. Treatise on International Law. Fourth edition, pt. 11, pages 164 and 165.)

The Russian Government has, in the memorandum of the ministry of marine, which accompanied the note of the ministry of foreign affairs to the legation of the United States at St. Petersburg, dated May 18-30, 1896, attempted to justify the seizure of the *James Hamilton Lewis* on the ground that being a sealing vessel her captain resisting arrest and not having exhibited a log book showing the position of the vessel from day to day, but on the other hand giving a statement of the occupation in which the vessel was engaged incompatible with the facts as revealed, and of her having been put about when the *Aleut* made for her, she had been in all probability engaged in hunting seals within Russian territory. This is a chain of circumstances in no wise incriminating the vessel, her master, or crew.

As a matter of fact, the evidence of the commander of the Russian cruiser itself shows that upon the usual signal the master of the *James Hamilton Lewis* brought his vessel to and hoisted the American flag, and that upon the arrival of an officer from the Russian cruiser to make a visit and search, he exhibited such documents as clearly indicated the nationality and identity of his vessel. If the right of visit and search upon a fishing vessel in time of peace upon the high seas be conceded, it must on the other hand be admitted that that right had been fully complied with by the exhibition of the papers in question showing the vessel to be sailing under the flag of a friendly State and in no way connected with piracy or any other act cognizable by the Russian Government. Had the Russian Government been in a position to produce any direct evidence of any depredation in Russian waters, or to show any corpus delicti, that any seals were taken in Russian waters by this or some unknown vessel, then there might have been ground for a continuation of the search, and by investigation either connecting the *James Hamilton Lewis* with such depredation or establishing her innocence.

The captain was perfectly aware of his entire innocence of wrong, and, while being a peaceable man, he was willing to waive any dispute as to the right of search on the part of a Russian war ship upon the high sea. He therefore exhibited such documents as served to show his nationality and identity, including his official log book. He did not deem it necessary to exhibit his private log book, showing the position of his vessel from day to day. This he was the less disposed to do upon seeing his official log book promptly confiscated. His private log book was the evidence on which he might prove, in case of the confiscation of his vessel, that she had not been within Russian territorial waters. It is to be noted, in order to remove the suspicion which the Russian officials have raised, that upon the first visit and search he had exhibited the official log book and other documents to prove his nationality, justly deeming these all the necessities of the case could require. This official log book the Russians had refused to

return to him, and it was therefore natural that upon finding his vessel seized and confiscated he should jealously guard the proofs of his innocence of wrong. That the log book exhibited was an entirely valid one for the purposes for which it was intended by the laws of his country the Revised Statutes of the United States show, and it is to be noted that entries of the position of the vessel are not required by law to be made in this book, nor is it customary to make them therein.

Chapter VII, on Navigation, of the Revised Statutes of the United States reads as follows:

SEC. 4290. Every vessel making voyages from a port in the United States to any foreign port, or, being of the burden of 75 tons or upward, from a port on the Atlantic to a port on the Pacific, or vice versa, shall have an official log book; and every master of such vessel shall make, or cause to be made, therein entries of the following matters; that is to say:

First.—Every legal conviction of any member of his crew, and the punishment inflicted.

Second.—Every offense committed by any member of his crew for which it is intended to prosecute, or to enforce a forfeiture, together with such statement concerning the reading over such entry and concerning the reply, if any, made to the charge, as is required by the provisions of section forty-five hundred and thirty.

Third.—Every offense for which punishment is inflicted on board, and the punishment inflicted.

Fourth.—A statement of the conduct, character, and qualifications of each of the crew; or a statement that he declines to give an opinion of such particulars.

Fifth.—Every case of illness or injury happening to any member of the crew, with the nature thereof, and the medical treatment.

Sixth.—Every case of death happening on board, with the cause thereof.

Seventh.—Every birth happening on board, with the sex of the infant and the names of the parents.

Eighth.—Every marriage taking place on board, with the names and ages of the parties.

Ninth.—The name of every seaman or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner, and cause thereof.

Tenth.—The wages due to any seaman or apprentice who dies during the voyage, and the gross amount of all deductions to be made therefrom.

Eleventh.—The sale of the effects of any seaman or apprentice who dies during the voyage, including a statement of each article sold, and the sum received for it.

SEC. 4291. Every entry hereby required to be made in the official log book shall be signed by the master and by the mate, or some other one of the crew, and every entry in the official log book shall be made as soon as possible after the occurrence to which it relates, and, if not made on the same day as the occurrence to which it relates, shall be made and dated so as to show the date of the occurrence, and of the entry respecting it; and in no case shall any entry therein, in respect of any occurrence happening previously to the arrival of the vessel at her final port, be made more than twenty-four hours after such arrival.

SEC. 4292. If in any case the official log book is not kept in the manner required, or if any entry hereby directed to be made in any such log book is not made at the time and in the manner hereby directed, the master shall, for each such offense, be liable to a penalty of not more than twenty-five dollars; and every person who makes, or procures to be made, or assists in making any entry in any official log book in respect of any occurrence happening previously to the arrival of the vessel at her final port of discharge, more than twenty-four hours after such arrival, shall for each offense be liable to a penalty of not more than one hundred and fifty dollars.

Having complied with all that the law of nations could under the circumstances require of him as regards any right of search Russia may have possessed, the captain did not deem it incumbent on him to accept any orders, to consider himself under arrest, or to go on board the Russian cruiser and give himself up. He simply continued his voyage until he was compelled by force of arms to submit to the arrest and confiscation. The Russian Government has claimed that his failure to surrender his ship was an act of resistance. He made no resistance; he had submitted to search, and he knew that nothing

incriminating had been found, and as in duty bound to his owners he continued his voyage until compelled by force to submit to arrest.

The evidence adduced by the Russian Government simply shows that this vessel came into the neighborhood of Copper Island, where, by Russian acknowledgment, she had a perfect right to come, and that she had taken a number of seals, which, so far as Russia is concerned, she had a right to take provided they were not taken in Russian jurisdiction, and that the master evinced a disposition to escape arrest and to evade inquiries. There was no evasion of search, and the evasion of inquiry is only circumstantial evidence of guilt, when an obligation to submit to investigation and to answer questions truly is first established. If the master of the *James Hamilton Lewis* was overhauled and submitted to interrogation, which the interrogator had no lawful authority to make, his reticence and his indisposition to make a full disclosure can not be given the construction put upon them by the Russian Government. It is to be borne in mind that the master denies these allegations; but, supposing them to be true, they do not even tend to connect the master with any unlawful act in Russian jurisdiction.

There is not a particle of affirmative evidence in support of the contention that the *James Hamilton Lewis* or her crew ever entered Russian waters, and every evidential fact alleged against her by Russia is entirely consistent with the lawful pursuit of her calling upon the high seas.

Russia has taken an American vessel upon the high seas at least 12 miles from any Russian territory and confiscated her and her equipment. She has arrested and imprisoned the master and crew of this vessel, and after they were released left them to make their way home penniless as best they might.

Such an act could only be justified upon proof of infraction of Russian law. The Russian Government has furnished no evidence whatever of any such infraction. It has simply shown what has never been denied, that the *James Hamilton Lewis* was engaged in sealing in the waters of the North Pacific Ocean, but there is no evidence to show that the seals taken by her were captured where Russia had the right to control the seal fishing. On the contrary, all the evidence goes to show that the vessel was hunting seals on the high seas far from any land.

The Russian Government has seen fit to throw doubt on the authenticity of the log book of the *James Hamilton Lewis*, herewith submitted in the evidence, on the ground that it was only produced long after the seizure. It is to be borne in mind that the master of the vessel repeatedly asked for a trial while in Vladivostok, but that this was denied him and, as the Russian Government has itself admitted, the vessel was confiscated with her equipment and cargo on the administrative process. This it is contended is in contravention of the rights of the owners under the principles of international law. They were entitled to have their rights submitted to a court of admiralty. Had the Russian authorities seen fit to grant to the master a trial the log book would have been produced in court. It was the property of the master, and his duty to his owners to whom he was responsible forbade his risking its confiscation under the summary process adopted in taking his vessel by presenting it to his captors. Since the presentation of the case to the Imperial Russian Government through the

medium of the diplomatic channels of the United States the log book has been at the disposition of the Imperial Government at any time and, indeed, as the correspondence shows, the document has been repeatedly offered to the Russian Government for its inspection. The delay in its presentation is therefore due to the Russian Government itself, and such delay can in no wise be brought up as evidence of a fictitious character as regards this piece of evidence.

Similarly the testimony of the master and crew as to their treatment during the period of their detention has been thrown aside by the Russian Government, stating that they are mere assertions unsupported by proofs, and that if the members of the crew suffered ill treatment they should have complained at Vladivostok.

In view of the summary proceedings in confiscating the vessel, the ignoring of their protest against its seizure, and the persistent refusal of a trial, it is not easy to see what these men had reason to believe that they would gain by making any complaint to the Russian officials. It would be an easy method of disposing of testimony unfavorable to the case of a litigant to throw it aside as fictitious. All of this testimony, including the log book, is submitted under oath and must be accepted as valid until disproved.

As regards the authenticity of the log book, it bears upon its face every evidence of genuineness. The several entries are all made seriatim without hiatus, ending with a copy of the protest of the master and the statement of the crew, which is signed by every surviving member thereof. As the crew separated after leaving Vladivostok, and as their signatures are all made with the same ink, it is unreasonable to suppose that they did not sign at the time of the seizure or during detention at Vladivostok.

But even if the evidence of the log book be rejected the fact still remains that the *James Hamilton Lewis* was seized wholly without Russian jurisdiction and without a scintilla of proof that she had ever been within it. She was not even within 6 miles of Russian land when sighted and was coming toward it; therefore she could not have been nearer to it within the knowledge of the Russian officials; though had she been she had the right of innocent passage therein.

No evidence of depredation within Russian territory or territorial waters on the part of the *James Hamilton Lewis* or anyone belonging to her or by anyone else has been shown.

She had certain seal skins upon her which, sailing upon the high seas, she had a right to have. No attempt has been made to prove that they were the skins of seals taken in Russian waters, or even that they were skins of seals of the Russian herd, although this could have been easily established by the experts in the fur-seal business had it been so.

The vessel was arrested upon the merest suspicion, which has not only been proven to have been justifiable, but which the evidence herein submitted proves to have been wholly unfounded.

Pirates as *hostes humani generis*, should be pursued by all nations. It is lawful to arrest, search, and deliver to justice, at the nearest port, even be it a foreign port, every vessel legitimately suspected of piracy. It follows from which that, in the application of this principle, since a ship unjustly arrested is entitled to damages, etc. (F. de Martens, *Treatise on International Law*, Vol. II, p. 342.)

The burden of proof not only against the log book and the other testimony offered, but against the *James Hamilton Lewis* itself is on the Russian Government.

The items of damage claimed by the owners, master, and crew of the *James Hamilton Lewis*, for the seizure and confiscation of their vessel, her outfit, and cargo, and by the master and crew for their imprisonment, are as follows:

Value of the vessel and outfit.....	\$25,000.00
424 seal skins, at \$10 each.....	4,240.00
Loss of probable catch of 2,000 skins.....	20,000.00
Claims of men for imprisonment, physical and mental suffering, injury to health, etc., 17 men, at \$2,000.....	34,000.00
Nine years' interest, at 6 per cent.....	44,949.60
Total.....	128,189.60

THE MEASURE OF DAMAGES.

The third item, that for loss of catch, is one for absolutely direct damages arising out of seizure. In the case of the United States vessel *Betsey*, unlawfully detained by British authorities, the majority of the board of arbitration decided in favor of allowing to the claimant, not only the value of the vessel and her cargo, but also the profits which would have been derived from the sale of her cargo had she been allowed to continue her voyage. The claims of the owners of the *Neptune* were similarly decided in 1795.

In the case of the American brig *Williams*, seized by the Mexican Government in 1829, the umpire awarded passage money which would have been received if the brig had been permitted to continue her voyage to her immediate destination, where she expected to receive a cargo of passengers.

The damages claimed for loss of catch of a sealing vessel are in no sense a claim for indirect damages or for speculative profits. In the present case they represent the direct loss sustained by the owners, officers, and crew of the *James Hamilton Lewis*, owing to her arrest and confiscation while in pursuit of her lawful calling upon the high seas. They are such damages as are usually allowed in analogous cases for losses suffered, as measured by the value of the services of the vessel, her outfit, and crew.

The rule of damages is well settled that in a fishing voyage the loss of the services of a fishing vessel is to be compensated upon the value of the vessel's use during the voyage interrupted. It is the measure of damage suffered by the parties in interest from the deprivation of the use of their property. It is the same rule of damages as that applied in the case of the seizure of a whaling ship. In the case of the *Costa Rica Packet*, the distinguished arbitrator admitted the principle of the loss of catch of a whaling vessel as the measure of damage owing to the detention of the vessel.

In the case of the *Hope On*, detained by the Chilean Government in 1883 at Talcahuano, the commission of arbitration in rendering its award, said:

The principle is well established in cases like the present, that the loss of the use of the vessel is the proper measure of damages, and the loss of such use is the loss of her probable catch, during her enforced absence from the fishing grounds. (G. B. Borden v. Chile.)

The Bering Sea Commission, in its awards in cases analogous to the present, clearly adopted this rule in measuring the damages sustained by sealing vessels owing to seizure.

The loss of the vessel itself is not the only direct injury sustained by these claimants owing to the confiscation of their vessel. The loss of

the use and service of their schooner and her outfit during the season for the purpose for which she was equipped is also to be taken into consideration. This is an injury sustained not alone by the owners, but by the officers and crew as well, who were thereby deprived of the means of earning their living. No one has the right to deprive another of the means of gaining his sustenance in any lawful calling which he may see fit to engage in. Equally, no one has the right by a summary act to divert the earning capacity of the invested capital of another. If the laborer is worthy of his hire, so also is invested capital entitled to its legitimate profit.

The damages sustained by these claimants can not be measured by the value of their vessel and its outfit alone. They had not done wrong to Russia and they were entitled to go peaceably on their way, employing their vessel and their own services in the lawful calling in which they were engaged. When the Russian Government, or its agents, took on itself to deprive them of this right it became responsible for all the consequences of its act. To restore to these parties, at the present time, their vessel or its value would not be at all to put them back in the position in which they stood at the time of the seizure. Neither would the addition of interest on such payment compensate the parties for their loss. The owners had not embarked their capital in a hazardous undertaking upon the ocean to gain simply such interest as their money might earn at home by its investment in securities. In every well-regulated business undertaking in which capital is involved, the interest upon the capital is deducted from the gross proceeds before profits are declared. As it is now impossible to put the parties back where they were at the time of the seizure, the only just basis of compensation for the injuries sustained by them owing to the seizure is upon a fair estimate of the probable catch added to the value of the vessel and its outfit, together with interest upon the whole. As upon a sealing voyage, the crew are compensated by lay in lieu of wages, such a basis discharges the indemnity due both to them and to the owners.

In the case of the *Potomac* before the Supreme Court of the United States, Mr. Justice Gray, in delivering the opinion of the court, said:

Both the questions of law presented by the record relate to the amount of the damages that the libellant is entitled to recover.

One question is as to the sum to be allowed for the detention of his vessel while repairing the injuries suffered by the collision. The rules of law governing this question are well settled, and the only difficulty is in applying them to the peculiar facts of the case.

In order to make full compensation and indemnity for what has been lost by the collision, *restitutio in integrum*, the owners of the injured vessel are entitled to recover for the loss of her use, while laid up for repairs. When there is a market price for such use the price is the test of the sum to be recovered. When there is no market price, evidence of the profits that she would have earned if not disabled is competent. (United States Reports, vol. 105, pp. 630-632.)

In the case of *Williamson v. Barrett*, before the Supreme Court of the United States, Mr. Justice Nelson, in delivering the opinion of the court, said:

As to the question of damages, the jury were instructed, if they found for the plaintiffs, to give damages that would remunerate them for the loss necessarily incurred in raising the boat and repairing her, and also for the use of the boat during the time necessary to make the repairs and fit her for business.

By the use of the boat, we understand what she would produce to the plaintiffs by the hiring or chartering of her to run upon the river in the business in which she had been usually engaged.

The general rule in regulating damages in cases of collision is to allow the injured party an indemnity to the extent of the loss sustained. This rule is obvious enough, but there is a good deal of difficulty in stating the grounds upon which to arrive in all cases at the proper measure of that indemnity.

The expenses of raising the boat and of repairs may of course be readily ascertained, and in respect to repairs no deduction is to be made, as in insurance cases, for the new materials in place of the old. The difficulty lies in estimating the damage sustained by the loss of service while she is undergoing the repairs.

That an allowance short of some compensation for this loss would fail to be an indemnity for the injury is apparent. This question was directly before the court of admiralty in England, in the case of the *Gazelle*, decided by Dr. Lushington, in 1844, 2 W. Robinson, 279. That was a case of collision, and in deciding it the court observed "that the party who had suffered the injury is clearly entitled to an adequate compensation for any loss he may sustain for the detention of the vessel during the period which is necessary for the completion of the repairs and furnishing the new articles.

In fixing the amount of the damages to be paid for the detention the court allowed the gross freight, deducting so much as would, in ordinary cases, be disbursed on account of the ship's expenses in earning it.

This rule may afford a very fair indemnity in cases where the repairs are completed within the period usually occupied in the voyage in which the freight is to be earned. But if a longer period is required it obviously falls short of an adequate allowance. It looks to the capacity of the vessel to earn freight for the benefit of the owner and consequent loss while deprived of her service. In other words, to the amount she would earn him on hire.

(13 Howard, 101.)

(See also the following cases: The *Baltimore*, 8 Wallace, 377-385; *Cayuga*, 14 Wallace, 270; *Freddie L. Porter*, 5 Federal Reports, 822; Vermont, 8 Federal Reports, 170; Brown v. Hicks, 24 Federal Reports, 811; Parsons v. Terry, 1 Lowell, 60; The *Notting Hill*, 9 Pro. Div., 105-113; The *Parana*, 2 Pro. Div., 118; The *Mary Steele*, 2 Lowell, 370-374; The *Resolute*, 8 Pro. Div., 109; The *Clarence*, 3 William Reb., 283-286; The *Gleaner*, 38 L. T. N. S., 650; The *Marsden* Collision, second edition, p. 115.)

This rule was applied in the cases of the whaling ships *James Murray*, *General Pike*, *Milo*, and the bark *Nile*, captured by the Confederate cruiser *Shenandoah* and compelled to abandon their whaling voyages, in the decisions of the Court of Commissioners of Alabama Claims.

(See also The *Walter Phara*, 1 Lowell, 437; *Stormless*, 1 Lowell, 153; *Mayflower*, 1 Brown, adm., 376; *Transit*, 4 Ben., 138; *Swift v. Brownell*, 1 Holmes, 467; The *Antelope*, 1 Lowell, 130; *Bourne v. Smith*, 1 Lowell, 547; *Frates v. Howland*, 2 Lowell, 36; *Hussey v. Fields*, 1 Sprague, 394-396; *Knight v. Parsons*, 1 Sprague, 279; 290 Barrels of Oil, 1 Sprague, 279; *Backster v. Rodman*, 3 Pickering (Mass.), 435, 438, 439; *Fletcher v. Taylor*, 17 C. B., 21; *Corey v. Thames Iron Works*, L. R. 3 Q. B., 181; *Ex parte Cambrian Steam Packet Company*, L. R. 6, eq., 396; *Cayuga*, 2d Ben., 125; *Jolly v. Terra Haute*, McLane, 589.)

This subject has recently undergone the most thorough and careful examination by the commission appointed to adjust the claims of the Canadian sealers against the Government of the United States, commonly known as the Bering Sea claims. It is scarcely necessary to do more than to refer to the arguments submitted before this tribunal on behalf of the English Government and of the American Government for the most complete and exhaustive review of all the decisions upon the subject.

The English Government contended for the rule as claimed in the present case. An examination of the awards made in certain cases before the Bering Sea Commission leaves no room for doubt that, in

those cases at least, the commission adopted the rule as contended for by the English Government and as herein stated. In the awards upon all these claims it is perfectly clear that the loss of catch was allowed in measuring the damages. If there were any doubt of this, it is relieved by such cases as No. 14, the *Triumph*, where the sole claim was for loss of catch. In the case of the *Triumph*, No. 14, not No. 11 for the same vessel, the award was \$15,500, the original claim was for \$19,674, of which \$250 was for legal and other expenses, \$19,424 being for balance of estimated catch of 2,500 skins at \$8 each. It was admitted that the *Triumph* had transshipped part of her season's catch before entering Bering Sea on or about July 4, a considerable part of the season had already elapsed and it was reasonable to suppose that she had taken a fifth part of her probable catch before entering Bering Sea, thus 2,000 skins would remain to be taken to make up the season's work of 2,500 skins. She had on board 72 skins when taken, leaving 1,928 skins to be taken to make up 2,000. One thousand nine hundred and twenty-eight skins at \$8 would amount to \$15,424, and the award was for \$15,450, as has been said.

EXHIBIT A.

Certificate of ownership of vessel.

UNITED STATES CUSTOM SERVICE, PORT OF SAN FRANCISCO,
COLLECTOR'S OFFICE,
March 29, 1900.

I hereby certify that according to the records of this office the schooner called the *James Hamilton Lewis*, of San Francisco, tonnage 77 and 52/100 tons, was registered at this office January 10th, 1890, and the following were her owners, viz:

Herman Liebes, of San Francisco, California, sole owner,
Transfer by bill of sale executed September 17th, 1890.

Herman Liebes to H. Liebes and Company (Inc.). All

Bill of sale executed July 29th, 1891.

H. Liebes and Company (Inc.) to Max Waizman, of
San Francisco, State aforesaid, All

and there is no mortgage or lien on record against said vessel in this office.

Given under my hand and seal of office this 29th day of March, 1900, 1.35 p. m.

N. S. FARLEY,
Deputy Collector.

Fee, 20 cents, paid.

H. J.

CASHIER'S OFFICE, CUSTOM-HOUSE,
SAN FRANCISCO, March 29, 1900.

[STAMP.]

EXHIBIT B.

OFFICE OF THE COLLECTOR OF CUSTOMS.
PORT OF SAN FRANCISCO, CAL.,
March 29, 1900.

I hereby certify that the records of this office show that the American schooner *J. H. Lewis*, A. McLean, master, of 78 tons, cleared at this port for a hunting and fishing voyage on the 7th day of March, 1891.

N. S. FARLEY,
Deputy Collector of Customs.

[STAMP.]

Fee, 20 cents, paid.

CASHIER'S OFFICE, CUSTOM-HOUSE,
SAN FRANCISCO, March 29, 1900.

EXHIBIT C.

Outward foreign manifest.

Report and manifest of the cargo, laden at the port of San Francisco, on board the American schooner *J. H. Lewis*, whereof A. McLean is master, or (commander), bound for hunting and fishing.

MARCH 7, 1891.

HUNTING AND FISHING GEAR.—SHIP'S STORES.

200 sacks cracked salt.	1 box vermicelli.
80/4 sacks flour.	1/2 dozen yeast cakes.
1 sack graham flour.	50 pounds soap.
3 sacks yellow corn meal.	2 bags coffee.
4 sacks oatmeal.	2 barrels granulated sugar.
4 boxes peas.	2 cases sirups and honey.
14 barrels beef.	2 kegs molasses.
4 barrels pork.	4 kegs sirups.
3 barrels mess pork.	4 cases bread.
2 packages pigs' feet.	1 tin matches.
100 pounds ham.	5 kegs of pickles and vinegar.
198 pounds bacon.	5 boxes of dried fish.
80 pickled shoulders.	4 cases coal oil.
2 cases lard.	4 cases peaches and assorted fruits.
4 cases roast beef.	4 cases corn and tomatoes.
1 case mutton.	4 mats China rice.
1 case assorted soup.	2 boxes tapioca and corn starch.
20 cases sausages.	2 boxes macaroni.
4 cases milk.	3 sacks green peas.
1 bale cod.	7 sacks beans.
1 bale salmon bellies.	35 sacks potatoes.
1/2 bale herrings.	2 sacks onions.
1 case sardines.	5 sacks turnips.
2 cases corned beef.	2 sacks carrots.
2 cases salmon.	3 dozen cabbages.
11 packages tobacco.	1 sack vegetables.
5,000 cigarettes.	6 cheeses.
300 cigars.	
8 breech-loading shot guns	\$35
15 kegs powder, 750 pounds	105
50 sacks shot, 1,250 pounds	100
25,000 primers	30
50,000 wads	40
	<hr/>
	310

PORT OF SAN FRANCISCO, *May 7, 1891.*

I hereby certify under oath that I have no arms or ammunition on schooner *J. H. Lewis*, except as mentioned herein. So help me God.

Sworn to this 7th day of March, 1891.

A. McLEAN, *Master.*
D. M. CASHIN, *Deputy Collector.*

Bond filed March 7, 1891.

W. P. SAXE, *Bond Clerk.*
G. H. F.

DISTRICT AND PORT OF SAN FRANCISCO,
COLLECTOR'S OFFICE,
March 23, 1900.

I hereby certify the foregoing to be a true copy of the original now on file in this office.

[Stamp.]

N. S. FARLEY, *Deputy Collector.*

Fee, 20 cents, paid.

CASHIER'S OFFICE, CUSTOM-HOUSE,
San Francisco, March 23, 1900.

Master or commander's oath on clearing outward.

District and port of San Francisco:

I, A. McLean, master or commander of the schooner *J. H. Lewis*, bound from the port of San Francisco to hunting and fishing, do solemnly, sincerely, and truly swear that the manifest of the cargo on board the said schooner *J. H. Lewis* now delivered

by me to the collector of this district and subscribed with my name contains, according to the best of my knowledge and belief, a full, just, and true account of all goods, wares, and merchandise now actually laden on board the said vessel or vehicle, and of the value thereof, and the foreign places or countries in which the same are truly intended to be landed; and if any other goods, wares, or merchandise shall be landed or put on board the said schooner *J. H. Lewis* previous to her sailing from this port I will immediately report the same to the said collector. I do also swear that I do verily believe the duties on all foreign merchandise therein specified have been paid or secured according to law, and that no part thereof is intended to be relanded within the United States, and that if by distress or other unavoidable accident it shall become necessary to reland the same I will forthwith make a just and true report thereof to the collector of the customs of the district wherein such accident or distress may happen. And said cargo is truly intended to be landed in the port of hunting and fishing. So help me God.

A. McLEAN, *Master*.

Sworn and subscribed before me this 7th day of March, 1891.

D. M. CASHIN, *Deputy Collector*.

EXHIBIT C.

Outward foreign manifest.

Report and manifest of the cargo, laden at the port of San Francisco, on board the schooner *J. H. Lewis*, whereof A. McLean is master or commander, bound for hunting and fishing.

MARCH 7, 1891.

8 breech-loading guns.....	\$35
15 kegs powder, 750 pounds.....	105
50 sacks shot, 1,250 pounds.....	100
25,000 primers.....	30
50,000 wads.....	40
	<hr/> 310

Bonds filed March 7, 1891.

W. P. SAXE, *Bond Clerk*.

DISTRICT AND PORT OF SAN FRANCISCO,
COLLECTOR'S OFFICE,
March 23, 1900.

I hereby certify the foregoing to be a true copy of the original now on file in this office.

[Stamp.]

N. S. FARLEY.

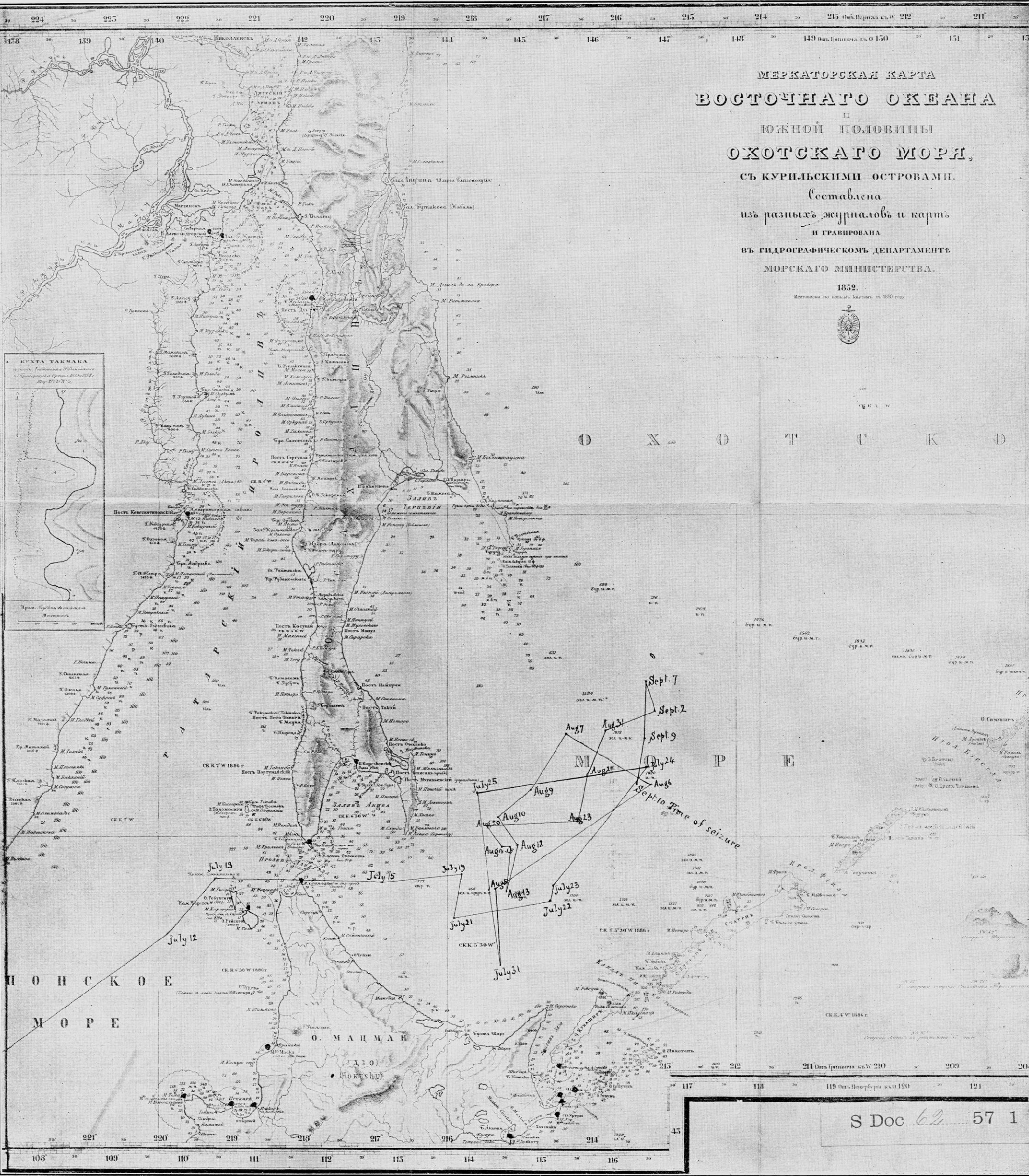
Fee, 20 cents, paid.

CASHIER'S OFFICE, CUSTOM-HOUSE,
San Francisco, March 23, 1900.

Master or commander's oath on clearing outward.

District and port of San Francisco:

I, A. McLean, master or commander of the schooner *J. H. Lewis*, bound from the port of San Francisco to hunting and fishing, do solemnly, sincerely, and truly swear that the manifest of the cargo on board the said schooner *J. H. Lewis* now delivered by me to the collector of this district and subscribed with my name contains, according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares, and merchandise now actually laden on board the said vessel or vehicle, and of the value thereof, and the foreign places or countries in which the same are truly intended to be landed; and if any other goods, wares, or merchandise shall be landed or put on board the said schooner *J. H. Lewis* previous to her sailing from this port I will immediately report the same to the said collector. I do also swear that I do verily believe the duties on all foreign merchandise therein specified have been



МЕРКАТОРСКАЯ КАРТА
ВОСТОЧНОГО ОКЕАНА

ЮЖНОЙ ПОЛОВИНЫ
ОХОТСКОГО МОРЯ,

СЪ КУРИЛЬСКИМИ ОСТРОВАМИ.

Составлена
изъ разныхъ журналовъ и картъ
и гравирована
въ ГИДРОГРАФИЧЕСКОМЪ ДЕПАРТАМЕНТѢ
МОРСКАГО МИНИСТЕРСТВА.

1852.

Издана по повелѣнью Императора въ 1850 году.



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БУХТА ТАКМАКА
См. в. Гидрографическаго Департамента Морского Министерства.
Шир. 47° 15' N.

Прим. Бухта въ горахъ
Восточнаго

ПОЦСКОЕ
МОРЕ

О. МАЦМАИ

ХОККАЙДО

paid or secured according to law, and that no part thereof is intended to be relanded within the United States, and that if by distress or other unavoidable accident it shall become necessary to reland the same I will forthwith make a just and true report thereof to the collector of the customs of the district wherein such accident or distress may happen. And said cargo is truly intended to be landed in the port of hunting and fishing. So help me God.

A. McLEAN, *Master.*

Sworn and subscribed before me this 7th day of March, 1891.

D. M. CASHIN, *Deputy Collector.*

EXHIBIT D.

Identical with the log book forming part of Exhibit G.

EXHIBIT E.

Chart showing the course of the *James H. Lewis*.

EXHIBIT F.

Extracts from "Fur-seal Arbitration: Appendix to the case of the United States before the tribunal of arbitration to convene at Paris under the provisions of the treaty between the United States of America and Great Britain, concluded February 29, 1892." Vol. II, 1892.

[Extract from deposition of Abial P. Loud, special assistant treasury agent on Pribilof Islands.]

MANAGEMENT AND PELAGIC SEALING.

* * * * *

I examined the seal skins she had on board, and about 80 per cent were skins of females. In 1888 or 1889 I examined something like 5,000 skins at Unalaska which had been taken from schooners engaged in pelagic sealing in Bering Sea, and at least 80 to 85 per cent were skins of females.

* * * * *

ABIAL P. LOUD.

Subscribed and sworn to before me, a notary public in the District of Columbia, this 15th day of April, 1892.

[SEAL.]

CHAS. L. HUGHES, *Notary Public.*

[Deposition of Thomas F. Morgan, agent of the lessees on the Pribilof Islands, and of the lessees on the Commander Islands.]

HABITS, MANAGEMENT, AND PELAGIC SEALING.

DISTRICT OF COLUMBIA, *City of Washington, ss:*

Thomas F. Morgan, being duly sworn, says: I am 44 years of age, and reside in the town of Groton, Conn. In 1868 I shipped as second mate of the bark *Peru*, owned by the firm of Williams & Haven, of the city of New London, Conn., which vessel was commanded by my father, Capt. Ebenezer Morgan, and sailed on that bark from Honolulu about the 27th day of February, 1868, for the purpose of catching seals on the islands in Bering Sea, Williams & Haven having for many years been engaged in seal fisheries, and being, so far as I know, the largest firm in the United States engaged in that business. We sailed to the port of Sitka and there applied to the commander, Gen. Jefferson C. Davis, for permission to land the cargo of the bark on the Pribilof Islands, and take seals on those islands. At the end of the season I remained on the island of St. Paul, one of the said Pribilof Islands, until August,

1869, as a representative of Williams & Haven's interests in and about the said island. In the last-mentioned year I returned to this country, and at the request of the Alaska Commercial Company, of which Williams & Haven were stockholders, I was employed in the year 1874 to return to the Pribilof Islands as a representative of the said Alaska Commercial Company.

In pursuance of such request I returned to the islands as agent of said last-mentioned company in charge of the island of St. George, which, with the islands of St. Paul, Otter, and Walrus, constitute the group known as the Pribilof Islands. I arrived at said island some time in May, 1874; took up my residence there, and remained in my capacity of agent in and about that island during each sealing season thereafter until the year 1887. At the expiration of the sealing season of 1887 I returned to the United States, and in 1891 was engaged by the Russian Sealskin Company, of St. Petersburg, as chief agent of that company, to proceed to the islands of Komandorski, consisting of Copper and Bering islands, commonly called the Commander Islands, which said company had a lease of the said Commander Islands as well as of the island of Tuliéni or Robben, in the Okhotsk Sea, to kill seals and other fur-bearing animals on those islands on the payment of a royalty to the Russian Government. During the years above mentioned I have superintended the killing of, on the average, 18,000 seals a year, and in the last year of my employment by the Russian Sealskin Company I killed or superintended the killing of 30,000 seals. The skinning, curing of skins, packing of skins, and shipping of the skins from the islands of all the seals the killing of which I superintended has been under my immediate supervision, and a considerable part of the work thereof has been done by me personally.

That during my employment on said Pribilof Islands I carefully studied the habits of the fur seal and the statements hereafter made as to the habits of said animals are based on my own observation, and also from the fact that these statements have been corroborated by natives and residents on said islands whom I know to be familiar with every phase of seal life.

The Alaska fur seal breeds, I am thoroughly convinced, only upon the Pribilof Islands; that I have been on the Alaska coast and also along the Aleutian Islands; that at no point have I ever observed seals to haul out on land except at the Pribilof Islands, nor have I been able to obtain any authentic information which causes me to believe such is the case.

The Alaska fur seal is migratory, leaving the Pribilof Islands in the early winter, going southward into the Pacific and returning again in May, June, and July to said islands. I have observed certain bull seals return year after year to the same place on the rookeries, and I have been informed by natives that have lived on the islands that this is a well-known fact and has been observed by them so often that they stated it as an absolute fact.

I believe that the cause the seals chose these islands for their home is because of the isolation of these Pribilof Islands and because the climatic condition of said Pribilof Islands is particularly favorable to seal life. During the time the seals are upon land the weather is damp and cool, the islands being almost continually enveloped in fogs, the average temperature being about 41° F. during the summer.

The pup seals are born on the breeding rookeries on St. Paul and St. George islands during the months of June and July. When first born a pup can only live upon land, is not amphibious, and is unable to swim. If it is washed off into the sea by the surf it is drowned, as I have often seen. If a pup was born in the water it could not possibly live, and I have never heard of such a case. A further fact in this connection is that the females never come to the islands accompanied by a pup. After birth a pup at once begins to suckle its mother, who leaves its offspring only to go into the water for food, which I believe, from my observation, consists mainly of fish, squids, and crustaceans. In her search for food the female, in my opinion, goes 40 miles or even farther from the islands. The pup does not appear to recognize its mother, attempting to draw milk from any cow it comes in contact with; but a mother will at once recognize her own pup and will allow no other to nurse her. This I know from often observing a cow fight off other pups who approached her and search out her own pup from among them, which I think she recognizes by its smell and its cry.

When the pups are about 6 or 8 weeks old they begin to herd together in groups called "pods;" these by degrees work down toward the shore, and after several trials and failures at last find the use of their flippers and learn to swim; from this time, the 1st of August or thereabouts, the pup goes into the water at intervals, but remains most of the time on the rookeries until about November, the time which the pup spends in the water depending a great deal on the weather. Toward the first or middle of November the pups leave the islands; they instinctively turn southward toward the Aleutian Islands.

The time of their departure depends a good deal on the state of the weather; if the winter is open, they may be found much later upon the islands, and if particularly warm seals may be found during the whole winter upon and about the islands. Probably, too, they are induced to leave the islands in pursuit of food. In my opinion if the islands were a little warmer in winter and not surrounded by ice, the seals would remain there the year round, as they evidently consider the Pribilof group their home.

From the islands the pup, with his fellows, goes southward, passing through the passes between the Aleutian Islands, and holds its course still south till lost sight of in the ocean. From this time until the herd reappears off the California coast their course is a matter of belief; but from information of sea captains of coasting vessels who have sailed during the winter, seals during December and the first part of January are found heading southeasterly toward the Californian coast. In January and February they begin to appear along that coast; then turning northward they proceed along the coast, reaching Vancouver Island about March, the southern Alaska coast in April and May, and in June the herd reenters Bering Sea and proceeds again to their island home. It is impossible to state the course or exact time of migration with complete accuracy, but this course here designated I believe to be approximately correct.

The pups which left the island the year before have now become "yearlings," the males and females herding together indiscriminately and not coming on shore until some time in August or September; they also leave the islands a little earlier than the first year and make the same course of migration as before. On their second return to the island as "two-year-olds" the sexes separate, the females going on the breeding rookeries, where they are fertilized by the bulls, and the males hauling up with the nonbreeding males, called "bachelors," on the so-called "hauling grounds." The "two-year-olds" again migrate southward over the same course as formerly. On their return to the islands the female goes again to the breeding rookeries and there brings forth her first pup. From this time forward she increases the seal herd by one pup annually, and the male of the same age is on the hauling grounds and is now considered of a killable age.

The fourth and fifth migrations are practically the same as the third. After the fifth or sixth migration the male seal, now called a bull, returns to the islands about the 1st of May, and hauls up on the breeding rookeries, provided he is able to maintain himself there, which takes many bloody conflicts. There he gathers about him as many females as he is able. From the time of his landing until the close of the rutting season, or about the 1st of August, he remains continuously on the breeding grounds, never eating, and sleeping very little, if at all. About August 1 he again takes to the water, after having fertilized all the cows in his harem, very lean and lank, and his harem becomes disorganized, the pups gathering into pods, the females going and coming from the water, and the bachelors mingling with the cows and pups.

The bachelors while on the islands, in my opinion, feed very little, and practically it is only the female seals which feed while located on the islands. The speed of a seal when swimming is very great, covering, I should say, from 10 to 15 miles an hour. Therefore a female can easily go to the feeding grounds and return to the islands in a day; and that, so far as I am able to ascertain, the foregoing facts are practically corroborated by all those who have had the opportunity to study or observe seal life on the Pribilof Islands and in Bering Sea.

On my first arrival in the Pribilof Islands, in 1868, several other vessels, representatives of different interests, were there for the purpose of killing seals; and the natives of these islands, called Aleuts, were nearly all employed by one or other of the vessels in the business of killing seals. I noticed that the natives always remonstrated whenever any female was killed, and stated that that was forbidden, and I am informed that it always had been forbidden by the Russian Government. All the seals killed by me or under my superintendence on the islands have been male seals, except in the case of accident. My knowledge of the catch of 1868 enables me to state that the destruction of seals from all sources in that year was about 240,000. This is the maximum figure. Despite the lowering of the standard weight of skins, care was taken annually on St. George that the residue of available male breeders was sufficient for the needs of the rookeries, and instructions to that effect were given to the assistants by the superintendent of the Alaska Commercial Company. In this we were aided by the inaccessible character of some of the hauling grounds.

From the year 1874 till 1885 we were able to get from St. George and St. Paul islands annually 100,000 male seals within the period known as the sealing season of six weeks, from the 10th of June to the 1st of August, and still leave a large percentage

of marketable seals. In 1885, and in every year thereafter until I left, in 1887, there was a marked decrease in the number of marketable skins that could be obtained in each year during the sealing season. We were able down to the last year (1887) to get our total catch of 100,000 seals, but in order to get that number we had to take what in previous years we would have rejected, namely, undersized skins, i. e., the skins of young seals. Prior to 1887 we had endeavored to take no skins weighing less than 8 pounds, but in order to make up our quota in the last-mentioned year we had to take skins weighing as little as 6½ pounds to the number of several thousand.

In the years 1885, 1886, and 1887 my attention was attracted not only to a diminution in the number of killable seals appearing on the island, but to a decrease in the females as well. Up to the year 1884 the breeding space in the rookeries had increased, and from that year down to 1887, when I left the island, the acreage covered by the rookeries which were occupied by seals constantly diminished. Naturally the cause of this diminution was a matter of interest and inquiry. It was not evident that it was from causes incident to the taking of seals upon the island. The greatest care was exercised in the driving. Under precisely similar conditions the herd had increased in former years. The number of skins originally apportioned to St. George Island were reduced at an early date, and only increased in proportion to the rookeries' expansion. No disturbance of the rookeries was permitted, even the presence of dogs and use of firearms being prohibited during the presence of the seals; but facts came under my observation that soon led me to what I believe to be the true cause of destruction—for instance, during the period of my residence on St. George Island down to the year 1884 there were always a number of dead pups, the number of which I can not give exactly, as it varied from year to year and was dependent upon accidents or the destructiveness of storms. Young seals do not know how to swim from birth, nor do they learn how for six weeks or two months after birth, and therefore are at the mercy of the waves during stormy weather. But from the year 1884 down to the period when I left St. George Island there was a marked increase in the number of dead pup seals, amounting, perhaps, to a trebling of the numbers observed in former years, so that I would estimate the number of dead pups in the year 1887 at about five or seven thousand as a maximum.

I also noticed during my last two or three years, among the number of dead pups, an increase of at least 70 per cent of those which were emaciated and poor, and in my judgment they died from want of nourishment, their mothers having been killed while away from the island feeding, because it is a fact that pups drowned or killed by accidents were almost invariably fat. Learning further, through the London sales, of the increase in the pelagic sealing, it became my firm conviction that the constant increase in the number of dead pups and the decrease in the number of marketable seals and breeding females found on the islands during the years 1885, 1886, and 1887 were caused by the destruction of female seals in the open sea, either before or after giving birth to the pups. The mother seals go to feeding grounds distant from the islands, and I can only account for the number of starved pups by supposing that their mothers are killed while feeding.

As I understand the fact to be, most of the seals killed in the open sea are females. My reasons for this conclusion are (1) that from my knowledge of the seal I know that the females when heavy with young, as they are during the early part of the season when on their way to the rookeries, where they are delivered during the months of June and July, are much heavier in the water and much less able to escape, because they are capable of remaining under water to escape for a very much less period of time than when they are not heavy with young, or than the male seal would be; and (2) because I have personally inspected skins taken upon the three schooners *Onward*, *Caroline*, and *Thornton*, which skins, taken in Bering Sea, were landed in Unalaska, and were then personally inspected by me in the month of May, 1887. The total number of skins so examined by me was about 2,000, and of that number at least 80 per cent were the skins of females. I have also examined the skins taken by the United States revenue cutter *Rush* from one of the North Pacific islands, where they had been deposited by what is known as a poaching schooner, and taken to Unalaska, which numbered about 400 skins, and of that 400 skins at least 80 per cent were the skins of female seals. I have also examined the skins seized from the *James Hamilton Lewis* in the year 1891 by the Russian gunboat *Aleute*, numbering 416, of which at least 90 per cent were the skins of female seals, and from my long observation of seals and seal skins I am able to tell the difference between the skin of a male and the skin of a female seal.

From my knowledge of the aquatic habits of the seal and the difficulty of accurate shooting when the object is in the water, I am of the opinion that a large number of seals are also killed by vessels engaged in the business of taking seals in the open seas which are not caught. I am unable to form any estimate of the number of seals shot or speared from vessels which are lost, but in the last two or three years of my

residence at St. George Island in taking 15,000 seals I found approximately 3 pounds of lead, in the form of slugs, bullets, and buckshot, which I personally took from the bodies of male seals, some of which were so badly wounded that they would have died; and I have personally examined the log of the schooner *Angel Dollie*, in which it was stated that the hunters from that vessel got about one seal out of every ten seals shot at; also that on one occasion they fired 250 rounds and got 20 seals; on another occasion, 100 cartridges and got 6 seals, and which log also stated that the captain personally shot and killed 7 seals of which he got only 1.

Deponent further says that he thinks that the decrease in the number of seals found in the rookeries and the increase in the number of dead pups are caused directly by the open-sea sealing, commonly called poaching, and that the prohibition of such poaching is necessary to the preservation of the herds, and that from what he has himself seen he thinks if such poaching be not prohibited the herds will be practically exterminated within five years. One cause of destruction is raiding, which has been done upon the shores of the islands. A half dozen such raids are known to me personally; but while it is not possible for me to state with certainty the skins actually secured by such raids, I believe that, although such raiding is detrimental, its injurious effect, as compared with the disastrous results of pelagic sealing, is insignificant.

THOMAS F. MORGAN.

Subscribed and sworn to before me this 5th day of April, 1892.

[SEAL.]

SEVELLON A. BROWN,

Notary Public in and for the District of Columbia, U. S. A.

[Deposition of William H. Williams, Treasury agent in charge of the Pribilof Islands.]

MANAGEMENT—PELAGIC SEALING.

William H. Williams, being duly sworn, deposes and says: I reside at Wellington, Ohio, and am 55 years of age; that I am the United States Treasury agent in charge of the Seal Islands in Bering Sea; that in pursuance of Department instructions to me of May 27, 1891, I made a careful examination during the sealing season of the habits, numbers, and conditions of the seals and seal rookeries with a view of reporting to the Department, from observation and such knowledge on the subject as I might obtain, whether or not, in my opinion, the seals are diminishing on the Pribilof Islands, and if so, the causes therefor; that as a result of such investigation I found, from the statements made to me by the natives on said islands, Government agents, employees of the lessees, some of whom had been on said islands for many years, that a decrease in number of seals had been gradually going on since 1885, and that in the last three years the decrease had been very rapid.

A careful and frequent examination of the hauling grounds and breeding rookeries by myself and assistant agents during the months of June, July, and August showed that the seals had greatly diminished in number, and we found large vacant spaces on all the rookeries which in former years, during these months, had been covered by thousands of seals; that prior to 1888 the lessees had been able to take 100,000 skins from male seals, but I am clearly of the opinion that not more than one-third of that number of merchantable skins could have been taken during the year 1891. Furthermore, I made careful inquiry of the people on the islands, both native and white, and of those who were or had been employed as masters or mates on sealing vessels, and others interested one way or another in the capture of fur-seals for food or for profit, and failed to find any of them but who admitted that the number of seals in the Bering Sea was much less now than a few years since, and nearly all of them gave it as their opinion that the decrease in number was due to pelagic hunting, or, as they more frequently expressed it, the killing of females in the water. It was freely admitted by the pelagic hunters with whom I conversed that but a very small per cent of their catch was males, and I found their statements in this respect verified by the dealers who bought or handled the skins and placed them on the market. They are known to the trade as the "Northwest coast catch," and I am credibly informed that a portion of the skin on the belly of the female heavy with pup or giving suck to her young is worthless, and that this is one of the chief causes why they are sold so much less than prime skins in the London market. They also further stated that the two most profitable periods for them to catch seal was in the spring of the year, when the females were heavy with pup and frequently found asleep on the water, and in the summer, after the mother seal had given birth to her young and gone out into the sea to feed, at which time she was easily approached.

The investigation further disclosed the fact that of the large number of seals killed by pelagic hunters only a portion of them are secured, and while all admitted that some were lost they differed considerably as to the number. In one instance a hunter claimed that he secured nearly all that he killed, and in another instance it was said that only one out of fifteen was secured. A great majority of the hunters, when closely questioned, admitted the losing of a large proportion shot at, and I am of the opinion that the wide difference in their statement was due to two facts: First, some hunters are more skillful than others; and, second, some base their estimate on what they know to have been actually killed, while others estimate from the number shot at; that the mother seals, while rearing their young on the Pribilof Islands during the months of July, August, September, and October of each year, leave the islands and go out to sea to feed, returning at intervals to give nourishment to their young. That they traveled long distances in pursuit of food at these times is a well-known fact and substantiated by the statements of reputable persons who have been on sealing vessels and seen them killed 200 miles or more from the islands, and who say they have seen the decks of vessels slippery with milk flowing from the carcasses of the dead females.

That thousands of the female seals were captured by the pelagic hunters in Bering Sea during the season of 1891, the most of which had to be secured quite a distance from the rookeries, owing to the presence of armed vessels patrolling the sea for miles around the islands, and that the slaughter of the seals was mostly of females, was confirmed by the thousands of dead pups lying on the rookeries starved to death by the destruction of their mothers.

It is a fact that none but male seals are ever driven and killed on the islands, and great care is taken to preserve a sufficient number each year to supply the breeding rookeries.

During the season of 1891 nearly every mature female coming upon the rookeries gave birth to a young seal, and there was great abundance of males of sufficient age to again go upon the breeding grounds that year, as was shown by the inability of large numbers of them to secure more than one to five cows each, while quite a number could secure none at all. My investigation confirms what has been so often said by others who have reported upon this subject, and that is that the Pribilof Islands are the greatest breeding grounds of the fur seals, and that they can be reared in great numbers on said islands, and at the same time, under wise and judicious restrictions, a certain number of male seals can be killed from year to year without injury to the breeding herds, and their skins disposed of for commercial purposes, thereby building up and perpetuating this great industry indefinitely, and thus adding to the wealth, happiness, and comfort of the civilized world; while on the other hand, if the pelagic hunting of this animal is to continue, and the barbarous practice of killing the mother seal with her unborn young, or when she is rearing it, is to go on, it will be but a very short time before the fur seal will practically become extinct, and this valuable industry will pass out of existence.

WM. H. WILLIAMS.

DISTRICT OF COLUMBIA, *City of Washington:*

Subscribed and sworn to before me this 19th day of March, 1892.

[SEAL.]

CHAS. L. HUGHES,
Notary Public.

[Deposition of Kerrick Artomanoff, native chief, resident of St. Paul Island.]

PELAGIC SEALING—MANAGEMENT.

ALASKA, U. S. A., *St. Paul Island, Pribilof Group, ss.:*

Kerrick Artomanoff, being duly sworn, deposes and says: I am a native Aleut, and reside on St. Paul Island, Pribilof Group, Alaska; I was born at Northeast Point, on St. Paul Island, and am 67 years of age. I have worked on the sealing grounds for the last fifty years, and am well acquainted with the methods adopted by the Russian and American Governments in taking of fur-seal skins and in protecting and preserving the herds on the island. In 1870, when the Alaska Commercial Company obtained the lease of the islands, I was made chief, and held the position for seventeen years.

It was my duty as chief to take charge of and conduct the drives with my people from the hauling to the killing grounds. The methods used by the Alaska Commercial Company and the American Government for the care and preservation of the seals were much better than those used by the Russian Government. In old Russian times

we used to drive seals from Northeast Point to the village, a distance of nearly 13 miles, and we used to drive 5 or 6 miles from other hauling grounds; but when the Americans got the islands they soon after shortened all the drives to less than 3 miles.

From 1870 to 1884 the seals were swarming on the hauling grounds and the rookeries, and for many years they spread out more and more. All of a sudden, in 1884, we noticed there was not so many seals, and they have been decreasing very rapidly ever since. My people wondered why this was so, and no one could tell why, until we learned that hunters in schooners were shooting and destroying them in the sea. Then we knew what the trouble was, for we knew the seals they killed and destroyed must be cows, for most all the males remain on or near the islands until they go away in the fall or fore part of the winter. We also noticed dead pups on the rookeries, that had been starved to death. These dead pups have increased from year to year since 1887, and in 1891 the rookeries were covered with dead pups. In my sixty-seven years' residence on the island I never before saw anything like it. None of our people have ever known of any sickness among the pups or seals, and have never seen any dead pups on the rookeries, except a few killed by the old bulls when fighting, or by drowning when the surf washed them off. If they had not killed the seals in the sea there would be as many on the rookeries as there was ten years ago. There was not more than one-fourth as many seals in 1891 as there was in 1880.

The fur seal goes away from the island in the fall or winter, and he returns in May or June, and I believe he will haul up in the same place each year, for I particularly noticed some that I could tell that hauled up in the same place for a number of years; and when we make drives those we do not kill but let go into the water are all back where we took them from in a few hours. The pups are born between the middle of June and the middle of July, and can not swim until they are six or seven weeks old; and if born in the water they would die. I have seen the surf wash some of the young pups into the sea, and they drowned in a very short time. In four or five days after it is born the mother seal leaves her pup and goes away to the sea to feed, and when the pup is two or three weeks old the mother often stays away for five or six days at a time. The mother seals know their own pups by smelling them, and no seal will allow any but her own pup to suck her. When the pups grow to be six or eight weeks old they form in "pods" and work down to the shore, and they try the water at the edge until they learn to swim. They will remain on the island until November, and if not too cold will stay till December. I have seen them swimming around the island late in January. All the seals, when they leave the island, go off south, but I think they would stay around here all winter if the weather was not so cold.

When they come back to the islands they come from the south, and I think they come from the North Pacific Ocean over the same track that they went. The females go upon the rookeries as soon as they arrive here, but the yearlings do not come on land till the last of July, and yearling males and females herd together. I think they stay in the water most of the time the first year, but after that they come regularly to the hauling grounds and rookeries, but do not come as early in the season as they do after they are two years old. Male seals from two to six years old do not go on the breeding rookeries, but haul out by themselves. The female seal gives birth to but one pup every year, and she has her first pup when she is three years old. The male seal establishes himself on the breeding rookery by May or June when he is seven or eight years old, and he fights for his cows and does not leave the place he has selected until August or September. Our people like the meat of the seal, and we eat no other meat so long as we can get it.

The pup seals are our chicken meat, and we used to be allowed to kill 3,000 or 4,000 male pups every year in November; but the Government agent forbade us to kill any in 1891, and said we should not be allowed to kill any more, and he gave us other meat in place of "pup" meat; but we do not like any other meat as well as pup-seal meat. We understand the danger there is in the seals being all killed off and that we will have no way of earning our living. There is not one of us but what believes if they had not killed them off by shooting them in the water there would be as many seals on the island now as there was in 1880, and we could go on forever taking 100,000 seals on the two islands; but if they get less as fast as they have in the last five or six years there will be none left in a little while.

KERRICK ARTOMANOFF.

Subscribed and sworn to before me, an officer empowered to administer oaths, under section 1976, Revised Statutes of the United States, this 8th day of June, 1892, at St. Paul Island, Alaska.

WM. H. WILLIAMS,
Treasury Agent in Charge of Seal Islands.

[Deposition of John Fratis, resident on St. Paul Island and employee of lessees.]

MANAGEMENT AND HABITS.

ALASKA, U. S. A., *St. Paul Island, Pribilof Group, ss:*

John Fratis, being duly sworn, deposes and says: I am 47 years of age, and was born on the Ladrone Islands. I can speak the English, Russian, and Spanish languages, and I understand the Aleut as it is spoken by the natives of St. Paul Island, Alaska.

I came to St. Paul Island in 1869, and married a native woman and became one of the people; was made a native sealer, and have resided here ever since.

From 1859 to 1869 I was employed on whaling vessels working in Bering and Okhotsk seas and the Arctic Ocean. I have been along the coast of Bering and Okhotsk seas, and along the coast of Alaska in the North Pacific Ocean from Sitka to Unalaska, and I never saw or heard tell of any place in American waters in that whole region where the Alaskan fur seals haul out on land or breed, excepting on the seal islands of Bering Sea known as the Pribilof Islands.

From the time I settled here, in 1869, until 1882 or 1883 there was no trouble at all in taking 85,000 seals on St. Paul Island between June 1 and July 30, and we often got that number by July 20.

In those days we used to get plenty of seals on the Zoltoi sands near the Reef rookery, and now there are none there. I have worked on the sealing grounds at everything there is to do, from driving to clubbing, and preparing the skins for shipment.

When Mr. Webster had charge of the killing at Northeast Point, where he used to kill from 25,000 to 35,000 seals in a season, I generally did the cooking there, and I cooked seal meat every day, and we all ate it, and our people live on seal meat, yet I never saw a sick or a diseased seal or a carcass that was unfit for food.

I have driven seals from all the rookeries and under the directions of several chiefs, and I know the orders were always very strict about the care we must take of the seals on the road. No drives were made in warm weather; the seals were not hurried, but every once in a while they were allowed to stop and rest. The men who did the driving were relieved from time to time, so that no man should get too cold on the drive, and when the sun came out warm the drive was always abandoned and the seals allowed to go into the sea. I never saw the seals overdriven or overheated, nor have I ever seen a seal die on the drive, except one or two occasionally smothered.

The drivers carry their knives along, and when a seal dies they skin him, and the skin is brought to the salt-house and counted in with the others.

An overheated seal would not be worth skinning, and for that reason the company agent is particular that the seals are not overheated. I have clubbed seals, too, and at present am a regular clubber.

We know a cow seal on sight, and when we find one on the killing grounds we take care she is not injured. Very few cows get into the drives before the middle of August, and then we are only driving and killing a few hundred a week for food.

All cows killed on the seal islands are killed accidentally, and it occurs so seldom that I do not think there has been to exceed 100 since I came to the island, in 1869. So carefully has this been guarded that when we used to be allowed to kill pup seals in November we had to examine and separate the sexes and kill none but males.

The seals came to the islands in spring, and they came from the southward.

The first bulls arrive late in April or very early in May, and they are coming along till June. The bachelors come in May, the older ones first, and they continue coming till July, when the younger ones arrive. The cows appear about the 10th of June, and they are all on the rookeries about the middle of July.

The pups are born soon after the arrival of the cows, and they are helpless and can not swim, and they would drown if put into water. The pups have no sustenance except what the cows furnish, and no cow suckles any pup but her own. The pups would suck any cow if the cow would let them.

After the pup is a few days old the cow goes into the sea to feed, and at first she will only stay away for a few hours, but as the pup grows stronger she will stay away more and more, until she will sometimes be away for a week.

I do not think the bachelors go to feed from the time they haul out until they leave the islands in November, for I have observed the males killed in May are fat and their stomachs full of fish, mostly codfish, while the males killed in July and afterwards are poorer and poorer, and their stomachs are empty. I know the bulls do not eat during their four months' stay on the islands.

In August the families, or harems, break up, and the cows scatter all over the rookeries, and the bulls begin to go away late in August and all through September,

so that very few are left in October. The cows and bachelors begin to leave in October and November, but their going is regulated somewhat by the weather.

Cold, stormy weather, with sudden heavy frost, will drive them off sooner, so that the islands will be deserted by December 15, while warm weather will keep plenty of bachelors here until late in January, when I have known them to be driven and killed for food. When the seals leave the island they go southward and through the passes of the Aleutian Islands into the Pacific Ocean.

It was in 1884 that I first noticed a decrease in the seals, and it has been a steady and a very rapid decrease ever since 1886, so that at present there is not one-quarter as many seals on the island as there was every year from 1869 to 1883.

I have known of one or two schooners operating in Bering Sea as early as 1877 or 1878, and they were on the rookeries occasionally during the past ten years; but they can not damage the seal herd much by raiding the rookeries, because they can not take many, even were they permitted to land, which they are not by any means.

The schooners increased every year from the time I first noticed them until in 1884 there was a fleet of 20 or 30, and then I began to see more and more dead pups on the rookeries, until in 1891 the fleet of sealing schooners numbered more than a hundred, and the rookeries were covered with dead pups.

It is my opinion that the cows are killed by the hunters when they go out in the sea to feed, and the pups are left to die, and do die on the island.

I never knew of a time when there were not plenty of bulls for all the cows, and I never saw a cow seal, except a 2-year-old, without a pup by her side in the proper season. I never heard tell of an impotent bull seal, nor do I believe there is such a thing, except the very old and feeble, or badly wounded ones. I have seen hundreds of idle vigorous bulls upon the rookeries and there were no cows for them. I saw many such bulls last year.

The pups do not learn to swim until they are six to eight weeks old, and after learning they seem to prefer to be on the land; and I think they would not leave the islands only for the cold weather, or it may be they follow the cows to sea after being weaned.

If the seals were let alone in the water we could manage them so as to again build up the rookeries. We are so familiar with their habits, and they are so accustomed to us, that there is no difficulty in managing them so as to make them increase. They are easy to handle, the little pups are not shy of us, and even when they are older in the fall they can be handled much easier than sheep. I can manage seals better than I can some of the sheep brought on the islands, and which I have been sent to catch.

JOHN FRATIS.

Subscribed and sworn to before me, an officer empowered to administer oaths under section 1976, Revised Statutes of the United States, this 10th of June, 1892, at St. Paul Island, Alaska.

WM. H. WILLIAMS,
Treasury Agent in charge of Seal Island.

[Deposition of Charles J. Goff, Treasury agent in charge of Pribilof Islands.]

PIBILOF ROOKERIES.

DISTRICT OF COLUMBIA, *City of Washington, ss:*

Charles J. Goff, of Clarksburg, W. Va., being duly sworn, deposes and says: I am 45 years of age. During the years 1889 and 1890 I occupied the position of special Treasury agent in charge of the Pribilof Islands. I was located on St. Paul Island, only visiting St. George Island occasionally. About the 1st June, 1889, I arrived on St. Paul Island, and remained there until October 12, 1889, when I returned to San Francisco for the winter. Again went to the islands in 1890, arriving there about the last week in May, and remaining until August 12, 1890. Since that time I have never been on the islands. My principal observations as to seal life upon the islands were confined to St. Paul Island, as I only visited St. George Island occasionally.

During my first year on the islands the Alaska Commercial Company was the lessee thereof, and during my second year the North American Commercial Company. In 1889 I made careful observations of the rookeries on St. Paul Island, and marked out the areas covered by the breeding grounds; in 1890 I examined these

lines made by me the former year and found a very great shrinkage in the spaces covered by breeding seals.

In 1889 it was quite difficult for the lessees to obtain their full quota of 100,000 skins; so difficult was it, in fact, that in order to turn off a sufficient number of four and five year old males from the hauling grounds for breeding purposes in the future the lessees were compelled to take about 50,000 skins of seals of one or two years of age. I at once reported this fact to the Secretary of the Treasury, and advised the taking of a less number of skins the following year. Pursuant to such report the Government fixed upon the number to be taken as 60,000, and further ordered that all killing of seals upon the islands should stop after the 20th day of July. I was further ordered that I should notify the natives upon the Aleutian Islands that all killing of seals while coming from or going to the seal islands was prohibited. These rules and regulations went into effect in 1890, and pursuant thereto I posted notices for the natives at various points along the Aleutian chain, and saw that the orders in relation to the time of killing and number allowed to be killed were executed upon the islands. As a result of the enforcement of these regulations the lessees were unable to take more than 21,238 seals of the killable age of from 1 to 5 years during the season of 1890, so great had been the decrease of seal life in one year, and it would have been impossible to obtain 60,000 skins, even if the time had been unrestricted.

The Table A appended to this affidavit shows how great had been the decrease on St. Paul Islands hauling grounds, bearing in mind the fact that the driving and killing was done by the same persons as in former years and was as diligently carried on, the weather being as favorable as in 1889 for seal driving. I believe that the sole cause of the decrease is pelagic sealing, which from reliable information I understand to have increased greatly since 1884 or 1885. Another fact I have gained from reliable sources is that the great majority of the seals taken in the open sea are pregnant females or females in milk. It is an unquestionable fact that the killing of these females destroys the pups they are carrying or nursing. The result is that this destruction of pups takes about equally from the male and female increase of the herd, and when so many male pups are killed in this manner, besides the 100,000 taken from the islands, it necessarily affects the number of killable seals. In 1889 this drain upon male seal life showed itself on the islands, and this, in my opinion, accounts for the necessity of the lessees taking so many young seals that year to fill out their quota.

As soon as the effects of pelagic sealing were noticed by me upon the islands I reported the same, and the Government at once took steps to limit the killing upon the islands, so that the rookeries might have an opportunity to increase their numbers to their former condition; but it will be impossible to repair the depletion if pelagic sealing continues. I have no doubt, as I reported, that the taking of 100,000 skins in 1889 affected the male life on the islands and cut into the reserve of male seals necessary to preserve annually for breeding purposes in the future; but this fact did not become evident until it was too late to repair the fault that year. Except for the numbers destroyed by pelagic sealing in the years previous to 1889 the hauling grounds would not have been so depleted, and the taking of 100,000 male seals would not have impaired the reserve for breeding purposes or diminished to any extent the seal life on the Pribilof Islands. Even in this diminished state of the rookeries in 1889 I carefully observed that in the majority of cases the four and five year old males were allowed to drop out of a "drive" before the bachelors have been driven any distance from the hauling grounds. These seals were let go for the sole purpose of supplying sufficient future breeders.

A few seals are injured by redriving (often conflicted with overdriving, and sometimes so called), but the number so injured is inconsiderable, and could have no appreciable effect upon seal life, though destroying the virility of the male. The decrease, caused by pelagic sealing, compelled whatever injurious redriving has taken place on the islands, as it was often necessary to drive every two or three days from the same hauling grounds, which caused many seals let go in a former "drive" to be driven over again before thoroughly rested. If a "drive" was made only once a week from a certain hauling ground, as had been the case before pelagic sealing grew to such enormous proportions and depleted the rookeries, there would be no damage at all resulting from redriving.

In my opinion pelagic sealing is the cause of redriving on the islands, the depletion of the rookeries, and promises to soon make the Alaska fur-seal herd a thing of the past. If it continued as it is to-day, even if killing on the islands was absolutely forbidden, the herd will in a few years be exterminated. I am, therefore, of the opinion that pelagic sealing should be absolutely prohibited both in Bering Sea and the North Pacific Ocean. If this is done and a few years are allowed the seal herd

to recover from the enormous slaughter of the past seven years, the Pribilof Islands will produce their 100,000 skins as heretofore for an indefinite period.

* * * * *

CHARLES A. GOFF.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 13th day of April, 1892.

SEVELLON A. BROWN, *Notary Public.*

[Deposition of Aggie Kushen, assistant priest on St. Paul Island, and employee of lessees.]

MANAGEMENT, HABITS.

ALASKA, U. S. A., *St. Paul Island, Pribilof Group, ss:*

Aggie Kushen, being duly sworn, deposes and says: I was born at Simshoe, Kurile Islands, and am 37 years of age. I came to St. Paul Island in 1867, and have resided here ever since. I can read and write in the Russian and Aleut languages, and am able to interpret the one into the other; and I understand the English language fairly well. At present, and for several years past, I am assistant priest in the Greek Catholic Church. My occupation on the island is that of a native sealer, and I have been such since 1870. I have a thorough knowledge of the taking of fur seals for skins in all its details as it has been done on St. Paul Island since 1870. From 1870 to about 1884 the seal rookeries were always filled out to their limits, and sometimes beyond them.

About 1885 a decrease was observed, and that decrease has become more marked every year from 1885 to the present time. I never saw many sealing schooners before 1884, but they have been coming more and more every year since, and I notice that as the schooners multiply in the sea the seals decrease on the rookeries. I do not mean to say that the seals were injured because a few were killed on the rookeries, when men from schooners landed on the islands in the night or when the fog was very thick, for the numbers killed in that way never amounted to much, as it is not often the raiders can land on a rookery and escape with their plunder. When, in 1886, we all saw the decrease of seals upon the hauling grounds and rookeries, we asked each other what was the cause of it, but when we learned that white men were shooting seals in the water with guns we knew what was the matter; we knew that if they killed seals in the water that they must be nearly all females that were going out to feed, for the males stay on the islands until they get ready to go away in the fall or winter. It was among the cows that we first noticed the decrease, and as we never kill the cows on the islands we knew that they must be killing them in the water. We noticed idle, vigorous bulls on the breeding rookeries because of the scarcity of cows, and I have noticed that the cows have decreased steadily every year since 1886, but more particularly so in 1888, 1889, 1890, and 1891.

There was a great number of dead pups upon the rookeries last year, whose mothers, I believe, were killed at sea by sealing schooners, and I do not expect to see many cows this year. I never saw a dead grown seal on the island during my twenty-five years' residence here, except odd ones that had been killed in fighting for places on the rookeries.

I never heard any of the old men who have lived here for fifty years before my time speak of such a thing as sickness or death among the seals. We eat the flesh of the seal, and it constitutes the meat supply of the natives; and seals from two to five years old have been killed by them for food every week during their stay on the land ever since the islands were peopled, and no one has yet found a diseased seal, either young or old.

I have been told that there are persons who claim we are not careful in driving seals, and that we kill them regardless of sex. These statements are not true. I have taken my turn at driving seals from the hauling to the killing grounds every year since 1870, and I know the driving is very carefully done. When I first came here seals used to be driven from Halfway Point to the village, a distance of about 6 miles; and from Zapadnie to the village, a distance of nearly 5 miles. Wet, or very damp, cool weather was chosen for such drives, and we started the drive at about 6 o'clock at night, and driving all night reached the village at from 6 to 8 o'clock next morning.

Half a mile in one hour was about the rate of speed on such drives in favorable weather, and I do not know of any drives of over 2 miles where we ever went at a greater speed.

All long drives were stopped in 1879 when the Alaska Commercial Company made a killing ground and built a salt house within 2 miles of Halfway Point, and made a killing ground within a mile of Zapadne. Since these changes were made no seals have been driven on St. Paul Island over 2 miles to a killing ground.

The seals are never driven at a greater speed than 1 mile in three hours; and the men who do the driving have to relieve each other on the road, because they travel so slowly they get very cold.

In a very large drive a small seal may be smothered, but that does not injure the skin, which is taken and salted and counted to the lessees; and the greatest number I ever saw die on the drive was 20 out of a drive of about 9,000 seals, and the 20 skins were good and were accepted as "first class." The bull seal arrives at the island early in May, and takes his place on the breeding rookery, and he stays there until August or September without food. About the middle of May the young males begin to haul out, but are driven off by the bulls, who would tear them to pieces if they went on the breeding rookeries. Consequently the bachelors haul out by themselves, and are easily surrounded and driven into the killing ground without disturbing the breeding rookery.

The cows begin to haul out in June, and take their places on the breeding rookeries beside the bulls, where the young pups are born in from one to three days after the arrival of the cows.

When the cow goes into the sea for food, her stay there becomes longer and longer as the season advances, until at times she will be away for three or four days at a time.

The pups when first born can not swim, and will drown if they are put into water.

I have seen many pups drowned when washed off the edge of the rookery by the surf. They do not go into the water until they are six or eight weeks old, and then they will keep in shallow water and close to the shore for several days more.

They seem to like to stay on land until late in the season. Every native knows a female seal at sight, and, as the law against killing a female is strict and so rigidly enforced, and as the clubbers are the most experienced and most careful men on the island, it is very seldom that any female seal is clubbed. Our people have great respect for law, and are always ready to obey any rules laid down by the proper authority, and they have been raised in the firm belief that it is wrong to kill a cow seal. No one knows better than the natives that our prosperity is in the protection of the seals. They are our food supply, and our earnings from taking the skins enable us to live comfortably. Should the company desire us to kill female seals, every native in the village would be interested in having the Government officer know it. The instructions we have always received from the company was to be careful in driving, and to never kill a female seal.

During the month of August the families break up and the seals scatter around, and some of the cows mingle with the young males and are driven along with them when we make a drive for food, and sometimes one or two are killed accidentally. It is so seldom that this occurs I do not think that there has been more than about 10 cows per year killed on St. Paul Island since 1870.

The skins taken from seals killed for food are salted and counted to the lessees on the quota of the following year, so that nothing may be wasted. When we were allowed to kill pups in November for food and clothing, we always picked out the males, because we were not allowed to kill female pups, and now we are not allowed to kill any pups at all. When the seals leave the island they go to the southward, and when they come back in the spring they come from that direction. The bulls begin to leave the island about the middle of August, and most of them are gone by the middle of September. The cows and bachelors leave in November, and the pups follow or go with the cows. When the weather is good, a number of seals will cling to the beach or remain in the water around the rookeries until December, and sometimes until late in January. I have noticed more and more dead pups on the rookeries every year since 1888, and in 1891 they were so close together in places I could not step among them without stepping on a dead pup. I saw many of them cut open and examined by the doctor (Dr. Ackerly) and their stomachs were empty. All of the dead pups were poor and thin and starved.

I believe they all died of starvation, because their mothers had been shot at sea when they went out to feed. I never saw a full fat pup or one who had a mother to feed him dead, except a few that were drowned in the surf. No cow will suckle any pup but her own, and I have often watched a cow driving pups from her until she found her own. She knows her pup by smelling it.

There are not one-fourth as many seals now as there were in 1882, and our people are very much alarmed to know what is to become of them after the seals are killed

off. If the seals decrease as fast as they have during the past five or six years, there will be none left in a very short time for us to live upon.

AGGIE KUSHEN.

Subscribed and sworn to before me, an officer empowered to administer oaths under section 1976, Revised Statutes of the United States, on this the 6th day of June, 1892, at St. Paul Island, Alaska.

WM. H. WILLIAMS,
Treasury Agent in Charge of Seal Islands.

[Extracts from depositions of Anton Melovedoff and J. C. Redpath, residents on St. Paul Island.]

DECREASE OF HERD.

TERRITORY OF ALASKA, U. S. A., *The Island of St. Paul:*

Before me, F. H. Newcomb, a first lieutenant in the United States Revenue-Marine Service, and executive officer of the U. S. revenue steamer *Rush*, and authorized and empowered to take testimony and administer oaths, personally appeared Anton Melovedoff, who, being by me first duly sworn according to law, testified as follows, to wit:

* * * * *

Q. To what do you attribute the decrease in the number of seals on the rookeries?—A. To the great number of cows killed by poachers, and consequently less pups are born on the rookeries.

Q. How do you know that cows have been killed by poachers?—A. I have handled and seen a great number of skins captured by the revenue cutters from the poaching vessels, and there were very few male skins among them; also have seen among them a great number of unborn pups. Twice upon the rookeries I have seen cows killed and left there by the poachers.

Q. Why is it, in your opinion, that more female than male seals are killed by the poachers?—A. Because, first, in the passage of the seals to the islands in the early season the females travel in groups and the males scatter; secondly, after arriving at the islands the males remain on or about the hauling grounds, while the females, having their pups to nurse, go out into sea to obtain food.

Q. How do you tell the skin of a female from that of a male?—A. By the nipples and general appearance.

Q. Have you ever known the lessees to take female skins?—A. No. Any employee killing a female either intentionally or accidentally would be liable to a fine.

Q. Did you see any dead pups on the rookeries the past season?—A. Yes; I saw lots of them.

* * * * *

ANTON MELOVEDOFF.

Also J. C. Redpath, who, having been duly sworn by me, as hereinafter certified, testified as follows:

Q. State your age, place of residence, and occupation.—A. I am 47 years of age, and have been a resident of the seal islands for the past seventeen years; formerly local agent of the Alaska Commercial Company, now of the North American Commercial Company, and during that time have been engaged in the taking of seal.

Q. Have you noticed any perceptible difference in the number of seals on the rookeries from one year to another? If so, what changes have you observed?—A. Within the last four or five years I have observed a decided decrease in the number of seals on the rookeries.

Q. In what proportion have the seals decreased within the time mentioned?—A. As far as my judgment goes, I should say at least one-half.

Q. How do you account for it?—A. By the numbers, principally females, that are killed in the waters by marauders.

Q. How do you know that the marauders kill females principally?—A. I know that the females, after giving birth to their young on the rookeries, frequent the open sea in search of food, whereas the males frequent the hauling grounds of waters immediately around it. At various times I have seen skins which were seized by the cutters from the poachers, and they were substantially female skins.

Q. Have you noticed any dead pups on the rookeries this past season, and in what proportion to former years?—A. I have seen an unusual number of dead pups this year on the breeding grounds; I may say twice as many as formerly.

Q. How do you account for it?—A. From the fact of their mothers having been killed by marauders. It is a well-known fact that the mothers suckle none but their own pups; consequently the motherless die from want of nourishment.

Q. What is the general condition of a healthy pup seal receiving constant attention from its mother?—A. I know him to be completely gorged with milk and his body to be enveloped in fat.

Q. What effect, in your opinion, does the increase in the number of poaching vessels in Bering Sea have upon seal life?—A. Since the number of sealing vessels has increased the number of seals coming to the islands has correspondingly decreased.

J. C. REDPATH, Agent.

[Deposition of Anton Melovedoff, native Alaskan, and employee of lessees on St. Paul Island.]

[MANAGEMENT—HABITS.]

ST. PAUL ISLAND, PRIBILOF GROUP, *Alaska, U. S. A., ss:*

Anton Melovedoff, being duly sworn, deposes and says: I am 38 years of age, and I was born on Kadiak Island, Alaska. I came to St. Paul Island in 1864 the first time and in 1869 the second time. I have resided here since 1869, and I have been constantly employed among the Alaskan fur seals in all that time. I have had a large and varied experience in all the details of the business as it has been carried on on St. Paul Island, and I have done service in all the departments, from the work of a boy to that of first chief of the island. I can read and write the English, Russian, and Aleut languages and I can interpret them into one another. I have read a considerable amount of the controversies on the seal question since the seals began to decrease so rapidly on the rookeries, and I have observed the rookeries and their daily condition since I became first chief in 1884, which office I resigned in 1891.

In the Russian times, before 1868, the seals were always driven across the island of St. Paul from North East Point to the village salt house, a distance of 12½ miles; but when the Alaska Commercial Company leased the islands they stopped long driving and built salt houses near to the hauling grounds, so that by 1879 no seals were driven more than 2 miles.

Noone ever said in those days that seals were made impotent by driving, although long drives had been made for at least fifty years. I have never known or heard tell of a time when there was not bulls enough and to spare on the breeding rookeries. I never saw a cow of 3 years old or over in August without a pup by her side. The only cows on a breeding rookery without pups are the virgin cows who have come there for the first time. I never went on to a rookery in the breeding season when I could not have counted plenty of idle vigorous bulls who had no cows.

I have heard it said that the seals are slaughtered indiscriminately on the seal islands, and that the natives take no care of the seals. The contrary of this is true. Rules could hardly be made any more stringent than the rules laid down by the Government and company officers for the care and management of the seals, and no people could be more careful in obeying them in letter and spirit than what ours are.

The killing of females is a crime on St. Paul Island, and our church teaches that it is a sin to kill one, and our people know that the death of a cow seal means one pup less for meat in years to come. Never, since I came here in 1869, have I known of a cow to be killed unless by accident, and I think there has not been 10 cows killed out of every 85,000 seals killed every year from 1870 to 1889.

When I first went on a drive I remember how the chiefs talked to me about being careful of how I went on the hauling grounds; how I must not disturb the breeding rookeries, and that I must walk as slow as I could when driving, and stop and let the seals rest occasionally.

I believe the same instructions were given at all times by the chiefs to our people, and I think they have been generally very faithfully obeyed. The bulls and cows being on the breeding rookeries all through June and July, while the killing of the bachelors for skins is taking place, there is no reason why a cow should be driven or killed in the two months named, and it is a very rare case to see a cow on the killing grounds at this time and still rarer to have one killed.

After the killing season is ended and the breeding season is over, the cows do mix up with the bachelors on the hauling grounds, and they are often driven when we make a drive of seals to kill for food, and sometimes one or two are clubbed by accident. With this exception there are no cows or females ever killed on the seal islands.

I was first chief from 1884 to 1891, all through the years of the decrease and controversy, and it has been my duty to inspect the rookeries and seals from time to time and to report the condition of both to the Government and company agents.

It has been my duty to thoroughly inform myself of the number of male seals—bachelors—on each rookery and to select the grounds to be driven from every killing day throughout each killing season, and I believe I never allowed the seals to be overdriven or the drives to be made too often. I remember seeing an occasional sealing schooner in Bering Sea as long ago as 1878, but it was in 1884 they came in large numbers. At first it was supposed they intended to raid the rookeries, and we armed a number of men and kept guard every night, and we drove off any boats we found coming to a rookery. Sometimes in a dense fog or very dark night they landed and killed a few hundred seals, but the numbers taken in this manner are too small to be considered.

About 1886 I noticed that the lines of former years were not filled with cows, and every succeeding year since then has shown a more marked decrease. In 1889 the bachelors were so few on the hauling grounds that the standard weight of skins was lowered to 5 pounds, and hundreds were taken at only 4 pounds in order to fill the quota of 100,000.

It was noticed by everyone on the island at this time that as the seals decreased on the rookeries from year to year the number of dead pups increased, until in 1891 the rookeries were covered with them. From 1884 the schooners kept on increasing, until in 1891 there was more than one hundred. These schooners care very little about coming to the islands to take seals on the land, for they only have to hover around the fishing banks from 50 to 200 miles away and take all the seals they want. It is to these banks the cow seals go to feed after the birth of their young, and it is here they are shot and killed, and the pups are left to starve and die on the rookeries.

Last year I seen thousands of such pups, and I saw many of them opened, and in all cases there was not a sign of food in their stomachs. I never seen a pup that had a mother living to suckle it look poor or sick or starved; nor did I ever see or hear of a sick or diseased seal, although I have eaten the flesh of the fur seal all my life, and it is and has ever been the staple meat ration of our people.

Seal meat is cooked at the company house every day while seals are to be had, and it is eaten by all the white men on the island. Men talk of epidemics among seals and of impotent bulls on the rookeries, but those who have spent a lifetime on the seal islands, and whose business and duty it has been to guard and observe them, have no knowledge of the existence of either. An impotent bull dare not attempt to go on a rookery, even had he a desire to do so. Excepting the extremely old and feeble, I have never seen a bull that was impotent.

The seals come to the islands every year from the southward, through the passes of the Aleutian Islands; and the bulls reach the islands late in April or early in May, and they continue to haul out till June. They select their stations on the rookeries, and I believe they generally return to the spot they occupied the previous year, and they stay there till August or September without food or water and without much rest or sleep. The cows begin to haul out early in June, and they continue to haul out till about the middle of July, and the pups are born soon after the cows land on the rookeries. When the pup is born it is utterly helpless and would drown if put into water. Those born nearest the water are often drowned in the surf when the sea is rough in stormy weather. When the pup is a few days old the cow goes into the sea to feed, and as the pup grows older the cow will stay longer and longer, until sometimes she will be away for a week. When the cows return they go to their own pups, nor will a cow suckle any pup but her own. The pups would suck any cow that would let them, for they do not seem to know one cow from another. At 7 or 8 weeks old the pups learn to swim by first paddling in the shallow water, but after learning to swim they appear to prefer to stay on land until the cold weather drives them off in November.

Until 1891 we were allowed to kill several thousand pup seals for food in November, about the time they were ready to leave the island. We generally killed ten or twelve for every person on the island, and when we killed them they were always found to be full of milk.

The bachelors commence to haul out in May, and they haul out to late in July, the older ones coming early and the younger ones later, and I have found that the seals killed in May and early June were fat, and that their stomachs were full of food, principally codfish, and that later in the season they were poor and had nothing in their stomachs. My opinion, therefore, is that none but the mother seals go out in the sea to eat during the time the herds are on the islands, and this accounts for the great number of cows shot by the sealing schooners in Bering Sea during July, August, and September. I was visiting in San Francisco in the winter of 1890-91, and I worked in a fur store during several months of my stay there, and I was called on to handle and inspect thousands of the skins taken by schooners in Bering Sea, and they were nearly all cow-seal skins.

I know of no other explanation than this: The cows are shot and killed when they go into the sea to feed, and the pups die on the rookeries. This, I think, is the true solution of the vexed question, "What has become of the seals?" When the season ends and the compact family organization breaks up, the bulls begin to leave the islands, going away slowly through September and early October before they are all gone.

The bachelors, cows, and pups go in November, the older bachelors leaving late in October and the pups in November. Sometimes in good, mild weather bachelors are found and killed for food late in January.

The movements of the seals are governed quite considerably by the weather. When they do leave the island they go southward and pass once more through the passes of the Aleutian Islands and out into the North Pacific Ocean.

It is usually supposed that seals are like wild animals. This is not so. They are used to the natives and will not run far from them. The little pups will come to them, and even in the fall, when they are older, we can take them up in our hands and see whether they are males or females. We can drive the seals about in little or large bands just as we want them to go, and they are easy to manage. We protect and take good care of the seals, and if they were not killed in the sea we could make them increase upon the islands so that they would be as many as before.

ANTON MELOVEDOFF.

Subscribed and sworn to before me, an officer empowered to administer oaths under section 1976, Revised Statutes United States, this 10th day of June, 1892, St. Paul Island, Alaska.

WM. H. WILLIAMS,
Treasury Agent in Charge of Seal Islands.

[Deposition of J. C. Redpath, agent of lessees on St. Paul Island.]

HABITS, MANAGEMENT, AND RULES OF FUR COMPANIES—PELAGIC SEALING.

ST. PAUL ISLAND, PRIBILOF GROUP,
Alaska, U. S. A., ss:

J. C. Redpath, being duly sworn, deposes and says: I am an American citizen, a native of Connecticut, and I am 48 years of age. At present I am a resident of St. Paul Island, Alaska. I have resided on the seal islands of St. George and St. Paul since my first coming to Alaska in 1875. My present occupation is that of local agent on St. Paul Island for the present lessees, the North American Commercial Company. I have a practical knowledge of and am thoroughly conversant with the habits and conditions of the fur seal as it exists on the Pribilof Islands of St. George and St. Paul, and also of the methods adopted and practiced in the taking of the skins, and of the several efforts made by the former and present lessees, as experience taught them, to increase the herd and to build up the rookeries and perpetuate seal life. I have had a personal experience of seventeen seasons on the killing grounds in different situations, from that of seal clubber to foreman, several years of which I have been the resident local agent. My position as local agent has led me to make a careful study of the seal question, and it is my duty to report, from time to time, to the general agent of the lessees the result of my observations.

The Alaskan fur seal is a native of the Pribilof Islands, and, unless prevented, will return to those islands every year with the regularity of the seasons. All the peculiarities of nature that surround the Pribilof group of islands, such as low and even temperature, fog, mist, and perpetually clouded sky, seem to indicate their fitness and adaptability as a home for the Alaskan fur seal; and with an instinct bordering on reason they have selected these lonely and barren islands as the choicest spots of earth upon which to assemble and dwell together during their six months' stay on land; and annually they journey across thousands of miles of ocean and pass hundreds of islands, without pause or rest, until they come to the place of their birth. And it is a well-established fact that upon no other land in the world do the Alaskan fur seal haul out of water.

Early in May the bulls approach the islands, and, after cautiously and carefully reconnoitering the surroundings, haul out and select their stations on the rookeries, where they patiently await the coming of the cows. When they first appear upon the rookeries the bulls are fat and sleek and very aggressive, but after a stay of from three to four months without food they crawl away from the rookeries in a very lean condition. In my opinion the bull seal returns to the spot he occupied the preceding

years, and I know of several instances, where he could be distinguished by the loss of an eye or a flipper, in which he actually did return for a series of years to the same spot.

The mother seals or cows commence to haul out about June 10, and nearly all of them are on the rookeries by July 15, and I believe they bring forth their young almost immediately after reaching their places on the rookeries. When the pup is from four to six days old the mother goes into the water for food, and as time passes her stay becomes longer, until finally she will be away from her pup for several days at a time and sometimes for a whole week. During these longer migrations she often goes 200 miles from the rookery, and I have been informed by men who were engaged in the trade of pelagic hunting that they had taken "mothers in milk" at a distance of over 200 miles from the Seal Islands.

No cow will nurse any pup but her own, and I have often watched the pups attempt to suck cows, but they were always driven off; and this fact convinces me that the cow recognizes her own pup and that the pup does not know its dam. At birth and for several weeks after the pup is utterly helpless and entirely dependent on its dam for sustenance, and should anything prevent her return during this period it dies on the rookery. This has been demonstrated beyond a doubt since the sealing vessels have operated largely in Bering Sea during the months of July, August, and September, and which, killing the cows at the feeding grounds, left the pups to die on the islands.

At about five weeks old the pups begin to run about and congregate in bunches or "pods," and at six to eight weeks old they go into the shallow water and gradually learn to swim.

They are not amphibious when born, nor can they swim for several weeks thereafter, and were they put into the water would perish beyond a doubt, as has been well established by the drowning of pups caught by the surf in stormy weather. After learning to swim the pups still draw their sustenance from the cows, and I have noticed at the annual killing of pups for food in November that their stomachs were always full of milk and nothing else, although the cows had left the island some days before. I have no knowledge of the pups obtaining sustenance of any kind except that furnished by the cows, nor have I ever seen anything but milk in a dead pup's stomach. The young males, from two to five years old, whose skins are taken by the lessees, begin to haul out on land in May and they continue to haul out till July. They herd by themselves during the months of May, June, and July, and they do this because, during the breeding season, they dare not approach the breeding rookeries or the bulls would destroy them. Being thus debarred from a position on the breeding rookeries or from intermingling with the cows, they herd together on the hauling grounds, where they are easily approached and surrounded by the natives, who drive them to the killing grounds without disturbing the breeding rookeries.

Young males killed in May and June, when examined, are found to be in prime condition, and their stomachs are filled with fish—principally codfish—but those killed later in the season are found to be poor and lean and their stomachs empty, which shows that the males rarely leave the islands for food during the summer months.

Statute law forbids the killing of the female seal, and nature regulates the matter so that there is no danger of their being driven or killed during the regular killing season, which takes place in June and July, when all the "killing for skins" is done, and after all my experience here I am free to say that a small fraction of 1 per cent would represent all the females killed on the islands since they became the property of the United States.

The compact family arrangement so tenaciously adhered to during the breeding season becomes relaxed in August, and the females scatter, and a few of them mix up with the young males, and when the natives make a drive for food it occasionally happens that a female will accompany the males, and sometimes one or two may be accidentally killed. I use the word "accidentally" advisedly, because there is no good reason why the natives or the lessees should kill a female seal designedly, as the skin is of no more use or value (if so much) nor its flesh as good for food as is that of the male; and, excepting accidents, it is a fact that no female seals are or ever were killed on the Pribilof Islands since American rules and regulations were established there.

The regular killing season for skins under the lease begins on June 1 and ends practically on the last of July, and during this period the first-class Alaskan fur-seal skins are taken. The seals are driven from the hauling to the killing grounds by experienced natives under the orders of the native chief, and the constant aim and object of all concerned is to exercise the greatest care in driving, so that the animals may not be injured or abused in any manner.

As the regulations require the lessees to pay for every skin taken from seals killed by the orders of their local agents, and as the skin of an over-heated seal is valueless, it is only reasonable to suppose that they would be the last men living to encourage or to allow their employees to overdrive or in any manner injure the seals. I know that the orders given to me, as local agent, were always the most positive and emphatic kind on this point, and they were always obeyed to the letter. Instead of overdriving or neglecting the seals the lessees have endeavored to do everything in their power to shorten the distances between the hauling and killing grounds, or between the hauling grounds and the salt house.

Before the Alaska Commercial Company leased the Seal Islands in 1870, it was a common practice to drive seals from North East Point to the village on St. Paul Island, a distance of 12 miles, and from Zapadnie to the village on St. George Island, a distance of 6 miles, across a very rough and rugged country.

From Halfway Point and from Zapadnie, on St. Paul Island, seals were driven, respectively, 5 and 6 miles.

When the Alaska Commercial Company took control of the islands the drive from North East Point was prohibited and a salt house and other necessary buildings erected within 2 miles of the killing ground, and all the skins taken there were salted and stored and shipped from North East Point. In 1879 a killing ground was made, and a salt house built at Halfway Point, within 2 miles of the hauling grounds, and all skins taken at the point are salted there. At Zapadnie, the same year, a killing ground was made within a mile of the hauling ground, and the skins taken there are taken to the village salt houses in boats, or, when the weather is unfavorable, by team and wagon.

Since 1878 there has not been a drive made on St. Paul Island to exceed 2 miles. At Zapadnie, St. George, a salt house was built about 1875 and the 6-mile drive prohibited, and a trail made at great expense across the island, over which the skins are taken on pack saddles to the village. Since 1874 no seals have been driven on St. George Island to exceed $2\frac{1}{2}$ miles.

Although the seals are comparatively tame after being on the land for a short time and do not get scared so easily as is commonly supposed, the rules and regulations of the Treasury Department are very strict on the question of absolute protection to the seals on the islands, and the Treasury agents have always most rigidly enforced them.

It is unlawful to fire a gun on the islands from the time the first seal appears in the spring until the last one leaves at the end of the season; and in order to properly enforce this law the firearms are taken from the natives and locked up in the Government house, in care of the Treasury agents.

No person is allowed to go near a rookery unless by special order of the Treasury agent; and, when driving from the hauling grounds, the natives are forbidden to smoke or make any unusual noise or to do anything that might disturb or frighten the seals. All driving is done when the weather is cool and moist, and when the condition of the weather demands it the drives are made in the cool of the night, and in no case are seals driven at a higher rate of speed than about half a mile an hour. So carefully is the driving done that it has been found necessary to divide the native drivers into several "watches" which relieve each other on the road, because, the pace being so slow, the men get cold.

From 1875 to 1883 it was no uncommon thing for the lessees to take the annual quota of 100,000 skins between June 1 and July 20, and yet there was no sign of any decrease, but rather an expansion of most of the rookeries.

I do not pretend to be able to say how many seals there are, or ever were, on the rookeries; nor do I believe anybody else can tell, for the rookeries are so broken and filled with rocks it is impossible to estimate the number of seals upon them with any approach to accuracy. The lines of expansion and contraction are plain enough, and can be seen and understood by the whole community.

Until 1884 sealing schooners were seen but very seldom near the islands or in Bering Sea, and the few seals taken by the hunters who raided the rookeries occasionally are too paltry to be seriously considered, because the raids were so few and the facilities for taking many seals off so utterly insignificant. In 1884 the sealing schooners became numerous. I believe there were about 30 in the sea that year, and they have increased very rapidly every year since, until now they are said to be about 120. As the schooners increased the seals decreased, and the lines of contraction on the rookeries were noticed to draw nearer and nearer to the beach, and the killable seals became fewer in number and harder to find. In 1886 the decrease was so plain that the natives and all the agents on the islands saw it and were startled, and theories of all sorts were advanced in an attempt to account for a cause.

A dearth of bulls on the breeding rookeries was a pet theory of one or two transient visitors, but it only needed a thorough investigation of the condition of the rookeries to convince the most skeptical that there were plenty of bulls, and to spare, and that hardly a cow could be found on the rookeries without a pup at her side.

For five years I have given this particular subject my most earnest attention, and every succeeding year's experience has convinced me that there is not, and never was, a dearth of bulls. The theory of impotency of the young bulls because of overdriving when young is not worthy of consideration by any sane or honest man who has ever seen a bull seal on a breeding rookery; and as I have already answered the question of overdriving, I will only add here that no young bull ever goes upon a breeding rookery until he is able to fight his way in, and an impotent bull has no desire to fight, nor could he win a position on the rookery were he to attempt it. The man is not alive who ever saw a 6 or 7 year old bull seal impotent.

Another theory, equally untrue, was that an epidemic had seized the herd; but investigations of the closest kind have never revealed the death, on the islands, of a full-grown seal from unknown causes. Let it be remembered that the flesh of the seal is the staple diet of the natives and that it is eaten daily by most of the white employees as well; and yet it is true that a sign of taint or disease has never been found on a seal carcass in the memory of man. It was not until so many thousands of dead pups were found upon the rookeries that the problem was solved.

The truth is that when the cows go out to the feeding grounds to feed they are shot and killed by the pelagic hunter, and the pups, deprived of sustenance, die upon the rookeries. Excepting a few pups killed by the surf occasionally, it has been demonstrated that all the pups found dead are poor and starved, and when examined their stomachs are found to be without a sign of food of any sort. In 1891 the rookeries on St. Paul Island were covered, in places, with dead pups, all of which had every symptom of having died of hunger, and on opening several of them the stomachs were found to be empty.

The resident physician, Dr. Ackerly, examined many of them and found in every instance that starvation was the cause of death. The lowest estimates made at the time, placing the number of dead pups on the rookeries at 25,000, is too high.

It has been said that man can do nothing to facilitate the propagation of the fur seal. My experience does not support this. The reservation of females and the killing of the surplus males, so that each bull can have a reasonable number of cows, is more advantage to the growth of the rookeries than when in a state of nature bulls killed each other in their efforts to secure a single cow.

The same care can be and is exercised in the handling and management of the seal herd as is bestowed by a ranchman upon his bands of ranging stock, and is productive of like results. The seals have become so accustomed to the natives that the presence of the latter does not disturb them. The pups are easily handled by the natives, and formerly, when used as an article of food, thousands of pups were actually picked up and examined, in accordance with Government requirement, to avoid the killing of a female. So easily are the seals controlled that when a drive of "bachelors" is made to the killing grounds a guard of two or three small boys is sufficient to keep them from straying, and from the general band any number from one upward can be readily cut out. It is possible in the future, as it has been in the past, to reserve unmolested suitable areas to serve as breeding grounds; to set aside each year a proper number of young males for future service upon the rookeries, and by the application of the ordinary stock-breeding principles not only to perpetuate but to rapidly increase the seal herd.

To one who has spent so many years among the seals as I have, and who has taken so much interest in them, it does appear to be wrong that they should be allowed to be so ruthlessly and indiscriminately slaughtered by pelagic hunters, who secure only about one-fourth of all they kill. There is no doubt in my mind that unless immediate protection be given to the Alaskan fur seal the species will be practically destroyed in a very few years, and in order to protect them pelagic hunting must be absolutely prohibited.

N. B.—The foregoing is substantially the same testimony that I gave to the Commissioners who visited the islands in 1891.

J. C. REDPATH.

Subscribed and sworn to before me, an officer empowered to administer oaths under section 1976, Revised Statutes of the United States, on this the 3d day of June, 1892, at St. Paul Island, Alaska.

WM. H. WILLIAMS,
Treasury Agent in charge of Seal Islands.

[Deposition of W. B. Taylor, Assistant Treasury Agent on St. George Island.]

MANAGEMENT, HABITS, PELAGIC SEALING.

DISTRICT OF COLUMBIA, *City of Washington*, ss:

W. B. Taylor, of Omaha, Nebr., being duly sworn, deposes and says: I am 41 years of age, secretary and treasurer of the Globe Loan and Trust Company, of Omaha, Nebr., and am not and never have been in any way connected with any company engaged in the seal-skin industry. In the year 1881 I was assistant treasury agent for the Seal Islands. I arrived on the islands in the latter part of May of that year, and after a week's stay on St. Paul Island was detailed to St. George, remaining there until the latter part of August. Since then I have not been on the islands. While on St. George I was on the killing grounds every day during the season and visited the rookeries almost daily, both in connection with my official duties and for the purpose of studying seal life. From carefully observing the grounds formerly occupied by breeding seals, as pointed out to me by the natives, and from statements made me by those on the island, I believe there were more seals on the islands in 1881 than in any year previous to that time. I believe that the increase and decrease of seal life can be certainly told from accurate measurements of the breeding grounds, because the seals herd together as closely as possible, whether there are few or many of them. But the number of seals can not be estimated with even approximate accuracy, because of the roughness and unevenness of the ground, and because during the height of the season a majority of the females (called cows) are out at sea feeding, being often obliged to go 30 or more miles from the islands for this purpose, and not returning till late at night. I think the number of seals heretofore estimated has been largely exaggerated, and no dependence can be placed on any estimate as to their number.

During the year I was on the island of St. George I did not see to exceed 25 dead pups on the rookeries, and the bodies of these were not emaciated, but had evidently been killed by the old bulls climbing over them in their combats. From my observations I am convinced a pup must be six or eight weeks old before it can swim, and that a female generally teaches her own pup the use of his flippers. Birth in the water would mean immediate death to the pup, both because of the fact last stated and from the further fact that for a day or two after birth a pup is entirely helpless. In my judgment, then, a seal pup for the first few weeks of its life is a land quadruped, and in no sense an amphibian. I believe that a seal is naturally a land animal, as all copulation, birth, and nursing takes place on shore; and the only reason I think the seals seek the water is because they are compelled so to do in order to obtain food. This is verified from the fact that the seals remain on land as long as possible until the need of food and severity of the weather compel them to take to the sea. A female when she returns from the feeding grounds will always select her own pup from all those on the rookeries, and will give suck to no other. It is therefore my opinion that if a mother seal is killed the pup will certainly die of starvation.

I made a very particular examination and study of the methods employed by the natives in driving and killing the young males or bachelors, and, in my opinion, these methods are the very best that could be adopted, and I can conceive of no other way which could be employed and preserve seal life so effectually. In starting to drive, the bachelors are driven from the hauling grounds, which are separated from the breeding grounds. Great care was always taken not to disturb the breeders; no one was ever allowed to go on the breeding grounds during the rutting season, all observations as to the habits being made from overhanging cliffs or some elevation in the vicinity of the harems. I never saw but one female killed out of the 20,000 taken on St. George Island in 1881, and that was accidental. A drive is always made between 2 and 6 o'clock in the morning, when the weather is cool and there is less liability of overheating the seals. Seals are driven as slowly as possible, and still keep them in motion. I do not think that there were 50 seals killed during the season by overheating and smothering, and in all cases the skins of these were taken and counted with the other skins transported to the salt houses. I never saw or heard of the generative organs of a male seal being injured by redriving, and it seems to me to be utterly absurd that anyone could think that an animal with such wonderful vitality as is possessed by the male seal could be injured or his reproductive powers impaired by driving or redriving. If such a thing should occur it would be at once noticeable, for the impotent bull would certainly haul up with the bachelors, having no inclination and vigor to maintain himself on the rookeries.

It is my opinion that a bull is able to serve from 3 to 5 cows a day, and certainly over 100 in a season. I have seen over 40 cows at one time in a harem, and the bull

who possessed this harem was continually striving to obtain more cows. There was but one raid on the rookeries while I was there, and that took place on Otter Island, about 60 skins being taken. After that raid the Government kept a man on Otter Island during the entire summer to protect it from marauders. Raids on the islands never affected seal life to any extent. Since my residence on the Pribilof Islands I have kept a very careful watch of the progress of events there, and have interviewed a great many connected with the seal industry. I am of the conviction that the reported decrease in seal life on these islands can be attributed to no other cause save pelagic sealing. While I was located at St. George Island in 1881 pelagic sealing was then, and previous to that time had been, of very little consequence, having very slight effect upon seal life. Not more than 4 or 5 vessels were engaged in pelagic sealing in 1881 in the waters of Bering Sea, and prior to that time a still fewer number were so engaged. But since 1881 this industry has grown yearly, until now about 100 vessels are destroying the seals in great numbers, and, as I am informed and believe, the great majority of those killed are females. Then, too, large numbers are killed in this way which are never recovered or reported. It is therefore, in my opinion, necessary that the seals should be protected, and all killing in the water prohibited in all waters which the seal herd frequents, and especially in Bering Sea and while the herd are en route to and from the islands through the Aleutian passes.

W. B. TAYLOR.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, U. S. A., this 26th day of April, 1892.

[SEAL.]

SEVELLON A. BROWN.

[Deposition of L. G. Shepard, captain, United States Revenue Marine.]

PELAGIC SEIZURE.

* * * * *

I examined the skins taken from sealing vessels seized in 1887 and 1889, over 12,000 skins, and of these at least two-thirds or three-fourths were the skins of females. Of the females taken in the Pacific Ocean and early in the season in Bering Sea nearly all are heavy with young, and the death of the female necessarily causes the death of the unborn pup seal; in fact, I have seen on nearly every vessel seized the pelts of unborn pups which had been taken from their mothers. Of the females taken in Bering Sea nearly all are in milk, and I have seen the milk come from the carcasses of dead females lying on the decks of sealing vessels which were more than 100 miles from the Pribilof Islands. From this fact and from the further fact that I have seen seals in the water over 150 miles from the islands during the summer, I am convinced that the female, after giving birth to her young on the rookeries, goes at least 150 miles, in many cases, from the islands in search of food. It is impossible to distinguish a male from a female seal in the water, except in the case of a very old bull, when his size distinguishes him. Therefore, open-sea sealing is entirely indiscriminate as to sex or age. I consider it necessary for the preservation of the seal herd which resorts to the Pribilof Islands, and for the prevention of their early extermination, that pelagic sealing should cease in all waters which they frequent.

I do not know and I never heard of any other place along the American coast or islands where the fur seals haul up, and it is my opinion that the fur-seal pup of the Alaskan herd is born nowhere else but on the Pribilof Islands. It is my belief that a pup born in the water would drown, for I am convinced, from statements made me by the natives and those thoroughly familiar with seal habits, that a pup for the first weeks of its life is unable to swim. It is my opinion that should pelagic sealing be prohibited in a zone 30, 40, or 50 miles about the Pribilof Islands it would be utterly useless as a protection to seal life, because female seals go much farther than that in search of food, and because fogs are so prevalent about those islands that it would be impossible to enforce any such prohibition.

L. G. SHEPARD,
 Captain, U. S. Revenue Marine,
 Chief of Division, Revenue Marine.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, U. S. A., this 27th day of April, 1892.

[SEAL.]

GEO. Y. COFFIN,
 Notary Public.

[Extract from affidavit of John Malowansky, agent of lessees of Commander Islands.]

MANAGEMENT; PELAGIC SEALING.

* * * * *

In 1891 the schooner *J. H. Lewis* was caught near the islands by the Russian gunboat *Aleut* and found to have 416 skins on board. I made a personal examination of these skins, and found that from 90 to 95 per cent were those of female seals.

* * * * *

JOHN MALOWANSKY.

Subscribed and sworn to before me this 15th day of April, A. D. 1892.

[SEAL.]

CLEMENT BENNETT,
Notary Public.

[Extract from deposition of Charles T. Wagner, agent of Alaska Commercial Company.]

HABITS; PELAGIC SEALING.

* * * * *

I have observed that by far the larger portion of skins purchased by me were taken from female seals. Not less than 8 out of every 10 were from cows with pup or in milk. I have often bought skins taken from cow seals where the young pup had been cut out of the mother and was kept alive for several days, until it became such a nuisance from constant yelping that I directed it to be killed, as it would not eat and would eventually die of starvation.

* * * * *

C. T. WAGNER.

Subscribed and sworn to before me this 5th day of April, A. D. 1892.

[SEAL.]

CLEMENT BENNETT,
Notary Public.

[Deposition of Peter Trearsheit, sealer (master).]

PELAGIC SEALING.

Peter Trearsheit, being duly sworn, deposes and says: I am 27 years old and reside at Sitka. Am by occupation a seaman and seal hunter. Have been engaged in catching seal three seasons. Last season I commanded the sealing schooner *Sitka*, of Sitka. Took seal along the coast as far as Yakutat. First seal were seen and caught last year off Sitka Sound and last year off Salisbury Sound in April and May. The seal are working to westward all the time. Have always used a shotgun to take seal. About 60 per cent of the seal shot with shotgun are lost. A much larger per cent are lost when rifle is used. The seals taken by me have been females mostly with pup. Have never killed a bull in my life. A few yearlings are taken, all of which are females. The sex of the seal can not be told in the water. Hunters use no discrimination, and everything in the shape of a seal that comes near the boat is killed. When seal are asleep lying with their heads on the water and are killed, they most always float, but if shot as they put their heads out of water they sink almost immediately. Always shoot a seal in the head when it is possible to do so.

Never heard of nor seen pups born in the water or on the coast of Alaska outside of Pribilof Islands. Have never seen or heard of seals hauling up on the coast elsewhere than on the Pribilof Islands. They very seldom come nearer this coast than 20 miles when advancing north toward Bering Sea. I think if sealing was stopped in Bering Sea that seal would become more plentiful along the coast, and if it is not stopped the herd will soon be destroyed.

PETER TREARSHEIT.

Subscribed and sworn to before me this 8th day of April, 1892.

A. W. LAVENDER,
United States Treasury Agent.

[Deposition of Niels Bonde, sealer (mate).]

PELAGIC SEALING.

PROVINCE OF BRITISH COLUMBIA, *City of Victoria, ss:*

Niels Bonde, being duly sworn, deposes and says: I am 24 years of age; residence, Victoria, British Columbia; occupation, seaman. I went sealing as deck hand in the British schooner *Kate*, Captain Moss, master, in 1887. We had twenty canoes and Indian hunters who used spears, except in calm weather, when they would use shot-guns. We sailed from Victoria the 15th of March, sealing off Barclay Sound, between there and Cape Cook, and caught 522 seals. Came back to Victoria in May, discharged our skins, and then went to Bering Sea, arriving there in July. We came out of the Bering Sea the latter part of August, and had caught about 1,700 seals between the Pribilof Islands and Unalaska; we caught them from 10 to 100 or more miles off St. George Island. The largest catch we had that year in any one day was 266 seals. We only took 8 canoes and 1 boat into Bering Sea.

In 1888 I left Victoria on the 11th of April as mate and interpreter on the British schooner *Arannah*, H. F. Siewart, master, and carried 16 canoes while sealing on the coast, and Indian hunters with spears, but in calm weather they used shotguns. We caught about 100 seals on the coast, and then in the latter part of May left for the Commander Islands, on the Russian side of the Bering Sea, and was seized on the 1st of July by the Russian authorities.

I left Victoria on the 28th of May, 1889, in the British schooner *Kate*, as deck hand, with 10 canoes and Indian hunters with spears and shotguns. The Indians used spears chiefly. We went directly to the Shumagin Island, where we took in water and provisions, and went into Bering Sea through Unamak Pass, and sealed in those waters till some time in August, when we were ordered out by the revenue cutter and went to Victoria. We caught a little over 800 seals in the Bering Sea that year.

In 1890 I left Victoria on the 17th of January in the British schooner *Pioneer*, Morgan, master. I shipped as a deck hand. We had 5 boats and white hunters, who used shotguns and rifles. We commenced sealing off the California coast, near Cape Blanco, and worked our way up the coast to Barclay Sound, and caught about 400 seals and put them aboard another vessel and then sealed along the coast to Bering Sea, and caught on our way up and in the sea about 1,600 more, and left Bering Sea for Victoria the latter part of August.

The seals caught along the coast after the 1st of April are mostly pregnant females, and those caught in Bering Sea were females that had given birth to their young. I often noticed the milk flowing out of their breasts when being skinned, and have seen them killed more than 100 miles from the Seal Islands. I have seen live pups cut out of their mothers and live around on the decks for a week. On the *Pioneer* we had a couple of good hunters who would get almost all they shot at, while some of our hunters would lose a good many that they would kill and wound. A green hunter will not get more than 1 out of 5, and I have known one hunter on our vessel who shot 80 shots and got only 4 seals. Indian hunters that use spears seldom lose any that are struck, and there is no wounded to go away and die. I can not say positively as to the decrease in numbers, but I know they are much more shy now than when I commenced sealing.

I know of no place where seals haul up on the coast, nor do I believe there is any.

NIELS BONDE.

Subscribed and sworn to before me on this 22d day of April, A. D. 1892.

[SEAL.]

LEVI W. MYERS,
United States Consul.

[Deposition of Henry Brown, sealer (boat puller).]

PELAGIC SEALING.

PROVINCE OF BRITISH COLUMBIA, *City of Victoria, ss:*

Henry Brown, being duly sworn, deposes and says: I am 42 years of age, and reside in Victoria, British Columbia. I am by occupation a seaman. On or about February 21, 1890, I shipped as an able seaman, but did service as a boat steerer on the sealing schooner *Minnie*, which cleared from Victoria. She carried 12 canoes and a stern boat. Each canoe was manned by two Indians, who used spears principally. The stern boat was manned by white men, who used rifles and shotguns, principally shot-

guns. I acted as steerer in the stern boat. We hunted seals all along the coast from Grays Harbor to the passes leading into Bering Sea. The first seals seen were about 30 miles south and west of Cape Flattery. We then followed the herd northward, capturing about 1,000 seals on the coast, which we transferred to the American steam schooner *Mischief* at sea, about 15 miles from Sand Point. We then proceeded to the Bering Sea, entering through the Unamak Pass about the middle of July. We captured over 1,200 seals all the way from 24 to 100 miles away from the Pribilof Islands. We then returned to Sand Point, and arrived back at Victoria about the last of November.

On January 19, 1891, I shipped at Victoria as an able seaman, and took the boat-steerer's billet on the sealing schooner *Mascot*, Lawrence, master. She carried 1 stern boat and 10 canoes. The canoes were manned by Indians, who used spears in hunting the seals, and the stern boat, in which I was steerer, was manned by 3 white men. The hunter used a shotgun. We sealed all along the coast from Cape Flattery up to Cape Cook, on Vancouver Island, and captured 9 seals. The only one taken by the stern boat was a female with a pup in her. The pup was thrown into the ocean. On the 22d of May we arrived back in Victoria.

On the 25th of February, 1892, I shipped at Victoria, British Columbia, on the sealing schooner *May Belle*, Smith, master. I shipped as an able seaman, and did service in the stern boat as boat steerer. She also carried 10 canoes, each being manned by 2 Indians, who used the spear in hunting. We sealed along the coast from Destruction Island as far north as Triangle Island, off the Vancouver shore, and captured but one female seal. On the 18th of April I left the *May Belle* at Clayquot Sound and returned to Victoria on the 5th of May on the steam schooner *Maud*.

The seal captured by us along the coast in 1890 were all gravid females. I do not know the sex of those taken by our Indians on the coast in that year. We did not capture any gravid seals in the Bering Sea. Nearly all the seals taken in Bering Sea were cows in milk. We captured a few young seals in the sea of both sexes.

In 1890 our hunter in the stern boat secured 60 seals, and lost over 200 seals that he wounded. The Indians make a sure work of it, and secure nearly every seal that they spear. They do not make so much noise in approaching a sleeping seal as the white hunters do. When an Indian in a canoe is approaching a bunch of seals asleep on the water he does not remove his paddle from the water, but dexterously and noiselessly moves it in the water, because the least sound would awaken the seals. The hunter who uses a gun not only disturbs the seal he shoots, but awakens and disturbs the others, who then make their escape.

In 1891 I noticed that there was a considerable decrease in the number of seals seen in the water; also that they were more shy and wakeful as compared with my observations in 1890. A cow seal that's heavy with pup is sluggish and sleeps more soundly than the males, and for that reason they are more readily approached. I have never known a black pup to be captured on the coast. Seals do not haul out upon the land along the coast, nor give birth to their young on the kelp or in the water. I have never heard the Indians or white sealers say there is a place on the coast where seals haul out and breed. A great many seals that are shot would sink before we could secure them. Sometimes the water above the sinking seal would be so discolored by the blood that it was impossible to see it and secure it with the gaff-hook, which all sealing boats carry for that purpose. If pelagic sealing is continued, especially with guns, in a few years the seal herd will become commercially destroyed. Nearly every seal captured causes the death of either an unborn pup or the death of a young pup by starvation on the islands. All pelagic sealing should be prohibited after April 1 of each year until such time as the young pups are able to subsist without nourishment from their mothers. It is practically impossible to distinguish the age or sex of seals in the water while approaching them while at a reasonable gunshot distance from them excepting in the case of old bulls. Old bulls and male seals appear to enter Bering Sea before the cows leave the coast. Our last catch of seals on the coast were almost exclusively gravid females.

HENRY (his x mark) BROWN.
JOHN MCLEOD.

Subscribed and sworn to before me this 7th day of May, 1892.

[SEAL.]

LEVI W. MYERS,
United States Consul.

[Deposition of Thomas Brown (No. 1), sealer (boat puller).]

PELAGIC SEALING.

DOMINION OF CANADA, *Victoria, British Columbia, ss:*

Thomas Brown, being duly sworn, deposes and says: My age is 31 years; my residence is Victoria, British Columbia; occupation, seaman. I went sealing in 1889 from San Francisco, Cal. (I do not remember the name of the vessel); Captain Scott was master. We sealed as far south as San Diego, Cal., then went along the coast to Farallone Islands, opposite San Francisco. We had 5 boats, 3 men to each boat, and 1 stern boat, all white men; we used shotguns and rifles; the seals were very plentiful that year; most all the seals that we shot and secured were females and had young pups in them, and we would sometimes skin them. If we didn't get to a seal soon after it was shot it would sink, and we lost a great many; probably got about 1 out of 5 of all the seals shot. We sealed as far as Queen Charlotte Islands, and got about 195 seals in the two months' sealing. We did not enter Bering Sea that year.

In 1890 I went sealing again in the schooner *Sea Lion*, Madison, master; had 5 boats, and 3 men to each boat; I was boat puller; we were sealing about three months and got about 400 seals, most all females. This year the seals were wilder than the year before; I think it was because they were being hunted so much. We did not capture as many in proportion to the number shot as we did the year previous, and did not save more than 1 out of 6 that we shot. We did not enter Bering Sea and returned to Victoria in April. Our catch was fully 80 per cent females. I do not think that seals give birth to their young on the kelp.

In 1891, in the month of February, I sailed from Victoria, British Columbia, on the schooner *Thistle*, Nicholson, master, on a sealing voyage. We had 17 boats, and 3 men to each boat, all white men. I signed as boat puller. Commenced sealing off Cape Flattery, and all the seals which we caught were pregnant females. I did not see as many seals as the years previous; I left the vessel in April at Victoria, British Columbia. The seals upon this voyage were more shy than in 1889, and more difficult to capture. During the trip of 1891 I don't think we got more than 1 seal out of 6 that we killed; many were wounded, and others were shot dead and sank before the boat could get to them. The seals are decreasing in number rapidly, and in order to prevent the extermination of seals, the hunting of them should be prohibited until after the mother seals give birth to their young. Sealers should be notified of a closed season before they go to the expense of fitting out.

THOMAS BROWN.

Subscribed and sworn to before me on this 22d day of April, A. D. 1892.

[SEAL.]

LEVI W. MYERS, *United States Consul.*

[Deposition of Alfred Dardean, sealer (boat puller).]

PELAGIC SEALING.

DOMINION OF CANADA, *Victoria, British Columbia, ss:*

Alfred Dardean, being duly sworn, deposes and says: I reside at Victoria, British Columbia. My occupation for the last two years has been that of a seaman. I went sealing in the schooner *Mollie Adams* (afterwards changed to *E. B. Marvin*) as boat puller. We left Victoria, British Columbia, on the 27th of May, 1890, and commenced sealing up the coast toward Bering Sea; entered Bering Sea through the Unamak Pass about July 7 and sealed around the eastern part of Bering Sea until late in the fall. We caught over 900 skins before entering the sea and our whole catch that year was 2,159 skins. Of the seals that were caught off the coast fully 90 out of every 100 had young pups in them. The boats would bring the seals killed on board the vessel and we would take the young pups out and skin them. If the pup is a good, nice one, we would skin it and keep it for ourselves. I had 8 such skins myself. Four out of 5, if caught in May or June, would be alive when we cut them out of the mothers. One of them we kept for pretty near three weeks alive on deck by feeding it on condensed milk. One of the men finally killed it because it cried so pitifully. We only got 3 seals with pups in them in the Bering Sea. Most all of them were females that had given birth to their young on the islands, and the milk would run out of the teats on the deck when we would skin them. We caught female seals in milk more than 100 miles off the Pribilof Islands.

We had 7 boats, and a stern boat and 3 men to a boat. Our hunters used shotguns and were good hunters. They lost a good many seals, but I do not know what

proportion was lost to those killed. Some of the hunters would lose 4 out of every 6 killed. We tried to shoot them while asleep, but shot all that came in our way. If we killed them too dead a great many would sink before we could get them, and were lost. Sometimes we could get some of these that had sunk with the gaff hook, but could not save many that way. A good many are wounded and escape only to die afterwards.

Hunters talk about the seals increasing from year to year, but I know they are decreasing, and if they keep on killing them the way they do now there will not be any left in a few years.

ALFRED (his x mark) DARDEAN.

Subscribed and sworn to before me on this the 22d day of April, A. D. 1892.

[SEAL.]

LEVI W. MYERS, *United States Consul.*

[Deposition of Arthur Griffin, sealer (boat puller and steerer).]

PELAGIC SEALING.

DOMINION OF CANADA, *Victoria, British Columbia, ss:*

Arthur Griffin, being duly sworn, deposes and says: My age is 24 years, and am by occupation a seafaring man, and reside at Victoria, British Columbia. On February 11, 1889, I sailed from Victoria as a boat puller on the sealing schooner *Ariel*, Buckman, master. She carried 6 hunting boats and 1 stern boat and had a white crew who use shotguns and rifles in hunting seals. We began sealing off the northern coast of California and followed the sealing herd northward, capturing about 700 seals in the North Pacific Ocean, two-thirds of which were females with pups. The balance were young seals, both male and female. We entered the Bering Sea on the 13th of July through the Unamak Pass and captured between 900 and 1,000 seals therein, most of which were females in milk. We returned to Victoria on 31st of August, 1889.

On January 10, 1890, I sailed from Victoria as a boat steerer in the schooner *Sea Lion*, Magason, master, and proceeded to San Francisco where we fitted out for sealing. From there a month later we went sealing. Our vessel carried a white crew, 5 boats, each boat manned by 3 men. We captured about 300 seals from San Francisco to Cape Flattery by the use of shotguns and rifles. We returned to Victoria about April 1.

I went out sealing again the same year on the *E. B. Marvin*, McKiel, master. I shipped as a boat steerer. We had a white crew and 7 boats and used shotguns and rifles while hunting the seals. We captured between 900 and 1,000 on the coast, most of which were females with pups. We entered the sea on July 12 through Unamak Pass and captured about 800 seals in those waters, about 90 per cent of which were females in milk.

A good hunter will often lose one-third of the seals he kills. A poor hunter will lose two-thirds of those he shoots. On an average hunters will lose 2 seals out of 3 of those they shoot. We captured females in milk from 20 to 100 miles from the rookeries. Seals do not haul out upon the land along the coast, nor do they give birth to their young on the kelp. We seek to shoot the seals while they are asleep on the water, because a seal shot while breaching is more likely to be lost. Seals ought not to be killed in the water during the months of April, May, June, July, and August.

ARTHUR GRIFFIN.

Subscribed and sworn to before me this 22d day of April, A. D. 1892.

[SEAL.]

LEVI W. MYERS, *United States Consul.*

[Deposition of James Harrison, sealer (boat puller).]

PELAGIC SEALING.

DOMINION OF CANADA, *Victoria, British Columbia, ss:*

James Harrison, being duly sworn, deposes and says: I reside at Victoria, British Columbia, and am by occupation a seafaring man. I have had experience in the seal-hunting business. First went out sealing as boat puller along the Northern Pacific coast about the 26th of June, 1891; sailed from Victoria, British Columbia, in the

schooner *Triumph*, Whidden, master. We had 2 boats and 1 stern boat, 3 men with each boat. We commenced sealing right off the coast; went as far south as the California coast and then hunted north to the west coast of Vancouver Islands; caught 500 skins during the season; almost all of them were pregnant females; out of 100 seals taken about 90 per cent would be females with young pups in them. I can't tell a male from a female while in the water at a distance. On an average I think the hunters will save about 1 out of 3 that they kill, but they wound many more that escape and die afterwards. We entered the Bering Sea about the 1st of June, and caught about 200 seals in those waters. They were mostly mothers that had given birth to their young, and were around the fishing banks feeding. The hunters used shotguns and rifles. In the Bering Sea we killed both male and female, but I do not know the proportion of one to the other. I returned and was discharged at Victoria, British Columbia, about the last of August.

I sailed again about February 12, 1892, in the same vessel and the same master. We carried 2 boats and 3 men to each boat; all white men in the boats, but we had 16 Indian canoes, with 2 Indians in each canoe, and the Indians used shotguns, but did not capture any seals, and returned to Victoria, British Columbia, the 1st of April, and I was discharged at the custom-house at Victoria, British Columbia.

Seals were not as plentiful along the coast this year as they were in 1891. I think that for the proper preservation of the seals all pelagic hunting should be prohibited until the mother seals have given birth to their young.

JAMES HARRISON.

Subscribed and sworn to before me this 22d day of April, A. D. 1892.

[SEAL.]

LEVI W. MYERS, *United States Consul.*

[Deposition of James Jamieson sealer (boat puller and mate).]

PELAGIC SEALING.

PROVINCE OF BRITISH COLUMBIA, *City of Victoria*, ss:

James Jamieson, being first duly sworn, deposes and says: I am 23 years old, and am by occupation a seaman; I reside at Victoria, British Columbia. In March, 1887, I joined the British sealing schooner *Mary Taylor*, McKiel, master, at Victoria, British Columbia. We went on a cruise for seal. I was boat puller. She carried 5 sealing boats, manned with 3 white men each. There were 3 Indians with us part of the season. We used breech-loading shotguns and Winchester rifles. We began to seal when about 20 miles off Cape Flattery. We worked toward the northwest and captured between 60 and 100 seals on the coast, about two-thirds of which were females with pup; the balance were yearlings, consisting of male and female; after which we ran into Barclay Sound for supplies, from which place we worked to the northward toward the Bering Sea. We captured about 80 seals while en route to the sea; about two-thirds of these were females with pup, the balance being yearlings, about one-half male and one-half female.

In the latter part of January we entered the Bering Sea through the Unamak Pass, and commenced sealing there. We captured about 800 seals at a distance from the rookeries on the Pribilof Islands of from 20 miles to 200 miles; about three-fourths of the catch in the sea was female seals in milk, the balance consisting of yearlings and male seals. We returned to Victoria, British Columbia, some time in August.

In January, 1888, I joined the *Mountain Chief*, Jacobson, master, at Victoria, British Columbia. I was mate on this vessel. She carried 10 canoes, each manned by 2 Indians, who used spears while hunting the seal. We began sealing along the coast and captured about 85 seals, after which we sailed into Barclay Sound, when I left the *Mountain Chief* and joined the German schooner *Adele* as a cook. Hanson was captain of the *Adele*. We proceeded up the coast and took on 16 Indian sealers and 8 canoes. We then sealed along the coast toward the sea, capturing about 100 seals en route. In the latter part of June we entered the Bering Sea and proceeded to take seals in those waters. Captured about 700 in the sea. We arrived back to Victoria on the 22d of September.

In January, 1889, I shipped as a boat steerer on the British sealing schooner *Theresa*, Lawrence, master. She carried 6 boats, including the stern boat. Our crew and hunters were white men and were equipped with Winchester rifles and breech-loading shotguns with which to capture seals. We began sealing off the Columbia River and then worked up along the coast, capturing about 380 seals before entering Victoria, British Columbia, in April.

In January, 1890, I shipped as a boat steerer on the sealing schooner *Mollie Adams*, McKeil, master. She carried 6 boats and a white crew, who used shotguns and rifles. We sailed as far south as Cape Mendocino, when we met the herd and proceeded to take them up along the coast, capturing about 400 seals, and then returned to Victoria, British Columbia, where we fitted out for the west coast and the Bering Sea. About the last of April I again sailed on a cruise for seals on the same vessel, having the same crew. Sailed up along the coast to Northeast Harbor, capturing 600 skins, which we transferred to the American steamer *Mischief* and shipped to Victoria, British Columbia. We then sailed through the Unamak Pass into the Bering Sea, when we at once began taking seals. Captured 1,000 seals in that sea, and after remaining in those waters for about two months we set sail for Victoria, British Columbia, on the 1st day of September, and arrived at Victoria on the 21st of the same month.

In January, 1891, I shipped as a seaman on the British sealing schooner *Mascot*, Lawrence, master, for a cruise for seals on the west coast. Our vessel carried 1 stern boat manned by white men, and 8 canoes, with 2 Indians to each canoe. We began sealing off Barclay Sound and caught 3 skins only, all of which were females with pup. We then ran into Clayquot Sound, when I left the *Mascot* and joined the British schooner *Venture*, Smith, master. I shipped as a seaman and hunter on the British schooner *Venture*. She carried an Indian crew and 6 canoes. The Indians used spears and breech-loading shotguns while hunting the seals. After securing our Indian hunters we went to the Bering Sea and proceeded along the coast. We captured 56 skins. We entered the sea through the Unamak Pass in the latter part of June and commenced to catch seals. We captured 610 skins while in the sea. In the latter part of July we were ordered out of the sea by the U. S. S. *Thetis*. We returned to Victoria. In February, 1892, I joined the British sealing schooner *Minnie*, Tyson, master, at Dodges Cove, in Barclay Sound. I shipped as cook. The *Minnie* was equipped with 3 sealing boats, all manned with white men. We caught 5 seals along the coast. We then returned to Victoria, British Columbia, about the 20th of April.

In hunting along the coast I think about 80 per cent of those we caught were females, and most of them were carrying their young. We seldom caught any old bulls, but caught a few of the younger males. I have seen the unborn young cut out of the mother seal and live for a week without food. We used to skin some, but threw most of them overboard.

Nearly our whole catch in the Bering Sea after the 1st of July each year were females, and nearly all of them in milk, and had evidently given birth to their young but a short time before. The milk would run out on the deck as we skinned them. The Indian hunters, with spears, would not wound or lose but very few seals that they struck; but the ordinary white hunter will, on an average, lose over half that he kills and wounds. We try to take the seals when asleep on the waters, but the hunters are usually paid a certain sum for each seal taken, and they try to kill everything, without reference to age, sex, or condition.

I do not think that they haul up on the land on the coast, and I have never known of anyone taking a young seal on the coast that was born that year, nor do we catch any cow seals on the coast that have given birth to their young that year.

JAMES JAMIESON.

Subscribed and sworn to before me on this 23d day of April, A. D. 1892.

[SEAL.]

LEVI W. MYERS, *United States Consul*.

[Deposition of Andrew Laing, trader and sealer (mate).]

PELAGIC SEALING.

PROVINCE OF BRITISH COLUMBIA, *City of Victoria*, ss:

Andrew Laing, being duly sworn, deposes and says: I am 42 years of age; residence, Victoria, British Columbia; occupation, trader. I went out as trader on the *W. P. Sayward*, of which I was part owner, in the years 1882, 1883, 1884, 1885, 1886, 1887, 1889, and 1890. In 1888 I went as mate on the *Favorite*, my boat having been seized the year before by the revenue cutter *Rush*, but was finally released, so that I went in her again in 1889 and 1890. My vessel carried Indian hunters in all her trips previous to this year (1892), and they used canoes and spears in hunting seals exclusively. Prior to 1886 I nor my vessel had ever been in the Bering Sea hunting, but had cruised along the coast each year from the Columbia River to Kodiak

Island, and then returned to Victoria, and had caught seals in greater or less numbers each year; but in 1886 and each year thereafter, excepting 1891, I have not only sealed on the coast, but have also been in the Bering Sea hunting seals.

My vessel went to the Bering Sea in 1891, but I did not go with her. The year I was on the *Favorite* she carried Indian hunters also, who used spears. It is now the practice to hunt along the coast early in the season from the Columbia River to the Bering Sea and enter those waters the fore part of July. Indian hunters will not stay out over ten days at a time when we are on the coast, so we have to come in and out quite often. This year I have changed my crew into white hunters, who use shotguns and rifles. When in Bering Sea we are usually from 50 to 150 miles from the Pribilof Islands. I did not pay any particular attention to the sex of the seals we caught on the coast or in the sea any further than we got a number of the yearlings and 2-year-olds on the coast, and that I have seen young live pups cut out of their dead mothers, and they would walk around on deck and bleat for three or four days and then die of starvation. In the Bering Sea I have noticed that in skinning seals milk would run out of the teats of females who had given birth recently to their young on the islands. I have caught this class of females from 75 to 100 miles from the Pribilof Islands.

I know of no place along the eastern coast where fur seals haul out on land, and I do not believe there is any outside of the Pribilof Islands. Fur seals do not give birth to their young in the water, neither will the pup seal live if born in the water. I can not say as to seals appearing off the coast in less numbers each year, but I think some arrangement should be made for their protection by a closed season during the time they are carrying and nursing their young.

ANDREW LAING.

Subscribed and sworn to before me on this 23d day of April, A. D. 1892.

LEVI W. MYERS, *United States Consul.*

[Deposition of Charles Peterson, sealer (boat puller).]

PELAGIC SEALING.

PROVINCE OF BRITISH COLUMBIA, *City of Victoria, ss:*

Charles Peterson, being duly sworn, deposes and says: I am 36 years old, and am by occupation a seafaring man; my residence is Victoria, British Columbia. In April, 1886, I went seal hunting from Victoria in the schooner *Mountain Chief*, Jacobson, master. Our schooner carried 10 canoes, each manned by 2 Indians, who hunted with spears. We began sealing off Cape Flattery and captured about 300 seals along the coast, most all of which were females and yearlings. We did not capture over 50 males, all told, on this voyage, and returned to Victoria in July.

In the spring of 1887 I went on a sealing voyage from Victoria as a boat puller in the schooner *Alfred Adams*, Dyre, master. She carried 1 stern boat and 2 Indian canoes. We had a white crew, but the canoes were manned by 2 Indians each. We began sealing off Cape Flattery and sealed right up toward the Bering Sea, capturing 16 seals along the coast, all of which were females with pup. We entered the Bering Sea about the 15th of August through the Unimak Pass and captured therein 1,404 seals, most of which were cows in milk. On that voyage we caught female seals in milk over 80 miles from the rookeries, where they had left their young. Our best hunters would secure half of the seals shot, but the poorest ones would not get more than 1 out of 20, the average being 1 secured out of 5 killed.

I have seen the deck almost flooded with milk while we were skinning the seals. It is impossible to distinguish the male seal from the female when they are in the water at a reasonable gunshot distance. About 90 per cent of all the seals we captured in the water were female seals. After remaining in the sea about fifteen days our vessel was seized and we returned to Victoria.

In April, 1890, I went sealing in the *Minnie*, Jacobson, master. She carried 14 canoes, manned with Indians, 2 Indians with each canoe, who used spears. We caught 350 seals along the coast, all of which were females excepting 20. We returned to Victoria in June.

In January, 1891, I left Victoria on a sealing voyage in the schooner *Minnie*, Dillon, master. We carried 2 boats manned by white men and 10 canoes, each manned by 2 Indians, who used shotguns. We captured 250 female seals with pup on the coast and then returned to Victoria, after which we sailed again in a short time on the same vessel with the same crew for the North Pacific Ocean and Bering Sea, capturing about 250 female seals while en route to the Bering Sea, also a few male yearlings. We entered the sea and secured about 10 seals, all of which were females in milk. After remaining there ten days we started back to Victoria.

The practice of taking seals in the water before they have given birth to their young is destructive to seal life, wasteful, and should be prohibited. Seals do not haul out upon the land along the coast and give birth to their young; nor do they breed on the kelp. If ever there was such an occurrence it must have been a premature birth caused by some accident to the female seal, and would result in the death of her young.

Previous to 1885 only 2 or 3 sealing vessels had ever gone to the Bering Sea to hunt seals, and the sealing from Victoria prior to 1886 was confined to the coast, and the crews were Indians who hunted with spears. Seals were caught by them with spears and but few were lost; but since the shotgun has come into use a great many are destroyed and lost.

C. PETERSON.

Subscribed and sworn to before me on this 23d day of April, A. D. 1892.

[SEAL.]

LEVI W. MYERS,
United States Consul.

[Deposition of Edwin P. Porter, sealer (boat steerer).]

PELAGIC SEALING.

DOMINION OF CANADA, *Victoria, British Columbia, ss:*

Edwin P. Porter, being duly sworn, deposes and says: My age is 25 years; residence, Victoria, British Columbia; occupation, seaman and seal hunter. I went out sealing as boat steerer on the British schooner *Penelope*, Captain Steel, master; I think it was in the year 1888 when I went in her. She had 5 boats and white hunters. They used shotguns and rifles—shotguns chiefly. We left Victoria about the last of January and cruised along the California and Oregon coast and caught about 1,000 seals before we entered Bering Sea. We entered the sea about the first week in July and caught about 1,100 more. We left the sea about the latter part of September. We caught some off the Copper Island, but most of them were taken from 30 to 100 miles south and southwest of the Pribilof Islands.

In 1889 I went as boat steerer on the British schooner *Ariel*, Captain Rucknam, master. She had 6 boats and 4 canoes. Carried both white and Indian hunters. White hunters used shotguns and rifles. Indians used spears chiefly. We left Victoria in February and sealed over about the same course as the year before and entered the Bering Sea in July. We took about 500 skins before entering the sea and caught about 1,600 more around the southwest bank, from 30 to 75 miles from St. Paul Island. We were ordered out of the sea about the 1st of September by the revenue cutter *Rush*.

In 1890 I did not go sealing.

In 1891 I sailed as boat steerer in the British schooner *Umbrina*, Captain Campbell, master. She carried 7 boats and had white hunters, who used shotguns and rifles. Left Victoria in March and sealed along the coast. I left her before she went into the sea. Her whole season's catch was about 900, but do not know what portion of them she caught before entering Bering Sea. This year I went as boat steerer in the British steamer *Thistle*. She had 6 sealing boats and 2 whaling boats and carried white hunters, with shotguns and rifles. She left Victoria in February and sealed off the California coast. I left her in March. She had only 79 skins.

My experience in four years' sealing is that nearly all the seals taken along the coast are pregnant females, and it is seldom that one of them is caught that has not a young pup in her. In the fore part of the season the pup is small, but in May and June when they are taken off the Queen Charlotte and Kadiac Islands the unborn pup is quite large, and we frequently take them out of the mothers alive. I have kept some of them alive for six weeks that were cut out of their mothers by feeding them on condensed milk. The seals we captured in Bering Sea were fully 80 per cent females that had given birth to their young. A fact that I often noticed was that their teats would be full of milk when I skinned them, and I have seen them killed from 20 to 100 miles from the Seal Islands. We try to kill the seal while sleeping on the water, but also shoot at them when they are breaching.

An ordinary hunter will lose about 4 out of every 6 he kills. Some do not do near as well, while others do better. The percentage of loss to those killed is less on the coast than it is in the Bering Sea, for the seals are more fat and do not sink as quick, but a great many are wounded and lost. The Indians, when they use the spears, lose but very few. They get up close to the sleeper and scarcely ever miss getting it. I

know of no place on the coast where seals come up to land, and I am positive there is none. Seals are not near as plentiful as when I went out in 1888, and I believe the decrease is due to their being hunted so much with shotguns and rifles.

EDWIN P. PORTER.

Subscribed and sworn to before me on this 22d day of April, A. D. 1892.

[SEAL.]

LEVI W. MYERS,
United States Consul.

[Extract from deposition of William Brennan, sealer (sailing master, boat steerer).]

PELAGIC SEALING.

* * * * *

The cow is 3 years old before she bears young. The pups are about 45 days old before they can go into the water, but they nurse the mother as long as they stay on the island. They are called "black" and "gray" pups—black before they shed their first coat and gray afterwards. As they grow older the gray turns darker, except upon the neck and head, but the color of the hair does not affect the fur, which can be seen by parting it.

* * * * *

WILLIAM BRENNAN.

[SEAL.]

D. A. MCKENZIE,
Notary Public.

[Extract from deposition of Theodore T. Williams, journalist, sent out by lessees to investigate pelagic sealing.]

PELAGIC SEALING.

* * * * *

In the list of skins offered for sale in the London market there appears the classification "black pups." These are the skins of unborn seals torn from the wombs of their dead mothers. It is not a pleasant picture, but it can not be avoided.

* * * * *

T. T. WILLIAMS.

VICTORIA, B. C., October 1, 1889.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco, ss:

I, Clement Bennett, a notary public in and for said city and county, residing therein, duly commissioned and sworn, do certify that on this 4th day of April, A. D. one thousand eight hundred and ninety-two, I carefully compared the foregoing copy of a report of T. T. Williams with the original thereof now in the possession of the Alaska Commercial Company, of San Francisco, California, and that the same is a full, true, and correct transcript therefrom and of the whole of said original report.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, this 4th day of April, A. D. 1892.

[SEAL.]

CLEMENT BENNETT, Notary Public.

[Deposition of Herman Liebes, furrier, San Francisco.]

GENERAL SEAL-SKIN INDUSTRY AND PELAGIC SEALING.

City and County of New York, ss:

Herman Liebes, being duly sworn, says:

First. That he is 50 years of age and resides in the city of San Francisco, Cal. That he has been in the fur business since he was 13 years of age, and established in his own business in San Francisco in the year 1864. That he first began to buy seal

skins in the year 1865. At that time he made his purchases from the Indians on the western coast of the American continent, who offered to him only the skins of female seals; that the price he originally paid for them was as low as 50 cents per skin; that he offered the Indians a much higher price for male skins, and was told by them that the male seals could not be caught, and that many Indians whom he has personally seen kill seals, and from whom he has bought skins, have told him that male seals and the young cubs were too active to be caught, and that it was only the female seals heavy with young which they could catch. The males, for instance, as deponent was told by the seal hunters, come up to the surface of the water after diving, often as much as a mile from the place they went down; whereas the females can, when pregnant, hardly dive at all.

Deponent says that from his own observation of live seals during many years, and from his personal inspection of the skins, he knows the difference between the skin of a female seal and a male seal to be very marked, and that the two are easily distinguishable. The skin of the female seal shows the marks of the breast, about which there is no fur. The belly of the female seal is barren of fur also, whereas on the male the fur is thick and evenly distributed. The female seal has a much narrower head than the male seal, and this difference is apparent in the skins; also that the differences between the male and female skins are so marked that there is now and always has been a difference in the price of the two of from 300 to 500 per cent—for example, at the last sales in London, on the 22d day of January, 1892, there were sold 30,000 female skins at a price of 40 shillings apiece, and 13,000 male seals at a price of 130 shillings apiece on an average.

Second. That from the year 1864 down to the present day deponent or his firm have been large purchasers of seal skins on the western coast of America from the Indians and residents on the British coast; and deponent believes that he has handled nearly three-fourths of the catch from that time down to the present. That during the whole of this period he has purchased from 3,000 to 40,000 seal skins a year, and that he has personally inspected and physically handled the most of the skins so bought by him or his firm.

That from the year 1880 he has been in the habit of buying skins from American and English vessels engaged in what is now known as poaching, and that he has personally inspected every cargo bought and seen unloaded from the poaching vessels, and subsequently seen and superintended the unpacking of the same in his own warehouse; that the most of the skins above mentioned as purchased by him have been bought from the poaching vessels, and that of the skins so bought from the vessels known as poachers, deponent says that at least 90 per cent of the total number of skins were those of female seals, and that the skins of male seals found among those cargoes were the skins of very small animals, not exceeding 2 years of age, and further, that the age of the seal may be told accurately from the size of its skin.

Third. That the skins bought at Victoria from the poaching vessels are shipped by him largely to the firm of C. M. Lampson & Co., in London, who are the largest sellers of skins in the world and the agents of deponent's firm. That he has been through the establishment of C. H. Lampson & Co. in London very frequently. That he has frequently heard stated by the superintendent thereof that the great majority of the skins received by them from what is called the "Northwest catch," that is, the northwest coast of Victoria, are the skins of seals caught by vessels in the open Pacific or the Bering Sea, and that a large proportion of said skins, amounting to at least 90 per cent, were in his, the said superintendent's, judgment obviously the skins of female seals.

Fourth. That deponent has frequently requested the captains of the poaching vessels sailing from the port of Victoria and other ports to obtain the skins of male seals, and stated that he would give twice as much money, or even more, for such skins than he would pay for the skins of female seals. Each and all of the captains so approached laughed at the idea of catching male seals in the open sea, and said that it was impossible for them to do it, and that they could not catch male seals unless they could get upon the islands, which, except once in a long while, they were unable to do in consequence of the restrictions imposed by the United States Government; because they said the males were more active and could outswim any boat which their several vessels had, and that it was only the female seals who were heavy with young which could be caught. Among the captains of vessels with whom deponent has talked, and who have stated to him that they were unable to catch anything but female seals, are the following:

Captain Cathcart, an American, now about 75 years of age, who commanded the schooner *San Diego*, and who subsequently commanded other vessels; Capt. Harry Harmson, Capt. George W. Littlejohn, Capt. A. Carlson, Gustav Sundvall, and others whose names he does not now remember.

Fifth. That by reason of his long acquaintance with the business and his conversations with the captains of the vessels called poachers, and the hunters employed on those vessels—that is, the persons who actually shoot the seals—deponent is satisfied that a large number of the seals which are shot are not caught, but are lost, and that the number so killed and lost is at least 25 to 30 per cent.

Deponent further says that by reason of his knowledge of the business he knows that the number of seals has greatly diminished within the last five years, and he is of the opinion that open-sea seal fishing should be absolutely prohibited, and that if the same is not done the seals will within two, or at the utmost three, years be exterminated. This opinion is based upon the assumption that the present restriction imposed by the United States and Russia on the number, age, and sex of the seals killed upon the islands owned by them respectively are to be maintained.

Deponent is further of the opinion that it would be necessary, in order to fully protect the herds, to prohibit, at least for a time, the killing of all female seals anywhere. That one reason for deponent's opinion that the total number of seals in the Pacific and Bering Sea has diminished very rapidly is the fact—which deponent knows from the fact that he buys so large a portion of the poachers' catch—that there are now engaged on what is called "poaching" about 80 vessels, and that about five years ago not more than 10 vessels were engaged in poaching; and that the total number of skins brought in by the whole 80 vessels is now not very much greater than the number brought in five years ago by 10 vessels. The poaching vessels a few years ago have been known to get as many as 3,000 or 4,000 skins, and deponent has bought 4,000 skins from one vessel, whereas no poaching vessel now gets more than a few hundred with the same size crew. One vessel last year sailing from Victoria made a catch of 1,900 skins, but this is now an altogether exceptional catch, and this vessel had a crew twice as large as poaching vessels formerly carried, and was equipped with from 12 to 15 boats instead of 5 or 6. One or two other poaching vessels also made large catches—that is, over 1,200 skins—but the average catch of the poaching vessels is not more than a few hundred each. This is true, although the poaching vessels are now equipped with much more experienced shooters, with better rifles, and with better boats than any of the vessels had five years ago. Many of the poaching vessels now have boats pointed at both ends, so that they can go backward or forward with equal ease; and the old poacher only had ordinary ships' boats. Deponent knows this to be true, because he has seen the boats and talked with the captains of the schooners about them.

HERMAN LIEBES.

Sworn to before me this 4th day of April, 1892.

[SEAL.]

EDWIN T. RICE, jr.,
Notary Public, New York County.

[Deposition of John J. Phelan, furrier.]

PELAGIC SEALING.

STATE OF NEW YORK,
City and County of New York, ss:

John J. Phelan, being duly sworn, says: I am 35 years of age, a citizen of the United States, and a resident of Albany, in the State of New York. At the age of 11 I entered the service of Mr. George C. Treadwell, a wholesale furrier of Albany. I remained with him until the time of his death, and have since been in the employ of his son, Mr. George H. Treadwell, who has succeeded to the business carried on by his father. It has always been a part of my occupation, beginning with the age of 11, to handle fur-seal skins, and during the last twenty years I have handled nearly every seal skin that came into the factory. I have for many years been in the habit of putting them through every process connected with their preparation for manufacture, except that of dyeing, with which I am not familiar. I have removed the flesh and blubber; I have washed the skins; removed the hair, or "picked" them, shaved them, and dressed them; and in this way I have constantly gone over and closely observed every part of their surfaces in all the stages or processes through which they pass before they go to the dyer.

As a result of the work I have performed for so many years, I am able to distinguish, without difficulty, the skin of a female seal from that of a male seal. There are generally several ways in which I can tell them apart. One of the surest ways consists in seeing whether any teats can be found. On a female skin above the age of two years teats can practically always be discovered; when the animal is over three years old, even a person who is not an expert at handling skins can discover two prominent ones on each side of almost every skin. This is because after the age of

three, and often even after two, almost all females have been in pup. There are also teats on a male skin, but they are only very slightly developed. When the fur is matted, as it is in salted fur-seal skins, the male teats can not be found, but the female teats of skins more than two years old can be found under all circumstances.

I have been able to test all my observations as to the teats on salted fur-seal skins by following these skins through the various processes which I have described. During these processes the skins become thinner and thinner, and the teats more and more noticeable, and at an early stage in the dressing they must be wholly removed. There are other ways of distinguishing the skins of the two sexes. I will state a few of them.

A female seal has a narrower head than a male seal. By the word "head" I mean here to include the part of the body from the head down to the middle of the back. I believe all men who have handled the skins of both sexes have noticed this point.

Then, again, when the whiskers have not been cut off, they generally afford a safe means of distinguishing the sexes. Male whiskers are much more brittle and of a darker color than those of the female animal. When the male seal is over six years old it begins to have a mane, and for this reason, it is after that age called a wig.

Finally, it is generally possible for me to tell the skins of the two sexes apart by just taking a look at them or feeling them. I suppose I can do this because I have been at the business so long that I am an expert in it.

The chief classes of seal skins which I have handled are the Alaska, the Northwest coast, and the Copper Island skins. I can always distinguish the skins of these classes. The Northwest coast skins are most easily told by the very great proportion of females contained in any given lot. Among the Alaska and Copper skins I have hardly ever seen a female skin.

While the Alaska and Northwest coast skins are taken from the same species or herd of seals, I am convinced that the Copper skins are taken from seals of a different herd. I have noticed the difference in the skins, both in their raw state and during the processes of dressing. The hair of the Copper skin is shorter, thinner, and generally of a somewhat darker color than that of the Alaska or Northwest coast skins, and in most cases the difference in shape is sufficiently marked to enable me to distinguish them by that means alone.

The difference between the Copper and the other skins is still more marked during the processes of dressing. It is very much more difficult to unhair a Copper skin. Furthermore, the pelts of the Copper skins are less porous than those of the other skins. While preparing skins for dressing it is necessary to "work" them and open the pores in order to "leather" them, and it is during this process that I have noticed the fact that Copper skins are much less porous than the others. The pelt being harder and stiffer and the hair more brittle, we can hardly ever unhair a Copper skin as satisfactorily as we can the other skins.

I was sent to New York from Albany a few days ago by Mr. George H. Treadwell, with instructions to go through a certain lot of seal skins, which I understand he had recently bought in Victoria, and to find out how many of these skins were taken from female animals. I have spent four days in doing this, working about seven hours a day.

There were several men who unpacked the skins and laid them before me, so that all of my time was spent in examining the individual skins. The lot contained 3,550 skins. I found that, with the possible exception of two dried ones, they were taken from animals this year; they were a part of what is known as the spring catch. I know this to be the case by the fresh appearance of the blubber and of the skin as a whole. This affords a sure way of telling whether the skin has lain in salt all winter, or whether it has been recently salted. I personally inspected each one of these skins by itself and kept an accurate record of the result. I divided the skins according to the three following classes: Males, females, and pups. In the class of pups I placed only the skins of animals less than two years of age, but without reference to sex.

I found in the lot 395 males, 2,167 females, and 988 pups. Leaving out of account the pups, the percentage of females was therefore about 82.

The great majority of what I classed as male skins were taken from animals less than three years of age. There was not a single wig in the lot. On the other hand, nearly all of the female skins were those of full-grown animals. On every skin which I classed among the females I found teats with bare spots about them on the fur side. Such bare spots make it absolutely certain that these teats were those of female skins.

With regard to the pup skins, I will say that I did not undertake to determine whether they were males or females, because they had a thick coat of blubber, which, in the case of an animal less than two years old, makes it very hard to tell the sex.

All of the skins that I examined were either shot or speared. I did not keep a close count, but I am of the opinion that about 75 per cent of them were shot.

The result of the examination is about what I had expected it would be. The figures only confirm what I have always noticed in a general way, that nearly nine-tenths of the skins in any shipment of Northwest coast skins are those of female animals.

JOHN J. PHELAN.

Sworn to before me, this 18th day of June, 1892.

[SEAL.]

WILLIS VAN VALKENBURG,
Notary Public, Kings County.

(Certificate filed in New York County.)

[Deposition of Henry Treadwell, member of the firm of Treadwell & Co., furriers.]

GENERAL SEAL-SKIN INDUSTRY—PELAGIC SEALING.

City and County of New York, ss:

Henry Treadwell, being duly sworn, says that he is a citizen of the United States, is 70 years of age, and resides in the city of Brooklyn, in the State of New York.

First. That he is a member of the firm of Treadwell & Co, which has been engaged in the business of buying, dressing, and dealing in furs since about the year 1832. That for the twenty years last past deponent's said firm have bought on their own account, dressed and dyed, annually from 5,000 to 8,000 seal skins.

Second. That nearly all of the skins purchased by deponent's said firm are bought of C. M. Lampson & Co., of London, who are the largest dealers in seal skins in the world. That the majority of the skins bought by said firm are a part of the skins known as the "Alaska" catch, that is, as deponent is informed and believes, the skins of seals killed on the Pribilof Islands by the companies having leases from the United States for that purpose. A certain number of skins bought by deponent's firm are those killed upon the Russian, called the Commander Islands, known as the Copper catch, and about 30 per cent of the whole number of seal skins bought by deponent's firm are what are called the Northwest coast skins—the skins of animals killed and caught in the open sea.

Third. That the skins of each of the several catches are readily distinguishable from each other by any person at all experienced in the handling of seal skins; and the skins of the Northwest, Alaska, or Copper catch, are none of them found except under those titles, that is to say, that skins of the "Copper" catch are not found among the "Alaska" seal skins, nor those of the Northwest catch among the Alaska for Copper seal skins. The skins of the three catches are so readily distinguishable from each other that deponent says he would be able, on the examination of the skins as they are taken from the barrels in which they are packed in salt and received by him, to detect at once in a barrel of Alaska skins, the skins of either the Copper or the Northwest catch; or in a barrel of the Northwest catch the skins of either the Alaska or the Copper catch, or in a barrel of the Copper catch the skins of either the Alaska or Northwest catch. The skins of the Alaska and Copper catches are readily distinguishable from each other, although male skins; and the skins of the Northwest catch are also readily distinguishable from both the Copper and Alaska by the act that they are almost all females, and all have marks of bullets, buckshot, or spears, showing that they have been killed at sea, although the Northwest catch belong to the Pribilof Island herd.

Fourth. That the skins of the Northwest catch are, deponent would say, at least nine-tenths of them, skins of female seals. The skins of the female seals are as readily distinguishable, before being dressed and dyed, from the skins of male seals as the skin of a bitch and the skin of a dog, or the skin of any other female animal from that of the male of the same family. The females always have narrower heads than the males, and the breasts afford another ready means of identification of female seals.

Fifth. It is equally true that the skins of all the other catches which we had in prior years were readily distinguishable from each other. I have not seen the seals in their native rookeries, and can not speak as to the distinguishing traits of the live animals, but in the trade and in the experience of our firm we have always been able to distinguish readily the skins coming from one locality from the skins coming from another. I remember upon one occasion my firm received a consignment of skins from London which bore no marks familiar to us and which skins had not been described to us, and that my brother, who was then at the head of the business,

and who is now dead, said, after inspecting the said skins, that they reminded him very much of what were formerly called "south latitude skins," and particularly of some skins which he had had twenty-odd years before from Santa Barbara, in California; and upon inquiry from the Messrs. Lampson & Co., we were informed by them that the said skins were the skins of seals killed at Santa Barbara.

HENRY TREADWELL.

Subscribed and sworn to before me this 1st day of April, 1892.

[SEAL.]

WILLARD PARKER BUTLER,
Notary Public, City and County of New York.

[Deposition of Alfred Fraser, member of firm of C. M. Lampson & Co., furriers, London.]

GENERAL SEAL-SKIN INDUSTRY.

STATE OF NEW YORK, *City and County of New York*, ss:

Alfred Fraser, being duly sworn, says:

First. That he is a subject of Her Britannic Majesty, and is 52 years of age, and resides in the city of Brooklyn, in the State of New York. That he is a member of the firm of C. M. Lampson & Co., of London, and has been a member of said firm for about thirteen years; prior to that time he was in the employ of said firm and took an active part in the management of the business of said firm in London. That the business of C. M. Lampson & Co. is that of merchants, engaged principally in the business of selling fur skins on commission. That for about twenty-four years the firm of C. M. Lampson & Co. have sold the great majority of the whole number of seal skins sold in all the markets of the world. That while he was engaged in the management of the business of said firm in London he had personal knowledge of the character of the various seal skins sold by the said firm from his personal inspection of the same in their warehouse and from the physical handling of the same by him. That many hundred thousands of the skins sold by C. M. Lampson & Co. have physically passed through his hands; and that since his residence in this country he has, as a member of said firm, had a general and detailed knowledge of the character and extent of the business of said firm, although since his residence in the city of New York he has not physically handled the skins disposed of by his firm.

That during the last year or two a large number of skins have been sold in London by the firm of Culverwell, Brooks & Co., and that said firm, as deponent is informed and believes, have secured the consignment of skins to them during the period aforesaid by advancing to the owners of vessels engaged in what is now known as pelagic sealing sums of money, which is stated to be \$15 per skin, as against shipments from Victoria of such skins.

Second. That the seal skins which have been sold in London from time to time since deponent first began business have been obtained from sources and were known in the markets as—

(A) The South Sea skins, being the skins of seals principally caught on the South Shetland Islands, South Georgia Islands, and Sandwich Land. That many years ago large numbers of seals were caught upon these islands, but in consequence of the fact that no restrictions were imposed on the killing of said seals they were practically exterminated and no seal skins appeared in the market from those localities for many years. That about twenty years ago these islands were again visited, and for five seasons a considerable catch was made, amounting during the whole five seasons to about 30,000 or 40,000 skins. Among the skins found in this catch were those of the oldest males and the smallest pups, thus showing, in the judgment of deponent, that every seal of every kind was killed that could be reached. That in consequence thereof the rookeries on these islands were then completely exhausted. One or twice thereafter they were visited without result, no seals being found, and about five years ago they were revisited and only 36 skins were obtained. Deponent is informed that all the South Sea skins were obtained by killing seals upon the islands above mentioned, and that it is obviously everywhere much easier to kill seals upon the land than in the water; and in the judgment of the deponent the seals of the above-mentioned islands were thus entirely exterminated because of the entire absence of any protection or of any restriction of any kind whatever upon the number, age, or sex of seals killed, and not merely, as deponent understands has been claimed by some authorities, because they were killed on land instead of in the open sea, which, moreover, in that locality, deponent is informed, is practically impossible by reason of the roughness of the sea and weather.

(B) A considerable number of seal skins were formerly obtained upon the Falkland Islands; how many deponent is not able to state.

(C) That a certain number of seals were also caught at Cape Horn, and that more or less are still taken in that vicinity, though the whole number has been very greatly reduced.

(D) That at the present time and for many years last past the skins coming to the market and which are known to commerce have come from the following sources:

1. And by far the most important are the Northern Pacific skins, which are known to the trade under the following titles:

The "Alaska" catch, which are the skins of seals caught on the Pribilof Islands, situated in Bering Sea. For many years past the whole of the skins caught upon these islands have been sold by deponent's firm, and a statement of the number of skins so sold in each year is appended hereto and marked "Exhibit A," showing the aggregate of such skins sold from the year 1870 to the year 1891, inclusive, as 1,877,977.

The "Copper" catch, being the skins of seals caught upon what are known as the Commander Islands, being the islands known as the Copper and Bering Islands. All the skins so caught have been sold by the deponent's firm in the city of London, and the total number of such "Copper" catch from the years 1872 to 1892 appears upon the statement which is hereto annexed and marked "Exhibit B," showing the total so sold during such years of 768,096 skins.

The "Northwest" catch, being the skins of seals caught in the open sea either of the Pacific Ocean or of the Bering Sea. These skins were originally caught exclusively by the Indians and by residents of the colony of Victoria and along the coast of the British possessions. A statement of the total number of the catch from the year 1868 to 1884, inclusive, is appended hereto and marked "Exhibit C," showing a total of 153,348. That statement is divided into three heads: First, the salted "Northwest" coast skins; second, the dried "Northwest" coast skins, both of which were mainly sold through deponent's firm in London, and third, salted "Northwest" coast skins, dressed and dyed in London, but not sold there. It will be noticed that in the years 1871 and 1872 an unusually large proportion of dried skins appear to have been marketed. Those skins were purchased in this year from the Russian-American Company, which was the lessee of the Russian Government on the Pribilof Islands prior to the cession of Russian America to the United States. Those skins had been accumulated by the Russian Company and sold when the Americans took possession. For the years 1871 and 1872, therefore, the surplus skins over the average for the other years should be rejected in a computation of the general average of seals killed during the years from 1868 to 1884, inclusive.

From the year 1885 to the year 1891 the number of skins included in the "Northwest" catch enormously increased, and a statement of such skins is hereto annexed and marked "Exhibit D," showing a total of 331,962, and is divided, like the statement marked "Exhibit C," into three heads: The salted "Northwest" coast skins, the dry "Northwest" coast skins, and the salted skins dressed and dyed in London, but not sold there. The majority of the first two classes were, as in the previous case, sold by deponent's firm. The great majority of these skins appearing in the last-mentioned statement are the skins caught by the vessels sent out from the Canadian Provinces, many also by vessels sent out from San Francisco, Port Townsend, and Seattle, and a few from vessels sent out from Yokohama. The majority, however, are supposed to have been caught by vessels sent out from British harbors. A large number of the skins included in "Exhibit D" have been consigned to C. M. Lampson & Co. by the firm of Herman, Liebes & Co., of San Francisco. In estimating the total number of the "Northwest" catch it should also be mentioned that something like 30,000 skins belonging to that catch have been dressed and dyed in the United States which have not gone to London at all.

(E) Besides the "Alaska," "Copper," and "Northwest" skins, there are also a certain number of skins arriving in London known as the Lobos Island skins, although the same are not handled by the firm of C. M. Lampson & Co.; but the total number of which, from the year 1882 to the year 1891, inclusive, is, as appears from the catalogues of sales, 247,777. The Lobos Island skins are those of seals killed on the Lobos Island, belonging to the Republic of Uruguay; and deponent is informed and believes that there is no open-sea sealing in the vicinity of such island and that the animals are protected on the island as they are on the Russian and Pribilof Islands, by prohibition from the killing of females and limiting the number of males killed in each year. A statement of the seals killed on Lobos Island is hereto annexed and marked "Exhibit E," from which it appears that there is a regular annual supply obtained from that source, which shows no diminution.

(F) There are also a certain number of skins sold in London, obtained from rookeries at or near the Cape of Good Hope, the exact number of which deponent is not able to state, but which he is informed shows a steady yield.

The statements marked A, B, C, D, and E, hereunto appended, have been carefully prepared by me personally, and the figures therein stated have been compiled by me from the several sale catalogues of C. M. Lamson & Co., and others from my private books which I had kept during all the years covered by the statements, and I am sure that those statements are substantially accurate and truly state the respective numbers of the skins caught and sold which they purport to state.

Third. The great majority of the skins sold from the "Northwest" catch are the skins of female seals. Deponent is not able to state exactly what proportion of such skins are the skins of females, but estimates it to be at least 85 per cent; and the skins of females are readily distinguishable from those of the males by reason of the fact that on the breast and on the belly of the bearing female there is comparatively little fur, whereas on the skins of the male seals the fur is evenly distributed; and also by reason of the fact that the female seal has a narrow head and the male seal a broad head and neck; and the skins of this catch are also distinguishable from the "Alaska" and "Copper" catch, by reason of the fact that the seals are killed by bullets or buckshot, or speared, and not, as on the Pribilof and Commander Islands, by clubs. Marks of such bullets, or buckshot, or spears are clearly discernible in the skins, and there is a marked difference in the commercial value of the female skins and of the male skins. This fact, that the "Northwest" skins are so largely the skins of females, is further evidenced by the fact that in many of the early sales of such skins they are classified in deponent's book as the skins of "females."

Fourth. Deponent further says that in his judgment the absolute prohibition of pelagic sealing, i. e., the killing of seals in the open sea, whether in the North Pacific or the Bering Sea, is necessary to the preservation of the seal herds now surviving, by reason of the fact that most of the females so killed are heavy with young, and that necessarily the increase of the species is diminished by their killing. And, further, from the fact that a large number of females are killed in the Bering Sea while on the search for food after the birth of their young, and that in consequence thereof the pups die for want of nourishment. Deponent has no personal knowledge of the truth of this statement, but he has information in respect of the same from persons who have been on the Pribilof Islands, and he believes the same to be true. Deponent further says that this opinion is based upon the assumption that the present restriction imposed by Russia and the United States on the killing of seals in their respective islands are to be maintained, otherwise it would be necessary to impose such restrictions, as well as to prohibit pelagic sealing, in order to preserve the herds.

Fifth. Deponent is further of the opinion, from his long observation and handling of the skins of the several catches, that the skins of the Alaska and Copper catches are readily distinguishable from each other, and that the herds from which such skins are obtained do not, in fact, intermingle with each other, because the skins classified under the head of Copper catch are not found among the consignments of skins received from the Alaska catch, and vice versa.

Sixth. Deponent further says that the distinction between the skins of the several catches is so marked that, in his judgment, he would, for instance, have had no difficulty, had there been included among 100,000 skins in the Alaska catch 1,000 skins of the Copper catch, in distinguishing the 1,000 Copper skins and separating them from the 99,000 Alaska skins, or that any other person with equal or less experience in the handling of skins would be equally able to distinguish them. And in the same way deponent thinks from his own personal experience in handling skins that he would have no difficulty whatever in separating the skins of the northwest catch from the skins of the Alaska catch, by reason of the fact that they are the skins almost exclusively of females, and also that the fur upon the bearing female seals is much thinner than upon the skin of the male seals—the skin of the animal while pregnant being extended and the fur extended over a large area.

Seventh. Deponent says that the number of persons who are employed in the handling, dressing, dyeing, cutting, and manufacturing of seal skins in the city of London is about 2,000, many of whom are skilled laborers, earning as high as £3 or £4 a week. Deponent estimates the amount paid in the city of London for wages in the preparation of fur-seal skins for a manufacturer's uses, and excluding the wages of manufacturers' employees, prior to the beginning of the pelagic sealing in 1885, at about £100,000 per annum; and deponent further says that in his judgment, if this pelagic sealing be not prohibited it is a question of but a few years, probably not more than three, when the industry will cease by reason of the extermination of the

seals in the same way in which they have been exterminated on the South Sea Islands by reason of no restrictions being imposed upon their killing.

ALFRED FRASER.

Subscribed and sworn to before me this 1st day of April, 1892.

EDWIN T. RICE,
Notary Public, New York County.

[Deposition of Henry Poland, head of the firm of P. R. Poland & Son, furriers, London.]

GENERAL SEAL-SKIN INDUSTRY—PELAGIC SEALING.

Mr. Henry Poland, being duly sworn, doth depose and say: That he is 40 years of age and a subject of Her Britannic Majesty; that he is the head of the firm of P. R. Poland & Son, doing business at 110 Queen Victoria street, in the city of London, and has been engaged in that business twenty-one years; that the said firm of P. R. Poland & Son are doing business as fur and skin merchants, and have been engaged in that business for over one hundred years, having been founded by deponent's great-grandfather in the year 1785, and having been continued without interruption since that date from father to son; that for many years last past deponent's said firm have been in the habit of buying large numbers of fur-seal skins—in fact ever since skins of that character have become an article of commerce—both on their own account and on commission for other persons resident in the United States and Canada and elsewhere; that by reason of having purchased so many skins deponent has a general and substantial knowledge of the history of the fur-seal skin business, and of the character and kinds of fur-seal skins coming upon the London market; that from about the year 1879 down to the present time the principal fur-seal skins coming to the London market have been what are known as the Alaska catch, being the skins of fur seals killed upon the Pribilof Islands, in the Bering Sea; the Copper Islands catch being the skins of fur seals killed upon the Kommandorski and Robben Islands, of Russia, and what are known as the Northwest catch. Until within two or three years ago a very considerable number of skins also arrived on the London market, amounting perhaps to several thousand annually, which were known as Japanese skins.

That the three classes of skins above mentioned are easily distinguishable from each other by any person skilled in the business or accustomed to handling skins in the raw state; that deponent has personally handled the samples of the skins dealt in by this firm, and would himself have no difficulty in distinguishing the skins of the Copper Island catch from the skins of the Alaska and Northwest catch by reason of the fact that in the raw state the Copper Island skins have a lighter color and the fur is rather shorter in pile and of an inferior quality. The skins of each of the three classes have different values and command different prices in the market. Both the Copper Island skins and the Alaska skins are almost exclusively the skins of male seals, and the difference between the skin of a male seal and a female seal of adult age can be as readily seen as between the skins of different sexes of other animals. That the Northwest skins are, in turn, distinguishable from the Copper Island and Alaska skins, first, by reason of the fact that a very large proportion of the adult skins are obviously the skins of female animals; second, because they are all pierced with the spear or harpoon or shot, in consequence of being killed in open sea, and not, as in the case of Copper Island and Alaska skins, being killed on land by clubs; third, because the Northwest skins are cured upon vessels by the crews of which they are killed, upon which there are not the same facilities for flaying or salting the skins as there are upon land, where the Copper and Alaska skins are flayed and salted.

The Japanese skins, which I think are now included in the Northwest catch, are distinguishable from the other skins of the Northwest catch by being yellower in color, having a much shorter pile, because they are salted with fine salt, and have plenty of blubber on the pelt. That the skins purchased by deponent's firm are handed over by it to what are called dressers and dyers for the purpose of being dressed and dyed. The principal dressers and dyers of the city of London at the present time are C. W. Martin & Co. and George Rice, and skins are also dressed and dyed by other persons. The fur-seal business has attained very considerable dimensions in the city of London, large amounts of capital being invested therein, and probably in and about the city of London there are employed in the fur-seal skin business as many as 3,000 persons, most of whom are skilled hands, some of whom

receive as high as £3 or £4 a week, and many if not most of whom have families dependent upon them for support. That the maintenance of this business necessarily depends upon the preservation of the seal herds frequenting the northern Pacific regions from being overtaken by the destruction which was the fate of the seals formerly found in large quantities in the South Atlantic and South Pacific Oceans.

That deponent is not in a position, by reason of possessing expert knowledge or personal acquaintance of killing seals, to pronounce a positive opinion as to what steps are necessary, if any, to accomplish this result, but he would suppose it reasonable to say that a close time, which should be universal in its application, for a specified period in each year, during which the killing of seals should be entirely prohibited, and the imposition of heavy penalties—say a fine of £1,000—for any violation of the regulations providing for such close time would be effective to preserve the herds referred to; and deponent would under any circumstances increase the zone around the islands containing the rookeries, within which sealing should be absolutely prohibited, to a distance of 50 miles in every direction from the shore.

HENRY POLAND.

Sworn at 110 Queen Victoria street, in the city of London, England, this 23d day of April, 1892, before me.

FRANCIS W. FRIGOUT,
*Vice and Deputy Consul-General of the
United States of America at London, England.*

[Deposition of William Charles Blatspiel Stamp, furrier, London.]

GENERAL SEAL-SKIN INDUSTRY—PELAGIC SEALING.

William Charles Blatspiel Stamp, being duly sworn, doth depose and say: That he is 51 years of age, and a subject of Her Britannic Majesty, and is engaged in business at 38 Knightrider street, London, E. C., as a fur and skin merchant; that he has been engaged in that business for upward of thirty years, and has been in the habit of purchasing fur-seal skins during the whole of the time that he has been in business; that he has personally handled many thousands of such fur-seal skins, and he has inspected the samples at practically every sale of fur skins made in London during the whole of the time he has been in business, and in consequence of these facts and of his knowledge of the fur-seal skin business he has a general and detailed knowledge of the history of the business of dealing in fur-seal skins in the city of London, and of the character and differences which distinguish the several kinds of skins coming on the market; that for many years last past the fur-seal skins coming on the London market have been known as, first, the Alaska catch, which are the skins of seals killed upon the Pribilof Islands, situated in the Bering Sea; second, the Copper Island catch, which are the skins of seals killed on the Kommandorski and Robben Islands in the Russian waters. The Robben Island skins were formerly separated from the Kommandorski Islands, and were of inferior quality, and it is only within the last eight or ten years that the Robben Island skins, which are considerable in number, have been presumably mingled with the skins of seals caught on the Copper Islands and included in the term "Copper catch." Third, the Northwest catch, which are skins of seals killed in the open Pacific or Bering Sea.

That the skins of these several catches are readily distinguished from each other, and the skins of the different sexes may be as readily distinguished from each other as the skins of the different sexes of any other animal. I should estimate the proportion of female-skins included within the Northwest catch at at least 75 per cent, and I should not be surprised nor feel inclined to contradict an estimate of upward of 90 per cent. My sorter, who actually handles the skins, estimates the number of female skins in the Northwest catch at 90 per cent.

One means of distinguishing the skins of the Northwest catch from those of the other catches is the fact that they are pierced with shot or spear holes, having been killed in the open sea, and not as in the case of the Copper and Alaska catches, killed upon land, with clubs.

The differences between the Copper and Alaska skins are difficult to describe so that they can be understood by any person who has no practical knowledge of furs, but to anyone skilled in the business there are apparent differences in color between the Copper and Alaska skins, and a difference in the length and qualities of the hairs which compose the fur, and there are also apparent slight differences in the shape of the skins.

The differences between the skins of the three catches are so marked that they have always been expressed in the different prices obtained for the skins. I have attended the sales for many years, and am able to make this statement from my own knowledge. The average prices obtained at the sales of the last year's catch, for instance, were as follows: For the Alaska skins, 125 shillings per skin; for the Copper skins, 68 shillings per skin, and for the Northwest skins, 53 shillings per skin.

That the skins purchased by the deponent are purchased on his own account and on account of others resident in Canada and the United States and the Continent, and he believes it is a fact that he is the largest commission merchant in the fur business.

That the skins so purchased are consigned to various dressers and dyers, the principal of whom are the firm of C. W. Martin & Sons and George Rice, and deponent himself is the landlord of a factory worked by Frederick Smith & Co., which is the oldest firm of dyers of fur-seal skins, and of late years they have also become dressers.

That the fur-seal skin business had become an important industry in the city of London in which a large amount of capital was invested and a large number of workmen employed, amounting, including the dressers, dyers, handlers, and persons employed in the manufactories of the furriers, to about 3,000. It is difficult to make any correct estimate of the number of people so employed, but deponent says that he has recently had occasion to look into the question in his capacity as master of the Skinners' Company and he believes the above figures to be substantially correct.

That a large number of persons so employed are skilled laborers, and most of them have families dependent upon their labors for their support: The wages paid in some cases are as high as £3 or £4 a week, and perhaps the average wages of the whole number may be safely estimated at £1 per week. That many of these persons know no other business than that in which they are at present engaged.

That the continual existence of the fur-seal business is dependent, in deponent's judgment, upon the preservation of the seal herds frequenting the Northern Pacific regions, and it is also a most important element in the industry that the supply of seal skins coming to the market each year should be regular and constant.

That deponent further says that some regulations are necessary for the preservation of the seal herds frequenting the Northern Pacific region, because it is a well-known fact that in the absence of any such regulations the seal herds which were formerly found in the South Atlantic and Pacific seas have been practically exterminated.

On the Lobos Island and in New Zealand governmental regulations exist, and I am told, although I know nothing about it, that regulations of some kind have been made in the colony of the Cape of Good Hope.

W. C. B. STAMP.

Sworn at Skinners' Hall, Dowgate Hill, in the city of London, England, this 14th day of June, 1892, before me.

[SEAL.]

FRANCIS W. FRIGOUT,
*Vice and Deputy Consul-General of the
United States of America at London, England.*

[Deposition of Emil Teichmann, furrier, London.]

GENERAL SEAL-SKIN INDUSTRY.

Emil Teichmann, being duly sworn, doth depose as follows:

First. That he is 46 years of age, a native of the Kingdom of Wurttemberg, and is now a naturalized subject of Her Britannic Majesty.

That since the age of manhood he has been engaged in the fur business; that from 1866 to 1868, inclusive, he resided in America in that business, and since 1868 he has resided in England and done business in the city of London, and is now and has continually been during all these years engaged in one way or another in the fur business; that he is now a member of the firm of C. M. Lampson & Co., and has been a member of such firm for the period of twelve years last past; that prior to the time he became a member of such firm and from the years 1873 to 1880 he was a member of the firm of Martin & Teichmann, who were then, and its successors, C. W. Martin & Sons, still are, the largest dressers and dyers of seal skins in the world.

That the firm of C. M. Lampson & Co., of which deponent has been as aforesaid for the last twelve years a member, are what is known as commission merchants

engaged in the business of selling furs of various kinds and also in buying furs upon commission.

That the said firm of C. M. Lampson & Co., has, during the time that deponent has been a member thereof, handled a larger number of skins of the fur-seal than all the other firms in the world together, and deponent knows from inspection of the books of his said firm that for many years prior to the date when he became a member of the same they also handled during many years previously thereto a larger number of fur-seal skins than all the other firms in the world together.

That during the time deponent has been a member of the said firm he has personally handled many hundreds of thousands of fur-seal skins, and he has a detailed and expert knowledge of the various kinds of seal skins, and the several differences between them which enable the several sorts of seal skins to be distinguished from each other.

Second. Deponent says from his general knowledge of the business inspection of the catalogues of sales of C. M. Lampson & Co., and from the information derived from his predecessors in the firm, the chief of whom was the late Sir Curtis Lampson, who founded the house about sixty years ago, that fur-seal skins were formerly obtained in large numbers in the South Pacific and Atlantic seas, upon the San Juan Fernandez and Falkland islands, upon Sandwich Island, South Shetland Island, Desolation Island, Goughs Island, and Kerguelan and Massafuero islands, and at Cape Horn.

There were also in former years a considerable number of skins obtained from Russian possessions in the North Pacific Ocean through the medium of a Russian company, as hereinafter stated.

The history of the Southern Atlantic and Pacific seal business shows that at the localities above enumerated, and principally on South Shetland and the Kerguelan islands, there must have been very large numbers of seals. The principal market for the skins of such Southern Pacific and Atlantic seals was, as deponent is informed, found in the Chinese ports, and deponent has been informed and understands that in consequence of the indiscriminate and universal killing of seals in the localities above mentioned, where no restrictions of any kind were then or are imposed upon the killing of seals at any time without regard to age or sex, the seal rookeries in those localities were, after a few years of such killing, practically exhausted.

That about twenty years ago the South Shetland Islands were again visited, and for two or three years there were obtained from these islands a considerable number of skins, amounting in the aggregate to perhaps 50,000 skins. At the end of a three-years' catch of skins it was reported that the rookeries were again exhausted, and the islands were not again visited for several years, not until five years ago, when deponent understands that a vessel was sent to those islands by the firm of C. A. Williams & Co., of New London, United States of America, and that that vessel was only able to obtain 39 skins.

The time during which deponent has been in the business the skins from all of the above-mentioned localities have been practically infinitesimal in number.

Third. That for many years last past the skins of fur seals actually coming into the markets of the world have been derived from the following sources:

I. *The Lobos Islands skins*, which are the skins of seals caught upon the islands of that name, situated off the river Platte and belonging to the Republic of Uruguay. These skins are consigned by the persons having the contract to take them with the Republic of Uruguay to Boulcher, Mortimer & Co., of London, by whom they are sold through Goad, Rigg & Co., and catalogues of the last-mentioned firm are published and have been inspected by deponent from time to time as published. The total number of skins derived from this source, as appears from an inspection of such catalogues, are during the years 1873 and 1892, inclusive, set forth accurately in the paper which is annexed hereto and marked "Exhibit A."

II. *Cape Horn skins*.—Prior to the year 1876 a small number of skins are supposed to have been obtained from this locality. They are not classified in our books or catalogues, nor in the books of any other persons or firms, so that they can not now, from examining the books and catalogues, be readily identified or separated from skins coming from other southern localities, but from the year 1876 down to the present time they have been so classified, and a large number have been sold by deponent's firm. A statement of the skins obtained from Cape Horn is hereto appended and marked "Exhibit B." The number of skins derived from this locality, as appears by that statement, fluctuated very largely in number, and I am informed that the reason for such fluctuation is that the seals from which the skins are obtained are killed mostly upon land, and that the weather in that part of the world is so severe that it is at times impossible to affect a landing upon or near the rookeries. So far as deponent knows, there is no protection of any kind for seals at Cape Horn

other than that which is afforded by the difficulty of landing in order to kill the seals in consequence of the heavy weather.

III. *Cape of Good Hope.*—From this locality a small but steady number of skins have been obtained during many years last past. These skins are not consigned to deponent's firm, but to other persons in London whose catalogues are published, and have been examined from time to time by deponent; and deponent is informed and believes from such examination of catalogues that the number of skins obtained from this source have been for the last few years about 5,000 per annum.

Deponent understands that the seals from which these skins are obtained are likewise killed mostly upon land, and he is also informed that some regulations for the protection of seal life at the Cape of Good Hope by regulating the killing of seals in that colony of the Cape of Good Hope have been established by the government of the said colony, but what those regulations are, if any such exist, deponent is not in a position to state.

In addition to the supplies from the above-mentioned sources, from 1,000 to 2,000 skins are obtained annually in Australasia, which includes New Zealand.

IV. The principal sources of supply for the market at the present time, and for many years last past, are the following:

(a) What are known as the Alaska catch, which are the skins of male seals, killed upon St. Paul and St. George islands in the Bering Sea.

(b) The Copper catch which come from the seals killed upon the Russian islands of Copper and Bering, called the Commander Islands, which are located in the Russian part of Bering Sea, and also the Robben Island, in the Okhotsk Sea, all of which are also the skins of male seals.

(c) The Northwest catch. These are the skins of seals caught in the open North Pacific and Bering Sea.

Fourth. The history of the seal-skin fishery coming from the Northern Pacific regions is briefly as follows:

In the early part of the century a Russian company was formed which obtained from the Russian Government a right to kill seals, both upon the Commander and Pribilof islands, and in and around the Bering Sea. Up to the year 1853 about 20,000 skins were annually received in London from the company in the parchment state. By the parchment state, I mean skins which were dried with the top or water hair left on. They were not, in consequence of this method of preservation by drying, in a condition to be unhaired, and they were after having been dressed in London largely returned to the Russian markets.

In the year 1853 a trial shipment of salted skins was made to J. M. Oppenheim & Co., in London, in pursuance, as deponent is informed, of suggestions theretofore sent out by Messrs. Oppenheim that an attempt should be made to salt the skins, but owing to the defective curing this shipment was a failure. By degrees, however, the curing by means of salting was improved, and in 1858 a contract was made by the Russian-American Company to ship to Messrs. J. M. Oppenheim & Co. an annual supply of from 10,000 to 12,000 skins delivered in London at 10s. 10d. a skin. The quantity was increased in 1864 to 20,000 skins. This contract remained in force until the Alaska Territory became the property of the United States. In addition to the salted skins covered by the contract last referred to, Messrs. Oppenheim & Co. also received during these years about 10,000 skins from the Russian-American Company per annum, which were dried in the old-fashioned way and not salted.

Deponent was connected with the firm of Messrs. J. M. Oppenheim & Co., at New York and London, from the years 1866 to 1872, inclusive, and his late partner, Mr. Martin, and himself ultimately succeeded to the business of Messrs. J. M. Oppenheim, so far as it related to the dressing and dyeing of seal skins.

Upon the cession of Alaska to the United States there was indiscriminate seal killing upon the Pribilof Islands for the season of 1869-1870. About the end of that season the Alaska Commercial Company was formed at San Francisco, as deponent is informed, by citizens of the United States, for the purpose of obtaining a lease from the United States of the right to kill seals on the Pribilof Islands.

This company did obtain from the United States an exclusive license to kill seals on the Pribilof Islands in the Bering Sea for a period of twenty years, under certain restrictions and regulations, which were, as deponent is informed, set forth in the contract between that company and the United States, and in extracts of Congress in relation thereto, and in regulations of the Treasury Department of the United States made in pursuance of such extracts of Congress.

A year or two thereafter Messrs. Hutchinson, Kohl, Philippeus & Co., of San Francisco, which, as deponent is informed, was a firm formed by persons controlling the Alaska Commercial Company, obtained a lease from the Russian Government giving them the exclusive right to kill seals upon Komandorski and Robben Islands.

That in 1890 the Alaska Commercial Company, as deponent was informed, did not secure a renewal of the lease which they had theretofore enjoyed from the United States, but a similar lease was granted by the United States to the North American Commercial Company, which is a separate corporation, and is controlled by different people from the Alaska Commercial Company.

Fifth. From the year 1870 down to the present time deponent's firm have received and handled from the Alaska Commercial Company and from Messrs. Hutchinson, Kohl, Philippeus & Co., from the North American Commercial Company, and the Russian Sealskin Company, of St. Petersburg, which company have now succeeded to the lease of the Komandorski and Robben Islands formerly enjoyed by Hutchinson, Kohl, Philippeus & Co., all the skins of seals which have been killed upon the Pribilof Islands and upon the Copper Islands. They have also received at least three-fourths of the skins included in what is called the Northwest catch until the year 1891, when the major part of the skins of the catch were consigned to Messrs. Culverwell, Brooks & Co., of London. A large number of the skins of this catch, amounting in one year to 40,000, have been consigned to deponent's firm by the firm Hermann Liebes & Co., of San Francisco.

The total number of skins of the Northwest catch received by deponent's firm during the years 1872 and 1892, inclusive, are set forth with accuracy in an affidavit made by my partner, Alfred Fraser, in New York, a copy of which, dated April 1, and acknowledged, E. T. Rice, notary public, has been received by me from him, and I annex hereto a copy of the lists of Northwest skins attached to Mr. Fraser's affidavit, making the same a part of this deposition, and mark the same Exhibit C. I also append hereto as a part of this deposition copies of the lists attached to the affidavits of Mr. Fraser of Alaska skins sold in London by my firm during the years 1870 to 1892, inclusive, and to the Copper Island skins sold by my firm in London during the years 1872 to 1892, inclusive, and mark the same, respectively, Exhibits D and E, and I refer to the affidavit of Mr. Fraser, above mentioned, for an explanation of all said lists and adopt the same explanation given by him as my own. I have carefully verified the figures contained in these latter and find them to be as accurate as any such statement can be made.

Sixth. The skins of the Alaska and Copper catches are readily distinguished from each other and command different prices in the market, and I should have no difficulty and would undertake from my knowledge of the various skins to separate Copper skins from Alaska skins should they ever be found mingled together, as, however, they are not. The Alaska and Copper skins are distinguishable from each other partly by means of the different color. The Copper Island skins generally have a darker top hair and are more yellow on the cheeks than the Alaska skins. Perhaps a surer means of distinguishing the two is the difference in shape. The Copper Island skins are much narrower at the head than the Alaska skins, and this difference is very marked. In our warehouses we have a different set of frames for the sizing out of the Copper skins from those we use for the Alaska skins. Another difference quite as important as the shape is that the fur upon Copper Island skins is considerably shorter on the flanks and toward the tail than is the fur of the Alaska skins. All of these differences are so marked, as I have before stated, as to enable any expert or one familiar with the handling of skins to readily distinguish Copper from Alaska skins, or vice versa; but it is true in the case of very young animals the differences are much less marked than in the case of the adult animal. We receive practically no skins of very young animals from Alaska; but we do receive at times a certain number of the skins of the young animals from Copper. All the skins of both the Copper and Alaska catches are the skins of the male animals.

Seventh. The skins of the Northwest catch are in turn readily distinguishable from the skins of the Alaska as well as the Copper catch. The differences which I have enumerated between the Copper and Alaska skins are accentuated in distinguishing the skins of the Northwest catch from the skins of the Copper catches, and we use a separate set of frames or patterns in our business for the Northwest skins from what we use for the Copper or Alaska skins. Among what are classed by us as Northwest skins are included what are sometimes called Japanese skins, which are the skins of seals killed on the northern Asiatic coasts. These skins come upon the market generally by way of Japan, but sometimes by way of San Francisco or Victoria.

The number of Japanese skins averages, deponent should say, about 5,000 a year, although there is a good deal of fluctuation in the quantity from year to year, and deponent says that, like the other skins included in the Northwest catch, they are principally the skins of female seals, not easily distinguishable from the skins taken from the herds frequenting the eastern part of the Pacific Ocean and Bering Sea, except by reason of their being principally speared instead of shot.

The most essential difference between the Northwest skins and the Alaska and Copper catches is, that the Northwest skins, so far as they are skins of adult seals, are almost exclusively the skins of female seals, and are nearly always pierced with shot, bullet, or spear holes.

The skins of the adult female seal may be as readily distinguishable from the skins of the adult male as the skins of the different sexes of other animals; that practically the whole of the adult Northwest catch seals were the skins of female seals; but the skins of the younger animals included within this Northwest catch, of which we have at times a considerable number, are much more difficult to separate into male and female skins, and I am not prepared to say that I could distinguish the male from the female skins of young animals.

A certain percentage of young animals is found among the consignments received by us at the beginning of each season, which we understand and are informed are the skins of seals caught in the Pacific Ocean off the west coast of America; but a much smaller percentage of such small skins is found among the consignments later in the season, which we are informed are of seals caught in the Bering Sea.

I have been told that it is easier to catch the female seal at sea than it is to catch the male seal, but I have no personal knowledge of that point. I suppose, however, that there must be some foundation for the statement, by reason of the fact that so small a proportion of male adult seals are included in what is called the Northwest catch.

Eighth. Deponent says that what may be termed the fur-seal business has largely been built up by the efforts of the Alaska Commercial Company, the North American Commercial Company, and the firm of C. M. Lampson & Co.

That it depends to a considerable extent upon making seal skins an article of fashion and of trade, and that a very large amount of capital is invested in the Kingdom of Great Britain in the business.

It is, in deponent's judgment, fair to estimate the amount of capital invested in the business, in one way or another, to have been at times as much as £1,000,000, and that there have been until lately dependent upon this industry, in the city of London, about 2,000 skilled workmen, most of whom have families dependent upon them for support; and the amount of wages paid to those people deponent estimates on the average at about 30 shillings per week, making an aggregate of £150,000 per annum.

Deponent further says that the continuance of this business depends very largely upon the maintenance of a steady and regular supply of fur-seal skins in order that the trade may be able to calculate with approximate certainty the number of skins which are to be received in each year.

Deponent further says that the maintenance of this business, to his mind, obviously depends upon the preservation of the seal herds resorting to Bering Sea from the destruction which has overtaken the seal herds which were formerly found in the southern regions, and that whatever is necessary to be done to preserving the seal herds in Bering Sea ought to be done; but deponent, having no knowledge of the business of killing seals, and having no scientific knowledge on the subject as a naturalist, is not in a position to relate what laws or regulations, in addition to those already existing, are necessary, if any such are necessary, in order to accomplish this desirable result.

EMIL TEICHMANN.

Sworn at 64 Queen street, in the city of London, England, this 25th day of April, 1892, before me.

FRANCIS W. FRIGOUT,
Vice and Deputy Consul-General of the
United States of America at London, England.

EXHIBIT G.

LEGATION OF THE UNITED STATES,
St. Petersburg, July 11, 1894.

YOUR EXCELLENCY: I am instructed by my Government to call the attention of the Government of His Imperial Majesty to the case of the American schooner *James Hamilton Lewis*, seized with her cargo by the Russian war cruiser *Aleut*, on August 2, 1891, regarding which I inclose a copy of a memorial of the owner, master, and crew, all American citizens.

The said schooner cleared from San Francisco on March 7, 1891, as is claimed, on a fishing and hunting expedition to the North Pacific Ocean, and was seized as above.

It is alleged that the master was obliged to sign a paper in the Russian language, which he did not understand, against which proceeding he filed a written protest. It

is also alleged that all belonging to the ship were subjected to serious hardships, from which they suffered greatly, and that no trial was given, though the master of the ship often demanded one.

The damages claimed and itemized in the accompanying document are \$123,000.

Requesting the attention of the Imperial Government to this very important matter, I avail myself of this occasion to renew to your excellency the assurance of my most distinguished consideration.

ANDREW D. WHITE.

To His Excellency M. DE GIERS,
Imperial Minister of Foreign Affairs, St. Petersburg.

EMBASSY OF THE UNITED STATES OF AMERICA,
St. Petersburg, Russia.

I, Herbert J. Hagerman, second secretary of the embassy of the United States of America at St. Petersburg, Russia, do hereby certify that I have compared the foregoing copy of a note to the Imperial Russian ministry of foreign affairs from the legation of the United States at St. Petersburg, dated July 11, 1894, with a copy of the original of said note recorded in the archives of this embassy, and that same is a correct transcript therefrom and of the whole of said note.

In testimony whereof I have hereunto set my hand and affixed the seal of the embassy of the United States this 3d day of March, in the year 1900.

[SEAL.]

HERBERT J. HAGERMAN,
Second Secretary, United States Embassy.

No. 5883.—UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof I, John Hay, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 4th day of October, A. D. 1900, and of the Independence of the United States of America the one hundred and twenty-fifth.

[SEAL.]

JOHN HAY.

[Copy.]

UNITED STATES OF AMERICA.

To the Secretary of State:

On behalf of the owners, master, and crew of the American schooner *James Hamilton Lewis*, which was illegally seized by the Russian man-of-war *Aleut*, while on the high seas, August 2, 1891, we have the honor to submit to the Secretary of State a history of the facts and circumstances attending said seizure, and to invoke the intervention of the Government of the United States, with a view of obtaining from the Russian Government just compensation and damages on account of the seizure of said vessel and the imprisonment and maltreatment of its master and crew by the Imperial authorities.

I.—*The voyage.*

The schooner *James Hamilton Lewis* was an American vessel, owned by citizens of the United States, and carried the flag of the United States. She sailed from San Francisco, Cal., March 7, 1891, with her clearance and ship's papers in proper and

lawful form, with a full complement of officers and men, destined for a cruise in the North Pacific Ocean on a fishing and hunting expedition, with Alexander McLean as master, Joseph McDonald as mate, 1 second mate, 1 cook, 1 cabin boy, 6 hunters, and 14 able-bodied seamen, well and sufficiently manned, victualed, and furnished with all things necessary for a vessel in the merchant service, and particularly for the voyage she was about to undertake.

Proceeding on her voyage, she arrived at Sand Point, Alaska, June 27, 1891, where she cast anchor and took in fresh water and supplies. On the following day she proceeded on her voyage.

On July 4, 1891, she reached latitude $52^{\circ} 30'$ north, longitude 165° west; July 9, latitude $50^{\circ} 10'$ north, longitude 175° west; July 13, latitude $51^{\circ} 10'$ north, longitude 170° east; July 20, latitude $51^{\circ} 35'$ north, longitude $179^{\circ} 10'$ east; July 25, latitude $50^{\circ} 15'$ north, longitude $170^{\circ} 20'$ east; July 28, latitude $50^{\circ} 20'$ north, longitude $170^{\circ} 20'$ east; July 30, latitude $52^{\circ} 40'$ north, longitude $169^{\circ} 20'$ east; July 31, latitude $53^{\circ} 10'$ north, longitude 169° east; August 1, latitude 54° north, longitude $168^{\circ} 10'$ east; August 2, latitude $55^{\circ} 35'$ north, longitude $169^{\circ} 20'$ east, where she was seized, at 6 o'clock in the morning, by the Russian war ship *Aleut*, being then about 20 miles distant from and to the east of Copper Island, the nearest land.

The position of the schooner on the above days is verified by her log book and ship's journal, and attested by her officers and crew. By this record we can trace the course of the vessel from the time of her departure to her seizure, and can establish the correctness of the delineation of her voyage by the testimony of the ship's entire company.

On examination of the route laid down in the log book it will be seen that the schooner did not enter Russian waters until August 1, 1891, and that she was seized at 6 o'clock on the following morning.

Annexed to this paper is a copy of the schooner's ship's journal, and a map designed to illustrate her cruise, which exhibits are to be taken as parts of this communication.

II.—*The seizure.*

On August 2, 1891, the schooner having crossed into Russian waters the day before, being then east of the sea boundary line, and within 20 miles of Copper Island, having decided on his return voyage to San Francisco, the captain deemed it necessary to make the land in order to test his chronometer. For this purpose he altered his course, standing toward the land lying to the westward. He had taken no seals since crossing the line that divides Russian and American waters; he had taken none within the limits of Bering Sea. He had not touched land since he left Sand Point, Alaska, on June 27. The seal skins on board the schooner showed that they had been taken from seals shot in the water, and that they had been taken more than forty hours before the seizure. All this is attested by the captain, the mates, and the crew.

At 6 o'clock in the morning of August 2, 1891, the schooner was brought to by a shot from the Russian war ship *Aleut*. She immediately hoisted the United States flag, and awaited the approach of a boat from the Russian vessel. On its arrival a Russian officer came on deck and demanded the schooner's log book, which was given to him by Captain McLean. The officer was also furnished with the ship's papers, issued by the customs officers in San Francisco in accordance with the laws of the United States. The officer then proceeded to search the vessel. Having completed his search, he returned to the man-of-war, carrying with him the log book of the schooner, which he refused to give up, and ordering the schooner to follow the war ship and await his return.

The officer returned soon after, with an armed crew, and ordered Captain McLean to leave his vessel and go aboard the *Aleut* with his ship's company, except 7, who were to remain on the schooner. This command the master refused to obey, for the avowed and true reason that he had violated no law or regulation, and was not subject to the orders of Russian officials. Thereupon he put his vessel on her course, steering east.

The boat and armed crew returned to the man-of-war, which immediately began maneuvering and fired four or five shots. Suddenly she crossed the schooner's bow from starboard to port; returning, she crossed bow of the schooner from port to starboard, obviously intending to run her down. In order to avoid a collision, the captain ordered the man at the wheel to starboard to helm, but the man-of-war had approached so near that it was impossible to get clear of her, and in the collision which followed the schooner's head gear was carried away. The vessels now being close together, the man-of-war made lines fast to the schooner's rigging. As the

schooner was being dashed against the war ship and in danger of serious damage, the mate was ordered to cut the lines that held the vessels. This he attempted to do, but the decks of the schooner were immediately crowded with armed men who took possession of the vessel. Captain McLean and his men were then taken on board the *Aleut*, where he was informed by her commander that he was a prisoner and that the schooner and cargo were confiscated. He was surrounded by guards. When he inquired why his vessel was seized, he was told by the Russian commander that he was in Russian waters.

The captain of the schooner then entered his protest, claiming that the seizure of the vessel and cargo and the arrest of the master and crew of the schooner were illegal; that they were in neutral waters—on the high seas—and not within 20 miles of land; that neither the captain nor any of the ship's men had touched land since they left Sand Point, Alaska, on June 28, 1891; that all the seals on board had been taken in the water on the high seas and killed with shotguns, as the skins on board would show, and that no skins had been taken within forty hours of the seizure.

III. Events following the seizure.

At the time of said seizure the American flag was flying at the masthead of said schooner, but shortly afterwards it was hauled down by the crew of the Russian vessel, torn into shreds, thrown on the deck, and trampled upon; and certain of the crew of said schooner picked up pieces of said flag, and now hold the same as mementoes of the insult offered to this great nation. The Russian flag afterwards floated at the masthead of said schooner.

On August 3, 1891, said schooner and her crew were taken to Bering Island. While at said island the Russians took from her 424 seal skins, and subsequently delivered them to the company holding the Russian lease. Said Russians also took from said schooner a large quantity of stores and provisions, which were transferred to the *Aleut* and used thereon.

Said vessel and crew were then taken to Petropavlovski, at which place the Russians took five of her boats and sold them. They also took the guns, stores, and provisions of said schooner.

On or about August 8, 1891, the commander of the *Aleut* prepared a paper in the Russian language and directed the master of said schooner to sign the same, explaining that the paper aforesaid was merely a notice of seizure. Said master protested against this, but, on further insistence by said commander, he signed the same and immediately filed a protest against any seizure of said schooner, said master being under duress at the time of said signing. This protest was handed to the commander aforesaid and attached to said notice of seizure, but no copy of this alleged notice was ever given to the master or crew of said schooner. Subsequently, the schooner and crew were taken to Vladivostock.

The master and crew of said schooner were treated as prisoners from the date of said seizure; but at the last-mentioned place they were allowed to go ashore, but were told that they were under arrest and ordered to report at police headquarters every day. Said master was also compelled to sign a document which the Russian authorities claimed required him not to leave port until further orders, but of the contents of which said master is entirely ignorant, having signed the same under duress.

During all this time no trial had been allowed said schooner, master, or crew. They were told by the Russian authorities that they were to have a trial in accordance with the forms of law, but after frequent requests in this behalf said authorities told said master that there was no necessity for such a course; and on or about October 10, 1891, the authorities aforesaid informed him and his crew that they were at liberty to leave. The master had been repeatedly informed while at Vladivostock that he could gain his liberty by withdrawing his protest; but this he invariably refused to do.

While at the last-mentioned place no quarters on board was furnished the master or crew of said schooner; but shortly after their arrival the master and mate were allowed 27 cents and the members of the crew $7\frac{1}{2}$ cents per day. On this they could not subsist, and they were compelled to sell a few of the clothes they had on their backs and to beg, having to sleep in an old jail overrun with vermin and breeding pestilence.

After his release aforesaid, the master of said vessel went to Nagasaki and thence to Yokohama, where he immediately filed with the American consul a protest against said seizure.

Up to the time of their arrival at Vladivostock the mate and crew of said schooner were compelled to work incessantly. No sleeping quarters or rations were furnished

to them, they being entirely dependent on the charity of the crew of the *Aleut* for the necessaries of life.

Said master and crew not only lost their vessel and all the property they had on board, except a few necessary articles of wearing apparel, but in consequence of the harsh and barbarous treatment received by them at the hands of their captors during their imprisonment, they became and are now emaciated in form, depressed in spirit, undermined in constitution, and permanently injured in health.

Russia's responsibility.

This case does not involve the question of *mare clausum*. The right of navigating the waters of Bering Sea by an American ship is assumed. The navigation of those waters on both sides of the boundary line is notoriously free to the merchant service of all nations.

This being so, it is not necessary to dispute or discuss any claims of Russia to the exclusive ownership of the west half of Bering Sea or to the extent of her dominion over its waters.

The right of the Imperial Government to prohibit foreign vessels from taking fur seals within her boundary line beyond the 3-mile limit in the adjudication of this case is not denied or questioned. On the other hand, if these claimants were engaged in killing seals in Russian waters it is conceded that their vessel would be liable to seizure, and, together with her cargo, apparel, and furniture, be liable to condemnation and confiscation by judgment of the proper court, in accordance with international law and the laws of all civilized States, and her officers and crew subjected to such penalties as said court might inflict according to law. But if it be true, as the evidence shows it is, that this vessel was quietly pursuing her voyage, and when 20 miles distant from the land, toward which she was sailing for a lawful purpose, was wantonly arrested, against the protest of her captain, and confiscated, together with her cargo and outfit, by a Russian war ship's officer, it is very plain that the act was unauthorized and that the Russian Government is liable for the damage which the claimants have sustained by reason thereof.

Your petitioners allege that said seizure, confiscation, and imprisonment were illegal and in contravention of the treaties between the United States and Russia, and that they have valid indemnity claims on account thereof against the Russian Government for reasonable compensation and damages as follows:

Value of vessel and outfit.....	\$25,000
424 seal skins (ready for market), at \$20	8,480
Probable catch for balance of season, 2,000 skins.....	40,000
For the unlawful detention of master and crew, their bodily and mental sufferings, and the permanent injuries resulting therefrom (25 men, at \$2,000 each).....	50,000
Total.....	122,480

Respectfully submitted.

JEFFRIES & EARLE,
Attorneys for Claimants.

WASHINGTON, D. C., *November, 1893.*

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

Alexander McLean, being first duly sworn, deposes and says that he is a resident of the city and county of San Francisco, State of California, is a male white citizen of the age of 21 years and upward; that he is a master mariner by profession, and was the late master of the schooner *James Hamilton Lewis*, and was such master of the said schooner at the time of the seizure of said schooner by the Russian war vessel *Aleut* on the 2d day of August, 1891; and further deposes that the last day that boats were lowered from said schooner for sealing purposes, previous to said seizure, was on July 30, 1891, and never had the boats of said schooner in the water after that up to the time of said seizure; that he had made no attempt to seal on the morning of said 2d day of August; that the said schooner had never been closer to Copper Island during the entire season than she was at the time of said seizure; that there were 2 British vessels in sight and in about the same position as said schooner at the time of said seizure; that the last observation taken by said affiant was on the 30th day of July of said year, and that the weather was continuously thick from said 30th day of July until early on the morning of the 2d day of August, and that by reason of said thick weather he was obliged to determine his position by means of dead reckoning; that Copper Island was

sighted about 4 o'clock on the morning of August 2, which he had been endeavoring to make in order to get his position. At about 6 o'clock a. m. a steamer hove in sight on the port quarter of said schooner, and soon afterwards came closer up. Said steamer, which proved to be the Russian man-of-war *Aleut*, fired a gun, and said affiant, concluding she wished to speak him, hove his vessel to and hoisted the American flag; that the Russian steamer thereupon lowered a boat and sent an officer and crew to board him; that said officer came on deck and demanded the official log of the schooner, which was given him; that it was not possible for said schooner, by her position the day before said seizure, to have been any nearer the said island than said schooner was at the time of said seizure; that said affiant stood no regular watch on board said schooner; that he went below to turn in on the night of August 1 at about 9. p. m., and went on deck on the morning of the 2d of August at about 4 a. m. That said affiant ordered the officers in charge of said schooner on the night of August 1 to steer north by east; that no seals were taken by said affiant during said season of 1891 in Bering Sea; that all seals that were taken by members of the crew of said sealer during said season were taken in the Pacific Ocean; that the last time that skins were salted down previous to the said seizure was on the evening of the 30th day of July, 1891; that no seals whatever came aboard said schooner subsequently to said 30th day of July; that no seals were thrown overboard after the said 30th day of July; that at the time said schooner was boarded by members of the crew of the Russian gunboat at the time of said seizure said schooner was flying the American flag at the masthead; that about twelve hours after the said schooner was boarded by members of the crew of said Russian man-of-war they hauled down the American flag, tore said flag in shreds, threw it on the deck, and trampled upon it; that certain members of the crew of said schooner afterwards picked up the pieces of said flag and now hold the remnants of said flag in their possession as a memento of the insult offered to the American flag; that the American flag was never hoisted on said schooner again, but the Russian flag was hoisted before entering port; that said schooner and her crew were taken to Bering Island on the 3d day of August, 1891; that Bering Island is merely a seal rookery and that there is no tribunal thereon; that at Bering Island the Russians took 424 seal skins from the said schooner and landed them, which seal skins were subsequently delivered to the company holding the Russian lease; that said Russians also took from said schooner a lot of stores and provisions and put them on said gunboat *Aleut*, and which were used on board of said *Aleut*; that subsequently said schooner was sent to Petropavlovsk; that said affiant was taken to said Petropavlovsk and was there at the time of the arrival of said schooner; that after the arrival of said schooner at said Petropavlovsk said Russians took from said schooner 5 boats and sold them; also took from said schooner her guns, stores, and provisions; that on or about the 8th day of August, 1891, the commander of the said *Aleut* made out a paper in the said Russian language which he asked affiant to sign, which affiant declined to do, the said commander explaining said paper to be a notice of seizure. Said commander further insisting that affiant should sign said paper affiant, against his will, signed the same and immediately thereafter filed a protest against any seizure of said schooner and handed said protest to said commander of said *Aleut*, which protest affiant believes commander attached to said notice of seizure; that no copy of said alleged notice was ever given or offered to affiant by the Russian authorities, or by anyone, or at all; that said schooner was subsequently sent to Vladavistock, and arrived there on or about the 28th day of September, 1891; that affiant did not go with said schooner to Vladavistock, but was ordered on board a man-of-war of the volunteer fleet and taken to Vladavistock, where he arrived on the 28th day of September, 1891; that affiant had been a prisoner on the days of the said seizure; that at Vladavistock affiant was allowed to go on shore, but was told he was under arrest and ordered to report at police headquarters every day, which affiant did; that affiant was further compelled to sign a document which the Russian authorities claimed was requiring said affiant not to leave port until further orders; that affiant never had a trial at any of the Russian ports, but was told by said authorities that he was to be tried; but after affiant had repeatedly requested a trial the authorities finally told him there was no necessity for a trial, and on or about the 10th day of October said authorities said to affiant and crew of said schooner that they could leave. Affiant was repeatedly told while at Vladavistock that if he would withdraw the said protest they would release him, which said affiant declined to do. That affiant believes that the object of said authorities in detaining him was in the hope that affiant would withdraw said protest in order that he might gain his liberty. That no quarters or board were furnished affiant nor the crew of said schooner while at Vladavistock; that each of the crew were given 50 kopecks (about 27 cents) a day while at Vladavistock, but the men could not live on that and were obliged to sell what clothes they could

spare, and after that begged for the necessities of life; that immediately after affiant was released, together with the crew of said schooner, he left Vladavistock and went to Nagasaki and from Nagasaki to Yokohama, at which last-named place, and immediately upon arrival, affiant filed with the American consul his protest against the seizure of said schooner, as aforesaid.

A. McLEAN.

Subscribed and sworn to before me this 13th day of January, A. D. 1893.

[SEAL.]

J. S. MANLEY,
Commissioner, United States Circuit Court,
Northern District of California.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

Alexander McLean, being duly sworn, deposes and says: That he has heard read the foregoing affidavit and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and that as to those matters he believes it to be true.

A. McLEAN.

Subscribed and sworn to before me this 13th day of January, A. D. 1893.

[SEAL.]

J. S. MANLEY,
Commissioner, United States Circuit Court,
Northern District of California.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

Joseph McDonald, being duly sworn, deposes and says: I have read the foregoing affidavit of Alexander McLean relative to the seizure of the schooner *James Hamilton Lewis* by the Russian war ship *Aleut*, and know that the facts stated in said affidavit are true; and further deposes and says that I was the mate of the said schooner *James Hamilton Lewis* at the time of her seizure on August 2, 1891; that I was taken from the schooner on board the man-of-war as just I stood, and two days later, upon our arrival at Bering Island, I was allowed to go with another man on board of the schooner to procure my clothing and effects, but upon going aboard the schooner found nothing there belonging to me of any value, everything having been taken from the schooner. I immediately reported to the Russian officer in charge of said schooner the fact of the loss of my property, and I was informed by him to make out a list of the articles missing, which I did, and handed the same to him, and he said that he would report to the captain of the *Aleut*. Immediately upon being taken aboard the man-of-war I was set to work at ship's work and was compelled to make the crew of the *Lewis* work also. I was given no hammock or berth to sleep in. No rations were served out to me or the members of the crew of the *Lewis*, but we were obliged to eat the crew's rations—what they could spare of it—no extra allowance being provided for us. The crew of the *Aleut* were all provided with hammocks, and I am positive there were extra hammocks on board the *Aleut* that could have been served out to us, I having seen them stowed below in the berth deck. We were treated with indignities generally, and not with the same consideration that the crew of the *Aleut* were treated. This treatment was kept up until our arrival at Vladavistock, at which port we were allowed to go ashore, and for the first two days no provision was made for us, and being without money, were obliged to dispose of what spare effects we had to obtain subsistence. After two days we were allowed by the authorities 50 kopecks (about 27 cents) per day. We were obliged to sleep on the floor of the police station or fire house until the time of our departure, which was about six weeks later. We left for Nagasaki on a Russian vessel, and were mixed in with a cargo of 300 Chinamen in the steerage.

Affiant further says that as a result of the ill-treatment while at Vladavistock I contracted the smallpox and suffered with it for three months and a half, the steward being also taken down with the same disease and died from the effects of the same. We arrived in San Francisco about the 21st of December, 1891, and was sent immediately to the quarantine station at Angel Island, in the harbor of San Francisco, and I was not released therefrom until about the 15th of March, 1892.

J. McDONALD.

Subscribed and sworn to before me this 13th day of January, A. D. 1893.

[SEAL.]

J. S. MANLEY,
Commissioner, United States Circuit Court,
Northern District of California.

STATE OF CALIFORNIA, *City and county of San Francisco, ss:*

Albert Leslie Donaldson, being duly sworn, deposes and says: I have read the foregoing affidavits of Alexander McLean and Joseph McDonald, relative to the seizure of the schooner *James Hamilton Lewis* by the Russian war ship *Aleut*, and know that the facts stated in said affidavits are true.

I also was deprived of the greater part of my effects, including a gun for hunting seals, rubber boots, a lamb's-wool coat, shaving outfit, etc. At Petropolauski we were sent ashore and forced to live on 15 kopecks (about 7½ cents) per day, or go to work for the Government; not being able to live on 7½ cents a day we were obliged and forced to work, handling heavy timbers, loading lighters, scrubbing boots, and general all-round work aboard of a vessel, for which we received a sailor's rations, and were allowed to sleep in an old house, which was used as a jail. My treatment from the time of leaving Petropolauski until my arrival at San Francisco was practically the same as related in the affidavit of Joseph McDonald. I was also held in quarantine at San Francisco from the time of my arrival, about the 21st day of December, 1891, until about the 5th day of January, 1892. My position aboard the schooner *James Hamilton Lewis* was that of officer and hunter.

A. L. DONALDSON.

Subscribed and sworn to before me this 13th day of January, A. D. 1893.

[SEAL.]

J. S. MANLEY,

Commissioner U. S. Circuit Court, Northern District of California.

STATE OF CALIFORNIA, *City and county of San Francisco, ss:*

Oren Simons and Andrew C. Simons, being first duly sworn, each for himself depose and say: That they have heard read the foregoing affidavits of Alexander McLean, Joseph McDonald, and Albert Leslie Donaldson relative to the seizure of the schooner *James Hamilton Lewis* by the Russian war ship *Aleut*, and know that the facts stated in said affidavits are true. We were both engaged as officers and hunters aboard the schooner *Lewis* at the time of the seizure. We lost the greater part of our clothing and effects, including 3 guns, gunsmith's tools, etc., of the value of about \$75, also an account book or wallet containing about \$8. While at Bering Island we, together with the steward and 3 other sailors, were transferred to the schooner *Lewis* to help sail her to Petropolauski. After arriving there our experience afterwards was practically the same as related by McDonald and Donaldson in their affidavits. We also worked the vessel from Petropolauski to Vladavistock. While at Vladavistock we were obliged to sleep with Russian laborers on the floor, without bedding or clothing, and the place was infected with vermin and in an extremely filthy condition. We were quarantined with the rest of the crew upon our arrival at San Francisco by reason of the smallpox contracted by Mate McDonald and the steward, Frederick Grinsted, at Vladavistock, for about fourteen days. The steward died while in quarantine. While on the voyage from Bering Island to Vladavistock, in conversing with the Russian officer in command of the schooner, Captain Libideff, we were told by him that the schooner at the time of the seizure was 33 miles off Copper Island.

OREN SIMONS.

A. C. SIMONS.

Subscribed and sworn to before me this 13th day of January, A. D. 1893.

[SEAL.]

J. S. MANLEY,

Commissioner U. S. Circuit Court, Northern District of California.

STATE OF CALIFORNIA, *City and county of San Francisco, ss:*

Alexander McLean, Joseph McDonald, Albert Leslie Donaldson, Oren Simons, and Andrew C. Simons, each for himself and not one for the other, do solemnly swear that the facts set forth in the foregoing statement in reference to the seizure of the

schooner *James Hamilton Lewis* by the Russian war ship *Aleut* on August 2, 1891, are true; that I was present on board said schooner and witnessed the events therein recited, and I know them to be true of my own knowledge.

ALEXANDER McLEAN.
 J. McDONALD.
 A. L. DONALDSON.
 OREN SIMONS.
 A. C. SIMONS.

Subscribed and sworn to before me this 13th day of January, A. D. 1893.

[SEAL.]

J. S. MANLEY,
Commissioner U. S. Circuit Court, Northern District of California.

STATE AND NORTHERN DISTRICT OF CALIFORNIA,
City and county of San Francisco, ss:

I, L. S. B. Sawyer, clerk of the circuit court of the United States of America of the ninth judicial circuit, in and for the northern district of California, do hereby certify that J. S. Manley, who has signed the foregoing attestation, is a duly appointed qualified acting commissioner of the circuit court of the United States for the northern district of California; that said signatures are his genuine handwriting, and that all his official acts as such commissioner are entitled to full faith and credit.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court this 14th day of January, A. D. 1893.

[SEAL.]

L. S. B. SAWYER,
Clerk U. S. Circuit Court, Northern District of California.

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Protest.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA.

PORT OF KANAGAWA, JAPAN, *November 30, 1891.*

By this public instrument of declaration and protest, be it known and made manifest unto all whom these presents shall come or may concern, that on the 30th day of November, 1891, before me, W. D. Tillotson, consul-general of the United States of America for Kanagawa, Japan, and the dependencies thereof, personally came and appeared Alexander McLean, master of the ship or vessel called the *James Hamilton Lewis*, of San Francisco, of the burden of 7,900 tons, or thereabouts, laden with ——— cargo, who duly noted and entered with me, the said consul-general, his protest, for the uses and purposes hereafter mentioned; and now, on this day, to wit, the day of the date hereof, before me, the said consul-general, again comes the said Alexander McLean and requires me to extend this protest; and together with the said Alexander McLean also come Joe McDonald, mate, Orrin Simons, Andrew Simons, and A. L. Donaldson, seamen, of and belonging to the said ship, all of whom, being by me duly sworn on the Holy Evangelists of Almighty God, did severally voluntarily, freely, and solemnly declare, depose, and state as follows, that is to say: That these appearers, on the 7th day of March, 1891, in their capacities aforesaid, sailed in and with the said *James Hamilton Lewis* from the port of San Francisco, in ballast, and bound to the North Pacific Ocean; that the said ship was then tight, stanch, and strong; had her cargo well and sufficiently stowed and secured; had her hatches well calked and covered; was well and sufficiently manned, victualled, and furnished with all things needful and necessary for a vessel in the merchant service, and particularly for the voyage she was about to undertake; that nothing happened worthy of note until the 2d day of August, 1891, at about 6 o'clock in the morning, 20 miles east of Copper Islands. Russian men-of-war came and seized said vessel while she was on her way back to San Francisco at said time. At about 5 o'clock a. m. saw 2 vessels on our lee bow, wind northwest on port tack, which we steered for the other vessels to speak them. About 6 a. m. a steamer reported on our port quarter; shortly afterwards she came close up to us. Had her flag flying and fixed a gun, so we concluded she wanted to speak us, so we hoisted the American flag

and hove-to for him; so they lowered a boat and crew and sent them to board us, and officer came on deck and demanded the ship's log book, which I gave him—the ship's official log book—and also showed him the vessel's official papers from the custom-house at San Francisco, Cal., which he did not wish to see, but demanded to search the vessel, which I assisted him to do so, as there was nothing on board that I wished to conceal, as everything was on the ship's manifest except what had been used on board during the voyage. So he left the vessel, taking my official log book on board of the Russian man-of-war *Aleut*, telling me to wait until he returned, as he would have to follow the steamer; so I told him to return my official log book. Shortly afterwards the officer returned with an armed crew of men and demanded me to leave my vessel and seven of my crew, which I refused, as I had done nothing wrong, and I was not informed for what I was wanted on board of the man-of-war *Aleut*. So I considered it my duty to remain on board of my vessel and proceed on my voyage as before to San Francisco, Cal., and I put the vessel on her course, steering east, when, upon the man-of-war boat returning to their ship, then they began to maneuver by their boat going on one side and the steamer on the other, firing four or five shots at us; then the man-of-war crossed our bow from starboard to port and just missed running into us, and then she returned, and crossing our bow from port to starboard, evidently intending to strike us; when I saw her getting so close I wanted to avoid a collision, told the man at the wheel to starboard the helm, but the man-of-war got too close to us and it was impossible to clear her, and the schooner struck her about midships, carrying away all our head gear, and the man-of-war made lines fast to our rigging, and the two vessels were smashing against one another. Then I told my mate to cut the lines that were holding the vessels together and get them apart before they would break up. The mate proceeded to do so by trying to cut the lines, when some of the man-of-war's men began shouting there was a man with a knife, and was afraid he was going to kill some one. In the meantime the schooner's deck was crowded with Russian guns and bayonets, and all shouting at once. Shortly afterwards we were all called on board of the man-of-war, and the commander informed me that I was his prisoner, and the vessel was seized, and I was surrounded by guards. Then I asked the commander for his authority to seize me and make me his prisoner. His reply was that I was in Russian waters. Then I protested that the seizure was illegal, as I was in neutral waters of the high seas belonging to all nations of the world, as I was outside of 20 miles of the nearest land. Furthermore, none of the crew of the schooner had landed on any land since they left Sand Point, Alaska, the 28th of June, 1891, and that all the seals taken by me during the voyage were killed with shotguns on the high seas and outside of all national limits, which could be proved by examining the seal skins and see where they were shot, and the pup skins that were found on board had been taken from the inside of the large seals after they were taken on board of the vessel, and no seals had been on the vessel's deck for forty hours previous to the time of the seizure; and the report made by the man-of-war *Aleut* that they had seen something thrown overboard from the schooner is wrong and mistaken, as their imagination must have deceived them, as there had not been as much as a bucket of water thrown over the side that morning.

And these said appearers, upon their oaths aforesaid, do further declare and say: That during the said voyage they, together with the others of the said ship's company, used their utmost endeavors to preserve the said vessel and cargo from all manner of loss, damage, or injury. Wherefore the said Alexander McLean, master, hath protested, as by these presents I, the said consul-general, at his special instance and request, do publicly and solemnly protest against all and every person and persons whom it doth or may concern, and against the winds, and waves, and billows of the seas, and against all and every accident, matter, and thing had and met with as aforesaid, whereby and by reason whereof the said vessel or her cargo has already, or hereafter shall appear to have, suffered or sustained damage or injury; and do declare that all losses, damages, costs, charges, and expenses that have happened to the said vessel or her cargo, or to either, are and ought to be borne by those to whom the same by right may appertain by way of average or otherwise, the same having occurred as before mentioned, and not by or through the insufficiency of the said vessel, her tackle or apparel or default or neglect of this appearer, his officers, or any of his mariners.

Thus done and protested in the port of Kanagawa, this 30th day of November, A. D. 1891.

In testimony whereof these appearers have hereunto subscribed their names, and I, the said consul-general, have granted to the said master this public instrument,

under my hand and the seal of this consulate-general, to serve and to avail him, and all others whom it doth or may concern, as need and occasion may require.

[SEAL.]

W. D. TILLOTSON,
United States Consul-General.
 ALEXANDER McLEAN, *Master.*
 J. McDONALD, *Mate.*
 OREN SIMONS, *Seaman.*
 A. C. SIMONS, *Seaman.*
 A. L. DONALDSON, *Seaman.*

I hereby certify that the above and foregoing is a true and correct copy of the original extended marine protest on file in the office of this consulate-general.

[SEAL.]

W. D. TILLOTSON,
United States Consul-General, Kanagawa, Japan.

Schooner *James Hamilton Lewis*, San Francisco, Cal., U. S. A., left March 7, 1891, San Francisco, on a hunting and fishing voyage; Alexander McLean, master. Illegally seized August 2 by the Russian man-of-war *Aleut*.

Crew list of "J. H. Lewis," March 7, 1891.

- | | |
|--------------------------------------|-------------------------------|
| 1. A. McLean, master. | 9. Chas. Miller, cabin boy. |
| 2. A. Gylsburg, mate. | 21. J. McDonald, second mate. |
| 3. A. C. Simons, hunter. | 22. Ed. Bolin, A. B. |
| 6. Lorenzo Higva, hunter. | 23. W. Hart, A. B. |
| 5. John H. Franklin, hunter. | 24. Fred Berry, A. B. |
| 4. Orn Simons, hunter. | 25. Joe Quinn, A. B. |
| 7. A. L. Donaldson, hunter. | 26. Arthur More, A. B. |
| 17. Thad. Lewis, hunter. | 27. Thos. Logan, A. B. |
| 8. Fred Grimstead, cook and steward. | 28. James Gordon, A. B. |

SUPPLEMENTARY ARTICLES.

- | | |
|---------------------------|---|
| 29. J. D. Stephens, A. B. | 33. Geo. Harrison, A. B. |
| 30. John Kelly, A. B. | 34. Frank Little (not on articles), A. B. |
| 31. Maurice Batto, A. B. | 35. Walter Jackson, A. B. |
| 32. Alex. Maxson, A. B. | |

Log of the schooner "J. H. Lewis," on a fishing and hunting voyage, 1891.

March 7.—Calm weather, weighed anchor, and towed to sea; 8 p. m., light W. wind; midnight, light W. wind; latter part, light W. wind; Farallone light-house, bearing NNW., distant 8 miles.

March 8.—Begins with light W. wind; midnight, light W. wind; noon, light SW. wind; Farallone, bearing NE, distant 20 miles.

March 9.—Begins with light SW. wind; midnight, strong SW. wind; latter part, more moderate. Lat. 40° 10' N.; long., 124° 10' W.

March 10.—Begins with light W. wind; midnight, light W. wind; latter part, light N. wind. Lat. 40° 10' N.; long., 124° 10' W.

March 11.—Begins with calm and fog; midnight, calm and fog; latter part, light SE. wind. Lat. 40° 20' N.; long., 124° 25' W.

March 12.—Begins with light S. wind; midnight, light S. wind; latter part, calm and fog. Lat. 40° 30' N.; long. 124° 25' W.

March 13.—Begins with light W. air; midnight, calm and fog; latter part, SE. wind. Lat. 41° 02' N.; long. 125° 10' W.

March 14.—Begins with light SE. wind; midnight, strong SE. wind; latter part, strong SE. wind. Lat. 43° 16' N.; long. 125° 10' W.

March 15.—Begins with light SE. wind; midnight, light SE. wind; latter part, light SW. wind. Lat. 40° 30' N.; long. 125° 20' W.

March 16.—Begins with strong SE. wind; midnight, strong SE. wind; latter part, more moderate. Lat. 46° 10' N.; long. 125° 30' W.

March 17.—Begins with SW. breeze; midnight, SW. breeze; latter part, S. wind. Lat. 47° 05' N.; long. 125° 30' W.

March 18.—Begins with strong S. wind; midnight, strong S. wind; latter part, more moderate. Lat. 47° 30' N.; long. 125° 33' W.

March 19.—Begins with SE. wind; midnight, strong breeze; latter part, strong SE. gale. Lat. 47° 50' N.; long. 125° 40' W.

March 20.—Begins with strong S. gale; midnight, strong S. gale; latter part, more moderate, with heavy sea running. Lat. 48° 26' N.; long. 125° 48' W.

March 21.—Begins with strong E. wind; midnight, strong E. wind; latter part, more moderate. Lat. 48° 20' N.; long. 125° 40' W.

March 22.—Begins with light SW. wind; midnight, heavy SW. squalls; latter part, calm and fog. Lat. 47° 54' N.; long. 126° 30' W.

March 23.—Begins with strong W. wind; midnight, calm; latter part, light SE. wind; came to anchor in port San Jum; took in supply of fresh water.

March 24.—Begins with light E. wind; weighed anchor and made sail; called at Neah Bay for mail; remained one hour and left for sea; midnight, strong SE. gale. Lat., off Barclay Sound.

March 25.—Begins with strong SE. wind; midnight, more moderate; latter part, strong S. gale; off Barclay Sound.

March 26.—Begins with strong SW. wind; midnight, strong SW. wind; latter part, strong SW. wind; off Barclay Sound.

March 27.—Begins with strong SW. wind; midnight, strong SW. wind; latter part, more moderate; off Barclay Sound.

March 28.—Begins with light S. wind; midnight, strong SW. wind; latter part, calm and fog; off Barclay Sound.

March 29.—Begins with strong S. wind; midnight, strong SW. wind; latter part, strong W. wind. Lat. 47° 03' N.; long. 125° 40' W.

March 30.—Begins with strong W. wind; midnight, strong SW. wind; latter part, more moderate; off Barclay Sound.

March 31.—Begins with light N. wind; midnight, SE. wind; latter part, strong SW. wind. Lat. 47° 12' N.; long. 124° 55' W.

April 1.—Begins with light SE. wind; midnight, light SE. wind; latter part, strong E. wind. Lat. 47° 23' N.; long. 125° 21' W.

April 2.—Begins with strong E. wind; midnight, light SE. wind; latter part, more moderate. Lat. 47° 25' N.; long. 125° 27' W.

April 3.—Begins with strong E. wind; midnight, light SE. wind; latter part, strong SE. wind. Lat. 48° 44' N.; long. 127° 37' W.

April 4.—Begins with strong SE. wind; midnight, light SE. wind; latter part, strong SE. wind. Lat. 48° 40' N.; long. 127° 30' W.

April 5.—Begins with strong SE. wind; midnight, light SE. wind; latter part, more moderate. Lat. 48° 46' N.; long. 127° 30' W.

April 6.—Begins with strong S. wind; midnight, moderating; latter part, light SW. wind. Lat. 48° 25' N.; long. 125° 46' W.

April 7.—Begins with strong SE. wind; midnight, strong SE. gale and heavy sea; latter part, more moderate. Lat. 48° 20' N.; long. 125° 40' W.

April 8.—Begins with light S. wind; midnight, light S. wind; latter part, light S. wind. Lat. 48° 30' N.; long. 125° 15' W.

April 9.—Begins with light S. wind; midnight, light S. wind; latter part, light SW. wind. Lat. 48° N.; long. 125° 10' W.

April 10.—Begins with light SW. wind; midnight, light SW. wind; latter part, strong W. wind. Lat. 48° 20' N.; long. 125° 20' W.

April 11.—Begins with strong NW. wind; midnight, strong NW. wind; latter part, more moderate. Lat. 48° 30' N.; long. 126° 10' W.

April 12.—Begins with light NE. wind; midnight, light NE. wind; latter part, light E. wind. Lat. 48° 10' N.; long. 126° 10' W.

April 13.—Begins with light NE. wind; midnight, light NE. wind; latter part, calm. Lat. 48° 30' N.; long. 127° 30' W.

April 14.—Begins with light S. wind; midnight, calm; latter part, light E. wind; came to anchor in Port Sawjun, and took in fresh water; sent a boat ashore to Neah Bay for mail.

April 15.—Begins with strong SE. wind; weighed anchor and made sail; latter part, strong SE. wind; off Cape Beal.

April 16.—Begins with light S. wind; midnight, light S. wind; latter part, calm and fog. Lat. 48° 30' N.; long. 128° 10' W.

April 17.—Begins with light SE. wind; midnight, light SE. wind; latter part, light SW. wind. Lat. 48° 10' N.; long. 128° 20' W.

April 18.—Begins with light SW. wind; midnight, light SW. wind; latter part, strong S. wind. Lat. 48° 40' N.; long. 128° W.

April 19.—Begins with strong S. wind; midnight, strong S. wind; latter part, strong SW. gale. Lat. 49° 41' N.; long. 128° 26' W.

April 20.—Begins with strong SW. gale; midnight, strong SW. gale; latter part, more moderate. Lat. 49° 20' N.; long. 128° 10' W.

- April 21.*—Begins with light SE. wind; midnight, calm; latter part, light NE. wind. Lat. 48° 41' N.; long. 128° 26' W.
- April 22.*—Begins with light E. breeze; midnight, S. wind; latter part, strong S. wind. Lat. 49° 20' N.; long. 129° 10' W.
- April 23.*—Begins with strong S. wind; midnight, more moderate; latter part, SE. wind. Lat. 53° 33' N.; long. 131° 37' W.
- April 24.*—Begins with strong SE wind; midnight, strong gale; latter part, strong SE. gale. Lat. 54° 21' N.; long. 133° 29' W.
- April 25.*—Begins with strong SE. gale; midnight, more moderate; latter part, strong E. wind. Lat. 54° 40' N.; long. 134° 30' W.
- April 26.*—Begins with light E. wind; midnight, light E. wind; latter part, light SE. wind. Lat. 55° 10' N.; long. 136° 05' W.
- April 27.*—Begins with light SE. wind; midnight, light SE. wind; latter part, calm. Lat. 57° N.; long. 138° 10' W.
- April 28.*—Begins with light NE. wind; midnight, light SE. wind; latter part, E. breeze. Lat. 27° 22' N.; long. 138° 43' 30' W.
- April 29.*—Begins with strong SE. wind; midnight, strong SE. wind; latter part, more moderate. Lat. 56° 30' N.; long. 137° 01' W.
- April 30.*—Begins with light E. wind; midnight, light E. wind; latter part, more moderate. Lat. 56° 35' N.; long. 137° 10' W.
- May 1.*—Begins with strong NW. wind; midnight, strong NW. wind; latter part, strong NW. wind. Lat. 56° 28' N.; long. 137° 44' W.
- May 2.*—Begins with strong NW. wind; midnight, strong NW. wind; latter part, strong NW. wind. Lat. 56° 21' N.; long. 137° 51' W.
- May 3.*—Begins with strong NW. wind; midnight, strong NW. wind; latter part, strong NW. wind. Lat. 56° 23' N.; long. 137° 21' W.
- May 4.*—Begins with strong NW. wind; midnight, more moderate; latter part, strong NW. wind. Lat. 56° 23' N.; long. 137° 21' W.
- May 5.*—Begins with SW. wind; spoke the schooner *Ed. E. Webster*; A. Gyllenberg, mate, transferred to the *Webster*, being in debt \$36.08; Murrie Rattio transferred from *Webster* to schooner *J. H. Lewis*; latter part, light SW. wind. Lat. 56° 25' N.; long. 140° 14' W.
- May 6.*—Begins with light SW. wind; midnight, light SW. wind; latter part, SW. wind and fog. Lat. 56° 53' N.; long. 140° 07' W.
- May 7.*—Begins with SW. breeze and fog; midnight, SW. breeze and fog; latter part, strong SW. wind. Lat. 57° N.; long. 140° 01' W.
- May 8.*—Begins with light S. wind; midnight, light S. wind; latter part, calm and fog. Lat. 58° N.; long. 139° 25' W.
- May 9.*—Begins with calm and fog; midnight, calm and fog; latter part, calm and fog. Lat. 58° 09' N.; long. 139° 31' W.
- May 10.*—Begins with light SE. wind; midnight, light SE. wind; latter part, strong SE. wind. Lat. 58° 13' N.; long. 139° 20' W.
- May 11.*—Begins with strong SE. wind; midnight, strong SE. wind; latter part, more moderate. Lat. 58° 30' N.; long. 140° W.
- May 12.*—Begins with light NE. wind; midnight, light NE. wind; latter part, light SE. wind. Lat. 58° 30' N.; long. 139° 45' W.
- May 13.*—Begins with light SE. wind; midnight, light SE. wind; latter part, light E. wind. Lat. 58° 25' N.; long. 139° 50' W.
- May 14.*—Begins with light E. wind; midnight, light E. wind; latter part, light E. wind. Lat. 58° 10' N.; long. 140° 03' W.
- May 15.*—Begins with fine weather and light E. wind at times. A hunting boat and 3 men lost from the vessel while out hunting. Names: Lorenzo Higuva, hunter; Chas. Miller and Ed. Bolen, A. B. seamen. The weather being fine and several other vessels in sight, I concluded that he boarded some other vessel by mistake; midnight, light E. wind; kept signals going all night; latter part, E. wind and fog at times; spoke 4 different vessels. Lat. 58° N.; long. 140° 03' W.
- May 16.*—Begins with strong SE. wind; midnight, more moderate; latter part, light E. wind. Lat. 58° 10' N.; long. 140° 15' W.
- May 17.*—Begins with light W. wind; midnight, light W. wind; latter part, light SW. wind. Lat. 58° 13' N.; long. 141° 05' W.
- May 18.*—Begins with light SW. wind; midnight, light SW. wind; latter part, S. wind. Lat. 58° 36' N.; long. 139° 42' W.
- May 19.*—Begins with light S. wind; midnight, calm; latter part, calm and fog at times. Lat. 58° N.; long. 138° 10' W.
- May 20.*—Begins with light NE. wind; midnight, light NE. wind; latter part, light E. wind. Lat. 58° N.; long. 139° 28' W.
- May 21.*—Begins with light E. wind; midnight, light E. wind; latter part, calm and fog. Lat. 58° 03' N.; long. 137° 53' W.

- May 22.—Begins with calm, and fog at times; midnight, calm, and fog at times. Lat. $57^{\circ} 57' N.$; long. $137^{\circ} 58' W.$
- May 23.—Begins with light SE. wind; midnight, light SE. wind; latter part, strong E. wind. Lat. $58^{\circ} N.$; long. $138^{\circ} W.$
- May 24.—Begins with strong E. wind; midnight, strong E. wind; latter part, more moderate. Lat. $57^{\circ} 45' N.$; long. $137^{\circ} 45' W.$
- May 25.—Begins with light E. wind; midnight, light E. wind; latter part, light E. wind. Lat. $57^{\circ} 30' N.$; long. $137^{\circ} 40' W.$
- May 26.—Begins with light E. wind; midnight, light E. wind; latter part, strong SE. wind. Lat. $57^{\circ} 37' N.$; long. $137^{\circ} 45' W.$
- May 27.—Begins with strong SE. wind; midnight, strong SE. wind; latter part, strong SE. wind. Lat. $57^{\circ} 35' N.$; long. $137^{\circ} 42' W.$
- May 28.—Begins with strong NW. wind; came to anchor in the outer harbor at Sitka, took in fresh water, and smoked the rats out of the vessel; Arthur More deserted the vessel, taking his personal effects and one of the ship's guns; latter part, strong NW. wind.
- May 29.—Begins with strong N. wind; sent Orn Simons in to Sitka after another seaman and inquiry after lost boat; O. Simons returned with Walter Jackson as seaman at 50 cents per seal caught by boat he is in; weighed anchor and made sail; light N. wind.
- May 30.—Begins with light N. wind; midnight, calm; latter part, calm; laying in the entrance to the harbor.
- May 31.—Begins with light SE. wind; midnight, light SE. wind; later, strong SE. wind; outside Sitka Harbor.
- June 1.—Begins with strong SE. wind; midnight, strong SE. wind; latter part, strong SE. wind; spoke the *Ed. E. Webster*; transferred John Bartlett, hunter, and Frank Little, seaman, to the *J. H. Lewis*. Lat. $57^{\circ} 58' N.$; long. $140^{\circ} W.$
- June 2.—Begins with strong SE. wind; midnight, strong SE. wind; latter part, more moderate. Lat. $58^{\circ} N.$; long. $140^{\circ} 10' W.$
- June 3.—Begins with light W. wind; midnight, light W. wind; latter part, calm, and fog at times. Lat. $57^{\circ} 30' N.$; long. $141^{\circ} 10' W.$
- June 4.—Begins with light NW. wind; midnight, light NW. wind; latter part, SW. breeze. Lat. $57^{\circ} 45' N.$; long. $141^{\circ} W.$
- June 5.—Begins with strong SW. wind; midnight, strong breeze; latter part, more moderate. Lat. $58^{\circ} N.$; long. $140^{\circ} W.$
- June 6.—Begins with light N. wind; midnight, light N. wind; latter part, light N. wind. Lat. $58^{\circ} N.$; long. $142^{\circ} 30' W.$
- June 7.—Begins with light N. wind; midnight, light N. wind; latter part, calm and fog. Lat. $58^{\circ} 30' N.$; long. $143^{\circ} W.$
- June 8.—Begins with calm and fog; midnight, light SW. wind; latter part, light SW. wind. Lat. $59^{\circ} N.$; long. $143^{\circ} 10' W.$
- June 9.—Begins with light W. wind; midnight, light W. wind; latter part, light W. wind. Lat. $59^{\circ} 5' N.$; long. $143^{\circ} 48' W.$
- June 10.—Begins with light W. wind; midnight, light W. wind; latter part, calm and fog. Lat. $58^{\circ} 45' N.$; long. $144^{\circ} 45' W.$
- June 11.—Begins with light SW. wind; midnight, calm; latter part, fresh SW. breeze. Lat. $58^{\circ} 45' N.$; long. $144^{\circ} 45' W.$
- June 12.—Begins with light SW. wind; midnight, calm; latter part, calm and fog. Lat. $58^{\circ} 30' N.$; long. $145^{\circ} 20' W.$
- June 13.—Begins with calm; midnight, light SW. wind; latter part, light SW. wind. Lat. $58^{\circ} 30' N.$; long. $145^{\circ} 20' W.$
- June 14.—Begins with light W. wind; midnight, light W. wind and fog; latter part, strong breeze. Lat. $58^{\circ} 01' N.$; long. $146^{\circ} 10' W.$
- June 15.—Begins with strong NW. wind; midnight, strong WN. wind; latter part strong NW. wind and fog. Lat. $58^{\circ} N.$; long. $149^{\circ} 10' W.$
- June 16.—Begins with strong NE. wind; midnight, strong NE. wind and fog; latter part, strong SE. wind. Lat. $57^{\circ} 51' N.$; long. $150^{\circ} 59' 30'' W.$
- June 17.—Begins with calm and fine weather; midnight, calm and fine weather; latter part, strong SE. wind. Lat. $57^{\circ} 40' N.$; long. $151^{\circ} 20' W.$
- June 18.—Begins with strong SE. wind; midnight, strong SE. wind; latter part, more moderate. Lat. $55^{\circ} N.$; long. $151^{\circ} 30' W.$
- June 19.—Begins with S. wind; midnight, S. wind; latter part, strong S. wind. Lat. $53^{\circ} 30' N.$; long. $153^{\circ} 10' W.$
- June 20.—Begins with strong W. wind; midnight, more moderate; latter part, light NW. wind; came to anchor in Alitack Bay, Rodack Island, Alaska.
- June 21.—Begins with strong SW. wind; midnight, strong SW. wind; hauled the vessel on the beach and cleaned her bottom; latter part, strong SW. wind.

June 22.—Begins with strong SW. wind; cleaning ship bottom.

June 23.—Begins with strong SW. wind; hauled off the beach; Will. Hart deserted, taking his effects; latter part, strong SW. wind. Paid Walter Jackson \$16 for 32 seals, by order on ——— *ex.*

June 24.—Begins with strong SE. wind; weighed anchor and made sail; midnight, strong SE. wind; latter part, strong SE. wind.

June 25.—Begins with strong SE. wind and fog; midnight, strong SE. wind and fog; latter part, SE. wind and fog. Lat. 56° N.; long. 155° W.

June 26.—Begins with strong SE. wind and fog; midnight, strong SE. wind and fog; latter part, strong SE. wind and fog. Lat. 55° N.; long. 157° W.

June 27.—Begins with strong SE. wind; midnight, more moderate; latter part, light SW. wind; came to anchor at Sand Point, Alaska; took in fresh water.

June 28.—Begins with fine weather, weighed anchor and made sail, light SE. air 10 a. m.; spoke the American gunboat *Thetis*, and warned the *J. H. Lewis* from going in the Bering Sea seal hunting, which I abide by; shipped Alex. Maxson, A. B., at \$40 per month; shipped George Harrison, A. B., at \$40 per month.

June 29.—Begins with light W. wind and fog; midnight, light W. wind and fog; latter part, light W. wind. Lat. 54° 20' N.; long. 162° W.

June 30.—Begins with light W. wind; midnight, calm and fog at times. Lat. 54° N.; long. 163° W.

July 1.—Begins with light W. wind; midnight, light W. wind; latter part calm. Lat. 54° 10' N.; long. 164° W.

July 2.—Begins with calm and fog at times; midnight, calm and fog at times; latter part, light SE. wind. Lat. 53° 10' N.; long. 164° 30' W.

July 3.—Begins with strong SE. wind; midnight, strong SE. wind; latter part, strong SE. wind. Lat. 53° N.; long. 164° 50' W.

July 4.—Begins with strong SW. wind; midnight, strong SW. wind; latter part, strong S. wind. Lat. 52° 30' N.; long. 165° W.

July 5.—Begins with strong SW. wind; midnight, strong SW. wind; latter part, light S. wind. Lat. 52° N.; long. 170° W.

July 6.—Begins with light SE. wind; midnight, light SE. wind; latter part, SE. wind and fog. Lat. 51° 10' N.; long. 173° W.

July 7.—Begins with light SE. wind; midnight, strong NE. wind; latter part, strong NE. wind. Crossing long. 180° W.

July 9.—Begins with strong NE. wind; midnight, strong NE. wind; latter part, more moderate. Lat. 50° 10' N.; long. 175° E.

July 10.—Begins with strong NNW. wind; midnight, strong NNW. wind; latter part, strong NW. wind. Lat. 52° N; long. 170° E.

Thomas Logan stabbed Alexander Maxson with a jackknife over the left nipple. Alexander Maxson not being able to do his work on account of being stabbed, Thomas Logan will have to pay his wages and board and also the ship's loss while the seaman is unable to do his duty. The stabbing was committed while in the forecabin in their watch on deck, and Logan refused to come on deck when the man called him to pump ship.

July 11.—Begins with strong NW. wind; midnight, more moderate; latter part E. wind and fog. Lat. 51° 40' N.; long. 170° 45' E.

July 12.—Begins with strong E. wind; midnight, strong E. wind and fog; latter part more moderate, and thick fog at times. Lat. 51° 25' N.; long. 170° 30' E.

July 13.—Begins with strong ENE. wind and fog; latter part, strong ENE. wind and fog. Lat. 51° 10' N.; long. 170° E.

July 14.—Begins with strong NE. wind and fog at times; latter part, strong NE. wind and fog at times. Lat. 50° 45' N.; long. 169° 20' E.

July 15.—Begins with light S. wind; latter part, calm. Lat. 50° 50' N.; long. 170° 10' E.

July 16.—Begins with SE. wind and fog at times; latter part, SE. wind and fog at times. Lat. 51° 10' N.; long. 173° E.

July 17.—Begins with light SE. wind and rain at times; latter part, light SE. wind and rain at times. Lat. 51° 30' N.; long. 175° 10' E.

July 18.—Begins with SE. wind; latter part, SE. wind. Lat. 51° 15' N.; long. 177° 15' E.

July 19.—Begins with light E. wind and fog at times; latter part, light E. wind and fog at times. Lat. 51° 40' N.; long. 179° 20' E.

July 20.—Begins with E. wind, with rain and fog at times. Lat. 51° 35' N.; long. 179° 10' E.

July 21.—Begins with strong S. wind and fog at times; latter part, strong S. wind and fog at times. Lat. 50° 50' N.; long. 177° 25' E.

July 22.—Begins with strong S. wind; latter part, strong S. wind. Lat. 50° 45' N.; long. 172° 50' E.

July 23.—Begins with strong S. wind; latter part, strong S. wind. Lat. 50° 30' N.; long. 170° 20' E.

July 24.—Begins with strong S. wind; latter part, strong S. wind. Lat. 50° 30' N.; long. 170° 20' E.

July 25.—Begins with light W. wind; latter part, calm. Lat. 50° 15' N.; long. 170° 20' E.

July 26.—Begins with SE. wind and fog at times; latter part, SE. wind and fog at times. Lat. 50° 05' N.; long. 170° 10' E.

July 27.—Begins with SE. wind; latter part, SE. wind and fog. Lat. 50° 25' N.; long. 170° 35' E.

July 28.—Begins with light E. wind; latter part, calm. Lat. 50° 20' N.; long. 170° 20' E.

July 29.—Begins with S. wind; latter part, calm. Lat. 50° 40' N.; long. 170° 25' E.

July 30.—Begins with strong SE. wind; latter part, strong SE. wind. Lat. 52° 40' N.; long. 169° 20' E.

July 31.—Begins with strong SE. wind; latter part, strong SE. wind. Lat. 53° 10' N.; long. 169° E.

August 1.—Begins with strong SE. wind; latter part, strong SE. wind. Lat. 54° N.; long. 168° 10' E.

August 2.—Light NW. wind; 20 miles eastward of Copper Island, Pacific Ocean, and upon the high seas.

[Copy of protest given to the commander of the man-of-war *Aleut*, 12th of August, 1891.]

I, the undersigned, do hereby protest in behalf of the schooner *James Hamilton Lewis* and owners against the illegal seizure of said vessel, her tackling and cargo, and hunting and fishing outfit, by the Russian man-of-war *Aleut*, the 2d day of August, 1891, upon the high seas and neutral waters of the ocean. All seal skins on board of said vessel had been killed upon said waters of the ocean with shotguns, and the pup skins on board were taken from the inside of said seal after they were taken on board of the vessel, and no seals were taken on board of the vessel for forty hours previous to the said seizure. I therefore hold the Russian man-of-war *Aleut* and her Government responsible for the detention and losses caused by the illegal seizure of said vessel and outfit and cargo.

ALEXANDER MCLEAN,
Master of the Schooner "*J. H. Lewis*," of San Francisco, Cal., U. S. A.

Schooner "*J. H. Lewis*"—Sealing account.

Date.		Latitude N.	Longitude W.	Number of seals.
1891.				
February	16			
March	9	40 10	124 10	7
	11	40 20	124 27	10
	13	41 02	125 10	12
	16	46 50	125 30	7
	29	47 03	125 40	2
	31	47 12	124 55	6
April	7	48 20	125 40	10
	12	48 10	126 10	4
	13	48 39	127 30	3
	14	48 39	127 30	25
	16	48 30	128 10	5
	18	48 40	128 00	8
	24	54 21	133 29	5
	25	54 40	134 30	10
	28	57 22	138 43	11
	29	56 30	137 01	13
	30	56 45	137 10	8
May	1	56 28	137 44	30
	6	56 56	140 07	23
	7	57 00	140 01	19
	9	58 09	139 31	2
	10	58 13	139 20	52
	11	58 30	140 00	8
				7

Schooner "J. H. Lewis"—Sealing account—Continued.

Date.		Latitude N.	Longitude W.	Number of seals.
1891.				
May	12.....	58 30	139 45	8
	15.....	58 00	140 03	26
	22.....	57 57	137 58	13
	23.....	58 00	138 00	11
	24.....	57 45	137 45	7
	31.....	(a)	(a)	11
June	4.....	53 25	141 00	15
	6.....	58 00	142 30	18
	8.....	59 00	143 00	6
	9.....	59 05	143 48	4
	10.....	58 45	144 45	6
	17.....	57 40	151 20	20
	18.....	55 00	151 30	3
Seals shipped.....				441
July	13.....	51 10	170 00	17
	15.....	50 50	170 10	53
	18.....	51 15	177 15	74
	21.....	50 50	177 25	4
	—.....	50 45	^b 172 50	19
	24.....	50 30	^b 170 20	31
	25.....	50 15	^b 170 20	61
	26.....	50 05	170 10	5
	27.....	50 25	170 35	22
	29.....	50 10	170 25	88
	30.....	52 40	169 20	50
Seals illegally seized.....				424

^a Off Sitka Harbor.

^b East longitude.

August 2, 1891, illegally seized 20 miles southeast by east off Copper Island, by the Russian man-of-war *Aleut*, the commander said, for being in Russian waters, for which I protested, as I was in neutral waters and on the high seas for all nations.

A. McLEAN, *Master*.

Statement of the illegal seizure by master and crew.

We, the undersigned, crew of the American schooner *James Hamilton Lewis*, of San Francisco, Cal., do hereby certify that this is a true and correct statement: That on the morning of August 2, 1891, when 20 miles to the eastward of Copper Island, we were standing in toward the land to test the chronometer before proceeding on our voyage to San Francisco, and about 5 a. m. saw 2 vessels on our lee bow, wind northwest on the port tack, which we steered for the other vessels to speak them. At about 6 a. m. a steamer reported on our port quarter; shortly afterwards she came close up to us, had her flag flying and fired a gun, so we concluded she wanted to speak us, so we hoisted the American flag and hove to for her; so they lowered a boat and crew and sent them to board us; and officer came on deck and demanded the ship's log book, which I gave him the ship's official log book, and also showed him ship's official papers from the custom-house at San Francisco, Cal., which he did not wish to see, but demanded to search the vessel, which I assisted him in doing, as I had nothing on board that I wished to conceal, as everything was on the ship's manifest, except what had been used on board during the voyage; so he left the vessel, taking my official log book on board the Russian man-of-war *Aleut*, telling me to wait until he returned, as we would have to follow the steamer; so I told him to return my official log book. Shortly afterwards the officer returned with an armed crew of men and demanded me to leave my vessel and 7 of my crew, which I refused to leave my vessel as I had done nothing wrong, and I was not informed for what I was wanted on board the man-of-war *Aleut*, so I considered it my duty to remain on board of my vessel and proceed as before on my voyage to San Francisco, Cal., and I put my vessel on her course, steering east, when upon the man-of-war's boat returning to their ship, then they began to maneuver, the boat going on one side and the steamer on the other, firing four or five shots at us; then the man-of-war crossed our bow from starboard to port, and just missed running into us, and then she returned and crossing our bow from port to starboard, evidently intending to strike us; when I saw

her getting so close, I wanted to avoid a collision and told the man at the wheel to starboard the helm; so the man-of-war got too close to us, and it was impossible to go clear of her when, as the schooner collided with her about midships, carrying away all our headgear, and then the vessels came close together, and the man-of-war made lines fast to our rigging and the two vessels were smashing against one another; then I told my mate to cut the lines that was holding the vessels together and get them apart before they would break up. The mate proceeded to do so, by trying to cut the lines, when some of the man-of-war's men shouting there was a man with a knife and was afraid he was going to cut some one; in the meantime the schooner's decks was crowded with Russians and guns and bayonets, and all shouting at once; shortly afterwards we were called on board of the man-of-war, and the commander informed me that I was his prisoner, and the vessels and cargo confiscated, and I was surrounded by guards; then I asked for why I was his prisoner and the vessel and cargo seized, his reply being that I was in Russian waters; then I protested that the seizure was illegal, as I was in neutral waters of the high seas belonging to all nations of the world, as I was outside of 20 miles of the nearest land; furthermore, none of the crew of the schooner had landed on any land since they left Sand Point, Alaska, the 28th June, 1891, and all the seals taken by us during the voyage were killed with shotguns on the high seas and outside of all national limits, which could be proved by examining the skins and see where they were shot, and the pup skins that were found on board had been taken from the inside of the large seal after they were taken on board of the vessel, and no seals had been on the vessel's deck for forty hours previous to the time of the seizure; and the report made by the man-of-war *Aleut* that they had seen something thrown overboard from the schooner is wrong and mistaken, as their imagination must have deceived them, as there was not as much as a bucket of water thrown over the side that morning; so we, the crew of the schooner *J. H. Lewis*, do declare this to be a true statement, and insert our signatures to the same.

ALEXANDER MCLEAN, *Master*.
 JOSEPH McDONALD, *Mate*.
 OREN SIMONS, *Hunter*.
 A. C. SIMONS, *Hunter*.
 A. L. DONALDSON, *Hunter*.
 T. W. LEWIS, *Hunter*.
 JOHN H. FRANKLIN, *Hunter*.
 F. GRIMSTED, *Steward*.
 F. BERRY, *A. B.*
 FRANK LITTLE, *A. B.*
 J. D. STEPHENS, *A. B.*
 G. HARRIS, *A. B.*
 JOHN KELLY, *A. B.*
 JOE QUINN, *A. B.*
 MAURICE RATTO.
 THOMAS LOGAN.

EXHIBIT H.

[Translation.]

No. 1999.]

MINISTRY FOR FOREIGN AFFAIRS,
 ASIATIC DEPARTMENT,
 May 18, 1896.

MR. ENVOY: As I had the honor to inform the legation of the United States under date of October 12, 1895, the Imperial ministry did not fail to transmit in due time to the ministry of marine the documents relating to the claim presented by the owner, captain, and crew of the *James Hamilton Lewis* on account of the capture of that vessel by the Russian cruiser *Aleut*.

The Imperial ministry of marine has just sent us a memorandum on this subject, of which I make it my duty to send you herewith a copy. In acquainting yourself with this document you will kindly note that the said ministry finds that the complaints of the claimants are unfounded, and in consequence does not consider that there is room for further action.

LOBANOW.

TO MR. CLIFTON R. BRECKINRIDGE,
Envoy, etc.





[Faint handwritten notes and scribbles, possibly including a signature or date.]



[Translation of a memorandum of the Imperial ministry of the marine on the subject of the capture of the American schooner *James Hamilton Lewis*.]

The petition of the owners, captain and crew of the schooner *James Hamilton Lewis*, captured by the Russian ship of war *Aleut* July 21 (August 2), 1891, a petition presented in November, 1893, by the advocates, Jeffries & Earl, of Washington, to the Secretary of State of the United States of America, containing an exposition of the facts relating to the said capture, which is considered to have been illegal, even asking the intervention of the Government of the United States with a view to obtaining from the Russian Government indemnity, both for the capture itself and for the arrest of the captain and crew of the schooner and for the bad treatment which they should prove on the part of the Imperial authorities.

The exposition of facts is divided into several heads, as follows: First, voyage of the vessel; second, the capture; third, facts after the capture. It is supported by the following documents, to which are annexed in copy to the petition addressed to the Secretary of State: 1. An act of protest of Alexander MacLeen, captain of the schooner *James Hamilton Lewis*, against the capture of that vessel; an act drawn up and delivered to MacLeen the 30th of November, 1891, by Mr. W. D. Tillodson, consul-general of the United States at Kanagawa (Japan). 2. The depositions on the subject of the captain, MacLeen, and of four men of the crew, made January 13, 1893, before the deputy of the court of the district of San Francisco. 3. The log book containing data of the voyage of the *James Hamilton Lewis*.

The petition above mentioned addressed to the Secretary of State of the United States includes among other things the following considerations, formulated by the advocates under the title of "Responsibility of Russia." The present case does not at all bring up the question of the closed sea (*mare clausum*). The right of American vessels to navigate in Bering Sea is self understood. From both sides of the line of delimitation these waters are open to the vessels of commerce of all countries. That being admitted there can be no dispute or discussion, whatever pretention Russia may make to an exclusive sovereignty over the eastern part of Bering Sea or to the extension of her domination over the waters in question.

"The right of the Imperial Government to interdict to foreign vessels the hunting of seals on this side of its maritime frontier to a distance from the lower coast of 3 miles is not at all contested nor brought in question. If the plaintiffs had been surprised killing seals in Russian waters we concede that their vessels would have been liable to capture, and that they would have been, with their cargo, rigging, and apparatus, subject to capture and confiscation by sentence of a competent tribunal, in accordance with international law and the laws of all civilized nations, while the officers and crew would have been liable to such penalties as said tribunal might have lawfully inflicted on them. But, on the other hand, if it is established, as the evidence seems to show, that the vessel in question was quietly pursuing its voyage and that she was at a distance of 20 miles from the coast, toward which she was proceeding with a legitimate object, she was irregularly seized, in spite of the protests of her captain, and confiscated, with cargo and apparatus, by an officer of the Russian ship of war, it is clear that it was an arbitrary act and one which the Russian Government is responsible for, for the prejudice which the plaintiffs have suffered by that act."

The plaintiffs conclude by affirming that the capture, confiscation, and imprisonment in question having been illegal and in contravention to the existing treaties between Russia and the United States, they have based a claim against the Russian Government for a just indemnity estimated as follows:

Value of the vessel and rigging.....	\$25, 000
424 skins of seals taken during the voyage at \$20 each	8, 480
Probable result of the hunting voyage according to the average of the season.	40, 000
Illegal detention of the captain and crew, physical and moral suffering endured by them, and permanent injury caused by such treatment (25 men, at \$2,000 each person).....	50, 000
Total	123, 480

The substance of the documents annexed in copy to the petition is as follows:

1. The protest signed at Kanagawa by Captain MacLeen and 4 men of his crew states the facts as follows: At 6 o'clock in the morning, when the schooner was at a distance of 20 miles to the west of Copper Island, a Russian ship of war approached it on the starboard side, with flag raised, and fired a cannon shot. Understanding that it wished to speak with him, the American flag was hoisted on the schooner, and she was hove to. A boat was then lowered from the ship of war and boarded the schooner. The officer who came on board with his crew demanded the log book,

which was given him, and he asked to examine the vessel. The captain assisted in this, the schooner containing nothing which he wished to conceal. Then the officer left the schooner, taking with him the official log book, although the captain requested him to leave it on board. In putting off the officer declared that the schooner would have to follow the ship of war. Soon he returned in his boat with a detachment of armed marines and demanded that the captain and 7 men should leave the vessel. MacLeen refused, believing it his duty to remain on board, and undertook to put the schooner on her easterly course, followed on one side by the boat and on the other by the ship of war, which, after firing four or five cannon shots, began to sail around her from starboard to port, and then from port to starboard. Seeing himself very closely pressed by the ship, the captain of the schooner tacked to starboard. In executing this manœuvre the vessel fouled the ship of war and lost her jib boom in the collision. Meantime the ship of war attached her cables to the rigging of the schooner. The captain ordered these cut loose, but the execution of this order was hardly commenced when the Russian armed marines boarded the schooner and MacLeen was ordered on board the ship of war, the commandant of which declared that his vessel was captured. The captain of the *James Hamilton Lewis* having demanded by what right the capture was made, the commandant answered him that the schooner had been taken in Russian waters. MacLeen protested, stating that he was in an open sea, the waters of which belonged to all nations, and at more than 20 miles from the nearest point of land. He added that since the 28th of June of that year no one of the crew had gone ashore, that all the seals found on the schooner had been killed by gunshots on the open sea, and that the skins of the young seals preserved on board came from animals taken from the bellies of their mothers after these had been brought on board the vessel.

2. In his subsequent deposition at San Francisco on January 13, 1893—that is to say, one year and five months after the capture—Captain MacLeen added, among other things, what follows, to his former declaration received by the United States consul at Kanagawa. On August 2 he had made no attempt to hunt seals. The last dispatch of boats for the purpose of hunting dated back to July 3. During the entire season the schooner had never been nearer to Copper Island than at the time of her capture. Her last observations had been made July 30. The weather being foggy she was obliged to determine her position and to this end tried to see Copper Island which she made out August 2 at 4 o'clock in the morning. The seals found on board had not been taken in Bering Sea, but in the Pacific Ocean. Skins had not been salted since July 30. The Russian marines who boarded the schooner had pulled down the American flag, which they had torn in pieces and trodden under foot. On August 3, the schooner and her crew had been brought to Bering Island. There, the Russians had taken 24 skins, carrying them ashore, while part of the provisions were taken on board the *Aleut*. Then the schooner was sent to Petropavlovsk, where the Russians had taken away and sold five boats belonging to the *James Hamilton Lewis*. August 8, the commandant of the *Aleut* brought MacLeen a document in the Russian language, saying to him that it was the act of seizure, and insisting that he should sign it, which MacLeen only did under constraint. He immediately drew up a protest against the said seizure, a document which he gave to the commandant of the *Aleut*, who annexed the protest to the act of seizure, no copy of which was given to the captain of the schooner. September 2, the *James Hamilton Lewis* was sent to Vladivostok, where MacLeen was also sent on board a vessel of the national fleet. He arrived there September 28. The day of the seizure the captain of the *James Hamilton Lewis* had been placed under arrest. At Vladivostok he was permitted to go on shore on condition of presenting himself every day at the police office. He observed this order, demanding many times to be arraigned before a tribunal. The authorities positively declared to him that there was no need for him to be placed under judgment, and on October 10 the captain and crew of the schooner were informed that they could go free. Neither he nor his men had been lodged or nourished during their stay at Vladivostok. The latter had received 50 kopecks a day, but this sum being insufficient to support them, they had been obliged first to sell such clothing as they could spare and after this to beg for a living. As soon as Captain MacLeen was put at liberty with his crew he left Vladivostok and went to Nagasaki, where he hastened to make a protest before the consul against the seizure of his vessel.

The deposition of Captain MacLeen was confirmed by 4 men of the crew of the *James Hamilton Lewis*, as follows: The mate of the schooner *MacDonald* as well as Albert Donaldson, Oren Simons, and Andrew C. Simons, calling themselves hunters and attached to the service of the schooner. They have, moreover, declared as follows:

MacDonald deposed that he had been taken on board the ship of war immediately after the capture of the schooner. Two days after his arrival at Bering Island he

was permitted, with another man of the crew, to go aboard the schooner to get his clothes and effects, but everything of value had disappeared. He at once reported this to the Russian officer on guard on the *James Hamilton Lewis*, who told him to draw up a list of the articles which were missing and promised to report it to the commander of the *Aleut*. On this latter ship MacDonald was pressed into the service on board without receiving any other food than that which was furnished to the sailors of the crew. Two days after his arrival at Vladivostok 50 kopecks a day was given to him for his support, and with the other men of the schooner he was obliged to sleep on the ground at the pumping station. Resulting from this bad treatment he had caught smallpox and was sick for three months and a half.

The deposition of Albert Donaldson states that at Petropavlovsk they were sent ashore, where they received 15 kopecks a day for subsistence, which obliged them in order to live to work hard.

According to the joint declaration of Oren and Andrew C. Simons these two men lost the greater part of their effects, which they value at \$75, as well as an account book or portfolio containing \$8. At Vladivostok they were obliged to sleep on planks with the laborers. They furthermore declare that during the passage from Bering Island to Vladivostok the Russian officer stated to the commandant of the *James Hamilton Lewis* that the latter had been seized 33 miles from Copper Island.

3. The papers in the case contain, moreover, a copy of the log book in which is a list of the crew and the notes of the voyage of the schooner, to which is also annexed a copy of the protest given August 12 by the captain of the *James Hamilton Lewis* to the commander of the *Aleut*.

The report (dated August 5, 1891, No. 385) of Second Captain Brandt, commanding the schooner *Aleut*, the act of seizure of the American sailing schooner *James Hamilton Lewis*, dated Petropavlovsk, July 30/August 11, 1891, and the extract of the log of the *Aleut*, documents sent by the commander of Vladivostok, with a report dated September 23, 1894, and received December 8 of the same year, present the facts in question as follows:

The schooner *Aleut* was on July 21/August 2, 1891, at 4.40 in the morning to the west of Copper Island, about 3 miles to the north of its southern extremity, when a sailing schooner was sighted. It was ahead of the *Aleut*, followed a northwest course, and was approaching the island. The *Aleut* headed for her to pay her a visit, which the schooner seeing went about and crowded on all sail. During the pursuit the crew of the sailing schooner were seen from the *Aleut* to throw something overboard. At 5.15 o'clock, at 12 miles from the southern extremity of Copper Island, the *Aleut* overhauled the schooner and fired a blank shot, on which the latter vessel hoisted the American flag and came to. Two officers sent to visit her reported on their return that the vessel was from San Francisco and carried the name of the *James Hamilton Lewis*. They had found on board 6 small whaleboats, a great quantity of salt, guns, cartridges, powder, and bullets, together with some long poles of bamboo with iron points, furnished with cord and rings to drag wounded seals out of the water. On being interrogated the captain of the schooner stated that he had come into those waters to hunt birds and to fish. He at first affirmed that the number of the crew was 25 men. Then he reduced the number to 22, adding that 5 of them were absent. In fact, the schooner only contained 17 men, including the captain. The journal which he produced, under the name of the official log book for 1891, only contained three entries, two of which related to incidents of the life on board and the third stated that the schooner had been visited in the neighborhood of Sand Pocus, Alaska, by the *Thetis* of the United States war fleet. There was further noted some account of the schooner and her sailors. As to the notes of time and place relative to the voyage of the vessel the journal contained nothing.

Although this first visit did not reveal any salted skins of seals or otters, everything else showed, nevertheless, that one had to deal with a schooner poaching in our waters, and probably also on our shores, if occasion offered. In consequence, the commandant of the *Aleut* ordered Lieutenant Lebedeff to take with him 6 men to go aboard the schooner, make the seizure, send the captain and half the crew on board the *Aleut*, and then bring the *James Hamilton Lewis* to Nikolskoe. When these orders were brought to the knowledge of the captain of the sailing vessel, he peremptorily refused to submit to them, stating that if the commandant of the ship of war needed to see him he could come to him. Thereupon he resumed his course and continued to sail with the wind. Seeing the schooner standing away while a light fog began to spring up, the commandant of the *Aleut* gave chase. Overhauling him he demanded that he come to, and supported his words by firing a shot over his bow. There was no response, and the schooner continued her course. The *Aleut* permitted her to pass, then overhauled her again, taking her on the other side, and pressing closer to her this time. The commandant repeated his order to come to and again

supported it with a shot fired against the forward sails. To the verbal summons the captain answered some words, indicating the American flag. To the cannon shot, which pierced the jib, he paid no attention. Then the *Aleut* increased her speed and barred the passage of the schooner, which fouled her on the starboard side. The shock broke the jib boom of the *James Hamilton Lewis* and damaged the taffrail, as well as the after corner of the poop of the *Aleut*, which, having forced the schooner to stop, took her in tow. The captain of the schooner, MacLeen, as well as her crew, were brought on board the *Aleut* and were informed that their vessel was seized and would be brought to Nikolskoe, situated on Bering Island.

During the tow the schooner was subjected to a careful examination. Four hundred and twenty-four seal skins, one line for fishing for otters, and two skins taken from seals which, estimating their ages and following the estimates of the chief of the arrondissement of the Commander Islands, could only have been killed on shore. On arrival at Nikolskoe the captain of the *James Hamilton Lewis* had to deliver the documents of the vessel, and he was notified that his schooner was considered to be a prize for having been engaged in forbidden and illegal hunting, and that he was to be taken to Vladivostok in accordance with orders that crews of vessels of that category having been guilty of resistance should be brought to that port. Now, there had been resistance from the fact of the refusal of Captain MacLeen to come to on receipt of the order to do so. Consequently the commandant of the *Aleut* proceeded to arrest the captain of the schooner and her crew. An act was drawn up, signed by the Commandant Brandt and by the officers, as well as by the Captain MacLeen. The latter wrote on the back of this document the following protest, expressed in English:

"I, the undersigned, hereby protest, in the name of the schooner *James Hamilton Lewis* and her owners, against the illegal seizure of the said vessel, her rigging, cargo, and apparatus for hunting and fishing found on her, a seizure effected by the Russian ship of war *Aleut* August 2, 1891, in the open sea, in the neutral waters of the ocean. All the seal skins found on board the *James Hamilton Lewis* came from animals killed by gunshots in the said waters of the ocean. As to the skins of young seals which form part (of the above), they were taken from animals drawn from the bellies of their mothers taken on board. No seal had been taken within the forty hours preceding the said seizure. In consequence, I hold the Russian ship of war *Aleut* and her Government responsible for this detention, as well as for the damages caused by the illegal seizure of the *James Hamilton Lewis*, her cargo, and the apparatus found on her."

The captured vessel was then prepared, by order of the commandant of the *Aleut*, to be taken to Petropavlovsk. Lieutenant Lebedeff, Ensign Engmann, 2 quartermasters, and 7 sailors, with 6 men from the crew of the *James Hamilton Lewis*, were designated to bring her. All the skins found on board of the schooner were, by order of the commandant, Brandt, sent against receipt to the chief of the arrondissement of the Commander Islands, to be sent to London and sold for the account of the Government.

The 24th of July the captured schooner weighed anchor for her destination, Petropavlovsk, where the *Aleut* found her, arriving on the 27th of the same month. The captain and 10 men of the crew of the *James Hamilton Lewis* were sent by order of the captain of the *Aleut* on board the steamer *Vladivostok* of the national fleet, and 6 others left on board of their vessel. August 17 the latter was sent on to Vladivostok.

In the report which he presented to the commandant of Vladivostok, dated October 20, 1891, the commandant of the *Aleut* stated, among other things, that his ship was, on the 21st of July, in the morning, near the southern point of Copper Island, at the moment when the *James Hamilton Lewis* was perceived. The distinctness with which her sails could be seen did not permit of the distance which separated the two vessels to be estimated at more than 6 miles. It follows that the *James Hamilton Lewis* was distant 6 miles at most from the southern point of Copper Island. The schooner was heading toward the shore, but as soon as she perceived the *Aleut* she went about and put on all sail. She was overtaken at 13 miles from the point from which she had been first seen, at 11 miles from the southern point of Copper Island.

On arrival at Vladivostok of the documents collected on board the *James Hamilton Lewis*, it proved that the most important, namely the journal of the vessel, serving among other things to note daily the geographical position of the ship, was not among the number. It was replaced by a book not at all filling those conditions, although it was entitled "official log book," with mention that it has been delivered by the Treasury Department of the United States.

On examination of the present affair to the bottom, it appears to rest upon the following considerations:

As soon as the schooner *James Hamilton Lewis*, seen July 21/August 2, 1891, by the *Aleut* at 3 miles to the north of the southern extremity of Copper Island, noticed

that our ship of war was headed for her, she changed her course and stood away under all sail from the island in question. At the same time some objects were thrown overboard into the sea. When, after a pursuit of an hour and a half, the *James Hamilton Lewis* was overhauled, a great quantity of firearms, powder, apparatus for dragging killed seals from the water, seal skins, and among them two skins of young seals which could only have been killed on shore. This assemblage of facts gave to the commandant of the *Aleut* sufficient basis for declaring the captured vessel subject to prize, as engaged in illegal and forbidden hunting in Russian waters. All the preceding recital of circumstances preceding or following the arrest of the schooner are confirmed by the protocol of seizure and by the entries in the log book of the *Aleut*. The captain of the *James Hamilton Lewis* has only set up his simple allegation, without supporting evidence, recorded in his protest, and stating that the seal skins found on board his vessel came from animals killed by gunshots at sea, and that no seal had been taken within forty hours before the capture. Now, it lay entirely with the said captain to present, at the time of the arrest of the schooner, a journal of the vessel, the tenor of which from day to day would have left no doubt and which would have served to establish in a convincing and irrefutable manner the movements of the *James Hamilton Lewis* up to the moment of arrest. Whether such a journal was or was not kept on board the *James Hamilton Lewis*, it is certain that it was not given to the commandant of the *Aleut*, who claimed it at the time of the capture. In place of this the captain of the American schooner gave him, according to his own protest before the United States consul at Kanagawa, a book which, in spite of its title, Official Log Book, did not at all fill those conditions. This being admitted, the extract from the journal of the vessel presented by the claimants in November, 1893—that is to say, two years after the seizure—could not have the character of evidence in support of the assertions it is intended to corroborate. There is nothing to show that the entries it contains are accurate, having been made at the time; and one is even justified in doubting its authenticity.

The declaration of the Captain MacLean at the moment of his arrest should not be lost sight of when he explained his presence at the place where that arrest took place, by the design of fishing and hunting birds, passing in silence hunting of seals. Now, in searching the schooner no birds nor fish were discovered, but only seal skins and apparatus for hunting those animals.

With regard to the depositions made by Captain MacLean and some of the men of his crew before the deputy of the court of the district of San Francisco on the subject of the bad treatment which they received from the Imperial authorities, these are mere assertions, unsupported by evidence, and deserve no credence. The reports submitted on the subject of the present affair contain no statements in this regard, whence the conclusion is justifiable that the claimants never presented any complaint of that nature to our authorities at Petropavlovsk.

By reason of what precedes, and considering that the statements furnished by the plaintiffs on the subject of the present affair are bare of evidence worthy of belief, I declare regular the provisions taken by Second Captain Brandt, commanding the *Aleut*, concerning the arrest and seizure of the American schooner *James Hamilton Lewis*. In consequence I give notice that the demand for indemnity brought by the owners, captain, and crew of the said vessel should not be taken into consideration.

THE GERANT OF THE MINISTRY OF MARINE,
Aid-de-Camp General TCHIKATCHEFF.

Countersigned,
Director SEREBRIAKOFF.

EXHIBIT I.

[Copy.]

ROOM 34, WASHINGTON LOAN AND TRUST BUILDING,
Washington, D. C., December 8, 1896.

SIR: I received Acting Secretary W. W. Rockhill's letter of August 20, 1896, inclosing a copy of correspondence from the legation at St. Petersburg, No. 340, July 3, 1896, also a copy of a memorandum from the Imperial ministry of marine, relative to the seizure of the American schooner *James Hamilton Lewis* by the Russian man-of-war *Aleut* August 2, 1891.

The delay in replying was due to my absence from the city and difficulty of obtaining additional evidence, owing to the absence from the port of San Francisco of Captain MacLean and his crew. I have, however, received the original log book

with captain's affidavit attached, also affidavits of Albert L. Donaldson and A. C. Simons, two of the hunters on the *Lewis* at the time she was illegally seized, they being the only two in the port at the present time, which affidavits I herewith inclose.

They are directly to the point that the seal pups assumed by the Russian authorities to have been taken on land were not so taken, but were from the bodies of cows captured at sea, which, according to their experience, extending over a period of about ten years, is an everyday occurrence.

They, together with the master, contradict the assertion of the Russian authorities that something was cast overboard from the *Lewis* after sighting the *Aleut*, as well as testify to the authenticity of the log book herewith submitted.

Inasmuch as the Russian Government discredit the authenticity of the log book, I thought it well to send the original, containing the signatures of the crew, made at Vladivostock. Since—the voyage being broken up—the crew necessarily separated after leaving Valdivostock, their signatures to the log is strong corroborative evidence of the fact, testified to by Donaldson, Simons, and the master, that the log was in its present complete condition before they left that place. This ought to set at rest any doubt as to its authenticity in any fair and dispassionate mind.

It is, however, urged by the Russian Government that the master failed to deliver this book to the seizing officer when this log was demanded, and that the "official log" actually delivered has no entry of the vessel's positions.

As to the entries in the "official log," a superficial inspection would have disclosed on page 3 a copy of sections 4290-4292 of the Revised Statutes of the United States, which provide what matter shall be entered in such log. Matters relating to the navigation of the vessel are not among those enumerated, and are never so entered.

With respect to the failure of the master to surrender the log herewith inclosed, it appears to me to have been eminently wise on his part, in view of the fact that his vessel has been confiscated without being given the opportunity of a defense in a court of justice. That book was a record necessary to prove the master's innocence, and was kept for that purpose in case of a trial, when it would no doubt have been produced. No trial being granted, it is but reasonable to suppose that had this record been delivered to the seizing officer, it would have been lost sight of with as little ceremony as was observed in the confiscation.

The attitude of the Russian Government toward the depositions offered in evidence is somewhat unfortunate, they being characterized as "mere assertions unsupported by evidence, and deserve no credence." What is to be considered as evidence and what not, and why this particular evidence "deserve no credence," are matters left unexplained. What better evidence would be obtained than the direct testimony of the parties themselves?

Equally unfortunate is the assertion that Captain McLean, at the time of his arrest, "explained his presence in that place where the arrest took place by the intention of fishing and hunting birds, passing in silence over hunting of seals."

To a person of ordinary experience in affairs it would scarcely require the denial of the master, contained in his affidavit, herewith inclosed, to discredit this assertion, for it would be a person of exceedingly weak understanding who would offer such an explanation of his presence in those grounds, with seal skins and all the paraphernalia for sealing on board. Whatever may be otherwise affirmed of Captain McLean, he certainly is not such a person.

The assertion "that some objects were thrown overboard into the sea" is also directly denied by the three affidavits herewith inclosed. The Russian Government does not even vouchsafe a suggestion as to what those objects may have been, leaving the whole matter to inference.

Of course, the treatment which the Russians are alleged to have accorded the American flag is not a matter of private concern, and can have no direct bearing upon the merits of this case; but we would, under ordinary circumstances, expect our Government to give the utmost attention to such matters, since respect for the flag lies at the foundation of that protection which American citizens, when abroad, have the right to expect at the hands of their own Government. A rigorous insistence upon such respect would largely tend to avert wrongs which, when once committed, diplomacy can never adequately repair. In this connection, I call to the special attention of the Department the fact that the flag was torn to pieces and trodden under foot.

I think the position of the Department of State is correct with reference to the weakness of the Russian evidence. I see no other course to pursue. In doing so, however, I think this Government should insist upon the credibility of the evidence offered in behalf of the claimants. The evidence is conclusive that the *James Hamilton Lewis*, when seized, was not in waters subject to Russian jurisdiction.

I trust the log book and affidavits inclosed will place you in possession of new facts which will put the case on a different footing. So far as is now possible, I have followed the suggestions of the Department in the matter of procuring additional evidence.

I respectfully urge upon you the importance of having the present minister conclude this business, as he is familiar with the case.

Very truly,

GEORGE R. TINGLE,
Attorney for Claimants.

To the Honorable RICHARD OLNEY,
Secretary of State, Washington, D. C.

[Copy]

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

A. C. Simons, being duly sworn, deposes and says: That he was one of the hunters on board of the schooner *James Hamilton Lewis* at the time of her seizure by the Russian authorities.

He further deposes that the pup seal skins found on board of said vessel at the time of said seizure were taken from the bodies of the cows caught in the water, and neither they nor any skins were taken upon land.

He further deposes that he has been in the seal-hunting business as a hunter for a period of ten years, and that, in his experience, it is an everyday occurrence to take such pups from the bodies of cows killed at sea.

He further deposes that from the time the said *Aleut* first sighted said *James Hamilton Lewis*, up to the time of the seizure, nothing whatsoever was thrown overboard from said *James Hamilton Lewis*.

He further deposes that the log book presented as the log of said schooner, showing her positions during said voyage, and signed at the end by the crew, was the true log of said voyage, and signed by said crew after the seizure and during the time of their confinement in Vladivostock.

A. C. SIMONS.

Subscribed to and sworn to before me this 17th day of October, 1896.

[SEAL.]

MARK LANE,
Notary Public in and for the City and County of San Francisco, State of California.

[Copy]

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

Albert L. Donaldson, being duly sworn, deposes and says: That he was one of the hunters on board of the schooner *James Hamilton Lewis* at the time of her seizure by the Russian authorities.

He further deposes that the pup seal skins found on board of said vessel at the time of said seizure were taken from the bodies of the cows caught in the water, and neither they nor any skins were taken on land.

He further deposes that he has been in the seal-hunting business as a hunter for a period of ten years, and that, in his experience, it is an everyday occurrence to take such pups from the bodies of cows killed at sea.

He further deposes that from the time the said *Aleut* first sighted said *James Hamilton Lewis*, up to the time of the seizure, nothing whatsoever was thrown overboard from said *James Hamilton Lewis*.

He further deposes that the log book presented as the log of said schooner, showing her positions during said voyage, and signed at the end by the crew, was the true log of said voyage, and was signed by said crew after the seizure and during the time of their confinement in Vladivostock.

A. L. DONALDSON.

Subscribed and sworn to before me this 19th day of October, 1896.

[SEAL.]

JAMES C. KING,
Notary Public in and for the City and County of San Francisco, State of California.

EXHIBIT J.

LEGATION OF THE UNITED STATES, ST. PETERSBURG,
January 9 (21), 1897.

YOUR EXCELLENCY: Referring to the note of the Imperial ministry of May 18 (30), 1896, I have the honor to present to your excellency certain views of my Government regarding the seizure by the Russian cruiser *Aleut* of the *James Hamilton Lewis* in the North Pacific Ocean.

I am instructed to say that my Government does not regard the justification offered for the seizure of the *James Hamilton Lewis*, namely, that she had been taking seals on Russian territory or in Russian waters, as established in point of fact, but, on the contrary, maintains that all the facts offered in evidence of this theory against the *James Hamilton Lewis* by the Imperial Government are consistent with the lawful pursuit of her calling upon the high seas.

The Imperial Government has alleged that the seizure and confiscation of this vessel was made because she had violated, within Russian jurisdiction, the laws of the Empire for the protection of fur seals in Russian territory and waters. My Government considers that to justify the act the Imperial Government should show an invasion of Russian territory or territorial waters by this vessel, and the taking of seals by its master and crew on Russian shores or within one marine league thereof. In its reply, the Imperial Government has made no contention for jurisdiction over American vessels fishing in the North Pacific Ocean (or Bering Sea) beyond ordinary jurisdiction waters.

In the memorandum of the Imperial ministry of marine on the subject of her capture, a copy of which was inclosed in the ministerial note referred to, no evidence of an affirmative character is adduced in support of the contention that the *James Hamilton Lewis* or her crew ever entered Russian waters; while, on the other hand, the original log book showing the vessel's daily position during the voyage, which is now in the archives of this legation, together with the original affidavit of the master, shows clearly that, during that voyage at least, she had not been in Russian waters.

The action of the captain in retaining, after the seizure of his vessel, this log book, showing his position from day to day, has been alluded to in the memorandum of the ministry of marine as damaging to his statements, and its authenticity has been discredited in the same document. As this book formed an important piece of evidence in his case, it is not surprising that the master of the *James Hamilton Lewis* desired to retain it in his own possession. As regards its authenticity, not only is it supported by the sworn affidavits of the master and two members of the crew, but it bears upon its face every evidence of being a genuine document, as I will take an early opportunity of exhibiting to your excellency. All of the entries are made in due order, followed by the protest of the captain upon the reverse page of the last entry, and this in turn is consecutively followed by the statement subscribed to by every member of the crew over his signature at Vladivostock. As the crew separated after leaving Vladivostock, their signatures to the log book is strong corroborative evidence of the fact that it was in its present condition before they left that place. A plotting of the course of the *James Hamilton Lewis* as indicated by this log book shows a voyage entirely consistent with the assertion that she had been sealing outside Bering Sea; and all the documents, including the affidavits of the captain and several of the crew, attest to this, as well as to the fact that the seal skins found on board were taken outside of Russian jurisdiction. On the other hand, not only is it not contended in the memorandum of the ministry of marine that the vessel was within a marine league of Copper Island when sighted by the *Aleut*, but no evidence has been adduced that any seals had been taken within Russian jurisdiction or that the vessel had ever been within its limits. An early entry in the log book of the voyage states that on June 28 the American gunboat *Thetis* was spoken, and warned the captain of the *James Hamilton Lewis* against going into the Bering Sea seal hunting, and the master adds, "which I abide by," thereby indicating a law-abiding disposition not likely to run counter to the laws of a foreign nation which would necessarily involve more serious consequences for him than the infraction of those of his own country could involve.

The evidence of the statement in the memorandum of the ministry of marine is that the *James Hamilton Lewis* was seen moving toward Copper Island, but more than a marine league away; that on sighting the *Aleut* she turned and fled, and threw something overboard; that when pursued and overhauled the master said he was engaged in fishing and hunting birds; that the log book did not show where the vessel had been; that a large number of seal skins were found on board, with a complete

sealing outfit, and that two of the seal skins had been taken from pups which were too young to swim.

It is the opinion of my Government that this is a chain of circumstances which might have served the purpose of connecting the *James Hamilton Lewis* with any depredations in Russian waters otherwise established by direct evidence, when it was only a question of who was the culprit. But the Imperial Government has not shown any corpus delicti, that any seals were taken in Russian waters or jurisdiction by this or any other vessel. The evidence simply shows that she had come into the neighborhood of Copper Island, where, by Russian acknowledgment, she had a perfect right to come, and that she had taken somewhere a large number of seals, which, so far as the Imperial Government is concerned, she had a perfect right to take, provided they were not taken within Russian jurisdiction, and that the master evinced a disposition to escape and evade inquiries made of him. The evasion of search and inquiry is, in the opinion of my Government, circumstantial evidence only when an obligation to submit to investigation and to answer questions truly is first established. If the master of the *James Hamilton Lewis* was overhauled and subjected to interrogation which the interrogator had no lawful authority to make, his reticence and indisposition to make a full disclosure can not be given the construction put upon them by the Imperial Government, and my Government is unable to recognize that, from the evidence adduced, such authority existed on the part of the captain of the *Aleut*. But I beg to point out to your excellency that the master of the *James Hamilton Lewis* denies these allegations as to the evasion of inquiries, as is shown by his affidavit which I have referred to above; but, admitting them to be true, they do not, in the opinion of my Government, even tend to connect the master with any unlawful act in Russian jurisdiction. He explains in a reasonable and credible manner his movements and occupation up to the time and place of his capture, and also the presence of the two skins of young seals which at that age could not have been swimming in the ocean. They were taken from the dead bodies of their mothers, as is duly sworn to by two of the hunters of the *James Hamilton Lewis*. It is a well-known fact that many of the female seals killed on the high seas are pregnant with young, ready to be born on reaching the rookeries.

While my Government does not wish it to be understood as defending the practice of killing mother seals pregnant with young on the high seas from an economic point of view, still it maintains that such an act is not in violation of any law which the Imperial Government is justified in enforcing against the *James Hamilton Lewis*.

My Government feels itself bound to dissent from the inference which the Imperial Government has drawn from the circumstances set forth, and maintains that Russia has taken an American vessel on the high seas at least twelve miles distant from Russian territory, and confiscated that vessel, her equipment, and cargo. That she also arrested and imprisoned the master and crew of this vessel, and after they were released they were left to make their way home, penniless, as best they might. My Government contends that such an act can only be justified on proof of infraction of Russian law, and it confidently believes that when the Imperial Government reconsiders the case upon the facts as they now stand, it will readily acknowledge that the *James Hamilton Lewis* was unlawfully taken and confiscated. In this belief it would seem that nothing remains but to ascertain what reimbursement is due to the owners, the master, and the crew of the confiscated vessel.

I avail myself of this occasion to renew to your Excellency the assurance of my most distinguished consideration.

HERBERT H. D. PEIRCE,
Chargé d'Affaires ad interim.

To His Excellency Count LAMSDORFF,
Adjoint of the Imperial Ministry of Foreign Affairs.

EMBASSY OF THE UNITED STATES OF AMERICA, ST. PETERSBURG, RUSSIA.

I, Herbert J. Hagerman, second secretary of the embassy of the United States of America at St. Petersburg, Russia, do hereby certify that I have compared the foregoing copy of a note to the Imperial Russian ministry of foreign affairs, from the legation of the United States at St. Petersburg, dated January 9/21, 1897, with the copy of the original of said note recorded in the archives of this embassy, and that the same is a correct transcription therefrom and of the whole of said note.

In testimony whereof I have hereunto set my hand and affixed the seal of the embassy of the United States this 9th day of March, 1900.

[SEAL.]

HERBERT J. HAGERMAN,
Second Secretary United States Embassy

EXHIBIT K.

[Memorandum.]

LEGATION OF THE UNITED STATES, ST. PETERSBURG.

On the morning of August 2, 1891, the American schooner *James Hamilton Lewis* was compelled by force of arms to come to, was boarded and searched, and afterwards forcibly and violently seized by the officers of the Russian war cruiser *Aleut* at a point admitted by the commander of the Russian war vessel to have been at least 12 miles from the Russian coast (viz, Copper Island), and claimed by the captain of the *Lewis* to have been 20 miles from that land.

The preliminary search did not reveal any skins of seals, but the commander of the *Aleut* appears to have considered that the outfit of the vessel was such as to indicate that she might be engaged in poaching seals in Russian waters, and, as he expressed it, "probably upon our shores also, if occasion offered." In his report the commander says: "In consequence," that is to say, in consequence of the suspicions aroused by the equipment of the vessel, "the commandant of the *Aleut* ordered Lieutenant Lébédéff to take with him six men, go aboard the schooner, and make the arrest."

After the arrest, and in taking the *Lewis* with a prize crew to Bering Island, a more thorough search revealed 424 salted seal skins, one line for fishing sea otters, and 2 skins of seals too young to swim, and therefore presumed by the Russian officers, apparently, to have been taken on shore.

At Bering Island her catch of seal skins, her outfit, and her stores of provisions were taken from her and she was sent in charge of a prize crew to Petropavlovsk, and from there to Vladivostock.

The master and crew were held prisoners from the time of the capture until October 10, 1891. The master was compelled to sign a paper in Russian which he believes, but, as he does not understand the language, he does not know, was a notice of seizure of the schooner, and against this he filed a written protest. Afterwards at Vladivostock he was obliged to sign another paper which he was informed was an acknowledgment that he and his crew were prisoners. The crew were subjected to arduous labor, on very insufficient rations and without any adequate accommodations, from the time of the seizure until their arrival at Vladivostock. While at Petropavlovsk the rations allowed them were barely sufficient to sustain life, and at Vladivostock they were still very inadequate. At this place they were obliged to sleep on the floor of some sort of a building quite unsuited to healthful conditions. Here two of the crew contracted smallpox and one of them afterwards died.

No trial was ever given them or the vessel by the Russian authorities, although the master repeatedly demanded one.

In consequence of the above-recited arrest of the vessel, master, and crew, their detention and hard treatment, the owners, master, and crew of the American schooner *James Hamilton Lewis*, all American citizens, memorialized the Government of the United States seeking damages amounting to \$123,000, as set forth in the note and inclosures of the United States legation at St. Petersburg to the Imperial ministry of foreign affairs, dated July 11, 1894, N. S.

In the memorandum of the Imperial ministry of marine, a copy of which was inclosed to the legation of the United States in the note of the imperial minister of foreign affairs, dated May 18, 1896, on the subject of the capture of the *Lewis*, no invasion of Russian territory or territorial waters by this vessel, nor the taking of seals on Russian shores, or within a marine league thereof, is shown. There is no contention in the reply of the Russian Government to the claims of the United States that Russia has jurisdiction over American vessels fishing or hunting in the North Pacific Ocean beyond ordinary jurisdictional waters. Furthermore, not a particle of affirmative evidence has been adduced to show that the vessel or her crew ever entered Russian waters. It is not even shown that when first sighted by the *Aleut* coming toward Copper Island she was within a marine league of land, and upon being pursued by that vessel she went about and sailed away from the island, so that when overhauled she was from 12 to 20 miles from shore.

It is the claim of the Government of the United States that the *James Hamilton Lewis* was not within Russian jurisdictional waters when seized, and that she never had been, for any purpose whatever. But had she been within such jurisdiction, so long as she was not there for an unlawful act, her seizure would not have been justifiable. To justify such a seizure it would be necessary to establish an act of depredation on her part within such waters.

In point of fact the evidence simply shows that the *Lewis* had come into the neighborhood of Copper Island, where, by Russian acknowledgment, she had a perfect

right to come; that she had taken somewhere a large number of seals, including two pups too young to swim, which, provided she had not taken them within Russian jurisdiction, she had a perfect right to take, so far as Russia was concerned, and that the master had evinced a disposition to escape and to avoid search. In the absence of any obligation to submit to search, the Government of the United States can not admit that such evasion is circumstantial evidence of guilt.

It was also declared by the commander of the *Aleut* that during the chase the crew of the *Lewis* were seen to throw something overboard. This is denied by the master and crew of the schooner; but as there is no evidence whatsoever to show what this something was, or, in any way to connect it with an unlawful act, it must be considered as immaterial.

The log book of the *James Hamilton Lewis*, which is exhibited, and a copy of which, duly authenticated by the legation, is hereto appended, indicates the course of the vessel during the entire voyage up to the time of the arrest, and shows that she never had been nearer to Russian jurisdiction than at the time when she was sighted by the *Aleut*. This log book bears upon its face every evidence of genuineness. It is sworn to by the master of the schooner as being a true record of the voyage, and the signatures of the crew attached to the declaration as to the seizure, which follows seriatim the last entry of the vessel's position, could only have been secured at Vladivostock, the crew being separated on leaving that place.

Doubt has been cast upon the authenticity of this log book by the officials of the Imperial ministry of marine owing to its not having been produced at the time of the seizure, and in view of the fact that another log book, called the official log book, was at that time submitted, in which were only certain brief entries which did not at all indicate the position of the vessel from day to day. There appears here to be a misunderstanding on the part of the officials of the Russian Government as to what the so-called official log book is.

The statutes of the United States provide and require that every vessel making voyage from a port in the United States to any foreign port is required to carry an "official log book," specifically so called in the statute, in which certain entries regarding the personnel of the crew are required to be made. The purpose of such an official log book is to offer protection to the members of the crew against possible abuse of authority, and, as in case of any claim on the part of a member of the crew against the master or owners of the vessel, this book might be required to be retained as evidence in a court of law, it might well happen, should the record of the daily position of the vessel be kept in this book, that embarrassment might arise, owing to its absence from the ship. Hence it is not the custom to record the ship's course in this "official log book," but to keep it only for the record of the events specified in the statute. This disposes of the point raised by the Imperial Government that the ship's daily position and due course were not indicated in the official log book exhibited by the master of the *Lewis* to the commander of the *Aleut* and confiscated by him. But it is further argued by the Imperial ministry of marine that the failure to produce the log book which did show the vessel's daily position is evidence that such a book did not exist at the time of the arrest, but was fabricated later. This conclusion is not warranted. On the contrary, as this book was the direct evidence that the vessel had not been within Russian waters, and therefore could not have committed any act of depredation therein, and as the master proposed not alone to protest but to make a claim for damages on account of the arrest from the Russian Government, it was of the utmost consequence to him that this important evidence in the case should not pass out of his keeping, especially in view of the fact that the official log book had been immediately confiscated on its exhibition.

This action of the commander of the *Aleut* in confiscating the official log book alarmed the master of the *James Hamilton Lewis*, who, being inexperienced in matters of official procedure, feared that the surrender of this book into the hands of the arresting parties, or the putting it in jeopardy of confiscation, would be an unwarrantable action on his part, in view of the rights and interests of the owners and crew, and even that, if by any contributory act of his it should be seized, he would lay himself liable for damages for the loss of the vessel and sufferings of the crew. That log book is now produced in its original condition, and bearing upon its face such evidence of its authenticity and of its not having been tampered with as to put it beyond any reasonable question as valid testimony to the vessel's position during the voyage. A plotting of the course of the vessel according to the data furnished by this log book shows a track entirely consistent with the ostensible object of the voyage, namely, the pelagic hunting of seals upon the open seas, and shows that she did not cross the line fixed by treaty ceding Alaska to the United States until about twenty-four hours before her seizure, and that she was never within a marine league of the Russian coast, her nearest approach thereto being at the time she was sighted by the *Aleut*.

Even were it claimed and conceded that all Bering Sea, on the Russian side of the line referred to, is within the territorial jurisdiction of Russia, it is not believed by the Government of the United States that the Imperial Government would claim the right to seize and confiscate foreign vessels or their cargoes and imprison their crews merely because they happened to come within those waters. There is, however, no contention, in the reply of the Imperial Government, that it had jurisdiction over American vessels fishing in the North Pacific Ocean (or Bering Sea) beyond ordinary jurisdictional waters.

The presence of the skins of two young seals, or pups, in the vessel was assumed by the commander of the *Aleut* as evidence that these pups had been killed on shore, doubtless on the basis of the well-known fact that up to the age of six to eight weeks, during which time the pups retain the black hair with which they are born, but which is shed and replaced by gray hair at about two months old, the young seals can not swim. But the evidence produced before the Paris tribunal clearly established, if it established nothing else, that an immense number of female seals are killed at sea yearly, in the bellies of which are found young. Indeed, this is shown by that evidence to be a daily occurrence, and several experts declared that one-half of the seals taken at sea are pregnant mothers. In the evidence before that tribunal it was further shown that the skins of "black pups," so called, are regularly quoted on the London market, and these are the skins of young seals taken from the wombs of their dead mothers killed at sea by the pelagic seal hunters.

The two skins of young seals found on the *James Hamilton Lewis* were, in fact, taken from the bellies of their mothers, which were captured on the open sea, as is sworn to by the master and two of the hunters, copies of whose sworn affidavits are submitted herewith.

The following quotations from the proceedings of the Paris tribunal furnish further strong corroborative evidence of the truth of the statement of the master that the seals whose skins were found on the *James Hamilton Lewis* were taken on the open sea.

In the paper by Dr. J. A. Allen, submitted in evidence by the Government of the United States, occurs the following:

"The proof of the claim that 80 to 90 per cent (probably the latter figure is nearer the truth) of the seals killed in pelagic sealing are females, is varied and conclusive. It is so stated by the experts in the fur trade, whose business it is to classify and grade the skins in accordance with their value and quality. The usual marks which characterize maternity are not only obvious in a seal's pelt, but the quality of the pelt of the breeding female is much inferior to that of the 'bachelor' seals, which constitute the catch from the rookeries. The northwest coast, or pelagic catch, has sometimes been designated in the trade as the 'female catch,' from the great preponderance of female pelts."

Now this was the distinguishing characteristic of the skins found on the *James Hamilton Lewis* and seized by the *Aleut*. During the proceedings the deposition of Mr. Thomas Morgan, agent of the lessees on the Pribilof Islands and of the lessees on the Commander Islands, was submitted in evidence. In his deposition Mr. Morgan stated upon oath: "I have also examined the skins seized from the *James Hamilton Lewis* in the year 1891 by the Russian gunboat *Aleut*, numbering 416, of which at least 90 per cent were skins of female seals, and from my long observation of seals and seal skins I am able to tell the difference between the skin of a male and the skin of a female seal."

Mr. John Malowansky, agent of the lessees of the Commander Islands, in his sworn affidavit, also submitted in evidence before the tribunal, stated: "In 1891 the schooner *J. H. Lewis* was caught near the islands by the Russian gunboat *Aleut* and found to have 416 skins on board. I made a personal examination of these skins, and found that from 90 to 95 per cent were those of female seals."

It appears, therefore, that the skins taken from the catch of seals of the *James Hamilton Lewis* had in a marked degree the indications of a pelagic catch.

Now, it was clearly proven before the Paris tribunal that the success of pelagic sealing does not at all depend upon close proximity to the Seal Islands. The course of the British schooner *Ada* on a pelagic sealing trip during the summer of 1897 shows that more seals were taken at 137 miles from the islands than were captured at 40 miles from them. The British schooner *Alfred Adams* in the same season took more seals in a given time at 125 miles from the islands than at 60 miles from them. The mass of evidence which was presented before the tribunal showing the great distances to which the female seals go from the islands in search of food, and at which they are killed by the pelagic hunters, is voluminous and conclusive; but the two typical illustrations cited sufficiently show that such hunting as that pursued by the *James Hamilton Lewis* does not require incurring the risk of seizure by close approach to the islands for its successful practice.

Briefly, the *James Hamilton Lewis* did not require to practice her calling within Russian jurisdictional waters; nor did she do so. That she approached Copper Island was because she desired to verify her reckoning, taken for days previous in the dense fogs which prevail during the summer months in the North Pacific Ocean. Her log book and the depositions of her crew show where she was and that she was cruising entirely without Russian jurisdiction. This evidence is not only in itself stamped with every indication of veracity, but it is entirely consistent with and sustained by all the well-known conditions affecting its import. On the other hand, there is not a scintilla of direct incriminating evidence against the vessel, her master, or her crew.

It is therefore the confident hope and belief of the Government of the United States that the Imperial Government will now, upon the new evidence submitted, without further delay reimburse the owners, master, and crew of the *James H. Lewis* for their losses sustained by the arrest and confiscation of the vessel, her outfit and cargo, and the imprisonment of her master and crew.

This new evidence consists of the original of the log book of the vessel, a copy of which only was previously submitted, and the supporting affidavits of the master and two of the hunters.

The entries in the log book are all made consecutively in regular and systematic order, without variation in spacing, up to the day of the arrest. On the reverse page following the last entry is given a copy of the protest of the master, which occupied two pages, and on the reverse page, following this, commences a statement of the facts of the arrest, signed by every member of the crew, to the number specified by the commander of the *Aleut* as constituting the company of the *James H. Lewis*, when seized, save one. This lacking name is that of the man who died at Vladivostok. These signatures are all written with the same ink, and as, after leaving Vladivostok, the crew separated and became scattered, their signatures could only have been obtained there, while the consecutive sequence of all the matter in the book, written without variation as to spacing or handwriting, and followed, without hiatus, by these signatures, clearly shows that these men signed a document which was complete at the time.

EMBASSY OF THE UNITED STATES OF AMERICA,
ST. PETERSBURG, RUSSIA.

I, Herbert H. D. Peirce, first secretary of the embassy of the United States of America at St. Petersburg, Russia, do hereby certify that I have compared the foregoing copy of a memorandum of the embassy of the United States at St. Petersburg with the copy of the said memorandum now on record in the archives of this embassy, and that the same is a correct transcription therefrom and of the whole of said memorandum, and of a memorandum which the ambassador of the United States handed to the officials of the Imperial Russian ministry of foreign affairs in my presence, and left with said official.

In testimony whereof I have hereunto set my hand and affixed the seal of the embassy of the United States this 8th day of March in the year 1900,

[SEAL.]

HERBERT H. D. PEIRCE,
Secretary of United States Embassy.

EXHIBIT L.

EMBASSY OF THE UNITED STATES,
St. Petersburg, March 16/28, 1898.

YOUR EXCELLENCY: In response to the note of March 15/27 which you have had the goodness to address me, I have the honor to transmit herewith the original log book of the American schooner *James Hamilton Lewis*, for examination by the Imperial ministry of marine, to be duly returned to this embassy. In view of the nature of this document, constituting in itself important evidence in the case which could not be replaced by a copy, I venture to ask your excellency to kindly furnish me with a receipt of the log book, to be filed in the dossier of the case. I would further ask that I be permitted to personally point out to the board of officers of the Imperial ministry of marine, whose province it is to consider the claims of the *James Hamilton Lewis*, certain salient features of this log book, in a personal interview.

I take this occasion to point out to your excellency that this case has now been under consideration for four years, and to express the hope that it may be found practicable to bring it to an early adjustment.

I beg that your excellency will accept the assurance of my high consideration.

ETHAN A. HITCHCOCK.

To his excellency Count LAMSDORFF,
Adjoint of the Imperial Ministry of Foreign Affairs, etc.

EMBASSY OF THE UNITED STATES OF AMERICA,
ST. PETERSBURG, RUSSIA:

I, Herbert J. Hagerman, second secretary of the embassy of the United States of America at St. Petersburg, Russia, do hereby certify that I have compared the foregoing copy of a note to the Imperial Russian ministry of foreign affairs from the embassy of the United States at St. Petersburg, dated May 16/28, 1898, with a copy of the original of said note recorded in the archives of this embassy, and that the same is a correct transcription therefrom and of the whole of said note.

In testimony whereof I have hereunto set my hand and affixed the seal of the Embassy of the United States this 10th day of March, 1900.

[SEAL.]

HERBERT J. HAGERMAN,
Second Secretary United States Embassy.

EXHIBIT M.

EMBASSY OF THE UNITED STATES,
St. Petersburg, July 23/August 4, 1898.

YOUR EXCELLENCY: Referring to my conversation with you to-day in relation to the case of the *James Hamilton Lewis*, I have the honor to submit the following points for your excellency's consideration:

The Imperial ministry of the marine has, as your excellency informed me, stated that the log book of the *James Hamilton Lewis* is, in its opinion, fabricated and not to be accepted as evidence of the schooner's course, but offers no proof whatever warranting such a suspicion. On the other hand, this book is confidently submitted by my Government as a bona fide document, sworn to by the master of the schooner in an affidavit attached to the book itself, and, moreover, the signatures of the crew to the statements of facts appended to the journal could have been obtained only at Vladivostok, the crew having separated and become widely dispersed thereafter. Further, as this statement follows seriatim and without hiatus the entries in the journal, the book could not have been fabricated after leaving Vladivostok, and it is clear that the master had not the materials necessary for concocting a false log book at that place. These would include a sailing chart of the waters of the Bering Sea.

The ministry claims that the young seals, the skins of which were found on the schooner, were taken on the Russian island, but this again is a mere suspicion, with no proof whatever warranting it.

As pointed out in my memorandum, left with the ministry of foreign affairs on March 17 last, nothing is better demonstrated than that young seals are constantly taken in the bellies of their captured mothers in pelagic sealing. Such skins constitute an article of special trade in the London market. But this, as well as the sworn statement of the captain and the crew that these two pups were taken from the bellies of their mothers captured outside of Russian waters, and many other points in my memorandum above referred to, the ministry of marine quite ignores.

The ministry of marine further argues that the attempt of the captain to escape is evidence of guilt. In reply I have simply to say that he went about, on finding himself close to Copper Island with a Russian man-of-war coming in pursuit of him, to avoid the very event which afterwards happened.

But I would further point out that, in point of fact, the report of Second Captain Brandt, commanding the *Aleut*, does not state, nor does any of the evidence of the Russian Government, as far as the United States embassy or the United States Government is informed, show that the *Lewis* was, when sighted or at any other time, within Russian jurisdictional waters. Captain Brandt states that at 4.40 a. m. on August 2, when to the west of Copper Island and about 3 miles to the north of its southern extremity, a sailing schooner was sighted ahead following a northwesterly course and approaching the island. Upon the *Aleut* pursuing her the schooner went

about, and at 5.15, or just thirty-five minutes after her being first sighted, she was overhauled at 12 miles from Copper Island. Now, it is quite out of the question to suppose that the vessel was able to observe the chase of the *Aleut* and go about in less than five minutes, and indeed it is highly improbable that she did so in less than ten minutes after her being sighted by the *Aleut*, which had to get under way; but allowing that she was chased during thirty minutes, to have been within the 3-mile limit when seen, she must have sailed at the rate of 18 miles an hour, a quite impossible feat for such a vessel. No racing yacht sailing under the best conditions for speed has ever attained a higher speed than 1 mile in five minutes. The *Lewis* had to cover 9 miles to have been within 3 miles of land when sighted and 12 miles from land when overhauled. To cover this distance, sailing even at the extraordinary rate of 1 mile in five minutes, would have required forty-five minutes.

The situation to-day is as follows: The *James Hamilton Lewis* was captured and confiscated eight years ago, and our claim remains unsettled. The United States Government has supported its claim in all its details by sworn evidence, duly certified and clearly proving that:

The *James Hamilton Lewis* was, when illegally captured, where she had a perfect right to be, viz, on the open seas and beyond the jurisdiction of the Russian Government; and this fact is shown both by the affidavits of the captain and crew of the *Lewis* as well as according to the commander of the *Aleut's* own figures as to time and distance.

That the skins of the 2 seal pups were not taken on or anywhere near shore, as is charged by the unsupported claim of the commander of the *Aleut*; and

That 424 seal skins were taken by the captain and crew of the *Lewis* in violation of no law.

On the other hand:

The Imperial ministry of marine submits no legal proof of evidence whatever either that the *Lewis* was within Russian jurisdiction when captured, or that seal pups were captured on land, or that the 424 seal skins were taken in Russian waters.

In calling the foregoing to your attention I avail myself of this occasion to renew to your excellency the assurance of my most distinguished consideration.

ETHAN A. HITCHCOCK.

To His Excellency Count MOURAVIEFF,
Imperial Minister of Foreign Affairs, etc.

EMBASSY OF THE UNITED STATES OF AMERICA,
ST. PETERSBURG, RUSSIA.

I, Herbert J. Hagerman, second secretary of the embassy of the United States of America at St. Petersburg, Russia, do hereby certify that I have compared the foregoing copy of a note to the Imperial Russian ministry of foreign affairs from the embassy of the United States at St. Petersburg, dated July 23/August 4, 1898, with a copy of the original of said note recorded in the archives of this embassy, and that the same is a correct transcript therefrom and of the whole of said note.

In testimony whereof I have hereunto set my hand and affixed the seal of the embassy of the United States this 10th day of March, 1900.

[SEAL.]

HERBERT J. HAGERMAN,
Second Secretary United States Embassy.

EXHIBIT N.

[Translation.]

No. 4587.]

MINISTRY FOR FOREIGN AFFAIRS, FIRST DEPARTMENT,
October 19, 1898.

MR. CHARGÉ D'AFFAIRES: Having received the note of the embassy of the United States dated July 23 (August 4) of this year, relative to the affair of the American schooner *James Hamilton Lewis*, I have not failed to communicate it to the ministry of marine.

The said note as well as the previous communication of the embassy dated March 6 (18) of this year, having been made the subject of a most thorough examination on the part of the competent authorities, I have the honor to transmit to you to-day the reply of the Imperial ministry of marine contained in the memorandum hereto annexed.

Returning to you herewith the log book of the American schooner in question, which the embassy had the goodness to send to us, I seize the occasion to renew to you, Mr. Chargé d'Affaires, the assurance of my distinguished consideration.

COUNT LAMSDORFF.

Mr. H. PEIRCE,
Chargé d'Affaires of the United States of America.

The account of the seizure of the American schooner *James Hamilton Lewis*, as related in the memorandum annexed to the ministerial note of May 18, 1896, states that on July 21 (August 2), 1891, in the morning, the sailing schooner *James Hamilton Lewis*, of San Francisco, was seen from on board the cruiser *Aleut* of the Imperial Russian navy, then lying near the southern extremity of Copper Island in Bering Sea, the schooner being about 5 miles from the coast. The cruiser *Aleut*, after having given chase to the vessel, arrested her at a distance of 11 miles from the shore as liable to confiscation for being engaged in illicit seal hunting in Russian waters. On the captured vessel there were found among other things a chart of those waters, the official log book, and other documents.

To the claim of the captain of the *James Hamilton Lewis* alleging that he had not gone into Russian waters for the purpose of illicit hunting of seals, and that he was arrested outside of such waters, it is answered as follows:

1. The fact of the presence in Russian waters of a vessel presumably engaged in illicit hunting is sufficient justification of her pursuit, even after the vessel has quitted the waters in question; the place where the *James Hamilton Lewis* was seen by the Russian cruiser is sufficiently conclusive under the circumstances to justify the right of pursuit, for were it otherwise the protection of the national interests confined to our cruisers would become entirely illusory.

But a radius of 5 miles ought to be considered as coming within the limit of territorial waters. According to the principles of international law territorial waters are understood to be the extent of sea adjacent to the shores over which the bordering power can, in fact, exercise dominion, and which constitutes a prolongation of its territory.^a

In view of the existing means of coast defense, the perfection of armaments, as well as the new conditions of social life (military, financial, and economic needs), the determination of the extent of territorial waters at 1 marine mile from the coast, according to the theory invoked to sustain the claims in question, could not at all be considered as justifiable, neither from the point of view of the practical range, as it should, nor as answering all the necessities in view.

Questions relative to the exploitation by foreigners of the various industries of hunting and fishing in territorial waters may be regulated by international arrangement, but in default of such arrangements they should be regulated according to the general principles applicable to the subject. In the present case, independently of the principles above enunciated, the special necessity of the protection of the fur seals may be cited, a necessity also recognized by the United States, inasmuch as it has concluded with the Imperial Government of Russia—subsequently, it is true—the arrangement of 1893, by which the extent of the prohibited zone is fixed at 30 miles around the Commander Islands—that is to say, up to a limit much beyond that in question in the present affair.

2. As for the presumption regarding the object of American schooner's coming into Russian waters, a presumption which was the motive of the pursuit and arrest of the vessel, it was justified by the following facts: Going about of the schooner on being sighted; persistent refusal to permit a search; inaccurate statement with regard to the purpose of her course and to the composition of the crew; haste employed to set in order whatever was inside the vessel; fact of concealing 424 skins, the result of the hunt; presence on board of various apparatus used in hunting fur seals, as well as 2 skins of young seals which could only have been killed on shore; refusal to produce authentic documents of the vessel; vague declarations with regard to hunting previously on the high seas, etc. The foregoing shows sufficient justification of the arrest of the vessel in question.

3. As to the argument on the fact that the confiscation of the vessel and her cargo was done by executive and not by judicial procedure, it is answered as follows:

^a "Terræ dominium finitur ubi finitur armorum vis." In every case, according to existing opinions, the extent of territorial waters should be considered as 5 miles from shore.

Previous to the publication of the law of January 1, 1893, forbidding seal hunting under pain of criminal action, administrative procedure was applicable under guaranty of equity, provided by the laws in force and by instructions from the supreme authority. In the present case the fact must be taken into account that the sale at auction of the confiscated material took place in accordance with the agreement between the ministry of marine, the governor-general of the amour, and the ministry of finance; the auction was fixed by the council of the admiralty. Under these conditions the procedure must be considered as having been entirely regular.

A new element has been introduced into the affair by the recent presentation of the log book of the schooner *James Hamilton Lewis*, containing data on the subject of her cruise from March 7, 1891, to the day of her arrest near Copper Island. Doubtless a document of this nature might have contributed to elucidate the affair, and even eventually to spare much damage to the vessel in question if it had been presented at the desired moment, and if it had served to directly confirm the allegations of the captain.

This latter, however, instead of complying with his most elementary obligations in this respect, since he states that he was engaged in making certain verifications near the Russian coast, delivered to the officer sent to interrogate him another register, bearing the title "Official Log Book," which contained data having no relation to the affair. The log book recently presented, however great its importance may have at all times been recognized to be on both sides, was only transmitted in its original text to the Imperial ministry of marine, six years and ten months after (May 21, 1898) the arrest of the vessel, which took place July 21/August 2, 1891.

Further, the title of the log book, commencing with the words "illegally seized," indicates that it was written after the protest of the captain on the subject of the act of arrest inscribed in the same book, and it thus arouses suspicions as to the authenticity of the register itself. The sole explanation given as to the delay in presenting this log book consists in the fear of the captain to deliver an essential document which could serve as his justification.

But this explanation can not be admitted, for the American captain was not justified in refusing his confidence to the commander of a vessel of war of the Russian navy. In view of the foregoing, independently of the suspicions which the form of the log book in question itself arouses, not only the latter can not be considered as serving to justify the captain, but rather it is evidence of a contrary nature; that is to say, it corroborates the conviction that the captain of the schooner *James Hamilton Lewis* took steps to conceal from the other the true character of his operations and the exact place where he had been. If the captain had had at his disposal a document of this nature which might be used in his justification, it is reasonable to suppose that he would have presented it at once and not deprive himself of the means of thus placing himself under the protection of the laws of Russia.

Finally, supposing that the log book recently presented was authentic—that is to say, that it was written prior to the arrest—it would not invalidate by its text alone the incontestable facts on which the decision arrived at by the Russian naval authorities was based.

The ministry of marine sees therefore no reason to change its previous opinion in regard to this affair, and, entertaining the above views, it considers that no indemnity is due on the ground of the confiscation and sale of the schooner in question.

EXHIBIT O.

Identical with Exhibit C C., *Cape Horn Pigeon*.

EXHIBIT P.

Identical with Exhibit E E!, *Cape Horn Pigeon*.

EXHIBIT Q.

Identical with Exhibit F F., *Cape Horn Pigeon*.

EXHIBIT R.

UNITED STATES OF AMERICA.

TREASURY DEPARTMENT, April 5, 1900.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true and correct copies of the records in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

[SEAL.]

Secretary of the Treasury.

S. J.

S. M. G.

TREASURY DEPARTMENT, BUREAU OF NAVIGATION,

Washington, D. C., April 5, 1900.

SIR: Referring to your letter dated the 4th instant, I transmit herewith a certified copy of a record in this Department relating to the time of certain yacht races in the United States.

Respectfully,

T. R. SANDERS,

Acting Commissioner.

Mr. GEO. R. TINGLE,

Room 3, 1008 F street NW., Washington, D. C.

The following table, which has been corrected to date, setting forth the facts, will be found valuable for reference:

Date.	Name.	Owner.	Course.	Time.
Aug. 22, 1851	America....	John C. Stevens and others.	From Cowes around Isle of Wight	<i>h. m. s.</i> 10 37 0
	Aurora....	Thomas Le Marchant.....	(Aurora second).	4 45 39
Aug. 8, 1870	Magic.....	Franklin Osgood.....	N. Y. Y. C. course (Cambria	3 58 21
	Cambria....	James Ashbury.....	tenth).	4 37 38
Oct. 16, 1871	Columbia....	Franklin Osgood.....	N. Y. Y. C. course.....	6 19 41
	Livonia....	James Ashbury.....		6 46 45
Oct. 18, 1871	Columbia....	Franklin Osgood.....	20 miles to windward off Sandy	3 7 41½
	Livonia....	James Ashbury.....	Hook light-ship and return.	3 18 15
Oct. 19, 1871	Livonia....	James Ashbury.....	N. Y. Y. C. course (Columbia	4 2 25
	Columbia....	Franklin Osgood.....	disabled).	4 17 35
Oct. 21, 1871	Sappho.....	W. P. Douglas.....	20 miles to windward off Sandy	5 39 2
	Livonia....	James Ashbury.....	Hook light-ship and return.	6 9 23
Oct. 23, 1871	Sappho.....	W. P. Douglas.....	N. Y. Y. C. course.....	4 46 17
	Livonia....	James Ashbury.....		5 11 55
Aug. 11, 1876	Madeleine..	J. S. Dickerson.....	.....do.....	5 23 54
	Countess of	Maj. C. Gifford.....		5 34 53
	Dufferin.			
Aug. 12, 1876	Madeleine..	J. S. Dickerson.....	20 miles to windward off Sandy	7 18 46
	Countess of	Maj. C. Gifford.....	Hook light-ship and return.	7 46 0
	Dufferin.			
Nov. 9, 1881	Mischief....	J. R. Bush.....	N. Y. Y. C. course.....	4 17 9
	Atalanta	Alexander Cuthbert.....		4 45 39
Nov. 10, 1881	Mischief....	J. R. Bush.....	16 miles to leeward from buoy 5,	4 54 53
	Atalanta	Alexander Cuthbert.....	off Sandy Hook and return.	4 33 47
Sept. 14, 1885	Puritan.....	J. M. Forbes.....	N. Y. Y. C. course.....	6 6 5
	Genesta....	Sir R. Sutton.....		6 22 24
Sept. 16, 1885	Puritan.....	J. Forbes and others.....	20 miles to leeward off Sandy	5 3 14
	Genesta....	Sir R. Sutton.....	Hook light-ship and return.	5 4 52
Sept. 7, 1886	Mayflower..	Gen. C. J. Paine.....	N. Y. Y. C. course.....	5 26 41
	Galatea....	Lieutenant Henn, R. N.....		5 38 43
Sept. 11, 1886	Mayflower..	Gen. C. J. Paine.....	20 miles to leeward off Sandy	6 49 0
	Galatea....	Lieutenant Henn, R. N.....	Hook light-ship and return.	7 18 9
Sept. 27, 1887	Volunteer..	Gen. C. J. Paine.....	N. Y. Y. C. course.....	4 53 18
	Thistle....	James Bell.....		5 12 41
Sept. 30, 1887	Volunteer..	Gen. C. J. Paine.....	20 miles off Scotland light-ship	5 42 56
	Thistle....	James Bell.....	and return.	5 54 45
Oct. 7, 1893	Vigilant....	Morgan-Iselin syndicate	15 miles to leeward.....	4 5 47
	Valkyrie...	Lord Dumraven.....		4 11 35
Oct. 9, 1893	Vigilant....	Morgan-Iselin syndicate	Triangle, 30 miles.....	3 25 1
	Valkyrie...	Lord Dumraven.....		3 35 36
Oct. 13, 1893	Vigilant....	Morgan-Iselin syndicate	15 miles to windward.....	3 24 39
	Valkyrie...	Lord Dumraven.....		3 25 19

EXHIBIT S.

[Cat. No. 335.—Register No. 75. Permanent.—Official numbers: Numerals, 76,806; Letters, ———.]

Copy of certificate of registry.

In pursuance of Chapter I, Title XLVIII, "Regulation of Commerce and Navigation," Revised Statutes of the United States, Geo. Lienes, of San Francisco, State of California, agent, having taken and subscribed the oath required by law, and having sworn that Herman Liebes, of said place, is the only owner of the vessel the *James Hamilton Lewis*, of San Francisco, whereof Alexander McLean is at present master, and is a citizen of the United States; and that the said vessel was built in the year 18—, at unknown, as appears by temporary register No. 55, issued at Portsounsend, November 29, 1889, now surrenders of home port, and said register having certified that the said vessel has 1 deck and 2 masts, and that her length is 75 and 2-tenths feet, her breadth 21 feet and 8-tenths, her depth 8 feet and 3-tenths, her height — feet and — tenths, that she measures 77 tons and 52 hundredths, viz:

	Tons.
Capacity under tonnage deck.....	74.53
Capacity between decks above tonnage deck.....	
Capacity of inclosures on the upper deck, viz.....	6.18
Gross tonnage.....	80.71
Deductions under section 4153, Revised Statutes, as amended by act of August 5, 1882:	
Total deductions.....	5.19
Net tonnage.....	77.52

The following-described spaces, and no others, have been omitted, viz: And that she is a schooner, has a billet head and an elliptic stern; and the said George Lienes, agent * * *, having agreed to the description and measurement above specified according to law, said vessel has been duly registered at the port of San Francisco. * * *

Given under my hand and seal at the port of San Francisco, the 10th day of January, 1890. * * *

T. G. PHELPS,
Collector of Customs.

STUART TAYLOR,
Naval Officer.

T. B. SANDERS,
Acting Commissioner of Navigation.

DISTRICT OF SAN FRANCISCO, PORT OF SAN FRANCISCO,
COLLECTOR'S OFFICE.

I hereby certify the within to be a true copy of the original on record in this office. Given under my hand and seal this 23d day of March, 1900.

N. S. FARLEY,
Deputy Collector.

[Stamp.]

Fee, 20 cents, paid.

CASHIER'S OFFICE, CUSTOM-HOUSE,
San Francisco, March 23, 1900.

Catalogue No. 335. Permanent.

Copy of certificate of registry No. 75 of the schooner called the *James Hamilton Lewis*, 77.52 tons.

Issued at the port of San Francisco January 10, 1890.

T. G. PHELPS,
Collector of Customs.

EXHIBIT T.

STATE OF CALIFORNIA, *City and County of San Francisco*:

Max Waizman, being first duly sworn, deposes and says: That he is a resident of the city and county of San Francisco, State of California, and was, on the 2d day of August, 1891, the sole owner of the American schooner *James Hamilton Lewis*, and was on the 2d day of August, 1891, the date of the seizure of said schooner, a citizen of the United States of America.

MAX WAIZMAN.

Subscribed and sworn to before me this 29th day of December, A. D. 1893.

[SEAL.]

J. S. MANLEY,

Commissioner U. S. Circuit Court, Northern District of California.

EXHIBIT U.

STATE OF CALIFORNIA, *State and County of San Francisco, ss*:

Alexander McLean, being first duly sworn, deposes and says: That he is a resident of the city and county of San Francisco, State of California; that on the 2d day of August, 1891, the date of the seizure of the American schooner *James Hamilton Lewis*, he was, and now is, a citizen of the United States of America; that all the officers of the said schooner on said date were citizens of the United States of America, and to the best of his knowledge and belief are now such citizens; that to the best of his knowledge and belief the entire crew of said schooner, on said 2d day of August, 1891, were, and now are, citizens of the United States of America.

ALEXANDER MCLEAN.

Subscribed and sworn to before me this 30th day of December, A. D. 1893.

[SEAL.]

J. S. MANLEY,

Commissioner U. S. Circuit Court, Northern District of California.

EXHIBIT V.

STATE OF CALIFORNIA, *City and County of San Francisco, ss*:

A. P. Lorentzen, of the city and county of San Francisco, State of California, being first duly sworn, deposes and says: That for a period of about ten years he was the managing owner of the sealing schooners *Alexander, E. E. Webster, Helen Blum, C. G. White, Ivanhoe, Matthew Turner*, and the *Herman*; that as such managing owner he has fitted said vessels out regularly for their sealing voyages during the time mentioned; that he is thoroughly familiar with the details of such outfits and the cost and expense thereof, and also familiar with the value of the schooners engaged in said business; that he knew the schooner *James Hamilton Lewis* and her value before and at the time of her seizure by the Russian Government; that in his opinion the said schooner *James Hamilton Lewis* and her outfit at the time of said seizure was reasonably worth the sum of \$25,000.

A. F. LORENTZEN.

Subscribed and sworn to before me this 15th day of October, 1900.

[SEAL.]

*Notary Public in and for the City and County of San Francisco,
State of California.*

[RUSSIAN CONSUL'S CERTIFICATE.]

EXHIBIT W.

State of California, City and County of San Francisco, ss:

Michael White, of the city and county of San Francisco, State of California, being duly sworn, deposes and says: That for years past he has been actively engaged both as managing owner of sealing schooners and also as master thereof; that

among the vessels so managed by him were the *Lottie Fairfield*, the *J. Eppinger*, the *Theresa* and the *Undaunted*; that he is familiar with the cost and expense of outfitting said vessels, and also familiar with the value of vessels engaged in said business; that he knew the schooner *James Hamilton Lewis* before and at the time of her seizure by the Russian Government, and that in his opinion the said schooner *James Hamilton Lewis* and her outfit were reasonably worth in the neighborhood of \$25,000.

MICHAEL WHITE.

Subscribed and sworn to before me this 26th day of September, 1900.

[SEAL.]

Notary Public in and for the City and County of San Francisco,
State of California.

[RUSSIAN CONSUL'S CERTIFICATE.]

EXHIBIT X.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

William Bendt, of the city and county of San Francisco, State of California, being duly sworn, deposes and says: That he has been actively engaged as managing owner of sealing schooners outfitted at the port of San Francisco and engaged in sealing, and that among the vessels managed by him were the *Bowhead* and the *Winchester*; that he is familiar with the value of sealing schooners, and the cost and expense of outfitting the same; that he knew the schooner *James Hamilton Lewis* before and at the time of her seizure by the Russian Government, and that in his opinion the said schooner, together with her outfit, was then and there reasonably worth the sum of \$25,000.

WILLIAM BENDT.

Subscribed and sworn to before me this 15th day of October, 1900.

[SEAL.]

Notary Public in and for the City and County of San Francisco,
State of California.

[RUSSIAN CONSUL'S CERTIFICATE.]

EXHIBIT Y.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

George E. Dodge, of the city and county of San Francisco, being first duly sworn, deposes and says: That he has been the owner of sealing vessels and fitted them out at the port of San Francisco from the year 1891 to and including the year 1892; that among the vessels so owned and outfitted by him were *The City of San Diego*, the *Vanderbilt*, the *Charles E. Wilson*, and the *Ellen*; that he was also part owner and actively interested in the outfit and business of the schooners *Active* and *Bowhead*; that he is thoroughly familiar with the cost and expense of outfitting vessels at the port of San Francisco for the sealing business, and also with the value of the schooners engaged therein; that he knew the *James Hamilton Lewis* before and at the time of her seizure by the Russian Government; and that in his opinion said vessel and outfit were reasonably worth the sum of \$25,000.

GEORGE E. DODGE.

Subscribed and sworn to before me this 15th day of October, 1900.

[SEAL.]

Notary Public in and for the City and County of San Francisco,
State of California.

[RUSSIAN CONSUL'S CERTIFICATE.]

EXHIBIT Z.

Charles F. Rydell, being first duly sworn, deposes and says: That he is a resident of the city and county of San Francisco, State of California; that he is at present master of the schooner *Frolic*, now being fitted out at this port for a cruise to Alaskan

waters; that he was thoroughly familiar with the schooner *James Hamilton Lewis*, which was seized by the Russian Government in the month of August, 1891; that he sailed in a number of vessels of the same class on sealing expeditions, notably the schooners *Alexander*, *Herman*, *Jane Gray*, *Eppinger*, serving during different seasons in the capacities of first mate, sailing master, and captain, respectively; that none of the vessels named ever attained a greater average speed during their cruises than 6 knots per hour; that he frequently met the schooner *James Hamilton Lewis* under full sail while on sealing voyages during the years 1889 and 1890, and that he knows of his own knowledge that the said schooner *James Hamilton Lewis*, whenever sailing alongside of any one of the vessels named, was invariably outsailed by them, and was probably the slowest of any of the sailing vessels comprising the fleet during the years named; and on one particular occasion, while he was mate of the schooner *Alexander*, during a sealing voyage, the said schooner started simultaneously with the schooner *James Hamilton Lewis* from the Cordell Banks bound for the harbor of Drakes Bay, and although both vessels encountered similar conditions on the way, the schooner *Alexander* arrived at Drakes Bay far ahead of the schooner *James Hamilton Lewis*; that he knows of his own knowledge that said schooner *James Hamilton Lewis* was not built with a view to the attainment of speed, but was composed of the heaviest kind of timber available for such craft, for the purpose of withstanding the rough weather usually encountered off the northwest coast and Alaskan waters during the sealing seasons.

CHARLES F. RYDELL.

Subscribed and sworn to before me this 29th day of March, 1900.

 Notary Public in and for the City and County of San Francisco,
 State of California.

EXHIBIT A A.

SAN FRANCISCO, March 26, 1900.

Andrew P. Lorentzen, being first duly sworn, deposes and says: That he is a resident of the city and county of San Francisco, State of California; that he is now and has been an owner of coastwise sailing vessels, and that he is acquainted with the majority of vessels entering and going out of the harbor of San Francisco, and is particularly conversant with their sailing capabilities; and that he knew the schooner *James Hamilton Lewis* prior to the seizure of said vessel by the Russian war vessel *Aleut* on the 2d day of August, 1891; that said vessel was built for the sealing trade, and had the ordinary speed of vessels of her class; that he knows of his own knowledge that the average rate of sailing speed of the schooner *James Hamilton Lewis* ranged from 5 to 10 knots per hour, and under the most favorable circumstances it was but seldom that said vessel attained the maximum rate of speed named.

A. P. LORENTZEN.

Subscribed and sworn to before me this 29th day of March, 1900.

 Notary Public in and for the City and County of San Francisco,
 State of California.

EXHIBIT B B.

N. T. James, marine surveyor for the Frankfort Marine Insurance Company, of Frankfort-on-the-Main, Germany, being first duly sworn, deposes and says: That he is a resident of the State of California, and has been engaged in the insuring and surveying of vessels for the past twenty years in the city of San Francisco, and was familiar with the schooner *James Hamilton Lewis*, as also with the other vessels comprising the fishing and sealing fleets of San Francisco, and he knows and believes that the said schooner *James Hamilton Lewis* was not (from her construction and model and rig) a faster vessel, or as fast as the majority of the sealing and hunting vessels which sail from the harbor of San Francisco. That he is familiar with the

speed of vessels, and would consider 140 miles during twenty-four hours at sea as much above the average which she could accomplish under ordinary circumstances of good weather and wind.

N. T. JAMES.

Subscribed and sworn to before me this 29th day of March, 1900.

*Notary Public in and for the City and County of San Francisco,
 State of California.*

EXHIBIT C C.

Leon Blum, being first duly sworn, deposes and says: That he is engaged in the mercantile business in the city and county of San Francisco, State of California, and for years past has been the owner and manager of various sailing vessels belonging to the port of San Francisco; that a number of said vessels have made frequent trips to and from Alaska; that he knows the capabilities of vessels of this kind with regard to their speed; that they are never built with the sole view of attaining speed; that in his opinion they never average more than from 5 to 9 knots per hour under a full spread of canvas, and with every circumstance in their favor; that he was well acquainted with the schooner *James Hamilton Lewis* prior to her seizure by the Russian Government on the 2d day of August, 1891, and that said vessel was, in his opinion, entirely incapable of attaining the maximum rate of speed named herein, and ordinarily made by vessels of her class.

LEON BLUM.

Subscribed and sworn to before me this 29th day of March, 1900.

*Notary Public in and for the City and County of San Francisco,
 State of California.*

EXHIBIT D D.

George E. Dodge, being first duly sworn, deposes and says: That he is a resident of the city and county of San Francisco, State of California; that he at one time owned and controlled a number of sailing vessels engaged in the sealing industry; that he is thoroughly acquainted with that class of craft, and is conversant with their sailing capabilities; that said vessels are heavily built, with a view to withstanding the severe storms prevailing in the waters where sealing is engaged in, but with no regard whatever to the attainment of speed; that he was entirely conversant with the general build and capabilities of the schooner *James Hamilton Lewis* prior to her seizure by the Russian Government in August, 1891, and that it is his opinion that the said vessel could never have attained more than the maximum speed of 8 knots per hour, and rarely made over 5 or 6 knots average per hour during her sealing voyages.

GEORGE E. DODGE,
 104 Stuart Street, San Francisco.

Subscribed and sworn to before me this 29th day of March, 1900.

*Notary Public in and for the City and County of San Francisco,
 State of California.*

EXHIBIT E E.

E. T. Ezekiel, being first duly sworn, deposes and says: That he is a resident of the city and county of San Francisco, State of California; that he makes frequent trips in sailing vessels to Alaska, and is acquainted with the general build and speed capacity of most of the sailing vessels which leave this harbor for the Alaskan

coast; that he is particularly posted concerning the sailing vessels which for years comprised the fleet engaged in sealing in the Bering Sea, and also off the Japan coast; that he was familiar with the schooner *James Hamilton Lewis* prior to the seizure of the said vessel by the Russian war vessel *Aleut* on the 2d day of August, 1891; that he knows of his own knowledge that said vessel was in no way different from the ordinary craft belonging to the sailing fleet, and that the average speed of vessels of her class ranges between 5 and 9 knots per hour, but rarely reaches the latter limit.

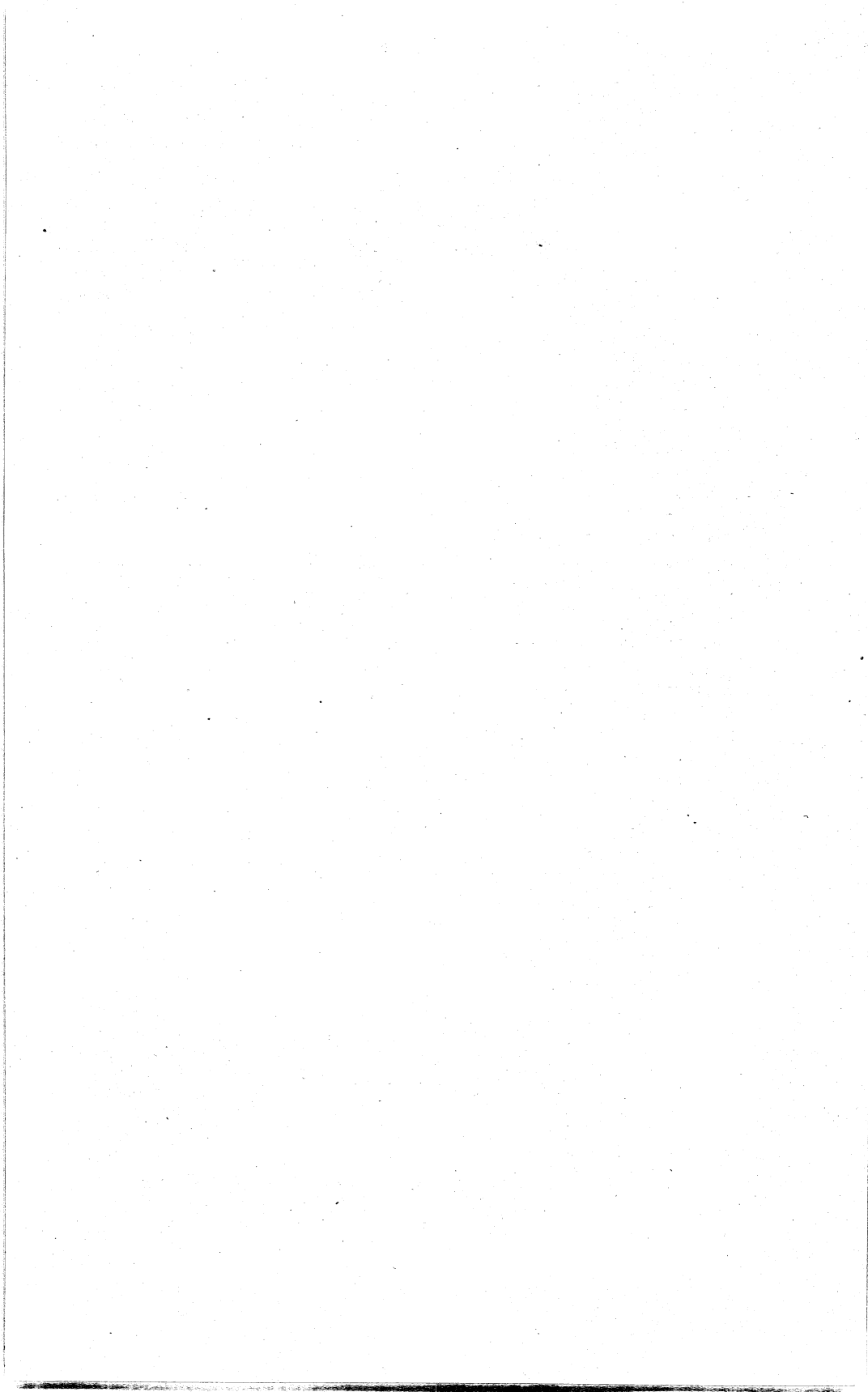
E. T. EZEKIEL.

Subscribed and sworn to before me this 29th day of March, 1900.

*Notary Public in and for the City and County of San Francisco,
State of California.*

CASE No. 3.

THE "C. H. WHITE."



CASE No. 3.

The "C. H. White."

STATEMENT OF THE CASE.

The *C. H. White* was an American schooner, duly registered in accordance with the laws of the United States of America at the port of San Francisco, in the State of California, and was owned and officered by citizens of the United States.

The ownership of the said schooner was, on the 15th day of July, A. D. 1892, vested in the Eagle Fishing Company, a corporation duly organized and existing under and by virtue of the laws of the State of California of the United States of America.

The names and residences of the stockholders, officers, and directors of the said Eagle Fishing Company were on the said 15th day of July, 1892, as follows, to wit: Johan H. C. Prien, San Francisco, president; Charles W. Preis, San Francisco, vice-president; Charles A. Wagner, San Francisco, secretary; Louis Schmidt, San Francisco, director; Lawrence M. Furman, San Francisco, master of vessel.

The above-named stockholders, on the said 15th day of July, 1892, owned all of the capital stock of the said Eagle Fishing Company, and each of them was on the said 15th day of July; and still is, a citizen of the United States of America.

The said schooner *C. H. White* sailed from San Francisco, Cal., in the United States of America, on the 7th day of May, A. D. 1892, with her clearance and ship's papers in proper and lawful form, with a full complement of officers and men, bound upon a fishing and hunting cruise in the North Pacific Ocean, or elsewhere, as the master might direct, with Lawrence M. Furman, one of the stockholders and directors of the said Eagle Fishing Company, as master; Andrew Ronning, mate; Neils Wolfgang, hunter; and a crew of 10 white men and 4 Indians, all of whom, with the exception of 1 white man, Julius Furman, and the 4 Indians, were citizens of the United States of America. And the said schooner *C. H. White* was at the time of her setting sail from San Francisco, and up to the time of her seizure by the Russian Government, in all respects seaworthy and fit for the voyage which it was intended she should take as herein mentioned, well and sufficiently manned, victualed, furnished, and equipped with all things necessary for a vessel in the merchant service, and particularly for the voyage she was about to undertake.

And the said Lawrence M. Furman, one of the stockholders and directors of the said Eagle Fishing Company, as aforesaid, was the duly qualified and acting master of the said vessel during the said voyage; and the said Furman was at the time when the claims herein set forth had their origin a citizen of the United States of America.

In support of these allegations the following documents are hereto

annexed and submitted in evidence, marked, respectively, as herein stated:

Exhibit A.—A duly certified copy of the certificate of incorporation of the Eagle Fishing Company.

Exhibit B.—A duly authenticated copy of the clearance papers of the said vessel from the port of San Francisco.

Exhibit C.—A duly authenticated copy of the certificate of the collector of the port of San Francisco, showing the ownership of the said *C. H. White*.

Exhibit D.—A duly authenticated copy of the outward manifest of the said vessel.

Exhibit E.—A duly authenticated copy of the certificate of naturalization of the said Neils Wolfgang.

Exhibit F.—A duly authenticated copy of the certificate of naturalization of Lawrence M. Furman.

Proceeding upon their voyage on board the good schooner *C. H. White*, the master and crew of the said vessel caught and killed upon the high seas, namely, more than 30 miles to the southward of the Aleutian Islands, in the North Pacific Ocean, 8 barrels of mackerel, 1 ton of codfish, and 20 seals.

On the 12th day of July, A. D. 1892, the said schooner, *C. H. White*, was about 40 miles to the southward of Agattou Island, one of the Aleutian Islands, the crew being engaged in fishing, and on or about that day the master of the said vessel set sail for the Kurile Islands, off the coast of Japan, intending to fish there. The master of the said vessel, finding that his chronometer was out, and wishing to correct the error, deviated from his course toward the Kurile Islands, for the purpose of sighting either Copper Island or Behring Island, in order to correct his chronometer.

On the 15th day of July, 1892, the said *C. H. White* arrived at latitude $54^{\circ} 18'$ north, longitude $167^{\circ} 19'$ east, by correct observation, and no person upon the said vessel had either fished or hunted for or killed any seals in said place, or within 50 miles thereof, or in Russian waters at all during the said voyage.

While sailing upon its course, as aforesaid, and in said latitude $54^{\circ} 18'$ north, longitude $167^{\circ} 19'$ east, with a light wind, and no boats being out from the said vessel, but all of her company being on board of her, and no one on board of her being either hunting or fishing, the said schooner *C. H. White* was boarded by an officer from the Russian war cruiser *Zabiaca*, an armed cruiser of the Imperial Russian navy, and the master of the said *C. H. White* was ordered by the said officer of the said Russian war cruiser to come on board of the said cruiser and to bring with him all of his vessel's papers. The master accordingly went on board of the said cruiser, taking with him the ship's papers of the *C. H. White*; and the commanding officer of said cruiser, after examining the schooner's papers, arrested the master, and then had all of the crew of the said *C. H. White*, except the mate, brought on board of the cruiser, and the master and crew of the said *C. H.*

White were kept on board of the said cruiser as prisoners, the master being kept under guard. The said commanding officer of the said Russian cruiser *Zabiaca* then and there seized the said schooner *C. H. White* and towed her to Nikolovsky Bay, Bering Island, and then placed the said schooner under the charge of a prize crew and sent it to Petropaulovsk; and the cruiser, with the master and crew of the said *C. H. White* as prisoners, sailed to Petropaulovsky, and arrived there on the 20th day of July, A. D. 1892, and the schooner *C. H. White* was there confiscated by the officers and agents of the

Russian Government and appropriated to the use of the Imperial Government of Russia.

The master of the schooner *C. H. White* duly protested to the commanding officer of the said Russian war cruiser against the seizure of his vessel, and against all the other acts complained of; and on the 5th day of August, A. D. 1892, the said master duly lodged a protest with the governor of Petropaulovsk against the seizure of his vessel and against all the other said acts; and on the 31st day of August, A. D. 1892, the said master made a due and formal marine protest against said seizure to James G. Swan, a notary public in and for Port Townsend, State of Washington, United States of America, immediately upon his arrival at said city, said city being the first place in the United States at which he arrived after leaving Russian jurisdiction upon his release by the Imperial Russian Government.

At the time of the arrest of the said master of the schooner *C. H. White* he, the said master, was compelled, under duress and by threats of deportation to Siberia, to sign a paper which, being in the Russian language, an unknown tongue to the said master, he could not understand.

The said master was, upon his arrest, put in close confinement in a room in said cruiser, and there kept constantly confined under a guard of four marines until the arrival of the cruiser at Petropaulovsk, without bedclothes or any change of clothing nor any of his effects; and, owing to the conditions of his confinement, he fell sick and was refused medical attention, and owing thereto and to subsequent enforced exposure and hard treatment his health became permanently impaired.

Upon the final restitution of his effects to the said master he found that certain of his property had been abstracted therefrom, to wit: One chronometer, valued at \$125; 1 aneroid barometer, valued at \$7; 1 pair of marine glasses, valued at \$25; 1 thermometer, valued at \$1; 1 lot of charts, valued at \$25; 1 lot of nautical books, valued at \$15; 1 silver watch and gold chain, valued at \$40; 7 razors, valued at \$15; 1 coal-oil stove, valued at \$3; 1 pair of rubber boots, valued at \$5; 1 lot of clothing, valued at \$25; 2 shotguns, valued at \$96; 2 rifles, valued at \$23.

Similarly, there were abstracted from the personal effects of the mate of the said vessel the following articles, to wit: Two nautical books, valued at \$10; 1 pair of rubber boots, valued at \$5; 1 oiled coat, valued at \$5; 3 suits of clothes, valued at \$9; 7 pairs of socks, valued at \$3.50; 1 watch and chain, valued at \$23; 1 razor, valued at \$3; and 2 pocket-knives valued at \$2.

Similarly, there were abstracted from the personal effects of the hunter, Neils Wolfgang, the following articles, to wit: One lot of underwear, valued at \$7; 1 lot of shoes, valued at \$4.50; 1 pair of trousers, valued at \$7; 1 oilskin coat, valued at \$3.50; 1 lot of socks, valued at \$2; 1 pair of rubber boots, valued at \$5; one gold ring, valued at \$9; 1 knife, valued at 75 cents; 9 seal skins, valued at \$18.

The officers and men, upon arriving at Petropaulovsk, were each allowed the sum of 15 kopecks a day for their subsistence, a sum equal, at the present rate of exchange, to about 40 centimes in French money, and at that time worth far less, and having in that country so small a purchasing power that it would only buy half a loaf of bread, so that all were obliged to beg in order to obtain sufficient nourishment to sustain life.

The master was obliged to seek such shelter as he could find at Petropaulovsk, and although weak and suffering from exposure and privation, he was obliged to content himself with such protection as was afforded by the hatch house of an American vessel then lying in port—an apartment 6 feet long, 6 feet wide, and 6 feet high, designed for keeping tools.

The mate and the rest of the crew, consisting of 10 white men and 4 Indians, were assigned for shelter by the officials of the Russian Government to a leaky shed 18 feet long by 10 feet wide, which they were obliged to share with 24 other persons. Thus 38 men were obliged to dispose themselves as best they might in a building the dimensions of which were insufficient to permit all of them to lie down at the same time upon the floor.

In support of these allegations the following documents are hereto annexed and submitted in evidence, marked, respectively, as follows, to wit:

Exhibit F.—1. A duly authenticated copy of the memorial of the Eagle Fishing Company to the Department of State of the United States of America.

2. A duly authenticated copy of the deposition of L. M. Furman.

Exhibit H.—A duly authenticated copy of the memorial of said Lawrence M. Furman to the Department of State of the United States, setting forth his claim for damages sustained by him by reason of the seizure of the schooner *C. H. White* and the acts connected therewith.

Exhibit I.—A duly authenticated copy of the memorial of Andrew Ronning, mate of the schooner *C. H. White*, setting forth his claim for damages sustained by him by reason of the seizure of the said vessel and the acts connected therewith.

Exhibit J.—A duly authenticated copy of the memorial of Neils Wolfgang, a hunter of the schooner *C. H. White*, to the Department of State of the United States, setting forth his claim for damages sustained by him by reason of the seizure of the said schooner and the acts connected therewith.

Exhibit K.—A duly authenticated copy of the marine protest made by the said Lawrence M. Furman, master of the said schooner *C. H. White*, to James G. Swan, a notary public in and for Port Townsend, in the State of Washington, United States of America.

Exhibit L.—A copy of Chart T of the United States Coast Survey, showing the waters in which the seizure of the *C. H. White* took place, and on which is indicated the point of intersection of the parallel of latitude 54° 18' north and the meridian of longitude 167° 19' west.

PRESENTATION OF CLAIMS.

The claims of the owners, officers, and crew of the *C. H. White* for damages sustained by them by reason of the seizure of their vessel and the acts connected therewith were duly presented to the Imperial Government of Russia, as is shown by the note of the then envoy extraordinary and minister plenipotentiary of the United States of America at the Imperial Court of Russia, dated December 26, 1894, a duly authenticated copy of which is hereto annexed and submitted in evidence, marked Exhibit M.

And these claims continued to be pressed by the legation of the United States at St. Petersburg and a settlement of them urged by said legation upon the Imperial Government of Russia.

On October 25, 1895, the legation of the United States at St. Petersburg received a note from the Imperial Russian ministry of foreign affairs, dated October 12, 1895, old style (October 24, 1895, new style), a duly authenticated copy of which is hereto annexed and submitted in evidence, marked Exhibit N, in which the Imperial Russian Government denied the allegations made by the claimants as to the circumstances of the seizure, and set up the claim that the schooner *C. H. White* was seized in latitude 50° 30' north, longitude 167° 15' west, and

not, as stated by the master of the vessel, in latitude 54° 18' north, longitude 167° 19' west, but still, by the admission of the Imperial Russian Government, 23 miles from Russian land.

On the 27th day of January, old style (8th day of February, new style), 1899, the then chargé d'affaires of the United States at St. Petersburg, acting under instructions from the Government of the United States, addressed a note to the Imperial Russian minister of foreign affairs proposing a compromise of the claims arising out of the seizure of the said schooner, and a duly authenticated copy of the said note is hereto annexed and submitted in evidence, marked "Exhibit O."

On the 26th day of March, 1899, the embassy of the United States at St. Petersburg received a response to the said note from the Imperial Russian minister of foreign affairs, dated March 13, old style (March 25, new style), 1899, refusing to make any compromise settlement of said claim. A duly authenticated copy of said response is hereto annexed and submitted in evidence, marked "Exhibit P."

The following documents are also hereto annexed and submitted in evidence, marked, respectively, as follows, to wit:

Exhibit Q.—A sworn copy of a translation of a paragraph occurring in a printed report of the director of the hydrographic department of the Imperial Russian ministry of marine, Vice-Admiral Wewel von Kruger, for the year 1875, printed in the Russian language at St. Petersburg, in the printing office of the Imperial ministry of marine, the said paragraph being on page 91 of said pamphlet. The original of said pamphlet forms part of Exhibit CC in the case of the *Cape Horn Pigeon*, in arbitration together with the present claims, and this exhibit is now referred to in the present case as here stated.

Exhibit R.—A duly authenticated copy of a note received by the legation of the United States of America at St. Petersburg from the Imperial Russian ministry of foreign affairs, dated May 8, 1882.

Exhibit S.—A duly authenticated copy of a note received by the legation of the United States of America at St. Petersburg from the Imperial Russian ministry of foreign affairs, dated June 1-13, 1882, together with its inclosure, all forming one exhibit.

Exhibit T.—The sworn deposition of Johan H. C. Prein, president of the Eagle Fishing Company, as to the value of the *C. H. White*, her equipment and cargo, at the time of the seizure, and the probable catch of the vessel, as well as the loss sustained by the Eagle Fishing Company by reason of her seizure.

Exhibit U.—The sworn deposition of Andrew P. Lorentzen as to the value of the *C. H. White* and her equipment.

Exhibit V.—The sworn deposition of James Boyes as to the value of the *C. H. White* and her equipment.

Exhibit W.—The sworn deposition of Charles Lutjens as to the value of the probable catch of the *C. H. White* during the season in which the vessel was seized.

Exhibit X.—An authenticated copy of the certificate of registry of the *C. H. White*.

Exhibit Y.—The sworn deposition of W. H. Grodt as to the identity of L. M. Furman.

Exhibit Z.—An authenticated copy of the certificate of naturalization of Andrew Olsen, alias Andrew Ronning, as citizen of the United States of America.

Exhibit AA.—An authenticated copy of the deposition of Andrew Olsen as to his identity.

Exhibit BB.—An authenticated copy of the deposition of Martin Olsen to the same effect.

Exhibit CC.—An authenticated copy of the deposition of Theodore Lowassen to the same effect.

Exhibit DD.—Senate Document No. 59, Fifty-fifth Congress, second session, Bering Sea awards.

TREATY OBLIGATIONS AND THE LAW OF NATIONS.

By the stipulations of the treaty of 1824 between the Government of the United States of America and the Imperial Government of Russia it was agreed—

That in any part of the great ocean commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the high contracting powers shall be neither

disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following articles.

The same declaration was made in the treaty of 1825 between Russia and Great Britain, and both of these treaties were concluded as the result of the protests of the Governments of the United States and Great Britain against the claims of the Imperial Government of Russia of exclusive jurisdiction within the Bering Sea beyond the limits of ordinary territorial waters.

In the tribunal of arbitration convened at Paris under the treaty between the United States of America and Great Britain, concluded at Washington February 20, 1892, for the determination of questions between the two Governments concerning the jurisdictional rights of the United States in the waters of Bering Sea, a majority of the board of arbitration adopted the following decisions:

By the ukase of 1821 Russia claimed jurisdiction in the sea now known as the Bering Sea to the extent of 100 Italian miles from the coasts and islands belonging to her, but in the course of the negotiations which led to the conclusion of the treaties of 1824 with the United States, and of 1825 with Great Britain, Russia admitted that her jurisdiction in said sea should be restricted to the reach of cannon shot from shore, and it appears that from that time up to the cession of Alaska to the United States Russia never asserted in fact or exercised any exclusive jurisdiction in Bering Sea or any exclusive rights in the seal fisheries therein beyond the ordinary limit of territorial waters.

The body of water now known as the Bering Sea was included in the phrase "Pacific Ocean" as used in the treaty of 1825 between Great Britain and Russia.

No exclusive rights of jurisdiction in Bering Sea and no exclusive rights to seal fisheries therein were held or exercised by Russia outside of ordinary territorial waters after the treaty of 1825.

The United States has not any right of protection or property in the fur seals frequenting the islands of the United States in the Bering Sea when such seals are found outside the ordinary 3-mile limit.

(See the proceedings of the tribunal.)

It has therefore been decided by this international tribunal of arbitration, as is shown in these decisions and in its final award, that the Bering Sea is an open sea, the common highway of all nations, and that no nation can of right exercise in it jurisdiction over vessels frequenting it for purposes lawful under international law beyond such ordinary territorial waters therein as are contiguous to its coasts, and that all nations have the right to navigate the Bering Sea and to fish and take seals therein outside of such territorial waters.

It is admitted by the Russian Government that the *C. H. White* was more than 20 miles from Russian land when she was arrested. She was therefore upon the high seas and wholly without Russian jurisdiction.

Chancellor Kent has stated:

The open sea is not capable of being possessed as private property, the free use of the ocean for navigation and fishing is common to all mankind, and the public jurists generally and explicitly deny that the ocean can ever be appropriated.

Vatel says:

To-day the whole extent of the sea within cannon shot of shore is regarded as forming part of the territory, and hence a vessel captured under the guns of a neutral fortress is not good prize. All that we have said of parts of the sea near to the coast is to be said in particular and with greater reason of roadsteads, bays, and straits as still more susceptible of occupation and more important to the country. But I speak of bays and straits of small extent, and not of great expanses of water to which are sometimes given these names—as Hudson Bay, the Straits of Magellan—over which empire could not extend and still less ownership. (Laws of Nations, book 1, chap. xxiii, secs. 289, 291.)

Phillimore says:

It is sufficient to say that the reason of the thing, the preponderance of authority, and the practice of nations have decided that the main ocean, inasmuch as it is the necessary highways of all nations and is from its nature incapable of being possessed, can not be the property of any one State. (Commentaries on International Law, third edition, Chap. V., pp. 247-248. CLXXII.)

The very eminent Russian jurist, M. F. de Martens, counsel for the Imperial Russian ministry of foreign affairs, writes as follows:

In our day legislation and jurists are in accord in recognizing the liberty of the ocean, and no people can set up the claim of governing it. To-day those portions of the sea which communicate with the ocean are recognized as free and accessible to all the world even when they are surrounded by the possessions of a single State. (Treatise on International Law, Vol. I, p. 494.)

Quoting further from the same treatise:

The ocean is free for all peoples. No nation can be interdicted from engaging in fishing and other peaceable enterprises on the high seas. If all possess there an equal right it follows that no State can there impose its laws on the others, cause judgment to be passed on foreign navigators or sailors, nor arrest nor search the vessels of another country.

Ortolan writes:

It remains to show that the sea can not be the property of any nation; and as what has been said regarding full and complete ownership is equally applicable to its functions—as, for example, the right of use, of gathering its fruits, of taking its products—it is demonstrated that no nation can possess these rights of property exclusively; that the use of the sea remains eternally open and common to all; that it is, so to speak, the patrimony of all mankind, a patrimony indivisible and which must forever remain indivisible. (Diplomacy of the Sea, vol. 1, p. 128.)

The same author remarks:

As to particular and interior seas a right of exclusive domain and sovereignty on the part of one nation over such a sea is only incontestable when that sea is totally surrounded by its territory so that it forms an integral part of it and could absolutely serve only as a means of communication and of commerce between the citizens of that nation. Then, indeed, none of the conditions which interfere either with ownership or empire of the seas are applicable. But the moment that several different States possess the shores of such sea, none of them can call itself either owner or sovereign to the exclusion of the others. (Ibid., p. 159.)

In the arbitration under the convention of February 8, 1863, between the United States and Great Britain, of the claims growing out of the seizure of the American fishing schooner *Washington* in the Bay of Fundy by one of Her Britannic Majesty's cruisers, the umpire declared:

The Bay of Fundy is from 65 to 75 miles wide and from 130 to 140 miles long. It has several bays on its coast. Thus the word bay, as applied to this great body of water, has the same meaning as applied to the Bay of Biscay and the Bay of Bengal, over which no nation can have the right to assume sovereignty.

But apart from all abstract reasoning or interpretation of the phraseology of any treaty, or the application of the principles of International Law to the special case, the Russian Government has itself admitted that its jurisdiction in the Bering Sea is confined to the limits of ordinary territorial waters, and has itself defined such limits as extending to 3 miles from its coasts. This admission on the part of the Imperial Government is contained in the documents hereto annexed and marked "Exhibits Q, R, and S," already recited.

It is claimed by the master and owners of the *C. H. White* that the vessel was seized by the Russian cruiser *Zabiaca* at a point 80 miles from the nearest Russian land, while the statement of the Russian authorities is that the seizure was made at 23 miles from Russian land,

as is shown by the statements contained in the note of the Imperial Russian ministry of foreign affairs, dated October 12 (24), 1895, submitted in the evidence herewith and marked "Exhibit N."

This is a question of fact in which the testimony of the officers of the respective vessels appears to differ. The claimants are unfortunately unable to produce the documentary evidence as to this fact, owing to the seizure of all the ship's papers of the *C. H. White*, including the log book, by the Russian officers. But in any case, the distance of 23 miles, claimed by Russia as the point at which the seizure was made, is far without any possible marine jurisdiction of any State. Nor is the claim set up, that the *C. H. White* had at one time been within 11 miles of Medney Island, justification of the seizure of the vessel. This statement is wholly at variance with the sworn testimony of the master of the vessel, but whether or not the schooner was at 11 miles from Medney Island she was at all events quite without Russian jurisdiction. It is not at all admitted that the *C. H. White* ever was as near to Russian territory, before her seizure, as 11 miles, but it is claimed with confidence that her master would have been quite within his rights in taking her within that distance of Russian lands up to the accepted limit of marine jurisdiction; namely, a marine league from the Russian coast, and of there engaging in his lawful occupation of fishing and seal hunting.

And it is further claimed that none of the allegations set forth in the note of the Imperial Russian ministry of foreign affairs of October 12 (24), 1895, just cited, even if true, offers sufficient ground for the seizure and confiscation of a vessel of a friendly State, upon the high seas, and the imprisonment and maltreatment of her crew.

Upon Russia's own showing the *C. H. White* was upon the high seas when seized, nor is any evidence adduced to show that she ever had been within Russian jurisdiction for any purpose whatsoever. The only justification of the seizure offered is the statement that the vessel's log book had not been kept for two days; that certain entries in it are alleged to indicate that she had been cruising "in the neighborhood of the Commander Islands," and that she had on board apparatus for taking seals, together with 5 freshly killed seals which had not yet been skinned.

As to the allegation that the log book had not been kept up for two days, if it be true, that is a matter quite outside of Russian jurisdiction. The *C. H. White* was, when seized, upon the high seas wholly without Russian jurisdiction, and, sailing under the flag of the United States, her master was responsible only to the authorities of his own country for all acts or omissions of this nature.

Even if, contrary to the assertions of the master of the vessel, she had been cruising in the neighborhood of the Commander Islands, an allegation the truth of which, however, is not admitted, such an act does not constitute a depredation upon Russian territory or a trespass upon Russian territorial waters. Even within the 3-mile limit she had the right of innocent passage. In regard to this Hall writes:

In all cases in which territorial waters are so placed that a passage over them is either necessary or convenient for the navigation of the open seas, as in that of marginal waters or of an appropriated strait connecting unappropriated waters, they are subject to the right of innocent use by all mankind for the purposes of commercial navigation. The general consent of nations, which was seen to be wanting, to the alleged right of navigation of rivers may fairly be said to have been given to that of the open sea. Even the earlier and more uncompromising advocates of the right of appropriation reserved a general right of innocent navigation. For more than two

hundred years no European territorial marine waters which could be used as a thoroughfare, or into which vessels could accidentally stray or be driven, have been closed to commercial navigation, and during the present century no such waters have been closed in any part of the civilized world. The right must therefore be considered to be established in the most complete manner. (Hall, Treatise on International Law, fourth edition, Pt. II, Chap. II, pp. 164 and 165.)

LIABILITY OF RUSSIA.

The Russian Government has attempted in the note of October 12 (24), 1895 (Exhibit N), to justify the seizure of the *C. H. White* on the ground of her having "probably" taken seals within Russian territorial waters. There is no evidence whatever offered by the Russian Government to support this allegation, and on the contrary the master of the schooner positively denies, under oath, that any seals were taken within Russian territorial waters.

No invasion of Russian territory or territorial waters or depredation therein or any corpus delicti has been shown by Russia; nor is there a particle of affirmative evidence to show that this vessel or anyone connected with her ever entered Russian waters for any purpose whatsoever.

The utmost that the Russian Government has been able to say in justification of the seizure is that the vessel was taken on the high seas on suspicion of having violated the municipal laws of Russia.

No judicial proceedings, so far as the parties in interest in the vessel or the Government of their country has ever been informed, were ever held to condemn or acquit the *C. H. White*, but she was simply confiscated and her master and crew made to suffer penal imprisonment on suspicion. No Government or its agents has the right to seize and confiscate foreign vessels and their cargoes on the high seas and imprison and maltreat their crews merely because it is believed that such vessels or their crews have violated the municipal laws of the country. If, in the exercise of belligerent rights, the vessel of an enemy State, seized by a ship of war, is entitled to trial before a duly organized prize tribunal before confiscation, much more is the vessel of a friendly State, in time of peace, entitled to such proceedings, even were the right of visit and search in time of peace admitted.

The question of visitation and search and of seizure of neutral vessels without the limits of territorial jurisdiction is thus discussed by Mr. Dana in his note, No. 108, to Wheaton's International Law:

It is true that Chief Justice Marshall admitted the right of a nation to secure itself against intended violations of its laws by seizures made within reasonable limits, as to which, he said, nations must exercise comity and concession, and the exact extent of which was not settled; and, in the case before the court, the 4 leagues were not treated as rendering the seizure illegal. This remark must now be treated as an unwarranted admission. It may be said that the principle is settled; that municipal seizures can not be made for any purpose beyond territorial waters. It is also settled that the limit of these waters is, in the absence of treaty, the marine league or the cannon shot. It can not now be successfully maintained either that municipal visits or search may be made beyond territorial waters for special purposes or that there are different bounds of that territory for different objects. But as the line of territorial waters, if not fixed, is dependent on the unsettled range of artillery fire, and if fixed, must be by an arbitrary measure, the courts, in the earlier cases, were not strict as to standards of distance where no foreign powers intervened in the causes. In later times it is safe to infer that judicial as well as political tribunals will insist on one line of marine territorial jurisdiction for the exercise of force on foreign vessels in time of peace for all purposes alike.

The following comment of Wheaton has a distinct bearing on the subject:

Pirates being the common enemy of all mankind, and all nations having an equal interest in their apprehension and punishment, they may be lawfully captured on

the high seas by the armed vessels of any particular State and brought within its territorial jurisdiction for trial in its tribunals.

This proposition, however, must be confined to piracy, as defined by the laws of nations, and can not be extended to offenses which are made piracy by municipal legislation. (Elements of International Law by Henry Wheaton, sixth edition, by Wm. Beach Lawrence, p. 185.)

But, however, while denying the right of the Russian Government to in any way interfere with the voyage of the *C. H. White*, the suspicions upon which she was arrested not having been substantiated must be regarded as unfounded.

Pirates as *hostes humani generis* should be pursued by all nations. It is justifiable to arrest, search, and deliver to justice at the nearest port, even be this a foreign port, every vessel legitimately suspected of piracy. It follows from which, in the application of this principle, since a vessel unjustly arrested is entitled to damages, etc. (F. de Martens, Treatise on International Law, Vol II, p. 342.)

Wheaton, in speaking of the suppression of the slave trade, says (Elements of International Law, Lawrence, p. 193):

No nation could exercise the right of visitation and search upon the common and unappropriated parts of the ocean, except upon the belligerent claim. The right of visitation and search on the high seas did not exist in time of peace.

Ortolan says (*Diplomatie de la Mer*, T. 1, p. 149):

If it is possible that particular measures of surveillance, inspection, or police may be authorized by one flag to another, this could only exist in virtue of special and reciprocal treaties, obligatory only upon the contracting parties, and are of no effect as regards States which have not consented thereto.

Wheaton (p. 188) cites Hautefeuille in the following language:

La visite is not a right, but the exercise of a belligerent claim of injuring the enemy, which can not exist in time of peace except as a violation of the independence of nations. The right of visit he defines to be the power granted to a foreign ship of war to stop a vessel and to go on board of her, and verify by her papers if she belongs really to the nation whose flag she bears.

The decisions of the Paris tribunal of arbitration upon the question in dispute between the United States and Great Britain in regard to the fur-seal fisheries in Bering Sea must be considered as setting at rest any doubts as to the ownership in the seals beyond territorial limits or the right of seizure beyond such limits for purposes of preservation of the fisheries.

THE MEASURE OF DAMAGE.

The seizure of the *C. H. White* was therefore unwarrantable and unjustifiable, and the Russian Government has become responsible for all injuries to the parties in interest resulting from the seizure and confiscation of the vessel, as well as from all the other acts connected therewith.

The loss of the vessel itself is not the only direct injury sustained by these claimants in consequence of the confiscation of their vessel. The loss of the use and service of their schooner and her outfit during the season for the purpose for which she was equipped is also to be taken into consideration. This is an injury sustained, not alone by the owners, but by the officers and crew as well, who were thereby deprived of the means of earning their living. No one has the right to deprive another of the means of gaining his sustenance in any lawful calling which he may see fit to engage in. Equally, no one has the right, by a summary act, to divert the earning capacity of the invested capital of another. If the laborer is worthy of his hire, so also is invested capital entitled to its legitimate profits.

The damages sustained by these claimants can not be measured by

the value of their vessel and its outfit alone. They had committed no trespass upon Russia, either by an invasion of her territory or waters, or by any other offense against Russian rights, and they were entitled to go peaceably on their way, employing their vessel and their own services in the lawful calling in which they were engaged. When the Russian Government, through its officers or agents, assumed to deprive them of this right it became responsible for all the consequences of its act. To restore to these parties, at the present time, their vessel or its value would not reimburse them for their losses, or place them in the advantageous position they occupied at the time of the seizure. Neither would the addition of interest on such payment compensate the parties for their loss. The owners had not embarked their capital in a hazardous undertaking upon the ocean to gain simply such interest as their money might earn at home by its investment in securities. In every well-regulated business undertaking, in which capital is involved, the interest upon the capital is deducted from the gross proceeds before profits are declared. As it is now impossible to put the parties back where they were at the time of the seizure, the only just basis of compensation for the injuries sustained by them owing to the seizure is upon a fair estimate of the probable catch, added to the value of the vessel and its outfit, together with interest upon the whole. As upon a sealing voyage the crew are compensated by lay in lieu of wages, such a basis discharges the indemnity due both to them and to the owners.

The damages here claimed for loss of catch are in no sense indirect damages for loss of speculative profits. They represent an actual loss sustained by the owners, officers, and crew, and are of the nature of demurrage. Had the Russian Government, at the moment of the seizure, handed over to the master of the *C. H. White* the full value of his vessel and equipment and returned him with his crew to San Francisco the voyage of the schooner would have been a positive loss to all the parties concerned. The earnings of a sealing vessel depend upon her taking advantage of her opportunity when it arrives, and the loss of her use with that of her outfit and crew in the middle of the season deprives her owners of any return upon their investment and her officers and crew of all remuneration for their labor.

The rule of damages is well settled that in a fishing voyage the loss of the services of a fishing vessel is to be compensated upon the value of the vessel's use. The objection that prospective profits are not admissible as a substantive ground of damage does not apply or exclude the use of the average catch of a fishing vessel as evidence of the value of the vessel's use, but is the best evidence, exactly as it is the evidence used in other cases to determine the injury suffered by a party from the deprivation of the use of his property.

In the case of the *Costa Rica Packet*, the distinguished arbitrator, Mr. F. de Martens, the official and permanent counsel of the Imperial Russian ministry of foreign affairs, in rendering his decision said, in the preamble to his award:

Whereas the unjustifiable detention of Captain Carpenter caused him to miss the best part of the whaling season;

Whereas on the other hand, Mr. Carpenter, on being set free, was in a position to have returned on board the ship *Costa Rica Packet* in January, 1892, at the latest; and whereas no conclusive proof has been produced by him to show that he was obliged to leave his ship until April, 1892, in the port of Tarnata without a master, or, still less, to sell her at a reduced price;

Whereas the owners or the captain of the ship being under an obligation, as a precaution against the occurrence of some accident to the captain, to make provision for his being replaced, the mate of the *Costa Rica Packet* ought to have been fit to take command and to carry on the whaling industry; and

Whereas thus the losses sustained by the proprietor of the vessel *Costa Rica Packet*, the officers, and the crew, in consequence of the detention of Mr. Carpenter, are not entirely the necessary consequence of this precautionary detention.

Thus the arbitrator in this case, clearly admitting the justice of the claim for damages owing to the loss of the use of the vessel, found that certain contributory acts of negligence on the part of the parties in interest in the vessel so modified the degree of responsibility of the Dutch Government for the loss of use of the vessel as to entitle it to consideration in estimating the amount of the indemnity due.

In the case of the *Potomac*, before the Supreme Court of the United States, Mr. Justice Gray, in delivering the opinion of the court, said:

Both the questions of law presented by the record relate to the amount of the damages that the libellant is entitled to recover.

One question is as to the sum to be allowed for the detention of his vessel while repairing the injuries suffered by the collision. The rules of law governing this question are well settled, and the only difficulty is in applying them to the peculiar facts of the case.

In order to make full compensation and indemnity for what has been lost by the collision, *restitutio in integrum*, the owners of the injured vessel are entitled to recover for the loss of her use while laid up for repairs. When there is a market price for such use, the price is the test of the sum to be recovered. When there is no market price, evidence of the profits that she would have earned if not disabled is competent. (United States Reports, vol. 105, p. 630-632.)

In the case of *Williamson v. Barrett*, before the Supreme Court of the United States, Mr. Justice Nelson, in delivering the opinion of the Court, said:

As to the question of damages.

The jury were instructed, if they found for the plaintiffs, to give damages that would remunerate them for the loss necessarily incurred in raising the boat and repairing her, and also for the use of the boat during the time necessary to make the repairs and fit her for business.

By the use of the boat, we understand what she would produce to the plaintiffs by the hiring or chartering of her to run upon the river in the business in which she had been usually engaged.

The general rule in regulating damages in cases of collision is to allow the injured party an indemnity to the extent of the loss sustained. This rule is obvious enough; but there is a good deal of difficulty in stating the grounds upon which to arrive, in all cases, at the proper measure of that indemnity.

The expenses of raising the boat and of repairs may, of course, be readily ascertained, and in respect to repairs, no deduction is to be made, as in insurance cases, for the new materials in place of the old. The difficulty lies in estimating the damage sustained by the loss of service of the vessel while she is undergoing the repairs.

That an allowance short of some compensation for this loss would fail to be an indemnity for the injury is apparent. This question was directly before the court of admiralty in England in the case of the *Gazelle*, decided by Dr. Lushington in 1844. (2 W. Robinson, 279.) That was a case of collision, and in deciding it the court observed: "That the party who had suffered the injury is clearly entitled to an adequate compensation for any loss he may sustain for the detention of the vessel during the period which is necessary for the completion of the repairs and furnishing the new articles."

In fixing the amount of the damages to be paid for the detention, the court allowed the gross freight, deducting so much as would in ordinary cases be disbursed on account of the ship's expenses in earning it.

This rule may afford a very fair indemnity in cases where the repairs are completed within the period usually occupied in the voyage in which the freight is to be earned, but if a longer period is required it obviously falls short of an adequate allowance. It looks to the capacity of the vessel to earn freight for the benefit of the owner and consequent loss while deprived of her service; in other words, to the amount she would earn him on hire. (13 Howard, 101.)

In the case of the United States vessel, the *Betsy*, unlawfully detained by British authorities, the majority of the board of arbitration decided in favor of allowing to the claimant not only the value of the vessel and her cargo, but also the profits which would have been derived from the sale of her cargo had she been allowed to continue her voyage. The claims of the owners of the *Neptune* were similarly decided in 1795.

In the case of the American brig *Williams*, seized by the Mexican Government in 1829, the umpire awarded passage money, which would have been received if the brig had been permitted to continue her voyage to her immediate destination, where she expected to receive a cargo of passengers.

In the case of the *Hope On*, detained by the Chilean Government in 1883 at Talcahuano, the commission of arbitration, in rendering its award, said:

The principle is well established in cases like the present, that the loss of the use of the vessel is the proper measure of damages, and the loss of such use is the loss of her probable catch during her enforced absence from the fishing grounds. (*G. B. Borden v. Chile.*)

(See also the following cases: The *Baltimore*, 8 Wallace, 377-385; *Cayuga*, 14 Wallace, 270; *Freddie L. Porter*, 5 Federal Reports, 822; *Vermont*, 8 Federal Reports, 170; *Brown v. Hicks*, 24 Federal Reports, 811; *Parsons v. Terry*, 1 Lowell, 60; the *Notting Hill*, 9 Pro. Div., 105-113; the *Parana*, 2 Pro. Div., 118; the *Mary Steele*, 2 Lowell, 370-374; the *Resolute*, 8 Pro. Div., 109; the *Clarence*, 3 William Reb., 283-286; the *Gleaner*, 38 L. T. N. S., 650; the *Marsden Collision* (2d edition, p. 115).

This rule was applied in the cases of the whaling ships *James Mawry*, *General Pike*, *Milo*, and the bark *Nile*, captured by the Confederate cruiser *Shenandoah* and compelled to abandon their whaling voyages, in the decisions of the Court of Commissioners of Alabama Claims:

(See also: The *Walter Pharo*, 1 Lowell, 437; *Stormless*, 1 Lowell, 153; *Mayflower*, 1 Brown Adm., 376; *Transit*, 4 Ben., 138; *Swift v. Brownell*, 1 Holmes 467; the *Antelope*, 1 Lowell, 130; *Bourne v. Smith*, 1 Lowell, 547; *Frates v. Howland*, 2 Lowell, 36; *Hussey v. Fields*, 1 Sprague, 394-396; *Knight v. Parsons*, 1 Sprague, 279; two hundred and ninety Barrels of Oil, 1 Sprague, 279; *Backster v. Rodman*, 3 Pickering (Mass.), 435, 438, 439; *Fletcher v. Taylor*, 17 C. B., 21; *Corey v. Thames Iron Works, L. R.*, 3, Q. B., 181; *Ex parte Cambrian Steam Packet Co.*, L. R. 6 eq., 396; *Cayuga*, 2d Ben., 125; *Barrett v. Williamson*, 4 McLane, 589; *Jolly v. Terra Haute*, 4 McLane, 589.

This subject has recently undergone the most thorough and careful examination by the commission appointed to adjust the claims of the Canadian sealers against the Government of the United States, commonly known as the Bering Sea claims. It is scarcely necessary to do more than to refer to the arguments submitted before this tribunal on behalf of the English Government and of the American Government for the most complete and exhaustive review of all the decisions upon the subject.

The English Government contended for the rule as claimed in the present case. An examination of the awards made in certain cases before the Bering Sea Commission leaves no room for doubt that in those cases at least the commission adopted the rule as contended for by the English Government and as herein stated. In the awards upon

all of these claims it is perfectly clear that the loss of catch was allowed in measuring the damages. If there were any doubt of this it is relieved by such cases as No. 14, the *Triumph*, where the sole claim was for loss of catch. In the case of the *Triumph*, No. 14 (not No. 11 for the same vessel) the award was \$15,450; the original claim was for \$19,674, of which \$250 was for legal and other expenses, \$19,424 being for balance of estimated catch of 2,500 skins at \$8. It was admitted that the *Triumph* had transhipped part of her season's catch before entering Bering Sea on or about July 4; a considerable part of the season had therefore already elapsed and it was reasonable to suppose that she had taken a fifth part of her probable catch before entering Bering Sea; thus 2,000 skins would remain to be taken to make up the season's work of 2,500 skins. She had on board 72 skins when taken, leaving 1,928 to be taken to make up the 2,000. One thousand nine hundred and twenty-eight skins at \$8 would amount to \$15,424, and the award was for \$15,450, as has been said.

There can be no possible room for doubt that this was the rule adopted by the Bering Sea Commission in fixing the damages in these cases. A careful examination of the cases shows that the rule here contended for was universally applied.

INDIVIDUAL CLAIMS OF LAWRENCE M. FURMAN, MASTER, AND OF THE CREW.

In the claim of Lawrence M. Furman, the master of the *C. H. White*, for indemnity for the injuries suffered by him, the following facts must be taken into consideration in addition to the mere fact of the summary and unwarrantable arrest of this citizen of a friendly State by the agents of the Imperial Government of Russia, for no other reason than the suspicion that he and his subordinates had violated, or might in the future violate, the municipal laws of Russia. First, Captain Furman was compelled, under duress and threats of deportation to Siberia, and against his protest, to sign a document of which he could of his own knowledge have had no understanding of the contents, not speaking or understanding the Russian language, in which it was written. The claim that certain written comments made by him upon the document are evidence that he knew what he was signing can not be admitted. It is not improbable that the purport of the document was explained to him, but whether wholly or in part, or how exactly, there is no evidence to show; and in any case such an ex parte translation can not be said to have acquainted him with the exact meaning and bearing of the document, though it might suffice to indicate that some comment on his part was necessary. The whole transaction evinced a purpose to compel Furman by threats to sign a paper containing admissions he could not understand, with the object of relieving the Russian officers and Government of all liability. But apart from the question of whether or not he knew what he was signing, the use of threats to compel him to perform the act constituted a grievous wrong, which should be taken into account in measuring the damages which should be awarded to this citizen of the United States.

His subsequent close and penal confinement and the refusal of medical aid to him while suffering illness, caused by enforced exposure to which he was subjected, entailing permanent injury to his health; the indignities and hardships suffered by him, together with the loss of valuable personal effects, are all elements of which the sum amounts

to a grave injury, for which he is entitled to fully adequate compensation from the Government whose agents or officers undertook to inflict upon him this great and unwarrantable wrong to his person and to his citizenship of a friendly State.

The damages suffered by the mate, Andrew Ronning, and the hunter, Neils Wolfgang, are only less in degree.

The loss by all of these officers of the *C. H. White* of the most valuable of their effects is of itself evidence of a disregard on the part of the Russian officials connected with this affair of the responsibilities and obligations incumbent on them in their relations with these citizens of a friendly State. That these officials, having taken it upon themselves to make these arrests on suspicion, should not have either at once put them in possession of their personal belongings or carefully sealed them up in such a manner as to preclude the possibility of their loss by accident or by the pilfering of dishonest persons, indicates a reckless disregard of the personal rights of their prisoners which must go far to convince the judicial mind of the likelihood of their committing other acts of wrong in their treatment of them. Doubtless these are the isolated acts of individuals which in no sense reflect upon either the humanity or the sense of right of the Russian Government; but that Government, having clothed these their agents with the powers they exercised, became responsible for their wrongful acts.

One has only to consider the size of the building in which the crew was confined, and the number of persons there incarcerated, for evidence of the general harshness with which these people were treated. This building was 18 feet long by 10 feet wide, and in it were confined 38 men, namely, 14 from the *C. H. White* and 24 others from other vessels. Supposing that these prisoners lay in three rows upon the floor, each man would have a space of 10 inches in width, in two of the rows, and of a little over 9 inches in the third row.

The bill of damages hereto annexed is submitted in the confident belief that it will be found to present an entirely equitable claim for the indemnity due to the owners, officers, and crew of the *C. H. White* for the losses and injuries suffered by them.

Statement of damages.

Value of vessel and equipment.....	\$35,000.00
20 seal skins, at \$14 each.....	280.00
8 barrels of mackerel.....	160.00
1 ton of codfish.....	260.00
Loss of probable catch, 2,480 seals, at \$14 each.....	34,720.00
Loss of probable catch of fish.....	10,300.00
Personal claims of Captain Furman.....	25,000.00
Personal claims of Andrew Ronning.....	15,000.00
Personal claims of Neils Wolfgang.....	10,000.00
Claims of the crew for imprisonment, physical and moral suffering, and injury to health, 10 men, at \$2,000 each.....	20,000.00
Interest at 6 per cent for nine years.....	81,388.80
<hr/>	
Total.....	232,108.80

EXHIBIT A.

No. 6616.—UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is under the seal of the State of California, and is entitled to full faith and credit.

In testimony whereof I, John Hay, Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 6th day of December A. D. 1900, and of the Independence of the United States of America the one hundred and twenty-fifth.

JOHN HAY.

[Seal of the State Department.]

STATE OF CALIFORNIA, DEPARTMENT OF STATE.

I, C. F. Curry, secretary of state of the State of California, do hereby certify that I have carefully compared the annexed copy of certificate of incorporation of Eagle Fishing Company with the original now in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the great seal of state, at office in Sacramento, Cal., the 8th day of September, A. D. 1900.

C. F. CURRY, *Secretary of State.*

[The great seal of the State of California.]

10 cent stamp.

9/8/1900.

C. F. C.

STATE OF CALIFORNIA, DEPARTMENT OF STATE.

I, Edwin G. Waite, secretary of the State of California, do hereby certify that a copy of the articles of incorporation of Eagle Fishing Company, certified by the county clerk of the city and county of San Francisco as a copy of such articles filed in his office, was filed in this office on the 29th day of September, A. D. 1891, which articles and the copy thereof contained the required statement of facts, to wit: First, the name of the corporation as aforesaid; second, the purpose for which it is formed; third, the place where its principal business is to be transacted; fourth, the term for which it is to exist; fifth, the number of its directors or trustees, and the names and residences of those who are appointed for the first year; sixth, the amount of its capital stock, and the number of shares into which it is divided; seventh, the amount of its capital stock actually subscribed and by whom.

Witness my hand and the great seal of state, at office in Sacramento, Cal., this the 29th day of September, A. D. 1891.

E. G. WAITE,
*Secretary of State.*Signed by WM. H. STEVENS,
Deputy.

[Great seal of State.]

EXHIBIT B.

No. 6615.—UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is under the seal of the Treasury Department, and is entitled to full faith and credit.

In testimony whereof I, John Hay, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 6th day of December, A. D. 1900, and of the independence of the United States of America the one hundred and twenty-fifth.

JOHN HAY.

[Seal of Department of State.]

DIVISION OF APPOINTMENTS.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, December 6, 1900.

This is to certify that N. S. Farley and Stanley Jackson were deputy collectors of customs at the port of San Francisco on November 19, 1900, and September 8, 1900, respectively, the dates upon which the inclosed papers bearing their signatures were executed, and that they were duly authorized to sign as such officers on the respective dates above named, the signatures appearing thereon being identical with those attached to official papers in the files of this office.

GAGE, *Secretary.*

[SEAL.]

OFFICE OF THE COLLECTOR OF CUSTOMS,
PORT OF SAN FRANCISCO, CAL., *November 19, 1900.*

I hereby certify that the American schooner *C. H. White*, of San Francisco, of 84 tons or thereabouts, cleared at this port, for hunting and fishing, on the 6th day of May, 1892, and that L. M. Furman was master, as appears by the records of this office.

N. S. FARLEY,
Deputy Collector of Customs.

CRAIG.

EXHIBIT C.

[Cat. No. 526.—Certificate of ownership of vessel.]

UNITED STATES CUSTOMS SERVICE, PORT OF SAN FRANCISCO,
COLLECTOR'S OFFICE, *September 8, 1900.*

I hereby certify that, according to the records of this office, the schooner called the *C. H. White*, of San Francisco, tonnage 84 and 45 tons net, was registered at this office, October 12, 1891, and the following were her owners, viz:

Eagle Fishing Company, of San Francisco, a corporation duly organized under the laws of the State of California, sole owner of said vessel, and there is no mortgage or lien on record against said vessel in this office.

Given under my hand and seal of office this 8th day of September, 1900, 10.40 a. m.

Deputy Collector.

[Seal of the collector of customs.]

SEPTEMBER 8, 1900.

10-cent stamp. Paid.

CASHIER'S OFFICE, CUSTOM-HOUSE, SAN FRANCISCO,
September 8, 1900.

EXHIBIT D.

[Gardner & Thornley, ship and custom-house brokers, No. 322 Washington street.—Outward foreign manifest.]

(New form.)

Report and manifest of the cargo laden at the port of San Francisco on board the American schooner C. H. White, whereof Furman is master, bound for hunting and fishing, May 6, 1892.

Marks.	Numbers.	Packages and contents.	Quantities, pounds, gallons, etc.	No. 1. Value of domestic merchandise.	No. 2. Value of foreign merchandise free.	No. 3. Value of foreign merchandise from bonded warehouse.	No. 4. Value of foreign merchandise not from bonded warehouse, which has paid duties.	No. 5. Value of foreign merchandise on the passage (in transitu) from one foreign country to another.	To be landed at—
		7 breech-loading shot guns.....		\$35. 00					
		13 breech-loading rifles.....		65. 00					
		300 pounds shot.....		20. 00					
		3,000 primers.....		15. 00					
		5,000 wads.....		15. 00					
		500 shells.....		7. 50					
		7 kegs powder.....		40. 00					

Bond filed May 6, 1892.

W. P. SAXE, *Bond Clerk.*

DISTRICT AND PORT OF SAN FRANCISCO,
COLLECTOR'S OFFICE, *October 12, 1892.*

I hereby certify the above to be a true copy of the original on file in this office.

JOHN T. DARE, *Deputy Collector.*

Master's or conductor's oath on clearing outward.

District and Port of San Francisco:

I, L. M. Furman, master or conductor of the schooner *C. H. White*, bound from the port of San Francisco to hunting and fishing, solemnly, sincerely, and truly swear that the manifest of the cargo on board the said schooner now delivered by me to the collector of this district, and subscribed with my name, contains, according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares, and merchandise now actually laden on board the said vessel or vehicle, and of the value thereof; and if any other goods, wares, or merchandise shall be laden or put on board the said schooner previous to her departure from this port I will immediately report the same to the collector. I do also swear that I verily believe the duties on all foreign merchandise therein specified have been paid or secured according to law, and that no part thereof is intended to be reloaded within the United States; and that if, by distress or other unavoidable accident, it shall become necessary to reland the same, I will forthwith make a just and true report thereof to the collector of customs in the districts wherein such distress or accident may happen. And said cargo is truly intended to be landed in the port of ———. So help me God.

L. M. FURMAN, *Master.*

Sworn to before me this 6th day of May, 1892.

JOHN T. DARE,
Deputy Collector of Customs.

EXHIBIT E.

Minor.]

Certified copy of act of naturalization.—No. 210.

In the superior court of the city and county of San Francisco, State of California.
Present: Hon. Jas. Troutt, judge.

In the matter of the application of Niels Wolfgang, an alien, to become a citizen of the United States of America.

In open court, department No. 11, this 26th day of April, A. D. 1892.

It appearing, to the satisfaction of this court, by the oaths of Alfred E. Janssen and Charles E. Rivard, citizens of the United States of America, witnesses for that purpose, first duly sworn and examined, that Niels Wolfgang, a native of Denmark, has resided in the United States of America three years next preceding his arriving at the age of 21 years, and that he has continued to reside in the United States to the present time, and has resided within the limits and under the jurisdiction of the United States five years at least last past, and within the State of California for one year last past; and that during all of said five years' time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; and the said applicant has declared his intention to become a citizen of the United States, and having now here before this court taken an oath that he will support the Constitution of the United States of America, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly to the King of Denmark, it is therefore ordered, adjudged, and decreed that the said Niels Wolfgang be, and he is hereby, admitted and declared to be a citizen of the United States of America.

JAS. M. TROETT, *Judge.*

NIELS WOLFGANG,

Residence, 250 Spear Street.

Witnesses:

ALFRED JANSSEN,
Residence, 250 Spear Street.

CHARLES E. RIVARD,
Residence, 250 Spear Street.

OFFICE OF THE CLERK OF THE SUPERIOR COURT.

CITY AND COUNTY OF SAN FRANCISCO, *State of California*, ss:

I, William J. Blattner, county clerk and ex officio clerk of the superior court in and for the city and county of San Francisco, State of California, said court being a court of record, having common-law jurisdiction and a clerk and seal, do certify that the above is a true copy of the act of naturalization of Niels Wolfgang as the same appears upon the records of said court now in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 26th day of April, in the year of our Lord one thousand eight hundred and ninety-two, and in the year of our Independence the one hundred and sixteenth.

[SEAL.]

WM. J. BLATTNER, *Clerk,*
By GEO. S. McCOMB, *Deputy Clerk.*

EXHIBIT F.

UNITED STATES OF AMERICA.

MASSACHUSETTS DISTRICT, ss:

To all people to whom these presents shall come, greeting:

Know ye that at a special district court of the United States, holden at Boston, within and for the Massachusetts district, on the fifth day of March, in the year of our Lord one thousand eight hundred and eighty-six, Lars Magnus Furman, of Boston, in said district, a mariner born in Gottenburg, Sweden, having produced the evidence and taken and subscribed the oath required by law, was admitted to become

a citizen of the United States according to the acts of Congress in such case made and provided.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Boston aforesaid this 5th day of March, A. D. 1886, and in the one hundred and tenth year of the Independence of the United States of America.

[SEAL.]

ELISHA BASSETT,
Deputy Clerk of the United States District Court for the District of Massachusetts.

EXHIBIT G.

(1.)

The memorial of the Eagle Fishing Company to the Department of State of the United States respectfully shows:

That the Eagle Fishing Company is now, and was at the time when the claim hereinafter set forth had its origin, a corporation duly organized and existing under and by virtue of the laws of the State of California, and having its principal office and place of business in the city and county of San Francisco, State of California, and makes this claim and memorial in its right and for its own benefit.

That the names and residences of the stockholders, officers, and directors of said corporation are as follows, to wit:

Johan H. C. Prien, San Francisco, president; Charles W. Preiss, San Francisco, vice-president; Charles A. Wagner, San Francisco, secretary; Louis Schmidt, San Francisco, director; Lawrence M. Furman, master of vessel.

That the above-named stockholders own all of the capital stock of said Eagle Fishing Company, and that they and each of them are now, and were at the time when the claim hereinafter set forth had its origin, citizens of the United States, and duly qualified and registered voters in the city and county of San Francisco, State of California.

The said Eagle Fishing Company claims from the Russian Government the sum of \$100,000, being the entire sum hereby claimed; the company believes that the sum so claimed would not reimburse it for the losses sustained by the wrongful act of the authorities of the Russian Government, hereinafter set forth; and that this company has received no money or other equivalent or indemnification from insurance or otherwise for the whole or any part of the loss or injury upon which this claim is founded.

That the said claim is based upon the following facts and circumstances, to wit:

The said Eagle Fishing Company, in pursuit of its regular and legitimate business, was at all the times herein mentioned the owner of the American schooner *C. H. White*, which said schooner was enrolled and registered in the port of San Francisco, and said schooner was regularly cleared from said port for a fishing and hunting voyage in the North Pacific Ocean or elsewhere, as the master might direct, having at the time on board said vessel a hunting and fishing outfit, consisting of rifles, shotguns, powder, and hunting and fishing gear, all of which will more fully and at large appear by the certified copies of the original clearance papers and outward manifest of said schooner, which are herewith filed, and that the reason why the original of all the said papers are not filed is that all of said original papers were seized as hereinafter mentioned.

That Lawrence M. Furman, one of the stockholders and directors of the Eagle Fishing Company, was then, and at all the times hereinafter mentioned, the fully acting and qualified master of the said schooner, and is now, and was at the time when the claim herein set forth had its origin, a citizen of the United States of America and of the State of California, and that the said Eagle Fishing Company was, prior to and at all the times hereinafter mentioned, and now is, the owner of a fishing station on Atu Island, the most westerly of the Aleutian Islands, belonging to the United States; that the said schooner *C. H. White*, on the 7th day of May, A. D. 1892, under command of the said master, and with a good and sufficient crew and a hunting and fishing outfit on board, as aforesaid, did set sail and depart from the said port of San Francisco, bound for the North Pacific Ocean, said vessel being at the time and at all the times hereinafter mentioned seaworthy, and in all respects fit for the voyage which it took, as herein mentioned; that the master and crew proceeded with said vessel on their voyage without disaster of any kind until the 15th day of July, A. D. 1892, and that prior to said day and in the open Pacific Ocean, more than 30 miles south of the Aleutian Islands, and not in Russian waters, had

caught 8 barrels of mackerel and 1 ton of codfish, and had killed 20 seals, all of which were caught and killed on the voyage from San Francisco, and more than 30 miles south of the Aleutian Islands, and not in Russian waters; that said master and crew, on about the 12th day of July, A. D. 1892, being then fishing about 40 miles south of Agattou Island, one of the Aleutian Islands, with said vessel, then set sail for the Kurile Islands, off the coast of Japan, intending to fish there, and the master of said schooner, finding that his chronometer was out, wanted to sight land to correct the chronometer, and accordingly deviated from his course or route to Kurile Islands for the purpose of sighting either Copper or Bering Island to correct his chronometer, and on the 15th day of July arrived at latitude 54° 18' north, longitude 167° 19' east, by correct observation, and had not fished or sealed in said place, nor at any place within 50 miles thereof, or in Russian waters at all, and the wind being light, but the vessel sailing on its course as aforesaid, and no boats being out from said vessel, either for hunting or fishing, and no one from said vessel being either hunting or fishing.

Said latitude 54° 18' north, longitude 167° 19' east by correct observation, measured on the United States Coast Survey Chart, No. 900, more than 80 miles from Cooper or Bering islands on the high seas, and not in Russian waters, when, at said time, and in the latitude and longitude above mentioned, on the 15th day of July, A. D. 1892, as aforesaid, and not being at the time hunting or fishing, and not having at any time fished or hunted seals in Russian waters, but being at said time on its course for the Kurile Islands, as aforesaid, the said schooner was boarded by an officer from the Russian war cruiser *Zabiaca*, which said war cruiser *Zabiaca* was at all the times herein mentioned a steamer regularly commissioned as a war cruiser, and belonging to the Russian Government; armed for offensive and defensive warfare, and acting under the authority and by the direction of the said Russian Government, and the master was by said officer ordered to come on board of said cruiser, with all the schooner's papers; the master accordingly went on board, and the captain of said cruiser, after examining the schooner's papers, arrested the master, and then had all the crew of said cruiser [*sic*] except the mate, brought on board of said cruiser, and master and crew of said schooner were kept on said cruiser as prisoners. The said Russian cruiser then and there seized said schooner *C. H. White* and towed it to Nicholovsky Bay, Bering Island, and then placed said schooner under a prize crew and sent it to Petropaulovsky, and the cruiser, with the master and crew of said schooner as prisoners, sailed to Petropaulovsky, and arrived there on the 20th day of July, A. D. 1892.

The Russian Government seized said schooner *C. H. White* as hereinbefore set forth, but this company does not know what disposition was made of said schooner, but is advised and believes, and therefore alleges, that said schooner was repainted and refitted and used by said Russian Government, and is now in its possession, and by it used.

That the master of said schooner *C. H. White* duly protested at the time to the captain of said war cruiser against the seizure of said vessel and against all the other acts herein complained of; that on the 5th day of August, A. D. 1892, the said master duly noted a protest against said seizure and said acts with the governor of Petropaulovsky; and that said master on the 31st day of August, A. D. 1892, duly made a marine protest against said seizure to James G. Swan, a notary public in and for Port Townsend, State of Washington, United States of America, immediately upon his arrival at said city, and said city being the first place in the United States at which he arrived.

That the seizure of said schooner *C. H. White* and all of said acts by said Russian war cruiser by the officers thereof and by the Russian officials were in violation of the law of nations and of the right of citizens of the United States, and in contravention to the treaties existing between the United States of America and Russia, and that this claim is founded upon the principles of international law and the rights which every nation and every person has upon the high seas, and upon the fact that all the above-mentioned acts by the Russian Government and its officials were in violation thereof.

Wherefore this company hereby requests the interposition of the Government of the United States of America against the Russian Government for the presentation of this claim against the Russian Government.

In witness whereof the above-named company has caused this memorial to be made and subscribed by its president and secretary, and its corporate name and seal to be hereunto affixed this 1st day of November, A. D. 1892.

EAGLE FISHING COMPANY,
By JOHAN H. C. PRIEN, *President*.
CHAS. A. WAGNER, *Secretary*.

[SEAL.]

STATE OF CALIFORNIA, *City and County of San Francisco* :

Johan H. C. Prien, being duly sworn, says: I am an officer, to wit, the president of the Eagle Fishing Company, the company making and subscribing the above memorial to the Department of State.

I have made the foregoing memorial and know the contents thereof, and the same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe it to be true.

JOHAN H. C. PRIEN.

Subscribed and sworn to by the said Johan H. C. Prien, known to me to be a credible witness, before me this 3d day of November.

HARRY J. LASK,
*Notary Public in and for the City and County of
San Francisco, State of California.*

EXHIBIT G.

(2.)

STATE OF CALIFORNIA, *City and County of San Francisco*, ss:

Lawrence Magnus Furman, being duly sworn, deposes and says as follows, to wit:

My full name is Lawrence Magnus Furman; I am 37 years of age; I was born in the city of Guttenburg, Sweden; I am now a resident, and at all the times when the events took place in regard to which I make this affidavit I was a resident of the city and county of San Francisco, State of California; I am now and at all the times when the events took place in regard to which I make this affidavit, I was by occupation a master mariner; I have an interest in the claim of the Eagle Fishing Company against the Russian Government, to support which claim I make this affidavit, that interest is as follows: I own one share of the capital stock of the Eagle Fishing Company, and am director thereof; I have no contingent interest in said claim other than should said Eagle Fishing Company recover damages I will receive a dividend of the amount recovered as owner of said share of stock. There are 1,500 shares of the stock of said corporation now in force. I am not the agent or attorney for the said claimant or for any person having an interest in said claim. I am a duly naturalized citizen of the United States of America, but I can not now produce a certified copy of the record of my said naturalization, but will hereafter produce the same if necessary.

I was on the 7th day of May, A. D. 1892, the duly acting and qualified master of the American schooner *C. H. White*, belonging to said Eagle Fishing Company, which said vessel on said day duly cleared from said port of San Francisco for a hunting and fishing voyage in the North Pacific Ocean, having at the time all necessary and requisite legal papers on board, as will more fully and at large appear by the memorial and papers on file herein; on said day I was master, as aforesaid, did in and with said schooner set sail and depart from the said port of San Francisco, bound for the North Pacific Ocean, said vessel being at that time and at all the times hereinafter mentioned seaworthy and in all respects fit for the voyage which it took, as herein mentioned; I proceeded with said vessel and crew on my voyage without disaster of any kind, until the 15th day of July, A. D. 1892, and prior to said day and in the open Pacific Ocean, more than 30 miles south of the Aleutian Islands and not in Russian waters, had caught 8 barrels of mackerel and 1 ton of codfish and had killed 20 seals, all of which were caught and killed on the voyage from San Francisco and more than 30 miles south of the Aleutian Islands and not in Russian waters; I with said vessel and crew on or about the 12th day of July, A. D. 1892, being then fishing about 40 miles south of Agattou Island, one of the Aleutian Islands, set sail for the Kurile Islands off the coast of Japan, intending to fish there, and knowing that my chronometer was out, wanted to sight land to correct my chronometer, and accordingly deviated toward the Copper and Bering islands for the purpose of sighting them or one of them and correcting my chronometer, as aforesaid, and on the 15th day of July arrived at latitude 54° 16' north, longitude 167° 18' east, by correct observation, and had not fished or sealed in said place nor at any place within 50 miles thereof, or in Russian waters at all, and the wind being light, but the vessel sailing on its course as aforesaid, and no boats being out from said vessel, either for hunting or fishing, and no one from said vessel being either hunting or fishing.

Said latitude 54° 18' north, longitude 167° 19' east, is, by correct observation, measured by me on the United States Coast Survey Chart, No. 900, more than 80

miles from Copper or Bering islands on the high seas, and not in Russian waters; when at said time, and in the latitude and longitude above mentioned, on the 15th day of July, A. D. 1892, as aforesaid, and not being at the time hunting or fishing, and not having at any time fished or hunted seals in Russian waters, but being at said time on my course for the Kurile Islands, as aforesaid, the said schooner was boarded by an officer from the Russian war cruiser *Zabiaca*, which said war cruiser *Zabiaca* was at all times herein mentioned a regularly commissioned war cruiser, belonging to the Russian Government, armed for offensive and defensive warfare, and acting under the authority and by the directions of the said Russian Government, and I was by said Russian officer ordered to come on board of said cruiser with all the schooner's papers; I accordingly went on board, and the captain of said cruiser, after examining the schooner's papers, arrested me, and then all of the crew of the said schooner, except the mate, were brought on board of said schooner as prisoners. The said Russian cruiser then and there seized said schooner, *C. H. White*, and towed it to Nicholovsky Bay, Bering Island, and then placed said schooner under a prize crew and sent it to Petropaulovsky, and the cruiser with me and the crew of said schooner as prisoners, sailed to Petropaulovsky and arrived there on the 20th day of July, A. D. 1892; and while on board of said cruiser, I was by the captain of said cruiser forced to sign a paper in Russian, which I did not understand, the said captain threatening to send me to Siberia unless I signed said paper, and I only signed said paper under a protest in consequence of said threat and the duress exercised by said captain of said cruiser.

The Russian Government seized said schooner *C. H. White*, as herein set forth, but I do not know what disposition was made of said schooner, but I am advised and believe, and therefore allege, that said schooner was repainted and refitted and used by said Russian Government, and is now in its possession and by it used.

I, as master of said schooner *C. H. White*, duly protested at the time to the captain of the said war cruiser against the seizure of said vessel and against all his other acts herein testified in regard to; and on the 5th day of August, 1898, I, as master, duly noted a protest against said seizure and said acts with the governor of Petropaulovsky; and I, as said master, on the 31st day of August, 1892, duly made a regular marine protest against said seizure to James G. Swan, a notary public in and for Port Townsend, State of Washington, United States of America, immediately upon my arrival at said city, and said city being the first place in the United States at which I arrived.

LAWRENCE M. FURMAN.

Subscribed and sworn to by the said Lawrence M. Furman, known to me to be a credible witness, before me this 3d day of November, A. D. 1892.

HARRY J. LASK,
Notary Public in and for the City and County of San Francisco,
State of California.

EXHIBIT H.

The memorial of Lawrence Magnus Furman to the Department of State, respectfully shows:

That said Lawrence M. Furman is now, and was at the time when the claim hereinafter set forth had its origin, a regularly naturalized citizen of the United States, and that he is unable to produce herewith a duly certified copy of the record of his naturalization, but will hereafter produce the same if required; that he is now, and was at the time when the claim hereinafter set forth had its origin, a resident of the city and county of San Francisco, State of California, and a duly qualified and registered voter therein.

That said Lawrence M. Furman claims from the Russian Government the sum of \$25,000, being the entire sum hereby claimed; this claimant believes that the sum so claimed would not reimburse him for the loss and damage sustained by him from the wrongful acts of the authorities of the Russian Government hereinafter set forth, and that this claimant has received no money or other equivalent or indemnification from insurance or otherwise for the whole or any part of the loss or injury upon which this claim is founded.

That the said claim is based upon the following facts and circumstances, to wit:

That I, the said Lawrence M. Furman, on the 7th day of May, A. D. 1892, was the duly acting and qualified master of the American schooner *C. H. White*, belonging to the Eagle Fishing Company, of San Francisco, Cal., which said vessel on said

day cleared from the said port of San Francisco for a hunting and fishing voyage in the North Pacific Ocean, having at the time all the necessary and legal papers on board, as will more fully and at large appear by the memorial, and papers in support thereof, of said Eagle Fishing Company on file in this Department, and that on the said day I with said vessel and a good and sufficient crew did set sail and depart from said port of San Francisco, bound for the North Pacific Ocean, said vessel being at that time and at all times hereinafter mentioned seaworthy and in all respects fit for the voyage which it took, as herein mentioned. I proceeded with said vessel and crew on my voyage without disaster of any kind until the 15th day of July, A. D. 1892, and that prior to said day, and in the open Pacific Ocean, more than 30 miles south of the Aleutian Islands, and not in Russian waters, had caught 8 barrels of mackerel and 1 ton of codfish, and had killed 20 seals, all of which were caught and killed on the voyage from San Francisco, and more than 30 miles south of the Aleutian Islands, and not in Russian waters; that about the 12th day of July, A. D. 1892, I, being then fishing about 40 miles south of Agattu Island, one of the Aleutian Islands, off the coast of Japan, intending to fish there, and then finding that my chronometer was out, wanted to sight land to correct the chronometer, and, accordingly, deviated from my course or route to the Kurile Islands for the purpose of sighting either Copper or Bering Island, to correct my chronometer, and on the 15th day of July arrived at latitude $54^{\circ} 18'$ north, longitude $167^{\circ} 19'$ east, by correct observation, and had not fished or sealed in said place nor at any place within 50 miles thereof, or in Russian waters at all; and the wind being light, but the vessel sailing on its course as aforesaid, and no boats being out from said vessel, either for hunting or fishing, and neither I nor anyone from said vessel being either hunting or fishing.

Said latitude $54^{\circ} 18'$ north, longitude $167^{\circ} 19'$ east, is by correct observation measured by me on the United States Coast Survey chart No. 900 more than 80 miles from Copper or Bering Islands, on the high seas, and not in Russian waters; when at the same time, and in the same latitude and longitude above mentioned, on the 15th day of July, A. D. 1892, as aforesaid, and not being at the time hunting or fishing, and not having at any time fished or hunted seals in Russian waters, but being at said time on my course for the Kurile Islands as aforesaid, the said schooner was boarded by an officer from the Russian war cruiser *Zabiaca*, which said war cruiser *Zabiaca* was at all times herein mentioned a steamer regularly commissioned as a war cruiser, and belonging to the Russian Government, armed for offensive and defensive warfare, and acting under the authority and by the directions of the said Russian Government; and I was by said officer ordered to come on board of said cruiser with all the schooner's papers; and I accordingly went on board, and the captain of said cruiser, after examining the schooner's papers, had all the crew of said schooner brought on board of said cruiser, and I, with all the crew of said schooner, was then and there arrested, and I was compelled by the officers of said cruiser to sign a paper in Russian language, which I do not understand, under threat of being sent to Siberia, and was kept on said cruiser as prisoner by the officers thereof until the cruiser arrived at Petropaulovsky, on the 20th day of July, A. D. 1892; I was kept confined in a room of said cruiser without bedclothes or any change of clothing, although I demanded my personal effects from the officers of the cruiser, which demand was refused by them.

The said cruiser, with me and the rest of the crew as prisoners, and with the schooner *C. H. White* in tow, set sail for Nicholovsky Bay, where we arrived on the 16th day of July, A. D. 1892. During the day and night which elapsed prior to our arrival at Nicholovsky Bay I was kept in the above-mentioned room without any bedclothes or any clothing whatever except those I had on, and was compelled to keep the doors and windows open; the weather during that night was cold and foggy, and I then and there, from the cruel and unnecessary exposure, caught cold, from which, owing to the exposure above and the exposure and ill treatment and lack of food and medicines hereinafter complained of, I have never recovered.

Upon our arrival at Nicholovsky Bay I was permitted to go on board the *C. H. White*, under the charge of an armed guard, for the purpose of getting my personal effects. I then took possession of my effects with the exception of the following articles, to wit: One chronometer, valued at \$125; 1 pair of marine glasses, valued at \$25; 1 aneroid barometer, valued at \$7; 1 thermometer, valued at \$1; 1 lot of charts, valued at \$25; 1 lot of nautical books, valued at \$15; 1 silver watch and gold chain, valued at \$40; 7 razors, valued at \$15; 1 coal-oil stove and utensils, valued at \$3; 1 pair of rubber boots, valued at \$5; 1 lot of clothing, valued at \$25; 2 shotguns, valued at \$96; 2 rifles, valued at \$32; which I was informed and believe, and therefore allege, to have been stolen by the officers and crew of the said *Zabiaca*, and which I then and there demanded from the officers of the said cruiser, but which were not then nor afterwards returned to me.

On my return to the *Zabiaca*, under guard, I was so sick from the exposure hereinabove complained of that I went to bed and asked to see the doctor, and saw him, but he refused to give me any medicine. I then asked to see any of my crew, but was informed that I could not see or speak with or communicate with any of my crew, but was permitted to send through a Russian sailor to my steward, who made me some flaxseed tea, which was all the medicine I could get while suffering from the cold and fever brought on by the exposure complained of; and during my detention on the *Zabiaca* I could procure no suitable food; and from said exposure, lack of food, brutal treatment, and lack of medicine I suffered great mental and physical pain and agony, and was confined to my bed during the balance of the voyage to Petropaulovsky, at which port we arrived on the 20th day of July, A. D. 1892, as hereinbefore stated. Upon our arrival at said port I was, notwithstanding my sickness, compelled by the Russian officers to go on shore and get along as best I could.

Upon landing I went to the governor of Petropaulovsk and demanded assistance. The governor allowed 15 kopecks—worth about 7 cents United States money—per diem for the support of the crew, and I was informed we were all prisoners, and that was all that would be allowed. I then asked for shelter for myself and men, but the only shelter given for my crew, consisting of 10 white men and 4 Indians, together with 24 other men belonging to other vessels which had been seized by the Russians, was a room 10 feet by 18 feet, with a leaky roof and broken windows. I, finding that the Russian officials would not provide other shelter for me, and being then sick, as aforesaid, and fearing death from exposure, asked the master of the American bark *Majestic*, then in port with coal for the Russian Fur Company, for assistance, but he had no spare room, and I obtained permission from him to sleep in the hatch house of the vessel, which was a small room erected at the hatchway, and was about 6 feet square by 6 feet high, and intended for keeping tools, etc. I slept in said hatch house until my arrival at Port Townsend, as hereinafter set forth. The 15 kopecks per day allowed me by the Russian officials would only then purchase at Petropaulovsk one-half of a loaf of bread, which was insufficient to sustain life. I was therefore, having no money, compelled to beg a meal here and there to keep me alive, but was not even by that means enabled to get sufficient food to keep me from suffering from hunger.

I, with my crew, was kept at Petropaulovsk prisoner as aforesaid until the 8th day of August, A. D. 1892, suffering all the time from the sickness above set forth, and being, during all said period, unable to procure sufficient food or proper treatment. I have been suffering physically ever since, and I am now informed by my physician that I shall probably never fully recover my health.

On the 8th day of August, A. D. 1892, the Russian officials informed me that the master of the American bark *Majestic* would make arrangements to take us from Petropaulovsk; accordingly I, and the masters of the other vessels which had been seized by the Russians, made arrangements with the master of the said *Majestic* to take us with our respective crews—amounting in all to 84 men—to some United States or British port, and we then and there signed a statement of our condition and a request to our respective Governments to pay the owners of said *Majestic* for our passage. The Russian officials then allowed us an amount of beans, flour, salt beef, tea, coffee, and sugar, which would equal about two-thirds of the shortest allowance of each which would be permitted by the United States shipping laws, and ordered us all on board the *Majestic*, which said vessel carried us to Port Townsend, at which port we arrived on the 31st day of August, A. D. 1892.

During the time I was on board said *Majestic* I was on short allowance, and suffering much from exposure to the weather consequent on insufficient shelter.

I, as master of said schooner *C. H. White*, duly protested at the time to the captain of the Russian cruiser *Zabiaca* against the seizure of said vessel, and at the time protested against each and all of the inhuman and cruel acts by the Russian officials hereinbefore complained of, and duly noted a protest on the 5th day of August, A. D. 1892, to the Russian governor of Petropaulovsk, and I, on the 31st day of August, A. D. 1892, duly made a regular marine protest against said seizure and acts hereinbefore complained of to James G. Swan, a notary public in and for Port Townsend, State of Washington, United States of America, immediately upon my arrival at said city, and said city being the first place in the United States at which I arrived.

That the seizure of said schooner *C. H. White* and all of the cruel and inhuman acts of the officers of the Russian war cruiser *Zabiaca* and by the Russian officials committed upon me were in violation of the law of nations and of my rights as a citizen of the United States, and in contravention to the treaties existing between the United States and Russia, and that this claim is founded upon the principles of international law and the rights which every nation and every person has upon the

high seas, and upon the fact that all the above-mentioned acts by the Russian Government and its officials were in violation thereof.

Wherefore, I hereby request the interposition of the Government of the United States of America against the Russian Government for the presentation of this claim against said Russian Government.

In witness whereof I have hereunto set my hand and seal this 24th day of January, A. D. 1893.

[SEAL.]

LAWRENCE MAGNUS FURMAN.

STATE OF CALIFORNIA, *City and County of San Francisco*, ss:

Lawrence M. Furman, being duly sworn, says: I am the person making and subscribing the above memorial to the Department of State.

I have read the foregoing memorial, and know the contents thereof; the same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe it to be true.

LAWRENCE M. FURMAN.

Subscribed and sworn to before me by the said Lawrence M. Furman, known to me to be a credible witness, this 24th day of January, A. D. 1893.

[SEAL.]

HARRY J. LASK,

Notary Public in and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, *City and County of San Francisco*, ss:

I, M. C. Haley, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the superior court thereof (which court is a court of record, having a seal), do hereby certify that Harry J. Lask, whose name is subscribed to the annexed instrument and thereon written, and before whom the annexed oath was taken, was, at the time of taking such oath or affidavit, a notary public in and for the city and county, duly authorized to take the same, and an officer duly authorized by the laws of this State to take and certify the acknowledgment and proof of deeds to be recorded in said State. And further, that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court at my office in said city and county this 31st day of January, A. D. 1893.

M. C. HALEY, *Clerk.*

I, Eugene R. Garber, presiding judge of the superior court of the city and county of San Francisco, State of California, do hereby certify that said court is a court of record, having a clerk and seal; that M. C. Haley, who has signed the annexed attestation, is the duly elected and qualified county clerk of the city and county of San Francisco, and was, at the time of signing said attestation, ex officio clerk of said superior court; that said signature is his genuine handwriting, and that all his official acts as such clerk are entitled to full faith and credit. And I further certify that said attestation is in due form of law.

Witness my hand this 31st day of January, A. D. 1893.

EUGENE R. GARBER,
Presiding Judge of the Superior Court.

STATE OF CALIFORNIA, *City and County of San Francisco*, ss:

I, M. C. Haley, county clerk of the city and county of San Francisco, State of California, do hereby certify that the Hon. Eugene R. Garber, whose name is subscribed to the preceding certificate, is presiding judge of the superior court of the city and county of San Francisco, State of California, duly elected and qualified, and that the signature of said judge to said certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said court this 31st day of January, A. D. 1893.

[SEAL.]

M. C. HALEY,
County Clerk and Clerk of Court.

EXHIBIT I.

The memorial of Andrew Ronning, sometimes called Romney, to the Department of State, respectfully shows:

That said Andrew Ronning is now, and was at the time when the claim hereinafter set forth had its origin, a regularly naturalized citizen of the United States, and that he is unable herewith to produce a duly certified copy of his naturalization, but will hereafter produce the same if required; and that he is now, and was at the time when the claim hereinafter set forth had its origin, a resident of the city and county of San Francisco, State of California, and a duly qualified and registered voter therein.

That said Andrew Ronning claims from the Russian Government the sum of \$15,000, being the entire sum hereby claimed. This claimant believes that the sum so claimed would not reimburse him for the loss and damage sustained by him from the wrongful act of the authorities of the Russian Government hereinafter set forth, and that this claimant has received no money or other equivalent or indemnification from insurance or otherwise for the whole or any part of the loss or injury upon which this claim is founded.

That the said claim is based upon the following facts and circumstances, to wit:

That I, the said Andrew Ronning, on the 7th day of May, A. D. 1892, was the duly acting and qualified mate of the American schooner *C. H. White*, belonging to the Eagle Fishing Company, of San Francisco, Cal., which said vessel on said day cleared from the port of San Francisco for a hunting and fishing voyage in the North Pacific Ocean, having at the time all the necessary and legal papers on board, as will more fully and at large appear by the memorial and papers in support thereof of said Eagle Fishing Company on file in this Department, and that on said day I, as mate, with said vessel and a good and sufficient crew, did set sail and depart from the port of San Francisco, bound for the North Pacific Ocean, said vessel being at that time and at all the times hereinafter mentioned seaworthy and in all respects fit for the voyage which it took, as herein mentioned. I proceeded with said vessel on my voyage without disaster of any kind until the 15th day of July, A. D. 1892, and that prior to said day, and in the open Pacific Ocean, more than 30 miles south of the Aleutian Islands, and not in Russian waters, had caught 8 barrels of mackerel and 1 ton of codfish, and had killed 20 seals, all of which were caught and killed on the voyage from San Francisco, and more than 30 miles south of the Aleutian Islands, and not in Russian waters; that about the 12th day of July, A. D. 1892, I being then fishing about 40 miles south of Agattou Island, one of the Aleutian Islands, with said vessel and crew, set sail for the Kurile Islands, off the coast of Japan, intending to fish there, and the master then finding that the chronometer was out, wanted to sight land to correct his chronometer, and accordingly deviated from the course or route to the Kurile Islands for the purpose of sighting either Copper or Bering Islands to correct the chronometer, and on the 15th day of July we arrived at latitude 54° 18' north, longitude 167° 19' east, by correct observation, and had not fished or sealed in said place nor at any place within 50 miles thereof, or in Russian waters at all, and the wind being light, but the vessel sailing on its course as aforesaid, and no boats being out from said vessel, either for hunting or fishing, and neither I nor anyone from said vessel being either hunting or fishing.

Said latitude 54° 18' north, longitude 167° 19' east, is by correct observation measured by the master on the United States Coast Survey Chart, No. 900, more than 80 miles from Copper or Bering Islands on the high seas, and not in Russian waters, when at said time, and in the latitude and longitude above mentioned, on the 15th day of July, A. D. 1892, as aforesaid, and not being at the time hunting or fishing, and not having at any time fished or hunted seals in Russian waters, but being at said time on its course for the Kurile Islands, as aforesaid, the said schooner was boarded by an officer from the Russian war cruiser *Zabiaca*, which said war cruiser *Zabiaca* was at all the times herein mentioned a steamer regularly commissioned as a cruiser and belonging to the Russian Government, armed for offensive and defensive warfare, and acting under the authority and by the directions of the Russian Government, and the master was by said officer ordered to come on board of said cruiser with all the schooner's papers. He accordingly went on board. Shortly afterwards the captain of said cruiser had me as well as all the crew of said schooner brought on board of said cruiser, and I, with the rest of the crew of said schooner, was then and there arrested, and I was sent with an armed prize crew back to the schooner *C. H. White*, and I remained a prisoner upon said schooner until it arrived at Petropaulovsky on the ——— day of July, 1892. During the voyage to Petropaulovsky the following articles belonging to me were stolen by the Russians: Two nautical books, valued at \$10; 1 pair rubber boots, valued at \$5; 1 oil-coat, valued at \$5; 3 suits of

underclothes, valued at \$9; 7 pairs of socks, valued at \$3.50; 1 watch and chain, valued at \$23; 1 razor, valued at \$3; 2 pocketknives, valued at \$2; and, notwithstanding my repeated demands for them, they were never returned to me.

Upon landing at Petropaulovsky the master went to the governor and demanded assistance. The governor allowed 15 kopecks (worth about 7 cents United States money) per diem for the support of each of the crew, and was informed that we were all prisoners, and that no more money would be allowed for our support, and then asked for shelter for his crew; but the only shelter given me and the rest of the crew (consisting of 10 white men and 4 Indians, together with 24 other men belonging to other vessels which had been seized by the Russians) was a room 10 feet by 18 feet, with a leaky roof and broken windows, in which I was compelled to live during my stay in Petropaulovsky, which lasted till the 8th day of August, A. D. 1892, and during that time I had to live upon a half loaf of bread each day (that being all the 15 kopecks allowed by the Russian Government would then buy); the bread, together with what I could beg, was not sufficient to keep me from hunger. From the exposure to the damp and foggy weather during my imprisonment at Petropaulovsky, and from the insufficient food, I suffered great physical pain, from the effects of which I have not yet recovered.

On the 8th of August provision was made for the passage of myself and the other prisoners at Petropaulovsky (84 in all) to some American or British port. Accordingly, on said last-named day I was driven on board of the American bark *Majestic*, where, on account of insufficient food and accommodation, I suffered greatly during my passage to Port Townsend, where I arrived on the 31st day of August, A. D. 1893.

That many of the facts constituting the cruel acts by the Russian officials and showing their lack of humanity in matters pertaining to this claim are not in my direct knowledge, but are more fully and at large set forth in the memorandum of Lawrence M. Furman, of said schooner *C. H. White*, to which said memorial reference is hereby made in support hereof.

The master of the said schooner *C. H. White* duly protested at the time to the captain of the Russian cruiser *Zabiaca* against the seizure of the said vessel, and at the time protested against each and all the inhuman and cruel acts by the Russian officials hereinbefore complained of, and duly noted a protest on the 5th day of August A. D. 1892, to the Russian governor of Petropaulovsky; and on the 31st day of August, A. D. 1892, duly made a regular marine protest against said seizure and acts hereinbefore complained of to James G. Swan, a notary public in and for Port Townsend, State of Washington, United States of America, immediately upon my arrival at said city, and said city being the first place in the United States at which I arrived, all of which said protest made before James G. Swan as aforesaid was also signed by me.

That the seizure of said schooner *C. H. White*, and all of the cruel and inhuman acts by the officers of the Russian war cruiser *Zabiaca*, and by the Russian officials committed upon me, were in violation of the law of nations and of my rights as a citizen of the United States, and in contravention to the treaties existing between the United States and Russia, and that this claim is founded upon the principles of international law and the rights which every person and every nation has upon the high seas, and upon the fact that all the above-mentioned acts by the Russian Government and its officials were in violation thereof.

Wherefore I hereby request the interposition of the Government of the United States of America against the Russian Government for the presentation of this claim against the said Russian Government.

In witness whereof I have hereunto set my hand and seal this 24th day of January, A. D. 1893.

[SEAL.]

ANDREW RONING.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

Andrew Roning, being duly sworn, says: I am the person making and subscribing the above memorial to the Department of State.

I have read the foregoing memorial and know the contents thereof. The same is true, of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe it to be true.

ANDREW RONING.

Subscribed and sworn to before me by the said Andrew Roning, known to me to be a credible witness, this 24th day of January, A. D. 1893.

[SEAL.]

HARRY J. LASK,
Notary Public in and for the City and County of San Francisco,
State of California.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

I, M. C. Haley, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the superior court thereof (which court is a court of record, having a seal), do hereby certify that Harry J. Lask, whose name is subscribed to the annexed instrument and thereon written, and before whom the annexed oath or affidavit was taken, was, at the time of taking the oath or affidavit, a notary public in and for the city and county of San Francisco, residing in said city and county, duly authorized by the laws of said State to take and certify the acknowledgment and proof of deeds to be recorded in said State. And further, that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court at my office in said city and county this 31st day of January, A. D. 1893.

[SEAL.]

M. C. HALEY.

I, Eugene R. Garber, presiding judge of the superior court of the city and county of San Francisco, State of California, do hereby certify that said court is a court of record, having a clerk and seal. That M. C. Haley, who has signed the annexed attestation, is the duly elected and qualified county clerk of the city and county of San Francisco, and was at the time of signing said attestation ex officio clerk of said superior court. That said signature is his genuine handwriting, and that all his official acts as such clerk are entitled to full faith and credit.

And I further certify that said attestation is in form of law.

Witness my hand this 31st day of January, A. D. 1893.

EUGENE R. GARBER,
Presiding Judge of the said Superior Court.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

I, M. C. Haley, county clerk of the city and county of San Francisco, and ex officio clerk of the superior court of the city and county of San Francisco, State of California, do hereby certify that the Hon. Eugene R. Garber, whose name is subscribed to the preceding certificate, is presiding judge of the superior court of the city and county of San Francisco, State of California, duly elected and qualified, and that the signature of said judge to said certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said court this 31st day of January, A. D. 1893.

[SEAL.]

M. C. HALEY,
County Clerk and Clerk of Court.

EXHIBIT J.

The memorial of Neils Wolfgang to the Department of State respectfully shows: That the said Neils Wolfgang is now and was at the time when the claim hereinafter set forth had its origin a regularly naturalized citizen of the United States, and that he is unable to produce herewith a duly certified copy of the record of his naturalization, but will hereafter produce the same if required; and that he is now, and was at the time when the claim hereinafter set forth had its origin, a resident of the city and county of San Francisco, State of California, and a duly qualified and registered voter therein.

That said Neils Wolfgang claims from the Russian Government the sum of \$10,000, being the entire sum hereby claimed; this claimant believes that the sum so claimed would not reimburse him for the loss and damage sustained by him from the wrongful act of the authorities of the Russian Government hereinafter set forth, and that this claimant has received no money or other equivalent or indemnification from insurance or otherwise for the whole or any part of the loss or injury upon which this claim is founded.

That the said claim is based upon the following facts and circumstances, to wit:

That I, the said Neils Wolfgang, on the 7th day of May, A. D. 1892, was a duly acting and qualified hunter on the American schooner *C. H. White*, belonging to the Eagle Fishing Company, of San Francisco, Cal., which said vessel on said day cleared from said port of San Francisco for a hunting and fishing voyage in the North Pacific Ocean, having at the time all the necessary and legal papers on board, as will more fully and at large appear by the memorial and papers in support thereof of said Eagle Fishing Company on file in this Department, and that on said day I, as hunter with

said vessel, and a good and sufficient crew, did set sail and depart from said port of San Francisco, bound for the North Pacific Ocean, said vessel being at that time and at all the times hereinafter mentioned seaworthy and in all respects fit for the voyage which it took, as herein mentioned. I proceeded with said vessel on my voyage without disaster of any kind until the 15th day of July, A. D. 1892, and that prior to that day and in the open Pacific Ocean, more than 30 miles south of the Aleutian Islands, and not in Russian waters, had caught 8 barrels of mackerel and 1 ton of codfish, and had killed 20 seals, all of which were caught and killed on the voyage from San Francisco, and more than 30 miles south of the Aleutian Islands, and not in Russian waters; and that about the 12th day of July, A. D. 1892, I being then fishing about 40 miles south of Agattou Island, one of the Aleutian Islands, with said vessel and crew, set sail for the Kurile Islands, off the coast of Japan, intending to fish there; and the master then finding that the chronometer was out, wanted to sight land to correct the chronometer, and accordingly deviated from the course of route to the Kurile Islands for the purpose of sighting either Copper or Bering Island to correct the chronometer, and on the 15th day of July we arrived at latitude 54° 18' north, longitude 167° 19' east, by correct observation, and had not fished or sealed in said place, nor at any place within 50 miles thereof, or in Russian waters at all, and the wind being light, but the vessel sailing on its course as aforesaid, and no boats being out from said vessel, either for hunting or fishing, and neither I nor anyone from said vessel being either hunting or fishing.

Said latitude 54° 18' north, longitude 167° 19' east, is by correct observation measured by the master on the United States Coast Survey Chart, No. 900, more than 80 miles from Copper or Bering Islands on the high seas, and not in Russian waters; when at the said time, and in the latitude and longitude above mentioned, on the 15th day of July A. D. 1892, as aforesaid, and not being at the time hunting or fishing, and not having at any time fished or hunted seals in Russian waters, but being at said time on its course for the Kurile Islands as aforesaid, the said schooner was boarded by an officer from the Russian war cruiser *Zabiaca*, which said war cruiser *Zabiaca* was, at all the times herein mentioned, a steamer regularly commissioned as a war cruiser, and belonging to the Russian Government, armed for offensive and defensive warfare, and acting under the authority and by the directions of the said Russian Government, and the master was, by said officer, ordered to come on board of said cruiser with all the schooner's papers; he accordingly went on board. Shortly afterwards the captain had me, as well as all the crew of said schooner, brought on board of said cruiser, and I, with the rest of the crew of said schooner, was then and there arrested, and was kept a prisoner on board of said cruiser until its arrival at Petropaulovsk on the 20th day of July, A. D. 1892, and while on said cruiser I had no other clothing than those in which I stood, and suffered from exposure to the weather and from the insufficient food allowed me.

The following articles were stolen from me by the Russians: 1 lot of underwear, valued at \$7; 1 lot of shoes, valued at \$4.50; 1 pair of pants, valued at \$7; 1 oilskin coat, valued at \$3.50; 1 lot of socks, valued at \$2; 1 pair of rubber boots, valued at \$5; 1 gold ring, valued at \$9; 1 knife, valued at 75 cents; 9 sealskins, valued at \$18; and, notwithstanding my repeated demands for them, they were never returned to me.

Upon landing at Petropaulovsk the master went to the governor and demanded assistance. The governor allowed 15 kopecks—worth about 7 cents United States money—per diem for the support of each of the crew, and was informed that we were all prisoners, and that no more money would be allowed for our support. He then asked for shelter for his crew, but the only shelter given me and the rest of the crew—consisting of 10 white men and 4 Indians, together with 24 other men belonging to other vessels which had been seized by the Russians—was a room 10 feet by 18 feet, with a leaky roof and broken windows, in which I was compelled to live during my stay in Petropaulovsk, which lasted until the 8th day of August, A. D. 1892, and during that time I had to live upon half a loaf of bread each day (that being all the 15 kopecks allowed by the Russian Government would then buy); the bread, together with what I could beg, was not sufficient to keep me from hunger. From the exposure to the damp and foggy weather during my imprisonment at Petropaulovsk, and from insufficient food, I suffered great physical pain, from the effects of which I have not yet recovered.

On the 8th day of August provision was made for the passage of myself and the others at Petropaulovsk (84 in all) to some American or British port. Accordingly, on said last-named day, I was driven on board the American bark *Majestic*, where, on account of insufficient food and accommodation, I suffered greatly during my passage to Port Townsend, where I arrived on the 31st day of August, A. D. 1892.

That many of the facts constituting the cruel acts by the Russian officials, and showing their lack of humanity in matters pertaining to this claim, are not in my

direct knowledge, but are more fully and at large set forth in the memorial of Lawrence M. Furman, master of said schooner *C. H. White*, to which said memorial reference is hereby made in support hereof.

The master of said schooner *C. H. White* duly protested at the time to the captain of the Russian cruiser *Zabiaca*, against the seizure of the said vessel, and at the time protested against each and all of the inhuman and cruel acts by the Russian officials hereinbefore complained of, and duly noted a protest on the 5th day of August, A. D. 1892, to the Russian governor of Petropaulovsky; and on the 31st day of August, A. D. 1892, duly made a regular marine protest against such seizure and acts hereinbefore complained of to James G. Swan, a notary public in and for Port Townsend, State of Washington, United States of America, immediately upon my arrival at said city, and said city being the first place in the United States at which I arrived, all of which protests were made on my behalf, and the protest made before James G. Swan, as aforesaid, was also signed by me.

That the seizure of the said schooner *C. H. White*, and all the cruel and inhuman acts by the officers of the Russian war cruiser *Zabiaca*, and by the Russian officials committed upon me were in violation of the law of nations, and of my right as a citizen of the United States, and in contravention to the treaties existing between the United States and Russia; and that this claim is founded upon the principles of international law, and the rights which every nation and every person has upon the high seas, and upon the fact that all the above-mentioned acts by the Russian Government and its officials were in violation thereof.

Wherefore I hereby request the interposition of the Government of the United States of America against the Russian Government for the presentation of this claim against said Russian Government.

In witness whereof I have hereunto set my hand and seal this 24th day of January, A. D. 1893.

[SEAL.]

NEILS WOLFGANG.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

I, M. C. Haley, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the superior court thereof (which court is a court of record, having a seal), do hereby certify that Harry J. Lask, whose name is subscribed to the annexed instrument and thereon written, and before whom the annexed oath or affidavit was taken, was at the time of taking such oath or affidavit, a notary public in and for the city and county of San Francisco, residing in said city and county, duly authorized to take the same, and an officer duly authorized by the laws of said State to take and certify the acknowledgment and proof of deeds to be recorded in said State. And further, that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court, at my office in said city and county, this 31st day of January, A. D. 1893.

[SEAL.]

M. C. HALEY, *Clerk.*

I, Eugene R. Garber, presiding judge of the superior court of the city and county of San Francisco, State of California, do hereby certify that said court is a court of record, having a clerk and seal. That M. C. Haley, who has signed the annexed attestation, is the duly elected and qualified county clerk of the city and county of San Francisco, and was at the time of signing said attestation, ex officio clerk of said superior court. That said signature is his genuine handwriting, and that all his official acts as such clerk are entitled to full faith and credit.

And I further certify that said attestation is in due form of law.

Witness my hand this 31st day of January, A. D. 1893.

EUGENE R. GARBER,
Presiding Judge of the said Superior Court.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

I, M. C. Haley, county clerk of the city and county of San Francisco, and ex officio clerk of the superior court of the city and county of San Francisco, State of California, do hereby certify that the Hon. Eugene R. Garber, whose name is subscribed to the preceding certificate, is presiding judge of the superior court of the city and county

of San Francisco, State of California, duly elected and qualified, and that the signature of said judge to said certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said court this 31st day of January, A. D. 1893.

[SEAL.]

M. C. HALEY,
County Clerk and Clerk of Court.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

Niels Wolfgang, being duly sworn, says: I am the person making and subscribing to the above memorial to the Department of State.

I have read the foregoing memorial and know the contents thereof; the same is true of my own knowledge, except as to those matters which are there stated on information and belief, and as to those matters I believe it to be true.

NIELS WOLFGANG.

Subscribed and sworn to before me by the said Niels Wolfgang, known to me to be a credible witness, this 24th day of January, A. D. 1892 [sic].

[SEAL.]

HARRY J. LASK,
*Notary Public in and for the City and County of San Francisco,
State of California.*

EXHIBIT K.

[Stamp.]

[James G. Swan, Port Townsend, Jefferson County, Wash.]

UNITED STATES OF AMERICA,

State of Washington, County of Jefferson, ss:

To all people whom these presents shall or may concern:

I, James G. Swan, a notary public in and for the county and State aforesaid, duly commissioned by the governor of said State in accordance with the laws thereof, dwelling in the city of Port Townsend, send greeting.

Know ye, that on this 31st day of August, A. D. 1892, before me, the said notary, at my office, personally appeared L. M. Furman, late master of the American schooner *C. H. White*, belonging to the port of San Francisco, Cal. (the said master having previously noted in due form of law his intention to protest), who, together with Andrew Romney, mate, and Niels Wolfgang, hunter, belonging to the aforesaid vessel, being by me duly sworn according to the laws of said State and of the United States of America, voluntarily and solemnly did depose and declare as follows, to wit, that they, the said appearers, on the 7th day of May, A. D. 1892, set sail and departed in and with the said vessel from the port of San Francisco, Cal., having on board a hunting and fishing outfit and bound for the North Pacific Ocean, the said vessel being then stout, staunch, and strong; her ballast, cargo, and stores well and sufficiently stowed and secured; well masted, manned, tackled, victualed, appareled, and appointed, and in every respect fit for sea and the voyage she was then about to undertake; that we proceeded on our voyage without disaster of any kind until the 15th day of July, A. D. 1892, when, being at that time on the high seas, in latitude 54° 18' north, longitude 167° 19' east, by correct observation; on the high seas, more than 30 miles from land, we were boarded by an officer from the Russian cruiser *Zabiaca*, Captain Deleveron, who ordered me to go on board the *Zabiaca* with all my papers, as the captain of the cruiser wanted to see my papers and me also.

I accordingly went on board in the officer's boat, and when Captain Deleveron had examined my papers and found that I had cleared for hunting and fishing, he arrested me and put me under a guard of four marines armed, and ordered me to be kept separate from the crew and not to be allowed to speak to anybody. He then took all hands out of the schooner, except the mate, and put them under guard on board the cruiser, after searching them and taking from them everything they had, but the clothes they stood in. He then took the steamer in tow, and towed her to Nicolavsky Bay, Bering Island. It took twelve hours to tow us from where we were seized to Bering Island, where we arrived on the 16th of July at 10 o'clock a. m. The cruiser and schooner were anchored near each other. After we had anchored Captain Deleveron called me into his cabin and told me that the United States steamer *Albatross*, Captain Tanner, had been to Bering Island and had instructed him to seize any vessel he might come across which had a sealing outfit on board. He also

showed me a list which Captain Tanner had given him of all the vessels which had cleared at San Francisco for hunting and fishing. The *C. H. White's* name was not on that list, as I left San Francisco after the *Albatross* had sailed for the north. Captain Deleveron also showed me the proclamation and other American Government papers which Captain Tanner had left with him, but I did not read those papers. Captain Deleveron also told me that he could seize any sealing vessels from 1 mile to 1,000 miles off shore, he did not care where they were. I told him that I had a clearance from the San Francisco custom-house for a hunting and fishing voyage in the North Pacific Ocean, and I claimed that I was in the North Pacific Ocean at the time I was seized. He said it did not matter it was in Russian waters. I said that the fishing limits are 3 leagues or 9 miles off shore, and I was a long way outside of that limit. He said that it made no difference.

By actual measurement of the General Chart of Alaska, No. 900, United States Coast Survey, 1890, I make my position latitude 54° 18' north. The Russians made it latitude 54° 30' north. My distance by my measurement was 80 miles to the south of Bering Island, and the Russians make it 70 miles by their own statement. I consider my vessel as being at least 70 miles outside the limit set by all civilized nations as their jurisdiction over the high seas.

After I had undergone this court-martial I was told by Captain Deleveron that I might go on board the schooner and get my personal effects. I went on board the schooner the same day, July 16, and found that my room had been robbed and everything of value taken away. A list of articles lost is herewith filed and becomes a part of this protest, together with the bills of the officers and Indians as claims. The next day (July 17) I was called to the cabin, and a paper in the Russian language, which I do not understand, was presented to me to sign. I refused to sign what I did not comprehend, and protested against this injustice. Captain Deleveron told me I could have my choice, either to sign the paper or go to Vladivostock and be court-martialed and sent to Siberia, as I would have no one to defend me. I then signed the paper under protest, which I was given to understand was an acknowledgment on my part that I had been sealing in Russian waters.

July 18 we left Bering Island for Petropaulousk and arrived there on the 20th.

On the 5th of August I noted a protest with the governor of Petropaulousk, which was translated into Russian language for me by a Russian who could speak and write English. The governor read the protest, and then signed my original in English.

On the 8th of August I went on board the cruiser to see the captain, but he refused to see me, and I was driven out of the ship. After I got ashore a detachment of marines was sent from the cruiser, and drove us all on board the American bark *Majestic*, then lying at anchor in Petropaulousk Harbor. She left on the following morning for Victoria, B. C., where we arrived August 30 at 2 o'clock p. m.

During the time we were prisoners at Petropaulousk we were only allowed 7 cents per day for our subsistence, the regular allowance to Russian prisoners, and provisions being high we could only obtain three biscuits, or half a pound of bread, which constituted our food each day. And I, in behalf of the owners of said schooner *C. H. White*, the crew and myself, do protest against said seizure of said vessel and the total confiscation of all our property by the said Russian cruiser *Zabiacca* and her commander, Deleveron, reserving to myself the right, on behalf of all parties concerned, to still further extend this protest if need be.

And the said appearers further declare that as all the damage and injury which already has or may hereafter appear to have happened or accrued to the said vessel, her freight, and cargo has been occasioned solely by the circumstances hereinbefore stated, and can not or ought not to be attributed to any insufficiency of the said vessel, the neglect or default of him, this deponent, his officers, or crew. He now requires me, the said notary, to make his protest and this public act thereof that the same may serve and be of full force and value, as of right shall appertain. And thereupon the said master protested, and I, the said notary, at his special instance and request, did, as by these presents I now do publicly and solemnly, protest against winds, weather, and seas, and against all and every accident, matter and thing, had and met with as aforesaid, whereby or by means whereof the said vessel, her freight, or her cargo already has or hereafter shall have suffered or sustained loss, damage, or injury, and for all losses, costs, charges, expenses, damages, and injury which the said vessel, or the owner and owners of the said vessel, or the owner or owners or shippers of her said cargo, or any other person or persons interested or concerned in it either, already have been or may hereafter be called upon to pay, sustain, incur, or be put unto, by or on account of the premises, or for which the insurer or insurers of the said vessel, her freight, or her cargo, is or are respectively liable to pay or make contributions or average according to custom, or their respective contracts or

obligations, so that no part of any losses, damages, injuries, or expenses already incurred or hereafter to be incurred do fall on him, the said master, his officers, or crew.

Thus done and protested in Port Townsend this 1st day of September. A. D. 1892.

In testimony whereof, as well as the said appearers, I, the notary, have subscribed these presents, and I have also caused my seal of office to be hereunto affixed the day and year before written.

[SEAL.]

JAMES G. SWAN, *Notary Public.*

Signatures of appearers:

L. M. FURMAN, *Master.*

ANDREWS ROMNEY, *Mate.*

NIELS WOLFGANG, *Hunter.*

STATE OF WASHINGTON,

County of Jefferson, City of Port Townsend, ss:

I hereby certify the above and foregoing to be a true copy of protest against the capture of schooner *C. H. White*, of San Francisco, now on file in my office.

[SEAL.]

JAMES G. SWAN,

Notary Public, Washington, residing in Port Townsend.

EXHIBIT L.

Chart T of the United States Coast Survey.

EXHIBIT M.

LEGATION OF THE UNITED STATES,

St. Petersburg, December 26, 1894.

YOUR EXCELLENCY: I am directed by my Government to present to the Imperial Government the claims of the owners, master, mate, and hunter of the American schooner *C. H. White*, seized by the Russian cruiser *Zabiaca* on the 15th day of July, 1892. These claims are fully set forth in the inclosed copies of the following documents:

1. A memorial of the Eagle Fishing Company, of San Francisco Cal., owners of the schooner *C. H. White*, complaining of the seizure of their vessel.

2. A memorial of Lawrence M. Furman, master, complaining of his capture, imprisonment, and illtreatment by the Russian authorities at the time of the seizure and afterwards.

3. A memorial of Andrew Ronning, mate, to the same effect.

4. A memorial of Neils Wolfgang, hunter, to the same effect.

It appears that the schooner was owned by the Eagle Fishing Company, an American corporation, the shareholders of which were at the time of the seizure, and still are, American citizens. Indeed, all of the claimants and officers as well as all the white men of the crew, except Julius Furman, at the time of the seizure were, and still are, citizens of the United States.

The schooner regularly cleared from San Francisco May 7, 1892, bound on a fishing and hunting voyage to the North Pacific Ocean, having on board a fishing and hunting outfit and a crew of 10 white men and 4 Indians.

She took neither fish nor seals in Russian waters, nor does she seem to have ever visited Russian waters. Yet in latitude 54° 18' N., longitude 167° 18' E., a point more than 80 miles from Copper or Bering Islands, and of course even more remote from the mainland or any other Russian island, she was on the 15th day of July, 1892, seized, as before stated, by the Russian war cruiser *Zabiaca*.

The officers and crew were treated as prisoners, and the schooner was towed by her captors to Bering Island. Thence she was sent in charge of a prize crew to Petropaulovsky, and her owners are informed that she is now in the possession and use of the Russian Government.

The protracted injustice and cruelty alleged by these men is recited in the inclosed memorials with harrowing particularity.

The master states that the Russian officers, presumably to cover up such transactions, compelled him in his helpless condition, and with the threat to send him to Siberia, to sign a paper in the Russian language, which he did not understand.



GENERAL CHART OF ALASKA

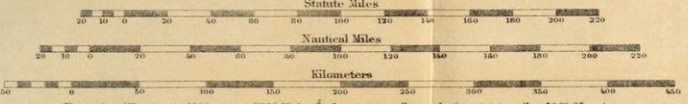
Polyconic Projection
Scale 3660000

Compiled from United States and Russian Authorities

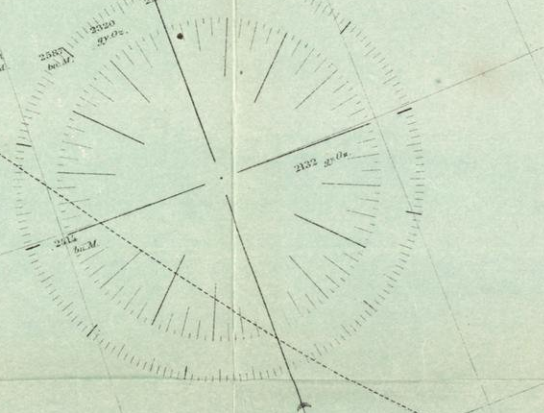
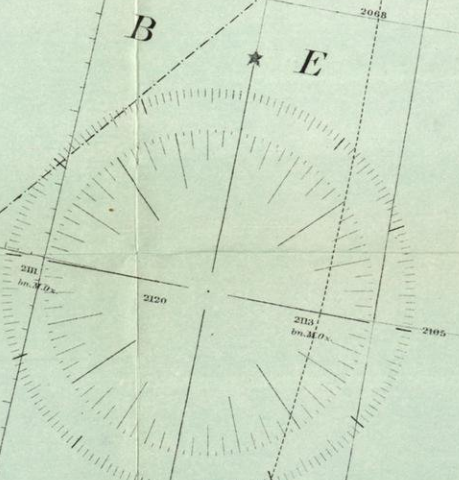
ALL SOUNDINGS IN FATHOMS, HEIGHTS IN FEET

Published at Washington, D.C.
BY THE U.S. COAST AND GEODETIC SURVEY
U.S. GEOL. SURV. DEPARTMENT

(Date of first publication 1850)



Note: The Sounding of 1000 fathoms (2286 M) is a guide only for the station 1000 fathoms.



My Government is very far from having any desire to protect from just punishment any of its citizens who enter the limits of another power and violate its laws. Nor do I imagine for a moment that the Imperial Government is without the most proper concern in regard to the conduct of its officers in those distant parts of the world. But here is a case where our citizens seem to have been engaged in a perfectly lawful pursuit, and under circumstances that do not touch in any degree the rights, interests, or jurisdiction of Russia. Every right, interest, and sentiment seems to have been totally disregarded.

Other memorials of this character, from the same quarter, have been presented by my Government; and I must ask your excellency to have this and similar cases pending made the subject of prompt and searching inquiry, to the end that such wrongs, if these allegations be true, may be prevented in the future, and that justice may be done for the past.

I avail myself of this occasion to renew to your excellency the assurance of my most distinguished consideration.

CLIFTON R. BRECKINRIDGE.

To His Excellency M. de GIERS,
Imperial Minister of Foreign Affairs, etc.

EMBASSY OF THE UNITED STATES OF AMERICA,
ST. PETERSBURG, RUSSIA.

I, Herbert H. D. Peirce, first secretary of the embassy of the United States of America, at St. Petersburg, Russia, do hereby certify that I have compared the foregoing copy of a note addressed to the Imperial Russian ministry of foreign affairs by the legation of the United States of America at St. Petersburg, Russia, dated December 26, 1894, with the original as entered in the archives of this embassy and now on file, and that the same is a correct transcription of the original as so entered and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of the embassy of the United States of America at St. Petersburg, Russia, this second day of July, in the year one thousand nine hundred.

[SEAL.]

HERBERT H. D. PEIRCE,
First Secretary of Embassy.

EXHIBIT N.

Identical with Exhibit S, *Cape Horn Pigeon.*

EXHIBIT O.

Identical with Exhibit T, *Cape Horn Pigeon.*

EXHIBIT P.

Identical with Exhibit U, *Cape Horn Pigeon.*

EXHIBIT Q.

Identical with Exhibit C C, *Cape Horn Pigeon.*

EXHIBIT R.

Identical with Exhibit E E, *Cape Horn Pigeon.*

EXHIBIT S.

Identical with Exhibit F F, *Cape Horn Pigeon*.

EXHIBIT T.

[In the matter of the seizure of the schooner *C. H. White* by the Russian Government.]

STATE OF CALIFORNIA, *City and County of San Francisco*, ss:

On this 20th day of November, 1900, before me, William T. Hess, a notary public in and for said city and county of San Francisco, State of California, duly commissioned and authorized by law to administer oaths in the said city, county, and State, and not interested in anywise in said claim, and not being the agent or attorney of any person interested in said claim, personally appeared Johan H. C. Prien, known to me to be a credible witness, and being first duly sworn, deposes and says:

I am the president of the Eagle Fishing Company, which said company owned the *C. H. White* in 1892, when she was seized by the Russian war cruiser *Zabiaca*, all of which will more fully appear by the memorial of said company on file herein.

The damage to said company for the loss of said vessel is placed by the said company in said memorial at the sum of \$100,000, and is itemized as follows: Value of schooner *C. H. White* and outfit, \$35,000; value of 20 sealskins which were seized, \$280; value of 8 barrels of mackerel seized, \$160; value of 1 ton of codfish seized, \$260; value of probable catch of codfish and mackerel after the seizure of the vessel, \$10,300; and probable value of catch of seals during the remainder of the sealing season, about \$54,000; and I further say that the said sum of \$100,000 will not reimburse said company fully for the seizure and loss of said vessel *C. H. White*.

I further state that said vessel *C. H. White* carried 7 hunting boats and a full equipment of hunters and sealers to man said boats.

JOHAN H. C. PRIEN.

Subscribed and sworn to before me this 20th day of November, 1900.

W. T. HESS,
*Notary Public in and for the City and County of
San Francisco, State of California.*

[Seal of notary.]

STATE OF CALIFORNIA, *City and County of San Francisco*, ss:

I, Wm. A. Deane, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the superior court thereof (which court is a court of record, having a seal), do hereby certify that W. T. Hess, whose name is subscribed to the annexed instrument and thereon written, and before whom the annexed oath or affidavit was taken, was at the time of taking such oath or affidavit a notary public in and for the city and county of San Francisco, residing in said city and county, duly authorized to take the same, and an officer duly authorized by the laws of said State to take and certify the acknowledgment and proof of deeds to be recorded in said State. And further, that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court, at my office in said city and county, the 23d day of November, A. D. 1900.

WM. A. DEANE, *Clerk.*

[Seal of the superior court.]

(10-cent stamp.)

11/23/1900.

W. A. D.

EXHIBIT U.

[In the matter of the seizure of the schooner *C. H. White* by the Russian Government.]

STATE OF CALIFORNIA, *City and County of San Francisco*, ss:

On this 20th day of November, 1900, before me, William T. Hess, a notary public in and for said city and county of San Francisco, State of California, duly commis-

sioned and authorized by law to administer oaths in said city, county, and State, and not interested in anywise in said claim, personally appeared Andrew P. Lorentzen, personally known to me to be a credible witness, who, being first duly sworn, says:

My age is 62 years. I was born in Denmark. My residence is Alameda, Cal. I am now, and since 1865 have been, a duly naturalized citizen of the United States. My residence at the time the events took place in regard to which I am testifying and deposing was Alameda, Cal. My occupation is now, and was at the time the events took place in regard to which I am testifying and deposing, shipping merchant, but I, as then and prior thereto, and subsequently thereafter until now, have been managing owner and part owner of sealing vessels, and otherwise interested in the sealing business. I am not interested, either directly or indirectly, in the said claim, nor have I any contingent interest in the same. I am not the agent or attorney of the claimant making the above claim, nor of any person whatever interested therein. I will not be entitled to receive any part of any sum which may be awarded under said claim to said claimant. Since 1885, when I first became interested in the sealing business, I have been managing owner of the following vessels engaged in the sealing business, viz, the *Mary H. Thomas*, the *Alexander*, the *Herman*, and the *Alton*, and I am well acquainted with the value of sealing vessels and the outfits for the same. I knew the *C. H. White*, her tonnage, and capacity well. I am advised as to her outfit and equipment. I knew L. M. Furman, the master thereof, and consider him a competent master, understanding the sealing business, and know that the master, outfit, equipment, and men of the *C. H. White*, in 1892, at the time she cleared from the port of San Francisco for the voyage during which she was seized by the Russian cruiser *Zabiaca*, were fully sufficient and competent for the purpose of sealing and fishing, and I know that the said *C. H. White* was fully fit for the purpose of sealing and fishing. I verily believe that the schooner *C. H. White*, with its equipment and outfit, at the time it cleared from the port of San Francisco in 1892, when it was seized by the Russian war cruiser *Zabiaca*, was fully worth the sum of \$35,000.

W. P. LORENTZEN.

Subscribed and sworn to before me this 20th day of November, 1900.

[Seal of notary.]

W. T. HESS,

Notary Public in and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

I, William A. Deane, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the superior court thereof (which court is a court of record, having a seal), do hereby certify that W. T. Hess, whose name is subscribed to the annexed instrument, and thereon written, and before whom the annexed oath or affidavit was taken, was, at the time of taking such oath or affidavit, a notary public in and for the city and county of San Francisco, residing in said city and county, duly authorized to take the same, and an officer duly authorized by the laws of said State to take and certify the acknowledgment and proofs of deeds to be recorded in said State. And further, that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court, at my office in said city and county, this 23d day of November, A. D. 1900.

[Seal of the superior court.]

WM. A. DEANE, *Clerk.*

[10-cent stamp.]

11/23/1900.

W. A. D.

EXHIBIT V.

[In the matter of the seizure of the schooner *C. H. White* by the Russian Government.]

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

On this 19th day of November, 1900, before me, William T. Hess, a notary public in and for said city and county of San Francisco, State of California, duly commissioned and authorized by law to administer oaths in said city, county, and State, and not interested in anywise in said claim, and not being the agent or attorney of any

person interested in said claim, personally appeared James Boyes, personally known to me to be a credible witness, who being first duly sworn, deposes and says:

My age is 46 years. I was born at Hull, England. I arrived in the city and county of San Francisco in 1870, and have been a duly naturalized citizen of the United States since 1876. My residence is now, and was at the time the events took place in regard to which I am testifying and deposing, No. 629 Broadway, San Francisco, Cal. My occupation is now wholesale shipping butcher; my occupation at the time the events took place in regard to which I am testifying and deposing was wholesale shipping butcher, but I was then and prior thereto and subsequently thereafter interested as managing owner of sealing vessels, and otherwise interested in the sealing business. I am not interested, either directly or indirectly, in the said claim, nor have I any contingent interest in the same. I am not the agent or attorney of the claimant making the above claim, nor of any person whatever interested therein. I will not be entitled to receive any part of any sum which may be awarded under said claim to said claimant.

I know the said schooner *C. H. White* well. The vessel was built in 1887 by C. H. White, a shipbuilder of San Francisco. She was then well worth the sum of \$15,000, having cost that much to build. I, with William Bent and others, purchased the schooner *C. H. White* from the said builder in 1888, and we fitted her out for hunting seals at a total expense of \$13,000. I was managing owner of the said schooner until 1891 or 1892, when we sold her to the Eagle Fishing Company, and I know that in the spring of 1892 the equipment was worth, for the purpose of sealing and fishing, all it cost us when new, \$13,000, for we had kept up the equipment in as good a condition as new, and the schooner was then, in 1892, well worth what it had cost to build, \$15,000; and I examined the said schooner *C. H. White*, and its outfit and equipment in 1892, just before she cleared for the voyage in the North Pacific Ocean, during which voyage she was seized by the Russian war cruiser *Zabiaca*; and I know her value, and also in a general way what the Eagle Fishing Company expended upon her^a to fit her out and man her for said voyage; and her value for the purpose of sealing and fishing was not less than \$35,000 at the time she was seized as aforesaid.

JAS. BOYES.

Subscribed and sworn to before me this 19th day of November, 1900.

[Seal of notary.]

W. T. HESS,
Notary Public in and for the City and
County of San Francisco, State of California.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

I, Wm. A. Deane, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the superior court thereof (which court is a court of record, having a seal), do hereby certify that W. T. Hess, whose name is subscribed to the annexed instrument and thereon written, and before whom the annexed oath or affidavit was taken, was, at the time of taking such oath or affidavit, a notary public in and for the city and county of San Francisco, residing in said city and county, duly authorized to take the same, and an officer duly authorized by the laws of said State to take and certify the acknowledgment and proof of deeds to be recorded in said State. And further, that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court at my office, in said city and county, this 23d day of November, A. D. 1900.

[Seal of the superior court.]

[10-cent stamp.]

11/23/1900.

W. A. D.

WM. A. DEANE, *Clerk.*

EXHIBIT W.

[In the matter of the seizure of the schooner *C. H. White* by the Russian Government.]

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

On this 19th day of November, 1900, before me, William T. Hess, a notary public in and for said city and county of San Francisco, State of California, duly com-

^a The word "here" has been corrected to read "her," as above noted.—W. T. HESS.

missioned and authorized by law to administer oaths in said city, county, and State, and not interested in anywise in said claim, and not being the agent or attorney of any person interested in said claim, personally appeared, Charles Lutgens, sometimes called Claus Lutgens, personally known to me to be a credible witness, who being first duly sworn, deposes and says:

I am not interested either directly or indirectly in the said claim, nor have I any contingent interest in the same. I am not the agent or attorney of the claimant making the above claim, nor of any person interested therein. I will not be entitled to receive any part of any sum which may be awarded under said claim to said claimant. My age is 59 years; my place of birth was North Germany. I arrived in the city and county of San Francisco in 1869, and I have been a duly naturalized citizen of the United States since about 1875. I have been a sailor or seaman for 38 years, and have been a master mariner since 1872. I am now a master mariner. At the time the events took place in regard to which I am now testifying and deposing I was a master mariner, and master and owner of the American schooner *Kate and Anna*, and am now the owner thereof. My residence is now at Alameda, Cal., and my residence at the time the events took place in relation to which I am testifying and deposing was San Francisco, Cal. During the season of 1892, I was sealing and hunting in the North Pacific Ocean as owner and master of said schooner *Kate and Anna*. I have been in the sealing business since 1886; I was master and owner of said schooner *Kate and Anna* until 1896, and since 1896 up to the present time, I am the owner of said schooner *Kate and Anna* and am engaged in the sealing business. I am well acquainted with the schooner *C. H. White*. I saw her in the year 1890, and I saw the said schooner in 1892 at the time it cleared for the voyage during which it was seized by the Russian cruiser *Zabiaca*. I was informed as to the date of the seizure of said schooner *C. H. White* on July 15, 1892. I know the master of said schooner, L. M. Furman, to have been a competent master, understanding the sealing business, and I know the equipment of the vessel to have been sufficient for the purpose of sealing and fishing. I was sealing in the North Pacific Ocean during the year 1892 as master and owner of the schooner *Kate and Anna*, and am fully able to judge as to the probable number of seals which the said schooner *C. H. White* would reasonably be expected to catch during the season of 1892 after its seizure as aforesaid. I know the value of the seal skins in the London market during the year 1892 to have been \$14 each, because I sold 1,252 seal skins that year at that price. I estimated that the probable catch of the schooner *C. H. White* for the season of 1892, subsequent to its seizure on July 15th, 1892, would have been at least 2,400 seal skins, worth as aforesaid \$14 each, and the probable and reasonable value thereof would have been \$33,600.

CHARLES LUTGENS.

Subscribed and sworn to before me this 19th day of November, 1900.

W. T. HESS,

Notary Public in and for the City and County of San Francisco, State of California.

[Seal of notary.]

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

I, Wm. A. Deane, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the superior court thereof (which court is a court of record having a seal), do hereby certify that W. T. Hess, whose name is subscribed to the annexed instrument and thereon written, and before whom the annexed oath or affidavit was taken, was, at the time of taking such oath or affidavit, a notary public in and for the city and county of San Francisco, residing in said city and county, duly authorized to take the same, and an officer duly authorized by the laws of said State to take and certify the acknowledgment and proof of deeds to be recorded in said State. And further, that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court at my office, in said city and county, this 23d day of November, A. D. 1900.

[Seal of the superior court.]

[10-cent stamp.]

11/23/1900.

W. A. D.

WM. A. DEANE, *Clerk.*

EXHIBIT X.

[Cat. No. 335.—Register No. 23: Permanent. Official number: Numerals, 126,500; letters.]

Copy of certificate of registry.

In pursuance of Chapter 1, Title XLVIII, "Regulation of commerce and navigation," Revised Statutes of the United States, John H. C. Prien, of San Francisco, Cal., president, having taken and subscribed the oath required by law, and having sworn that the Eagle Fishing Company, a corporation duly organized under the laws of the State of California, is the only owner of the vessel called the *C. H. White*, of San Francisco, whereof Lawrence M. Furman is at present master, and is a citizen of the United States; and that the said vessel was built in the year 1888 at San Francisco, Cal., as appears by permanent register No. 77, issued at this port January 11, 1890, now surrendered new owner; and said register having certified that the said vessel has one deck and two masts, and that her length is 86 and 8 tenths feet, her breadth 23 feet and 10 tenths, her depth 9 feet and 5 tenths, her height feet and tenths; that she measures 84 tons and 45 hundredths, viz.:

	Tons.
Capacity under tonnage deck	82.44
Capacity between decks above tonnage deck .....	.....
Capacity of inclosures on the upper deck, viz	6.45
<hr/>	
Gross tonnage.....	88.89
Deductions under section 4153, Revised Statutes, as amended by act of August 5, 1882	4.44
<hr/>	
Total deductions	4.44
	<hr/>
Net tonnage.....	84.45

The following described spaces, and no others, have been omitted, viz:

and that she is a schooner, has a billet head and an elliptic stern; and the said Johan H. C. Prien having agreed to the description and admeasurement above specified, and sufficient security having been given according to law, said vessel has been duly registered at the port of San Francisco.

Given under my hand and seal at the port of San Francisco this 12th day of October, in the year 1891.

[Place for seal of naval officer.]
 [Place for seal of collector.]
 [Seal of the United States Treasury.]

E. P. DANFORTH, *Naval Officer.*
 T. G. PHELPS, *Collector of Customs.*
 WM. W. BATES,
Commissioner of Navigation.

EXHIBIT Y.

[In the matter of the claim of Lars M. Furman against the Russian Government.]

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

W. H. Grodt, being duly sworn, deposes and says: I was born in the year 1850. I have been a citizen of the United States for about fourteen years. I reside at No. 9 Essex street, San Francisco, Cal. I am by occupation a stevedore. I have known Lars M. Furman, who makes claim against the Russian Government under the name of Lawrence M. Furman, from childhood. We played together as boys in Sweden. I have known him since his arrival in this country. He was always called Lars M. Furman in Sweden. I know that his true name is Lars M. Furman, and I know him to be the same person who makes claim against the Russian Government under the name of Lawrence M. Furman.

I have no interest of any kind or nature whatsoever in said claim, nor am I the agent or attorney of said claimant.

W. H. GRODT.

Subscribed and sworn to before me this 10th day of April, 1894.

[SEAL.]

JOHN C. HUGHES,
*Notary Public in and for the City and County of San Francisco,
 State of California, Rooms 4 and 5, Fourth Floor,
 Mills Building, San Francisco, Cal.*

EXHIBIT Y.

[In the matter of the claim of Lars M. Furman against the Russian Government.]

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

I, M. C. Haley, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the superior court thereof (which court is a court of record, having a seal) do hereby certify—

That John C. Hughes, whose name is subscribed to the annexed instrument and thereon written, and before whom the annexed oath or affidavit was taken, was, at the time of taking such oath or affidavit, a notary public in and for the city and county of San Francisco, residing in said city and county, duly authorized to take the same, and an officer duly authorized by the laws of said State to take and certify the acknowledgment and proof of deeds to be recorded in said State. And further, that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court, at my office in said city and county, this 10th day of April, A. D. 1894.

[SEAL.]

M. C. HALEY, *Clerk.*

EXHIBIT Z.

Minor.]

Certified copy of act of naturalization.—No. 323.

In the superior court of the city and county of San Francisco, State of California. Present: Hon. D. J. Toohy, judge.

[In the manner of the application of Andrew Olson, an alien, to become a citizen of the United States of America.]

In open court, department No. 11, this 5th day of March, A. D. 1898.

It appearing to the satisfaction of this court by the oaths of George Anderson and F. H. Hagenah, citizens of the United States of America, witnesses for that purpose, first duly sworn and examined, that Andrew Olson, a native of Norway, resided in the United States of America three years next preceding his arriving at the age of 21 years, and that he has continued to reside in the United States to the present time, and has resided within the limits and under the jurisdiction of the United States five years at least last past, and within the State of California for one year last past, and that during all said five years' time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same, and the said applicant has declared his intention to become a citizen of the United States, and having now here before this court taken an oath that he will support the Constitution of the United States of America, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, and sovereignty whatever, and particularly to the King of Norway and Sweden, it is therefore ordered, adjudged, and decreed that the said Andrew Olson be, and is hereby, admitted and declared to be a citizen of the United States of America.

D. J. TOOHY, *Judge.*

ANDREW OLSON, *Residence, No. 1 Jackson street.*

Witnesses:

GEORGE ANDERSON, *No. 9 Jackson Street.*

F. H. HAGENAH, *No. 100½ Jackson Street.*

OFFICE OF THE CLERK OF THE SUPERIOR COURT,
City and County of San Francisco, State of California, ss:

I, Wm. J. Ruddick, county clerk and ex officio clerk of the superior court, in and for the city and county of San Francisco, State of California, said court being a court of record, having common law jurisdiction, and a clerk and seal, do certify that the above is a true copy of the act of naturalization of Andrew Olson, as the same appears upon the records of said court now in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 5th day of March, in the year of our Lord one thousand eight hundred and eighty-eight and in the year of our Independence the one hundred and twelfth.

(Stamped) WM. J. RUDDICK, *Clerk.*

By BERT M. NULFY, *Deputy Clerk.*

[SEAL.]

EXHIBIT A A.

[In the matter of the claim of Andrew Olson against the Russian Government.]

Andrew Olson, also known as Andrew Ronning, being duly sworn, deposes and says: I was born in Norway in the year 1853. I have been a citizen of the United States since March 5, 1883. I reside at No. 10 Jackson street, San Francisco, Cal.; I am by occupation a seafaring man. I am the same person who makes claim against the Russian Government under the name of Andrew Ronning. My father's name was Ole Andreason Ronning, and in accordance with the custom of the country in which I was born, to wit, Norway, I was christened Andrew Olson. I was sometimes called Andrew Ronning in Norway. After I came to San Francisco, and subsequent to receiving my naturalization papers, I found a great many people by the name of Olson in the seafaring business, and in order to avoid confusion, and finding it to be the custom in the United States for the son to take the last name of his father as his own last name, I used the name of Andrew Ronning and shipped on the vessel *C. H. White* under the said name of Andrew Ronning, and for the same reason I used the name of Andrew Ronning in making my claim against the Russian Government.

I furthermore depose and say that there is no other reason for the change of my name than as above stated.

ANDREW OLSON.

Subscribed and sworn to before me this 10th day of April, 1894.

JOHN C. HUGHES,

*Notary Public in and for the City and County of San Francisco, State of California,
Rooms 4 and 5, Fourth Floor, Mills Building, San Francisco, Cal.*

[In the matter of the claim of Andrew Olson against the Russian Government (Andrew Olson also known as Andrew Ronning.)]

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

I, M. C. Haley, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the superior court thereof (which court is a court of record, having a seal), do hereby certify that John C. Hughes, whose name is subscribed to the annexed instruments and thereon written, and before whom the annexed oaths or affidavits were taken, was, at the time of taking such oaths or affidavits a notary public in and for the city and county of San Francisco, residing in said city and county, duly authorized to take the same, and an officer duly authorized by the laws of said State to take and certify the acknowledgment and proof of deeds to be recorded in said State; and further that I am well acquainted with the handwriting of such officer and verily believe that the signatures to such jurats or certificates are genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court, at my office in said city and county, this 10th day of April, A. D. 1894.

[SEAL.]

M. C. HALEY, *Clerk.*

EXHIBIT B B.

[In the matter of the claim of Andrew Olson against the Russian Government.]

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

Martin Olsen, being duly sworn, deposes and says: I was born in Norway in the year 1858. I have been a citizen of the United States since the year 1892. I reside at No. 1½ Cedar avenue, San Francisco, Cal. I am by occupation a seafaring man. I have known Andrew Olson for the last twenty years. I knew him in Norway. His father's name was Ole Andreason Ronning. I am familiar with the custom of Norway in regard to patronymics. It is the custom in Norway to give the child the last name Olson where the father's first name is Ole. I know him to be the person who makes claim against the Russian Government under the name of Andrew Ronning, and I also know him to be the same person who was naturalized in the

superior court of the city and county of San Francisco, State of California, March 5, 1888.

I have no interest of any kind or nature whatsoever in said claim, nor am I the agent or attorney of said claimant.

MARTIN OLSEN.

Subscribed and sworn to before me this 10th day of April, 1894.

[SEAL.] JOHN C. HUGHES,
Notary Public in and for the City and County of San Francisco, State of California,
Rooms 4 and 5, Fourth Floor, Mills Building, San Francisco, Cal.

EXHIBIT C C.

[In the matter of the claim of Andrew Olson against the Russian Government.]

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

Theodor Tonnessen, being duly sworn, deposes and says: I was born in Norway in the year 1855. I have been a citizen of the United States since the year 1890. I reside at 29½ Fourteenth street, San Francisco, Cal. I am by occupation a seafaring man. I have known Andrew Olsen from childhood in Norway, and in this country since I arrived here. I know his father. His father's name was Ole Andreason Ronning, and while he was usually called Andrew Olsen in Norway, yet I have heard him called Andrew Ronning there. I am familiar with the custom of Norway in regard to patronymics. It is a custom in Norway to give the child the last name Olson where father's first name is Ole. I have heard him generally called Andrew Olson in Norway, although at times they have called him in my presence Andrew Ronning. I know him to be the same person who makes claim against the Russian Government under the name of Andrew Ronning, and I also know him to be the same person who was naturalized in the superior court of the city and county of San Francisco, State of California, March 5, 1888.

I have no interest of any kind or nature whatsoever in said claim, nor am I the agent or attorney of said claimant.

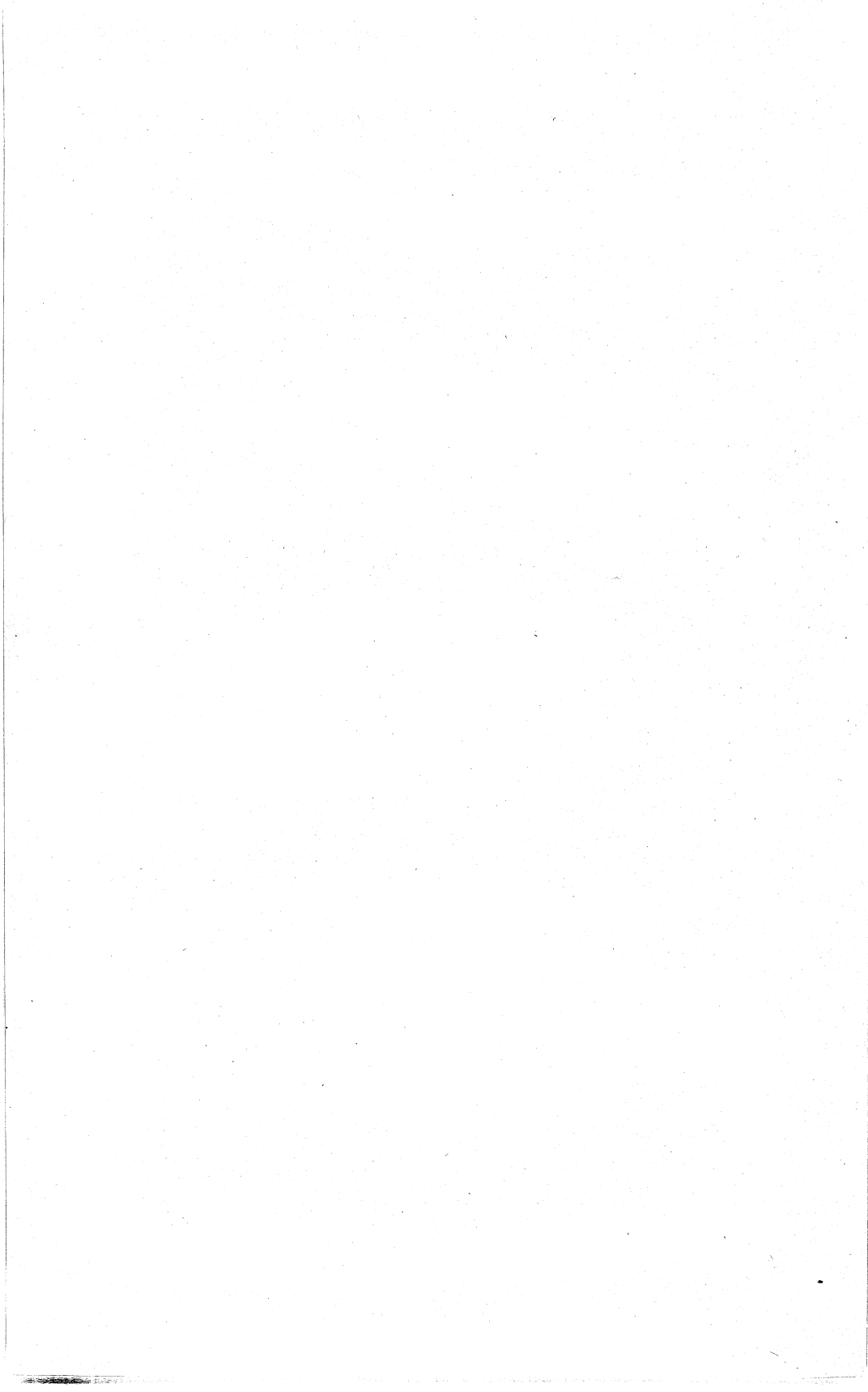
THEODOR TONNESSEN.

Subscribed and sworn to before me this 10th day of April, 1894.

[SEAL.] JOHN C. HUGHES,
Notary Public in and for the City and County of San Francisco, State of California,
Rooms 4 and 5, Fourth Floor, Mills Building, San Francisco, Cal.

EXHIBIT D D.

Identical with Exhibit D D, *Cape Horn Pigeon.*

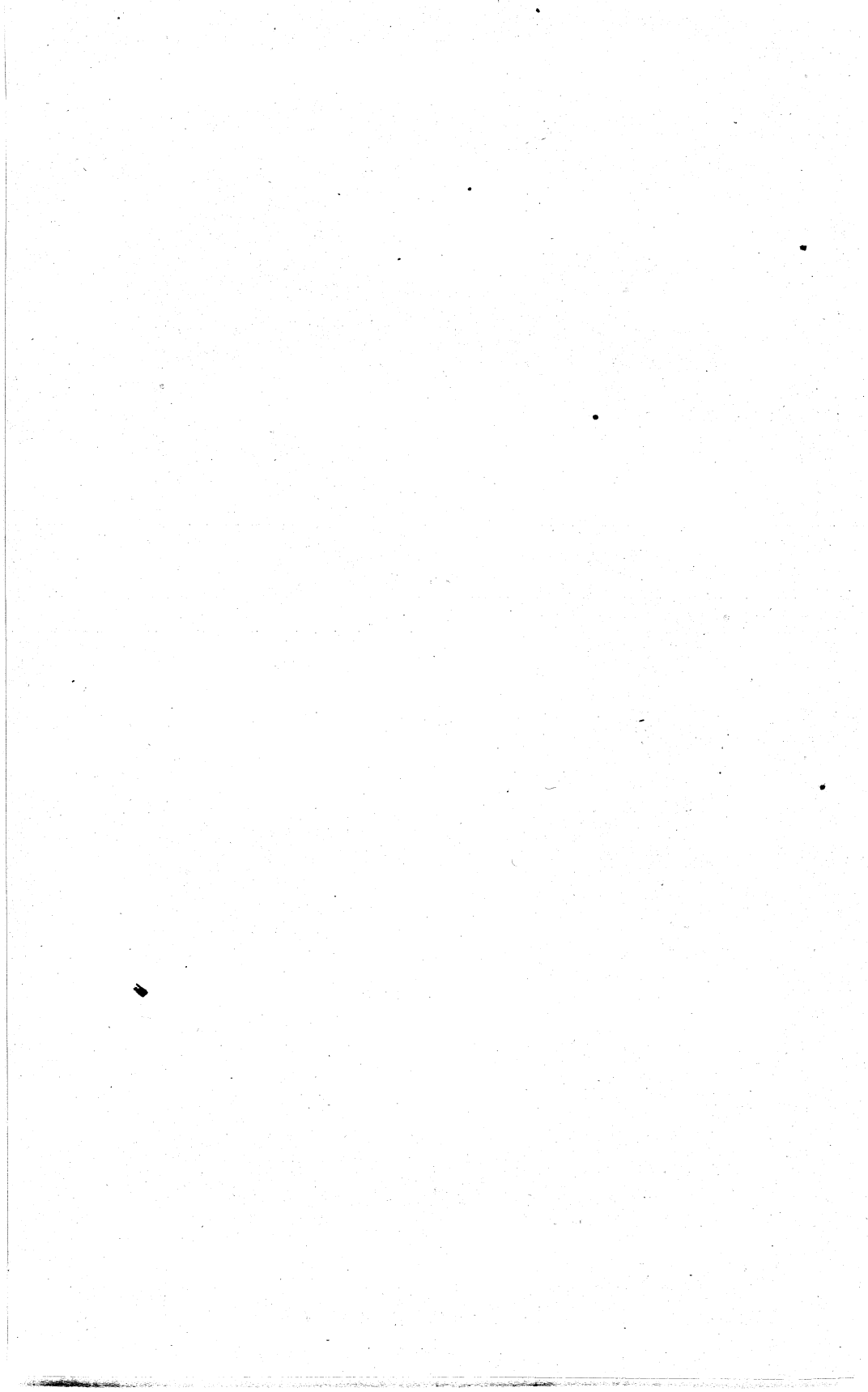


CASE No. 4.

THE "KATE AND ANNA."

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CASE NO. 4.

The "Kate and Anna."

STATEMENT OF THE CASE.

The *Kate and Anna* was an American schooner owned and commanded by the complainant, Claus Lutjens, sometimes called Charles Lutjens, a naturalized citizen of the United States of America.

The said schooner was duly enrolled and registered at the port of San Francisco and was duly and regularly cleared from said port of San Francisco on March 1, 1892, bound upon a hunting and fishing voyage in the North Pacific Ocean or elsewhere as her master might direct, and the said schooner was in all respects seaworthy and well and sufficiently manned, victualed, furnished, and equipped for a vessel in the merchant service and particularly for the voyage she was about to undertake.

In support of the above allegations the following documents are hereto appended marked, respectively:

Exhibit A.—A duly authenticated copy of the enregistration of said schooner, the *Kate and Anna*, at the custom-house of the United States in San Francisco.

Exhibit B.—A duly authenticated copy of the outward manifest of the said schooner *Kate and Anna*.

Exhibit C.—A duly authenticated copy of the clearance papers of the said *Kate and Anna*.

Exhibit D.—A duly authenticated copy of the certificate of naturalization of the said Claus Lutjens, master and owner of the said *Kate and Anna*.

Proceeding upon his voyage as aforesaid the said master and owner took the said schooner *Kate and Anna* into the waters of the North Pacific Ocean and there killed and took upon the high seas within the jurisdiction or territorial waters of no nation 124 seals, the skins of which were duly preserved and stored within the said vessel.

And upon the 12th day of August in the same year, to wit, 1892, when in latitude 54° 9' north and longitude 168° 21' east, by correct observation, a point upon the high seas without the jurisdiction and territorial waters of any nation and more than 30 miles from the nearest Russian land, and while sailing in a southwesterly course and no one from said vessel being either hunting or fishing, the said Claus Lutjens was compelled, by an armed cruiser of the Imperial Russian navy, namely, the *Zabiaca*, a cruiser regularly armed, equipped, and commissioned as a man-of-war by the Imperial Government of Russia, to come to. And the said schooner *Kate and Anna* having come to the said cruiser the *Zabiaca* came alongside of her and the commanding officer of the said *Zabiaca* ordered the master of the *Kate and Anna* to come on board of the cruiser and to bring with him the said schooner's papers. Accordingly the said Claus Lutjens, master and owner of the said schooner *Kate and Anna*, took the logbook of his said vessel and her other official papers and went on board of the *Zabiaca* and delivered the said papers to the commanding officer of

the *Zabiaca* for his examination. And the said commanding officer made an entry in the said logbook to the effect that the *Kate and Anna* was arrested in latitude 54° 9' north, longitude 168° 21' east, and not in Russian waters, but because the said logbook did not disprove that she has been sealing on the sealing ground of the Commander Islands her seals were confiscated. And the said commanding officer of the *Zabiaca* then and there ordered him to send on board of the said *Zabiaca* all of his seal skins, to cease sealing, and to return to his home. And the said Claus Lutjens, under fear of the guns and armament of the said Russian war cruiser, and believing that if he failed to obey the said orders that his vessel would be seized and confiscated, did send on board of the *Zabiaca* all his seal skins, which were then and there confiscated, and to his great loss and injury ceased sealing and taking his schooner, returned to San Francisco forthwith. And at the time of the arrest of his vessel and the confiscation of his seal skins, the said Lutjens protested to the commanding office of the *Zabiaca* against all of the aforesaid injurious acts, and upon his arrival in San Francisco, or as soon thereafter as he conveniently could, the said Claus Lutjens, went before one Harry J. Lask, a notary public, in and for the city and county of San Francisco, State of California, and before him duly made a regular marine protest.

In support of these allegations the following documents are hereto annexed and submitted in evidence, to wit:

Exhibit E.—The original log book of the said schooner *Kate and Anna* upon her said voyage.

Exhibit F.—A duly authenticated copy of the marine protest of the said Claus Lutjens made before the said Harry J. Lask, notary public in and for the city and county of San Francisco, Cal., dated October 18, A. D. 1892.

PRESENTATION OF THE CLAIMS.

And thereafter the said Claus Lutjens addressed a memorial to the Government of the United States of America duly setting forth his grievances and asking that they be remedied, a duly authenticated copy of which memorial is hereto annexed and submitted in evidence, marked "Exhibit G."

And acting upon the request contained in the same memorial the Government of the United States, through its diplomatic representative at St. Petersburg, Russia, presented the claim of the said Claus Lutjens to the Imperial Government of Russia, and asked satisfaction therefor in a note dated November 9/21, 1894, from the then envoy extraordinary and minister plenipotentiary of the United States at St. Petersburg to the Imperial Russian minister for foreign affairs, a duly authenticated copy of which is hereto annexed and submitted in evidence, marked "Exhibit H."

And in reply to said note of the diplomatic representative of the United States at St. Petersburg the Imperial Russian Government addressed a note to the envoy extraordinary and minister plenipotentiary of the United States at St. Petersburg, stating that indemnity for the confiscation of the seal skins on the *Kate and Anna* would only be due if it could be proved that these seals had been taken outside of Russian waters; but refusing to pay for the loss of use of the vessel. A duly authenticated copy of the said note, dated August 26, old style, September 7, new style, 1895, is hereto annexed and submitted in evidence, marked "Exhibit I."

And the Government of the United States of America continued to

press for a settlement of the claims of the said Claus Lutjens as aforesaid, and finally, through its diplomatic representative at St. Petersburg, offered to settle the said claim by compromise, as is shown by the note of the then chargé d'affaires of the United States at St. Petersburg, dated January 27, old style, February 8, new style, 1899, a duly authenticated copy of which is hereto annexed and submitted in evidence, marked "Exhibit J."

In reply to the said note of February 8, new style, January 27, old style, 1899, offering a compromise in settlement of the claim, the Imperial Russian Government addressed a note to the embassy of the United States at St. Petersburg, dated March 13, old style, March 25, new style, proposing a basis of compromise wholly inadequate to indemnify the said Claus Lutjens for the losses sustained by him in consequence of the acts of the commanding officer of the *Zabiaca*, a duly authenticated copy of which said note is hereto annexed and submitted in evidence, marked "Exhibit K."

And in further support of the allegations herein set forth and as evidence regarding the limit of jurisdiction of the Imperial Russian Government in the North Pacific Ocean, the following documents are hereto annexed and submitted in evidence, marked, respectively, as follows, to wit:

Exhibit L.—A copy of chart No. 900, of the United States Coast Survey, showing the waters in which the seizure of the *Kate and Anna* took place, and on which is indicated the point of intersection of the parallel of latitude 54° 9' north and the meridian of longitude 168° 21' east.

Exhibit M.—A sworn copy of a translation of a paragraph occurring in a printed report of the director of the hydrographic department of the Imperial Russian ministry of marine, Vice-Admiral Wewel von Kruger, for the year 1875, printed in the Russian language at St. Petersburg, in the printing office of the Imperial ministry of marine, the said paragraph being on page 91 of said pamphlet. The original of said pamphlet forms part of Exhibit CC, in the case of the *Cape Horn Pigeon*, in arbitration, together with the present claims, and this exhibit is now referred to in the present case, as here stated.

Exhibit N.—A duly authenticated copy of a note received by the legation of the United States of America at St. Petersburg from the Imperial Russian ministry for foreign affairs, dated May 8, 1882.

Exhibit O.—A duly authenticated copy of a note received by the legation of the United States of America at St. Petersburg from the Imperial Russian ministry for foreign affairs, dated June 1-13, 1882, together with its inclosures, all forming one exhibit.

TREATY OBLIGATIONS AND THE LAWS OF NATIONS.

The first article of the treaty of 1824 between the United States and Russia reads as follows:

It is agreed that in any part of the great ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the high contracting powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following articles.

This article is practically identical with the first article of the treaty of 1825 between Russia and Great Britain.

In the course of the arbitration proceedings held under the treaty concluded between the United States and Great Britain at Washington, February 20, 1892, to determine the questions then pending between these two Governments, the following decisions were adopted:

First. By the ukase of 1821 Russia claimed jurisdiction in the sea now known as the Bering Sea to the extent of 100 Italian miles from the coasts and islands belonging to

her, but in the course of the negotiations which led to the conclusion of the treaties of 1824 with the United States and of 1825 with Great Britain, Russia admitted that her jurisdiction in the said sea should be restricted to the reach of cannon shot from shore, and it now appears that, from that time up to the time of the cession of Alaska to the United States, Russia never asserted in fact or exercised any exclusive jurisdiction in Bering Sea or any exclusive rights in the seal fisheries therein beyond the ordinary limit of territorial waters.

Second. The body of water now known as the Bering Sea was included in the phrase "Pacific Ocean," as used in the treaty of 1825 between Great Britain and Russia.

Third. No exclusive rights of jurisdiction in Bering Sea and no exclusive rights as to seal fisheries therein were held or exercised by Russia outside of ordinary territorial waters after the treaty of 1825.

Fourth. The United States has not any right of protection in the fur seals frequenting the islands of the United States in Bering Sea when such seals are found outside the ordinary 3-mile limit.

It can hardly be questioned that these rulings are equally applicable to any claim on the part of Russia to jurisdiction beyond ordinary territorial waters, or to any right of Russia of protection of the fur seals in the Bering Sea or North Pacific Ocean beyond ordinary jurisdictional limits.

Indeed, Russia has herself disclaimed any jurisdiction in the Bering Sea outside ordinary territorial waters, as is abundantly shown by all her acts, and by the evidence of Exhibits L, M, N, and O hereto annexed in the evidence submitted in this case.

The Bering Sea is therefore the high sea, the common highway of all nations, and no right of seizure thereon for alleged or suspected violation of the municipal laws of any nation can be maintained, nor has any nation the right of visitation and search thereon of vessels of friendly states in time of peace.

It is admitted by the Russian Government that the *Kate and Anna* was more than 20 miles from Russian land when she was arrested. She was therefore upon the high seas and wholly without Russian jurisdiction.

Chancellor Kent has stated:

The open sea is not capable of being possessed as private property, the free use of the ocean for navigation and fishing is common to all mankind, and the public jurists generally and explicitly deny that the ocean can ever be appropriated.

Vattel says:

To-day every expanse of the sea which is within cannon shot of the coast is regarded as forming part of the territory, and for that reason a vessel taken under the cannon of a neutral fortress is not good prize.

All we have said of parts of the sea near the coasts may be more particularly said, and with greater justice, of roadsteads, bay, and straits as still more capable of being occupied, and more important to the safety of the country. But I speak of bays and straits of small extent, and not of the great expanses of the sea to which are sometimes given the names such as Hudson Bay, the Straits of Magellan, over which empire could not extend and still less ownership. (*Le droit des Gens.*, 1, Chap. XXIII, sections 289, 290.)

Philimore says:

It is sufficient to say that the reason of the thing, the preponderance of authority, and the practice of nations have decided that the main ocean, inasmuch as it is the necessary highway of all nations, and is from its nature incapable of being possessed, can not be the property of any one State. (*Commentaries on International Law*, third edition, Chap. V, page 247-248, CLXXII.)

The very eminent Russian jurist, Monsieur F. de Martens, counsel for the Imperial Russian ministry of foreign affairs, writes as follows:

In our day legislations and jurists are in accord in recognizing the freedom of the ocean, and no people can set up the pretension of reigning over it as master. At

present those portions of the sea which communicate with the ocean are regarded as free and accessible to all the world even when they are surrounded by the possessions of a single State. (Treatise on International Law, Vol. I, p. 494.)

Quoting further from the same treatise:

The ocean is free for all peoples. No nation can be interdicted from engaging in fishing and other peaceful enterprises on the high seas. If all possess an equal right in it it follows that no State can there impose its laws over the others, cause judgment to be passed on foreign navigators or sailors, nor arrest, nor search the ships of another country.

Ortolan writes:

It is demonstrated that the sea can not be the property of any nation, and as what has been said of complete ownership is equally applicable to partial ownership—as, for example, the right of use, of gathering its fruits, of taking its products—it is demonstrated that no nation can have exclusively these partial rights of ownership; that the use of the sea remains forever open and common to all; that it is, so to speak, the patrimony of all mankind, a joint patrimony with regard to which the joint ownership can not cease. (Diplomatie de la Mer., Vol. I^r, p. 128.)

The same author remarks:

As to interior seas, a right of exclusive domain and sovereignty on the part of a nation over such a sea is only incontestable when that sea is totally included within the territory, so as to form an integral part of it, and so that it can absolutely only serve as a means of communication between the citizens of the nation in question alone. Then, indeed, none of the conditions obstructive to ownership or to empire of the seas are applicable. But the moment that several different States possess the shores of such a sea, none of them can call itself the owner or sovereign to the exclusion of the other. (Ibid., p. 159.)

In the arbitration under the convention of February 8, 1863, between the United States and Great Britain of the claims growing out of the seizure of the American fishing schooner *Washington* in the Bay of Fundy by one of her Britannic Majesty's cruisers, the umpire declared:

The Bay of Fundy is from 65 to 75 miles wide and from 130 to 140 miles long. It has several bays on its coasts. Thus, the word bay, as applied to this great body of water, has the same meaning as applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume sovereignty.

THE MEASURE OF DAMAGES.

The items of damage claimed on behalf of the owners of the *Kate* and *Anna* are three, viz, for the value of the seal skins illegally seized and confiscated from the *Kate* and *Anna*, for loss of probable catch of the vessel, and for interest upon the total amount from the time of the arrest of the schooner until payment of the award fixed by the honorable arbitrator at 6 per cent.

The rule for estimating the damages sustained in such cases is well settled and was applied in all of the cases of seizures of British vessels by the authorities of the United States by the commission appointed under the convention of February 8, 1896, to assess the damages sustained by the various claimants under the award of the Paris tribunal. Out of 20 of these claims, 6 were for damages sustained by vessels which had been warned out of Bering Sea. They are as follows: Claim No. 4, the *Favorite*; No. 11, *Triumph*; No. 12, *Juanita*; No. 14, *Triumph*; No. 17, *Ariel*; No. 18, *Kate*. In all these cases the commissioners awarded damages, not alone for seal skins confiscated, but for loss of catch.

As to the property seized by the commander of the cruiser, there can be no question of the indemnity due. The proposition of the Russian Government that indemnity can be due only on proof that the seals from which the skins were taken were caught outside Russian jurisdiction, is wholly untenable. Russia has shown no invasion of

her territory by this or any other vessel, nor any evidence in the smallest degree connecting the *Kate and Anna* with any depredations, or even that any depredation had been committed by anyone. The skins were taken by the *Kate and Anna* in the regular practice of her lawful calling upon the open sea, and upon that open sea they were unwarrantably taken from her by an armed cruiser of the Russian navy. That her owners should be called upon to prove that they were not stolen from Russian waters before restitution be made is a proposition unheard of in international relations. Were such a precedent established no merchant ship would be secure upon the high seas against the confiscation of her merchandise.

The damages here claimed for loss of catch are in no sense indirect damages for loss of speculative profits. They represent an actual loss sustained by the owners, officers, and crew, and are of the nature of demurrage.

The earnings of a fishing vessel depend upon her taking advantage of her opportunity when it arrives, and the loss of her use, with that of her outfit and crew, in the middle of the season, deprives her owners of any return upon their investment, and her officers and crew of all remuneration for their labor.

The rule of damages is well settled that in a fishing voyage the loss of the services of a fishing vessel is to be compensated upon the value of the vessel's use. The objection that prospective profits are not admissible as a substantive ground of damage does not apply or exclude the use of the average catch of a fishing vessel as evidence of the value of the vessel's use, but is the best evidence, exactly as it is the evidence used in other cases to determine the injury suffered by a party from the deprivation of the use of his property.

In the case of the *Costa Rica Packet* the distinguished arbitrator, Mr. F. de Martens, the official and permanent counsel of the Imperial Russian ministry of foreign affairs, in rendering his decision, said in the preamble to his award:

Whereas the unjustifiable detention of Captain Carpenter caused him to miss the best part of the whaling season;

Whereas, on the other hand, Mr. Carpenter, on being set free, was in a position to have returned on board the ship *Costa Rica Packet* in January, 1892, at the latest, and whereas no conclusive proof has been produced by him to show that he was obliged to leave his ship until April, 1892, in the port of Ternata without a master, or still less to sell her at a reduced price;

Whereas the owners or the captain of the ship being under an obligation, as a precaution against the occurrence of some accident to the captain, to make provision for his being replaced, the mate of the *Costa Rica Packet* ought to have been fit to take command and to carry on the whaling industry;

And whereas, thus, the losses sustained by proprietor of the vessel *Costa Rica Packet*, the officers, and the crew, in consequence of the detention of Mr. Carpenter, are not entirely the necessary consequence of this precautionary detention.

Thus the arbitrator in this case clearly admitted the justice of the claim for damages owing to the loss of the use of the vessel, found that certain contributory acts of negligence on the part of the parties in interest in the vessel so modified the degree of responsibility of the Dutch Government for the loss of use of the vessel as to entitle it to consideration in estimating the amount of the indemnity due.

In the case of the *Potomac* before the Supreme Court of the United States, Mr. Justice Gray, in delivering the opinion of the court, said:

Both the questions of law presented by the record relate to the amount of the damages that the libellant is entitled to recover.

One question is as to the sum to be allowed for the detention of his vessel while

repairing the injuries suffered by the collision. The rules of law governing this question are well settled, and the only difficulty is in applying them to the peculiar facts of the case.

In order to make full compensation and indemnity for what has been lost by the collision (*restitutio in integrum*) the owners of the injured vessel are entitled to recover for the loss of her use while laid up for repairs. When there is a market price for such use, the price is the test of the sum to be covered. When there is no market price, evidence of the profits that she would have earned if not disabled is competent. (United States Report, vol. 105, p. 630-632).

In the case of *Williamson v. Barrett*, before the Supreme Court of the United States, Mr. Justice Nelson, in delivering the opinion of the court, said:

As to the question of damages, the jury were instructed, if they found for the plaintiffs, to give damages that would remunerate them for the loss necessarily incurred in raising the boat and repairing her, and also for the use of the boat during the time necessary to make the repairs and fit her for business.

By the use of the boat, we understand what she would produce to the plaintiffs by the hiring or chartering of her to run upon the river in the business in which she had been usually engaged.

The general rule in regulating damages in cases of collisions is to allow the injured party an indemnity to the extent of the loss sustained. This rule is obvious enough; but there is a good deal of difficulty in stating the grounds upon which to arrive, in all cases, at the proper measure of that indemnity.

The expense of raising the boat and of repairs may, of course, be readily ascertained, and in respect to repairs no deduction is to be made as in insurance cases for the new materials in place of the old. The difficulty lies in estimating the damage sustained by the loss of service of the vessel while she is undergoing the repairs.

That an allowance short of some compensation for this loss would fail to be an indemnity for the injury is apparent. This question was, directly before the court of admiralty in England, in the case of the *Gazelle*, decided by Dr. Lushington in 1844 (2 W. Robinson, 279). That was a case of collision, and in deciding it the court observed that the party who had suffered the injury is clearly entitled to an adequate compensation for any loss he may sustain for the detention of the vessel during the period which is necessary for the completion of the repairs and furnishing the new articles.

In fixing the amount of the damages to be paid for the detention the court allowed the gross freight, deducting so much as would in ordinary cases be disbursed on account of the ship's expenses in earning it.

This rule may afford a very fair indemnity in cases where the repairs are completed within the period usually occupied in the voyage in which the freight is to be earned. But, if a longer period is required, it obviously falls short of an adequate allowance. It looks to the capacity of the vessel to earn freight for the benefit of the owner, and consequent loss while deprived of her service—in other words, to the amount she would earn him on hire. (13 Howard, 101.)

In the case of the American brig *Williams*, seized by the Mexican Government in 1829, the umpire awarded passage money which would have been received if the brig had been permitted to continue her voyage to her immediate destination, where she expected to receive a cargo of passengers.

In the case of the *Hope On*, detained by the Chilian Government in 1883, at Talcahuano, the commission of arbitration, in rendering its award, said:

The principle is well established in cases like the present, that the loss of the use of the vessel is the proper measure of damages, and the loss of such use is the loss of her probable catch during her enforced absence from the fishing grounds. (*G. B. Bordon v. Chile*.)

See also the following cases: *The Baltimore*, 8 Wallace, 377-385; *Gayuga*, 14 Wallace, 270; *Freddie L. Porter*, 5 Federal Reports, 822; *Vermont*, 8 Federal Reports, 170; *Brown v. Hicks*, 24 Federal Reports, 811; *Parsons v. Terry*, 1 Lowell, 60; the *Notting Hill*, 9 Pro. Div., 105-113; the *Parana*, 2 Pro. Div., 118; the *Mary Steele*, 2 Lowell,

370-374; the *Resolute*, 8 Pro. Div., 109; the *Clarence*, 3 William Reb., 283-286; the *Gleaner*, 38 L. T. N. S., 650; the *Marsden* Collision, second edition, p. 115.

This rule was applied in the cases of the whaling ships *James Maury*, *General Pike*, *Milo*, and the bark *Nile*, captured by the Confederate cruiser *Shenandoah* and compelled to abandon their whaling voyages, in the decisions of the Court of Commissioners of Alabama Claims.

See also the *Walter Phroa*, 1 Lowell, 437; *Stormless*, 1 Lowell, 153; *Mayflower*, 1 Brown, adm., 376; *Transit*, 4 Ben., 138; *Swift v. Brownell*, 1 Holmes, 467; the *Antelope*, 1 Lowell, 130; *Bourne v. Smith*, 1 Lowell, 547; *Frates v. Howland*, 2 Lowell, 36; *Hussey v. Fields*, 1 Sprague, 394-396; *Knight v. Parsons*, 1 Sprague, 279; 290 Barrels of Oil, 1 Sprague, 279; *Backster v. Rodman*, 3 Pickering (Mass.), 435, 438, 439; *Fletcher v. Taylor*, 17 C. B., 21; *Corey v. Thames Iron Works, L. R.*, 3 Q. B., 181; *Ex parte Cambrian Steam Packet Co., L. R.*, 6 Eq., 396; *Cayuga*, 2d Ben., 125; *Jolly v. Terre Haute*, McLane, 589.

This subject has recently undergone the most thorough and careful examination by the commission appointed to adjust the claims of the Canadian sealers against the Government of the United States, commonly known as the Bering Sea claims. It is scarcely necessary to do more than to refer to the arguments submitted before this tribunal on behalf of the English Government and of the American Government for the most complete and exhaustive review of all the decisions upon the subject.

The English Government contended for the rule as claimed in the present case. An examination of the awards made in certain cases before the Bering Sea Commission leaves no room for doubt that in those cases, at least, the commission adopted the rule as contended for by the English Government, and as herein stated. In the awards upon all of these claims it is perfectly clear that the loss of catch was allowed in measuring the damages. If there were any doubt of this it is relieved by such cases as No. 14, the *Triumph*, where the sole claim was for loss of catch. In the case of the *Triumph*, No. 14, not No. 11 for the same vessel, the award was \$15,500; the original claim was for \$19,624, of which \$250 was for legal and other expenses, \$19,424 being for balance of estimated catch of 2,500 skins at \$8 each. It was admitted that the *Triumph* had transhipped part of her season's catch before entering Bering Sea, on or about July 4. A considerable part of the season had therefore already elapsed, and it was reasonable to suppose that she had taken a fifth part of her probable catch before entering Bering Sea; thus 2,000 skins would remain to be taken to make up the season's work of 2,500 skins. She had on board 72 skins when taken, leaving 1,928 skins to be taken to make up the 2,000. One thousand nine hundred and twenty-eight skins at \$8 would amount to \$15,424, and the award was for \$15,450, as has been said.

The rule of allowing interest upon claims of this nature is so well established as to need little comment in the present instance; indeed, it may be said to be the universal practice in arbitration cases.

The accompanying bill of Damages is submitted herewith in the confident belief that it sets forth equitably the amount of indemnity due to the claimant for the injury done him.

BILL OF DAMAGES.

Seizure of 124 seal skins, at \$14 each	\$1,736.00
Loss of probable catch, 625 seals, at \$14	8,750.00
Interest at 6 per cent for, say, 9 years	5,662.44
Total	16,148.44

No. 5122.—UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting!

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof I, John Hay, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 20th day of September, A. D. 1900, and of the Independence of the United States of America the one hundred and twenty-fifth

[SEAL.]

JOHN HAY.

PIÈCE PRODUITE A.

[Cat. No. 335.—Register No. 80: Permanent. Official number: Numerals, 14,376; letters.]

Copy of certificate of registry.

In pursuance of Chapter I, Title XLVIII, "Regulation of commerce and navigation," Revised Statutes of the United States, Charles Lutjens, of San Francisco, State of California, having taken and subscribed the oath required by law, and having sworn that he is the only owner of the vessel called the *Kate and Anna*, of San Francisco, whereof Charles Lutjens is at present master, and is a citizen of the United States; and that the said vessel was built in the year 1882, at Portland, Oregon, as appears by P. E. No. 9, issued at the port of Astoria, Oregon, Oct. 16, 1889, now surrendered; district changed. And said enrollment having certified that the said vessel has one deck and two masts, and that her length is 36 and 4-tenths feet, her breadth 14 feet and 8-tenths, her depth 5 feet and 7-tenths, her height — feet and — tenths; that she measures twenty-three tons and forty-two hundredths, viz:

Capacity under tonnage deck	Tons.	24.65
Capacity between decks above tonnage deck		
Capacity of inclosures on the upper deck, viz		
Gross tonnage		24.65
Deductions under section 4153, Revised Statutes, as amended by act of August 5, 1882 .....		.23
Total deductions		1.23
Net tonnage		23.42

The following-described spaces, and no others, have been omitted: and that she is a schooner, has a sharp head and an elliptic stern; and the said Charles Lutjens, having agreed to the description and admeasurement above specified, and sufficient security having been given, according to law, said vessel has been duly registered at the port of San Francisco.

Given under my hand and seal, at the port of San Francisco, this 26th day of February, in the year one thousand eight hundred and ninety-two.

[Place for seal of naval officer.]

E. P. DANFORTH,
Naval Officer.

[Place for seal of collector.]

T. G. PHELPS,
Collector of Customs.

[Seal of the United States Treasury.]

WM. W. BATES,
Commissioner of Navigation.

DISTRICT OF SAN FRANCISCO, PORT OF SAN FRANCISCO,
COLLECTOR'S OFFICE.

I hereby certify the within to be a true copy of the original, on file in this office.
Given under my hand and seal this 18th day of October, 1892.

JOHN T. DARE,
Deputy Collector.

Cat. No. 335. Permanent.
Copy of certificate of registry, No. 80, of the schooner called the *Kate and Anna*,
23 42/100 tons.
Issued at the port of San Francisco, district of San Francisco, February 26, 1892.

T. G. PHELPS,
Collector of Customs.

EXHIBIT B.

[Gardner & Thornley, ship and custom-house brokers, No. 322 Washington street—Outward foreign
manifest.]

(New form. Special.)

*Report and manifest of the arms, etc., laden at the port of San Francisco on board the
American schooner Kate and Anna, whereof Charles Lutjens is master, bound for
hunting and fishing voyage, February 27, 1892.*

Marks.	Num- bers.	Packages and contents.	Quan- tities, pounds, gallons, etc.	No. 1. Value of do- mestic mer- chan- dise.	No. 2. Value of foreign mer- chan- dise. Free.	No. 3. Value of foreign mer- chan- dise from bonded ware- house.	No. 4. Value of foreign merchan- dise not from bonded ware- house, which has paid duties.	No. 5. Value of foreign merchan- dise on the pas- sage (in transitu) from one foreign country to an- other.	To be landed at—
		4 rifles.....		\$60. 00					
		9 shotguns.....		180. 00					
		5,000 primers.....		8. 00					
		20,000 wads.....		15. 00					
		500 shells.....		20. 00					
		400 pounds shot.....		20. 00					
		Hunting and fishing gear.....							

Bond filed February 27, 1892.

W. P. SAXE, Bond Clerk.

Master's or conductor's oath on clearing outward.

District and Port of San Francisco:

I, Charles Lutjens, master or conductor of the American schooner *Kate and Anna*, bound from the port of San Francisco to hunting and fishing, solemnly, sincerely, and truly swear that the manifest of the cargo on board the said American schooner, now delivered by me to the collector of this district and subscribed with my name, contains, according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares, and merchandise now actually laden on board the said vessel or vehicle, and of the value thereof; and if any other goods, wares, or merchandise shall be laden or put on board the said American schooner previous to her departure from this port, I will immediately report the same to the collector. I do also swear that I verily believe the duties on all foreign merchandise therein specified have been paid or secured according to law, and that no part thereof is intended to be re-landed within the United States; and that if, by distress or other unavoidable accident, it shall become necessary to re-land the same, I will forthwith make a just and true report thereof to the collector of customs of the districts wherein such distress or accident may happen. And said cargo is truly intended to be landed in the port of _____ So help me God.

CHARLES LUTJENS, Master.

Sworn to before me this 27th day of February, 1892.

JOHN T. DARE,
Deputy Collector of Customs.

EXHIBIT C.

[Sec. 4201, Rev. Stats.—Cat. No. 481.]

THE UNITED STATES OF AMERICA.

Clearance of vessel to a foreign port.

DISTRICT OF SAN FRANCISCO, *Port of San Francisco*:

These are to certify all whom it doth concern, that Charles Lutjens, master or commander of the American schooner *Kate and Anna*, burden 23 tons, or thereabouts, mounted with ——— guns, navigated with 12 men, built and bound for hunting and fishing voyage, having on board stores, hath here entered and cleared his said vessel, according to law.

Given under our hands and seals, at the custom-house of San Francisco, this 27th day of February, 1892, and in the one hundred and sixteenth year of the Independence of the United States of America.

{SEAL.]

JOHN T. DARE,
Deputy Collector.

{SEAL.]

G. M. BRANCH,
Acting Deputy Naval Officer.

EXHIBIT D.

UNITED STATES OF AMERICA.

Record of naturalization.

In the circuit court of the United States for the district of California.

In the matter of the naturalization of Claus Lutjens.

Be it remembered that on this 29th day of September, A. D. 1873, being a day in the June term, A. D. 1873, of said court, Claus Lutjens, an alien, and late a subject of the Emperor of Germany, appeared in said court and applied to be admitted a citizen of the United States of America, pursuant to the acts of Congress in relation thereto; and having then and there exhibited to the court a certified copy of his declaration of intention to become a citizen of the United States, made in the United States district court, district of California, on the 10th day of August, A. D. 1869, and proved by the oaths of Adam Pfeffer and Charles Woge, citizens of the United States, his residence within the United States for the last five years, and his residence within the State for the last year, and by said witnesses and other satisfactory proofs that he is entitled to be made a citizen of the United States; and having on oath then declared, before said court, that he will support the Constitution of the United States of America, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, State, or sovereignty whatever, and particularly to the Emperor of Germany.

Whereupon it is ordered by the court that said Claus Lutjens be admitted, and he is hereby adjudged and declared to be, a citizen of the United States of America.

In open court:

LORENZO SAWYER, *Judge.*

EXHIBIT E.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

I, W. T. Hess, a notary public in and for the city and county of San Francisco, State aforesaid, duly commissioned and sworn, do hereby certify that the annexed log book of the *Kate and Anna* is the original log book produced by Charles Lutjens and verified as an original log book by his affidavit this day sworn to before me, to which said affidavit special reference is hereby made.

The said log book consists of 58 pages besides this, and I have this day affixed my official seal to each of the said 58 pages for the purpose of identifying the same.

In witness whereof I have hereunto set my hand and official seal this 20th day of November, 1900.

W. T. HESS,

Notary Public in and for the City and County of San Francisco, State of California.

[Seal of notary public.]

Log of Schooner Kate and Anna, 1892.

[Journal from San Francisco toward the coast of Japan.]

- 2nd day of March, 1892.*—Weighed anchor at 2 p. m. Wind light from NW. Proceeded on voyage toward southered and westered. Farallons light, bearing NNW. 11 p. m. Weather fine. Course, SW. Wind fresh, NW., all sails set.
- 2nd day of March, 1892.*—Course, SSW.; wind, NW. Remarks: Fresh breeze; weather clear. Distance, 150. Lat. by D. R., $36^{\circ} 30'$; lon. by D. R., $124^{\circ} 15'$.
- 3rd day of March, 1892.*—Course, SW. Wind, NW. Remarks: Fresh breeze from NW., and showery. Distance, 150. Lat. by D. R., $35^{\circ} 30'$; lon. by D. R., $127^{\circ} 45'$.
- 4th day of March, 1892.*—Course, SW.; wind, NW. Remarks: Wind more moderate; weather clear in afternoon. Distance, 150. Lat. by D. R., $32^{\circ} 25'$; lon. by D. R., $129^{\circ} 30'$.
- 5th day of March, 1892.*—Course, SW.; wind, N. Remarks: Light north wind and clear. Distance, 140. Lat. by D. R., $32^{\circ} 10'$; lon. by D. R., $131^{\circ} 50'$.
- 6th day of March, 1892.*—Course, SW.; wind, NE. Remarks: Wind light; weather cloudy. Distance, 135. Lat. by ob., $31^{\circ} 2'$; lon. by ob., 134° .
- 7th day of March, 1892.*—Course, SW. by W.; wind, ENE. Remarks: Light breeze from ENE., with light showers during the night. Distance, 140. Lat. by ob., $30^{\circ} 19'$; lon. by ob., $136^{\circ} 35'$.
- 8th day of March, 1892.*—Course, SW. by W.; wind, SE. Remarks: Strong breeze from SE. Distance. Lat. by ob., $29^{\circ} 47'$; lon. by ob., $139^{\circ} 30'$.
- 9th day of March, 1892.*—Course, SW. Remarks: Wind strong from SE. and hauled to SW. 11 a. m., with heavy rain shower till 2 p. m., when rain ceased and wind moderated. Vessel hove-to, heading to southward and eastward. Lat. by D. R., 29° ; lon. by D. R., $1^{\circ} 42'$.
- 10th day of March, 1892.*—Wind, SW. Remarks: Wind increased to a gale and hauled to SW., with heavy sea; rising wind all day and all night. Vessel hove-to.
- 11th day of March, 1892.*—Wind, SW. Remarks: Wind slightly moderated, but still blowing hard from SW., with heavy rain squalls. Lat. by ob., $28^{\circ} 19'$.
- 12th day of March, 1892.*—Remarks: Wind still fresh from SW., but moderated in the evening. Shook out reefs and stood to the southward and eastward. Weather clouded, light rain squalls. Vessel heading toward southward and westward. Lat. by ob., $27^{\circ} 16'$; lon. by ob., $140^{\circ} 51'$.
- 13th day of March, 1892.*—Course, SW.; wind, NW. Remarks: Wind light from W. Weather clear. Wind changed to NW. during the night. Lat. by ob., $27^{\circ} 27'$; lon. by ob., $141^{\circ} 20'$.
- 14th day of March, 1892.*—Course, SW. Remarks: This day opened fine and clear, with light breeze from NW. Wind hauled to the northward and eastward toward the middle of the day. Vessel heading SW. Lat. by ob., $25^{\circ} 6'$; lon. by D. R., $142^{\circ} 10'$.
- 15th day of March, 1892.*—Course, SW. by W.; wind, NE. Remarks: Light breeze from NW., with light rain squalls and cloudy. Lat. by ob., $24^{\circ} 36'$; lon. by ob., 144° .
- 16th day of March, 1892.*—Course, SW. by W.; wind, NNE. Remarks: Clear and bright; wind moderate from northward and eastward. Lat. by ob., $24^{\circ} 15'$; lon. by ob., 146° .
- 17th day of March, 1892.*—Course, SW. by W.; wind, NE. Remarks: Light breeze from northward and eastward; increased to fresh breeze; toward evening died out; calm during the night. Lat. by ob., $23^{\circ} 47'$; lon. by ob., $147^{\circ} 22'$.
- 18th day of March, 1892.*—Course, WSW.; wind, NE. Remarks: This day opened with light winds from NE., and continued so during the day. Sky clear, sun quite warm. Lat. by ob., $23^{\circ} 12'$; lon. by ob., $150^{\circ} 30'$.
- 19th day of March, 1892.*—Course, WSW. Remarks: Weather fine and clear. Winds light and changeable from E. to N. Lat. by ob., $23^{\circ} 10'$; lon. by ob., $152^{\circ} 30'$.
- 20th day of March, 1892.*—Course, WSW.; wind, NE. Remarks: Fresh breeze from northward and eastward, with light rain squalls at intervals. N. lat. by ob., $22^{\circ} 50'$; W. lon. by ob., $155^{\circ} 20'$.
- 21st day of March, 1892.*—Course, WSW. Remarks: Fresh breeze from NNE. Weather clear. Lat. by ob., $22^{\circ} 44'$ N.
- 22nd day of March, 1892.*—Course, WSW. Wind, NW. Remarks: Fresh breezes from NE. Weather clear. Lat. by ob., $22^{\circ} 30'$; lon. by ob., $160^{\circ} 30'$.
- 23rd day of March, 1892.*—Course, WSW. Remarks: Fresh breeze from northward and eastward. Weather fine and clear.
- 24th day of March, 1892.*—Course, W. by S. $\frac{1}{2}$ S.; wind, NE. Remarks: This day opened fine and clear, with fresh breeze from northward and eastward; 2 o'clock p. m. very heavy rain squall, followed by light showers the rest of the day.

25th day of March, 1892.—Course, W. by S. $\frac{1}{2}$ S. Remarks: Fresh breeze from northward and eastward. Light rain squalls during the day, with thunder and lightning at intervals during the night.

26th day of March, 1892.—Course, W. by S. $\frac{1}{2}$ S. Remarks: Fresh breeze from northward and eastward, with light rain showers during the day and night; light flashes of lightning at intervals.

27th day of March, 1892.—Course, W. by S. $\frac{1}{2}$ S. Remarks: Weather clear. Light breeze from northward and eastward.

28th day of March, 1892.—Course, W. by S. $\frac{1}{2}$ S.; wind, NE. Remarks: Weather clear. Wind light from NE.

29th day of March, 1892.—Course, W. by S. $\frac{1}{2}$ S.; wind, NE. Remarks: Wind light, NE. Weather clear.

30th day of March, 1892.—Course, W. by S. Remarks: Wind fresh from NE.

1st day of April, 1892.—Course, W. by S.; wind, NE. Remarks: Weather fine and clear. Light breeze from NE.

2nd day of April, 1892.—Remarks: Strong breeze from northward and eastward in fore part of the day; wind moderated toward noon. Wind hauled round to the westward 1 o'clock p. m., and increased to very fresh breeze. Heavy rain squalls during the evening.

3rd day of April, 1892.—Course, W.; wind, NE. Remarks: Weather more moderate. Wind shifted to NE.

4th day of April, 1892.—Remarks: This day opened fine and clear. Wind light from NE.

5th day of April, 1892.—Course, W.; wind, WNW. Remarks: Sighted a comet about 2 o'clock in the morning bearing E. Weather fine and clear. Light breeze from NE.

6th day of April, 1892.—Course, W. Remarks: Weather clear and very warm. Very light breeze from the north and eastward. Course, W.

7th day of April, 1892.—Course, W. by N.; wind, E. Remarks: Weather clear and calm. Light air from the eastward. Very warm.

8th day of April, 1892.—Course, W. by N. $\frac{1}{2}$ N.; wind, E. Remarks: Light breeze from eastward. Weather clear and very warm. Course, W. by N. $\frac{1}{2}$ N.

9th day of April, 1892.—Course, WNW. Remarks: Weather clear. Light breeze from northward and eastward.

10th day of April, 1892.—Course, WNW. Remarks: Strong breeze from northward. Weather clear.

11th day of April, 1892.—Course, WNW. Remarks: This day opened fine and clear, with light breeze from NE. Wind hauled to the southward and westward about 2 p. m., and blew hard. Heavy rain squalls at intervals. Wind hauled to NW.

12th day of April, 1892.—Course, WNW. Remarks: Wind, NE. Fresh breeze. Weather clear.

13th day of April, 1892.—Course, NW. by W. Remarks: Weather clear. Wind light from southward and eastward.

14th day of April, 1892.—Course, NW. by W. Remarks: This day opened fine, with fresh breeze from northward and eastward, and gradually hauled round the compass to N. about 4 p. m.

15th day of April, 1892.—Course, NW. $\frac{1}{2}$ W. Remarks: Light northerly winds. Light fog.

16th day of April, 1892.—Course, NW. $\frac{1}{2}$ W. Remarks: Fresh breeze from NE., with light rain and fog.

17th day of April, 1892.—Course, NW. $\frac{1}{2}$ W. Remarks: Light breeze from northward and eastward. Foggy at intervals.

18th day of April, 1892.—Course, W. by N. Remarks: Fresh breeze from SE., with light rain and fog. Sighted 1 seal.

19th day of April, 1892.—Remarks: Fresh breeze from northward and westward.

20th day of April, 1892.—Remarks: This day opened fine and clear, with light breeze from northward and westward. Lowered boats about 9 o'clock and took 52 seals.

21st day of April, 1892.—Wind, S. Remarks: This day opened clear, with light breeze from southward and eastward, increased to very fresh breeze. About 5 p. m. stood under short sail for land. Course, NW. Took 3 seals from the vessel during the day.

22nd day of April, 1892.—Remarks: Moderate gale from the south and westward. Hove-to 4 o'clock a. m. Wind shifted to northward during the evening and died out toward midnight.

23rd day of April, 1892.—Remarks: This day opened fine and calm, with very light breeze from SE.; increased during the day. Put off boats and took 11 seals.

24th day of April, 1892.—Remarks: This day opened fine, with light breeze from eastward; continued so during the day. Put boats out in the afternoon; took 5 seals. Spoke the schooner *Bowhead*.

25th day of April, 1892.—Remarks: Wind, SE., increased to a gale, then hauled to northward and eastward, and blew very hard during the night.

26th day of April, 1892.—Remarks: This day opened with fresh breeze from northward and westward. Moderated toward evening. Put out the boats and took 3 seals. Sighted land of Japan.

27th day of April, 1892.—Remarks: Weather fine, wind light from northward and eastward in forenoon, changed to SE. 5 p. m.; ran inshore and came to anchor in Yamada Harbor, Bay of Yamada, 8 p. m.

28th day of April, 1892.—Remarks: Light breeze from southward. Took in water.

29th day of April, 1892.—Remarks: Weather fine. Wind light from southward and eastward. Hove up anchor and got under weigh and started out of harbor, but came to anchor again 5 p. m.

30th day of April, 1892.—Remarks: This day opened fine, and calm set in. Foggy, with light rain, 10 a. m.; 4 p. m. wind freshened up from southward and eastward.

1st day of May, 1892.—Remarks: Opened calm and foggy. Very light breeze from southward. Got up anchor and started out of the harbor. Wind died out; put the boats out and towed out. Struck a breeze about 7 o'clock p. m., and stood offshore. Wind increased during the night, and hove the vessel to.

2nd day of May, 1892.—Remarks: Strong breeze from north and eastward. Very thick and rainy all day.

3rd day of May, 1892.—Remarks: Strong breeze from the eastward. Weather cloudy and cold. Wind moderated toward evening. Took 2 seals.

4th day of May, 1892.—Remarks: Light southerly winds. Put out boats and took 83 seals.

5th day of May, 1892.—Remarks: Strong breeze from southward. Put out boats; about 5 p. m. took 17 seals.

6th day of May, 1892.—Remarks: Fresh breeze from the north and eastward. Put out boats and took 54 seals. Wind freshened about 12 o'clock, and boats came aboard.

7th day of May, 1892.—Remarks: This day opened with strong easterly wind; moderated toward evening. Took 4 seals.

8th day of May, 1892.—Remarks: Strong northerly wind during the entire day.

9th day of May, 1892.—Remarks: Wind still very fresh from westward; moderated about 4 p. m., but freshened during the night. Took 1 seal.

10th day of May, 1892.—Remarks: This day opened with strong breeze from north and westward; moderated toward evening. Put out boats; took 1 seal.

11th day of May, 1892.—Remarks: This day opened with strong breeze from southward and eastward, and increased to a gale during the night.

12th day of May, 1892.—Remarks: Wind still very strong, but moderated toward evening. Took 1 seal.

13th day of May, 1892.—Remarks: Very fresh breeze from westward. Weather clear.

14th day of May, 1892.—Remarks: This day opened fine and clear, with light breeze from westward, but freshened toward evening, and hauled to southward. Put out boats; took 35 seals.

23rd day of May, 1892.—Remarks: Wind light from southward and eastward; light during the day, but increased toward evening; quite fresh during the night. Lowered boats; took 71 seals.

24th day of May, 1892.—Remarks: Strong breeze from southward and eastward during the entire day.

25th day of May, 1892.—Remarks: Fresh breeze from southward and eastward. Put out boats; took 50 seals.

26th day of May, 1892.—Remarks: Moderate gale from north and eastward. 1 seal.

27th day of May, 1892.—Remarks: Gale.

28th day of May, 1892.—Remarks: Heavy gale from southward and westward. Very heavy sea. Glass 28.90.

29th day of May, 1892.—Remarks: Still heavy gale from northward and westward.

30th day of May, 1892.—Remarks: Light breeze from southward and westward. Took 40 seals.

31st day of May, 1892.—Remarks: Calm through the day. Took 105 seals.

1st day of June, 1892.—Remarks: Light southerly wind during the day, increased to fresh breeze toward evening. Took 39 seals.

2nd day of June, 1892.—Remarks: Moderate gale from southward and eastward.

3rd day of June, 1892.—Remarks: Fresh breeze from southward and westward during the forepart of the day. Wind hauled to southward and eastward in the afternoon, and died out. Calm. Put out boats; took 70 seals.

- 4th day of June, 1892.—Remarks: Fresh SW. wind. Took 2.
 5th day of June, 1892.—Remarks: Light breeze from eastward. Thick fog. Took 4 seals.
 6th day of June, 1892.—Remarks: Light southerly wind. Thick fog.
 7th day of June, 1892.—Remarks: Fresh breeze from southward and westward. Weather clear. Put out boats; took 20 seals.
 8th day of June, 1892.—Remarks: Very slight breeze from southward and westward. Took 54 seals.
 9th day of June, 1892.—Remarks: Very light breeze from southward and westward. Took 56 seals.
 10th day of June, 1892.—Remarks: Light easterly breeze. Very thick fog in afternoon. Took 29 seals.
 11th day of June, 1892.—Remarks: Strong breeze from northward.
 12th day of June, 1892.—Remarks: Fresh breeze from westward. Took 10 seals.
 13th day of June, 1892.—Remarks: Slight easterly breeze. Took 12.
 14th day of June, 1892.—Remarks: Strong breeze from northward and eastward.
 15th day of June, 1892.—Remarks: Moderate gale from NE.
 16th day of June, 1892.—Remarks: Light breeze from northward. Took 31 seals.
 17th day of June, 1892.—Remarks: Fresh breeze from SW. Took 1 seal.
 18th day of June, 1892.—Remarks: Light breeze from southward. Took 36 seals.
 19th day of June, 1892.—Remarks: Calm and foggy throughout the day.
 20th day of June, 1892.—Remarks: Light breeze and foggy. Took 13 seals.
 21st day of June, 1892.—Remarks: Light breeze, thick fog. Took 1 seal.
 22nd day of June, 1892.—Remarks: Thick fog, light breeze. Took 12 seals.
 23rd day of June, 1892.—Remarks: Light southerly breeze. Took 17 seals.
 24th day of June, 1892.—Remarks: Light breeze. Foggy at intervals. Took 2 seals.
 25th day of June, 1892.—Remarks: Very light breeze and changes through the day. Entered the Straits of Tsugar bound for Hakodadi.
 26th day of June, 1892.—Remarks: Very light and changeable winds. Still in the Straits of Sangar. Foggy and rainy.
 27th day of June, 1892.—Remarks: Fresh southwesterly wind. Came to an anchor in Hakodadi, 7.30 p. m.
 28th day of June, 1892.—Remarks: In Hakodadi. Weather clear and fine, with fresh breeze from southward and westward.
 In Hakodadi 29th, 30th June, 1st, 2nd, 3rd, 4th, 5th July.
 6th day of July, 1892.—Remarks: Hove up anchor and got (9 o'clock a. m.) under weigh, and started on my northern cruise.

[Journal from Hakodadi for northern cruise.]

- 7th day of July, 1892.—Remarks: Fresh breeze from southward and westward.
 8th day of July, 1892.—Remarks: Fresh breeze from westward. Sighted Cape Yesimo, bearing north 2 o'clock p. m. Took 4 seals.
 9th day of July, 1892.—Remarks: Fresh breeze from southward and westward. Took 2 seals. P. D. R., lat. 42° 18'; lon. 144° 58'.
 10th day of July, 1892.—Remarks: Fresh breeze from SW.; thick fog. P. D. R., lat. 42° 12'; lon. 147° 30'.
 11th day of July, 1892.—Remarks: Wind SW.; fog. P. D. R., lat. 42° 30'; lon. 149°.
 12th day of July, 1892.—Fresh breeze from southward and westward; thick fog; wind moderated in afternoon; rain. P. D. R., lat. 43° 15'; lon. 152° 2'.
 13th day of July, 1892.—Remarks: Thick fog and heavy rain. Fresh breeze from southward and westward. P. D. R., lat. 44° 25'; lon. 154° 48'.
 14th day of July, 1892.—Remarks: Light breeze from southward and westward. Thick fog and heavy rain. P. D. R., lat. 46° 26'; lon. 157° 33'.
 15th day of July, 1892.—Remarks: Very light breeze from NW. Cloudy. P. D. R., lat. 47° 14'; lon. 159° 35'.
 16th day of July, 1892.—Remarks: Light breeze from north and westward; fog. P. D. R., lat. 48° 5'; lon. 161° 40'.
 17th day of July, 1892.—Remarks: Light breeze from northward and westward. P. D. R., lat. 49° 25'; lon. 163° 48'.
 18th day of July, 1892.—Remarks: Light breeze from westward. Weather clear at intervals. P. by ob., lat. 51° 40'; lon. 166° 55'.
 19th day of July, 1892.—Remarks: Fresh breeze from SW. Weather misty. Took 1 seal. P. D. R., lat. 52° 35'; lon. 166°.
 20th day of July, 1892.—Remarks: Light southerly wind, foggy, and misty. Hove to all day.

21st day of July, 1892.—Remarks: Hove to. Wind southward and westward. Foggy.

22d day of July, 1892.—Remarks: Weather clear. Wind southward and westward, light. Took 1 seal. P. by ob., lat. 53° 40' N.; lon. 169° 30' E.

23rd day of July, 1892.—Remarks: Strong breeze from SW. Weather foggy.

24th day of July, 1892.—Remarks: Strong breeze from SW. Thick fog.

25th day of July, 1892.—Remarks: Light southerly wind. Foggy.

26th day of July, 1892.—Remarks: Light breeze from southward. Thick fog.

27th day of July, 1892.—Remarks: Light breeze from NW. Weather clear. Took 17 seals. P. by ob., lat. 53° 38'; lon. 167° 10'.

28th day of July, 1892.—Remarks: Light breeze from W. Took 36 seals. Weather fine and clear. Lat. 53° 30' N.; long. 168°.

29th day of July, 1892.—Remarks: Fresh breeze from southward and westward. Clear. Took 6 seals. P. by ob., lat. 53° 30', lon. 167°.

30th day of July, 1892.—Remarks: Strong breeze from southward and eastward. Hove to all day.

31st day of July, 1892.—Remarks: Moderate gale from southward and eastward. Hove to. Took 1 seal.

1st day of August, 1892.—Remarks: Strong breeze from southward and eastward. Weather foggy, and light rain.

2nd day of August, 1892.—Remarks: Fresh breeze from southward and eastward. Lat. 54° 30'; lon. 165° E.

3rd day of August, 1892.—Remarks: Light breeze from southward. Weather foggy. Took 7 seals.

4th day of August, 1892.—Remarks: Light breeze from eastward, with fog at intervals. Took 3 seals.

5th day of August, 1892.—Remarks: Wind hauled to the northward, very light breeze, light fog. Took 22 seals.

6th day of August, 1892.—Remarks: Calm through the day. Took 39 seals.

7th day of August, 1892.—Remarks: Light breeze from southward and westward; foggy at intervals. Took 22 seals.

8th day of August, 1892.—Remarks: Fresh breeze from westward. Took 4 seals.

9th day of August, 1892.—Remarks: Light breeze from southward and westward; weather misty. Took 1 seal.

10th day of August, 1892.—Remarks: Light breeze from southward and westward.

11th day of August, 1892.—Remarks: Weather misty; fresh breeze from southward and westward. Took 2 seals.

Schooner *Kate and Anna* was arrested in 54° 9' N. lat. and 168° 21' lon., though not in Russian waters exactly; but she has been sealing at the sealing grounds of Commodore Islands. The contravense could not be witnessed by the log book, so the seals were confiscated; but the vessel was not taken and got free.

B. DE LIVREIN,

Captain of H. I. M.'s Russian cruiser "Zabiaca."

AUGUST 12, 1892.

Harry, cabin boy, account current, February 27, 1891.

Dr.		Cr.	
Feb. 27, to advance.....	\$25.00	Wages, 7 months at 20 dollars	\$140.00
Apr. 30, cash at Yamada.....	1.00	Less 5 days	3.66
July 5, " Hakodadi.....	31.50		
" 28, to one cap.....	.25		136.34
Aug. 23, allow. to cash	6.00		3.50
	63.75		139.84
	10.00		73.75
	73.75		66.09

Received full payment for sealing voyage of schooner *Kate and Anna* in 1892.

HARRY K. HANDA.

Schooner "Kate and Anna," Dr. to seals.

	B.	G.	
May 26	1	..	1
May 30	34	6	40
May 31	101	4	105
June 1	36	3	39
June 3	68	2	70
June 4	2	..	2
June 5	4	..	4
June 7	17	3	20
June 8	45	9	54
June 9	48	8	56
June 10	26	3	29
June 12	9	1	10
June 13	12	..	12
June 16	26	5	31
June 17	1	..	1
June 18	29	7	36
June 20	12	1	13
June 21	1	..	1
June 22	11	1	12
June 23	13	4	17
June 24	1	1	2
			409
			1,252 by 24th June.

	C. L.	B.	G.
March 4	By seal.....	4	..
March 31	"	3	..
June 1	"	1	..
June 3	"	1	..
July 27	"	1	..
July 28	"	1	..
August 5	"	1	..
August 6	"	2	..

Schooner "Kate and Anna," Dr. to seals.

April 20..	46	6	52	
April 21..	3	..	3	
April 23..	8	3	11	
April 24..	5	..	5	
April 26..	3	..	3	
May 3..	2	..	2	74 seals in April.
May 4..	79	4	83	
May 5..	14	3	17	
May 6..	52	2	54	
May 7..	3	1	4	
May 9..	1	..	1	
May 10..	1	..	1	
May 12..	1	..	1	
May 14..	33	2	35	
May 15..	30	4	34	
May 16..	40	4	44	
May 17..	31	..	31	
May 18..	5	..	5	
May 19..	61	5	66	
May 20..	87	4	91	
May 21..	30	1	31	
May 22..	2	..	2	
May 23..	67	4	71	
May 25..	48	2	50	
July 8..	3	1	4	623
July 9..	2	..	2	
July 19..	2	..	2	
July 27..	17	..	17	
July 28..	36	..	36	
July 29..	6	..	6	
July 31..	1	..	1	
August 3..	7	..	7	
August 4..	2	1	3	
August 5..	20	2	22	
August 6..	33	1	34	
August 7..	22	..	22	
August 8..	4	..	4	
August 9..	1	..	1	
August 11..	2	..	2	
August 12..	3	1	4	
August 14..	3	..	3	172
August 18..	5	..	5	
August 19..	1	..	1	
August 20..	1	..	1	
August 30..	1	..	1	

May 4.. By seal.. 4 B. and G. net.

EXHIBIT F.

UNITED STATES OF AMERICA.

STATE OF CALIFORNIA, *city and county of San Francisco, ss:**To all people whom these presents shall or may concern:*

I, Harry J. Lask, a public notary in and for the State and city and county aforesaid, by letters patent, under the great seal of the said State, duly commissioned and sworn, dwelling in the city and county of San Francisco, send greeting:

Know ye that on the 18th day of October, in the year of our Lord one thousand eight hundred and ninety-two, before me, the said notary, at my office, in the city and county of San Francisco, personally appeared Charles Lutjen, master of the schooner *Kate and Anna*, belonging to the port of San Francisco (the said master having previously noted, in due form of law, his intention to protest), who, together with Daniel Claanssen, hunter and third mate, and Frank Morean, hunter and second mate, belonging to the aforesaid vessel, being by me duly sworn on the holy evangelists of Almighty God, voluntarily and solemnly did declare and depose as follows, to wit:

That they, the said appearers, on the 1st day of March, A. D. 1892, set sail and departed in and with the said vessel from the port of San Francisco, having on board a hunting and fishing outfit, and bound for the North Pacific Ocean, the said vessel being then stout, staunch, and strong, her cargo well and sufficiently stowed and secure, well masted, manned, tackled, victualled, appareled, and appointed, and in every respect fit for sea and the voyage she was about to undertake; that we proceeded on our voyage without disaster of any kind, and had been hunting seals until the 12th day of August, A. D., 1892, at which time we had on board 124 seal skins, which had all been taken in the North Pacific Ocean more than 30 miles south of the Copper and Bering islands, when on said 12th day of August, 1892, being then in said North Pacific Ocean, on the high seas, in latitude 54° 9' north, longitude 168° 21' east, by correct observation, we were ordered by the Russian cruiser *Zabiaca* to heave to, and the captain of our vessel was ordered to come on board of said cruiser, and to bring his papers with him.

I, the undersigned, captain of said *Kate and Anna*, then went aboard of the said cruiser; the captain of the *Zabiaca* told me that I could not prove by my log book that I had not got the sealskins in Russian waters, and he then took all my sealskins, 124 in number, confiscated them, and ordered me to stop sealing and go home.

I then protested against the seizure of the sealskins, and the captain of the cruiser then forced me to sign a paper in Russian, which I did not understand. I signed said paper under protest.

Captain Deleveron, of said Russian cruiser, signed a statement in my log book, of which the following is a copy:

"Schooner *Kate and Anna* was arrested in 54° 9' north latitude and 168° 21' east longitude, though not in Russian waters exactly, but she has been sealing at the sealing grounds of Commander Islands. The contravense could not be witnessed by the log book, so the seals are confiscated; but the vessel was not taken, and got free.

"B. DE LIVERON,

"Captain of H. I. M. Russian Cruiser '*Zabiaca*.'"

"August 12, 1892."

I then, with my vessel and crew, sailed for the port of San Francisco, in accordance with the orders of said captain of the said *Zabiaca*, fearing that should I remain fishing in said North Pacific Ocean I would be further molested by said cruiser, and arrived in said port of San Francisco on the 23d day of September, A. D. 1892.

And the said appearers further declare that as all the damage and injury which already has or may hereafter appear to have happened or accrued to the said vessel, her freight and cargo, has been occasioned solely by the circumstances hereinbefore stated, and can not, or ought not to, be attributed to any insufficiency of the said vessel, the neglect or default of him, this deponent, his officers or crew. He now requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be of full force and value, as of right shall appertain. And thereupon the said master protested, and I, the said notary, at his special instance and request, did, as by these presents I now do, publicly and solemnly protest against winds, weather, and seas, and against all and every accident, matter, and thing had and met with as aforesaid, whereby, or by means whereof, the said vessel, her freight, or her cargo already has, or hereafter shall have, suffered or sustained loss, damage, or injury, and for all losses, costs, charges, expenses, damages, and injury

which the said vessel, or the owner or owners of the said vessel, or the owners, freighters, or shippers of her said cargo, or any other person or persons interested or concerned in either, already have been or may hereafter be called upon to pay, sustain, incur, or be put unto by or on account of the premises, or for which the insurer or insurers of the said vessel, her freight, or her cargo, is or are respectively liable to pay or make contributions or average, according to custom, on their respective contracts or obligations, so that no part of any losses, damages, injuries, or expenses already incurred, or hereafter to be incurred, do fall on him, the said master, his officers or crew.

Thus done and protested in San Francisco, Cal., this 18th day of October, in the year of our Lord one thousand eight hundred and ninety-two.

In testimony whereof, as well as the said appearers, as I, the notary, have subscribed these presents, and I have also caused my seal of office to be hereunto affixed the day and year before written.

CHARLES LUTJENS, *Master.*
FRANK MOREAN, *Second Mate and Hunter.*
DANIEL CLANSSSEN, *Third Mate and Hunter.*

HARRY J. LASK, *Notary Public.*

[SEAL.]

STATE OF CALIFORNIA,
City and County of San Francisco:

I, the undersigned notary public, hereby certify that the foregoing act of protest to be an accurate and faithful copy of the original on record in my book of official acts.

In testimonium veritatis:

[SEAL.]

HARRY J. LASK, *Notary Public.*

EXHIBIT G.

The memorial of Claus Lutjens, commonly known and called by the name of Charles Lutjens, to the Department of State of the United States, respectfully shows:

That the said Claus Lutjens makes this claim and memorial in his own right and for his own benefit;

That the above-named Claus Lutjens is now, and was at the time when the claim hereinafter set forth had its origin, a duly naturalized citizen of the United States, and presents herewith a duly certified copy of his naturalization papers, and a duly qualified and registered voter in the city and county of San Francisco, State of California;

The said Claus Lutjens claims from the Russian Government the sum of \$10,000, being the entire sum hereby claimed; the claimant believes that the sum so claimed would not reimburse him for the losses sustained by the wrongful act of the authorities of the Russian Government, hereinafter set forth; and that this claimant has received no money or other equivalent or indemnification from insurance or otherwise for the whole or any part of the loss or injury upon which this claim is founded.

That the said claim is based upon the following facts and circumstances, to wit:

The said Claus Lutjens, in the pursuit of his regular and legitimate business, was at all the times herein mentioned the owner of the American schooner *Kate and Anna*, which said schooner was enrolled and registered in the port of San Francisco, and said schooner was regularly cleared from said port for a fishing and hunting voyage in the North Pacific Ocean, or elsewhere, as the master might direct, having at the time on board said vessel a hunting and fishing outfit, consisting of rifles, shotguns, powder, and hunting and fishing gear, all of which will more fully and at large appear by the certified copies of the original enrollment or registry of said schooner and certified copies of the original clearance papers and outward manifest of said schooner, which are herewith filed, and that the reason why the originals of all of said papers were and are not filed is that all of said original papers were and are in the United States custom-house at San Francisco, Cal.

That said Claus Lutjens, owner of said American schooner *Kate and Anna* as above set forth, was then, and at all the times hereinafter mentioned, the duly acting and qualified master of said schooner, and is now and was at the time when the claim herein set forth had its origin a citizen of the United States of America and of the State of California; that the said schooner *Kate and Anna* on the 1st day of March, A. D. 1892, under command of the said master, and with a good and sufficient crew and a hunting and fishing outfit on board, as aforesaid, did set sail and depart from the said port of San Francisco, bound for the North Pacific Ocean, said vessel being

at that time and at all the times hereinafter mentioned seaworthy and in all respects fit for the voyage which it took as herein mentioned; that the master and crew proceeded with said vessel on their voyage without disaster of any kind until the 12th day of August, A. D. 1892, and that prior to said day and in the open Pacific Ocean, more than 30 miles south of the Commander Islands, and not in Russian waters, had killed and taken 124 seals, worth in the open market \$1,767, all of which were caught and killed on the voyage from San Francisco, and more than 30 miles south of the Commander Islands, and not in Russian waters; and that on said 12th day of August arrived at 54° 9' north, longitude 168° 21' east, by correct observation, and had not sealed in said place, nor at any place within 30 miles south of said Commander Islands or in Russian waters at all, and no boats being out at said time from said vessel, either for hunting or fishing, and no one from said vessel being either hunting or fishing, and said schooner then sailing in a southwesterly course.

Said latitude 54° 9' north, longitude 168° 21' east, by correct observation is more than 30 miles from Copper or Bering Islands on the high seas, and not in Russian waters; when, at said time, and in the latitude and longitude above mentioned, on the 12th day of August, A. D. 1892, as aforesaid, and not being at the time hunting or fishing, and not having at any time fished or hunted seals in Russian waters, but being at said time on a southwesterly course, as aforesaid, the Russian war cruiser *Zabiaca* was at all times herein mentioned a steamer regularly commissioned as a war cruiser, and belonging to the Russian Government, armed for offensive and defensive warfare, and acting under the authority and by the directions of the said Russian Government, steamed toward said schooner and fired a blank charge, which was an order for said schooner to heave-to. I accordingly heaved-to, and said cruiser steamed alongside said schooner, and I was ordered to come on board the cruiser with the schooner's papers; I accordingly went on board with my papers, showed my log book and other papers to the captain of said cruiser, who then ordered me to send my sealskins to said cruiser, to stop sealing, and to go home. I then, under said orders, and being forced to do so by said cruiser, sent on board said cruiser 124 sealskins; and being then fearful of arrest and confiscation of my schooner by said cruiser, I stopped sealing and sailed for San Francisco, at which port I arrived on the 23d day of September, A. D. 1893.

While on board said cruiser *Zabiaca* the captain thereof wrote in my log book the following, to wit:

"Schooner *Kate and Anna* was arrested in 54° 9' north latitude and 168° 21' longitude, though not in Russian waters exactly, but she has been sealing at the sealing grounds of Commander Islands. The contravense could not be witnessed by the log book, so the seals are confiscated, but the vessel was not taken, and got free.

"B. DE LIVRON,

"*Captain of H. S. M. Russian Cruiser 'Zabiaca.'*

"AUGUST 12, 1892."

My original log book, containing said writing by said Russian captain, is now in my possession, and will be produced by me in support hereof when required.

By said wrongful seizure by the Russian cruiser *Zabiaca*, as aforesaid, I have been damaged as follows, to wit: In the sum of \$1,767, United States gold coin, by the seizure of the 124 seal skins above set forth, and in the sum of \$8,233, United States gold coin, by the breaking up of my voyage from the threats and wrongful armed interference of said Russian war cruiser *Zabiaca*.

That I, as master of said schooner, *Kate and Anna*, duly protested at the time to the captain of said Russian war cruiser against the seizure of said seal skins, and against all the other acts herein complained of; that on the 18th day of October, A. D. 1892, I duly noted a protest against said seizure and said acts with Harry J. Lask, a notary public in and for the city and county of San Francisco, State of California; and on said day, before said notary public, I duly made a regular marine protest.

That the seizure of said seal skins and all of said acts by the said war cruiser, by the officers thereof, and by the Russian officials, were in violation of the law of nations and of the right of citizens of the United States, and in contravention to the treaties existing between the United States of America and Russia, and that this claim is founded upon the principles of international law and the rights which every nation and every person has upon the high seas, and upon the fact that all the above-mentioned acts by the Russian Government and its officials were in violation thereof.

Wherefore I hereby request the interposition of the Government of the United States of America against the Russian Government for the presentation of this claim against said Russian Government.

In witness whereof the above-named claimant has subscribed his name and affixed his seal to this memorial this 28th day of January, A. D. 1893.

CLAUS LUTJENS. [SEAL.]

STATE OF CALIFORNIA, *City and County of San Francisco*, ss:

Claus Lutjens, being duly sworn, says: My true name is Claus Lutjens, although I am sometimes known and designated by the name of Charles Lutjens.

I am the person making and subscribing the above memorial to the Department of State.

I have read the foregoing memorial, and know the contents thereof; it is true of my own knowledge except as to those matters which are therein stated on information and belief, and as to those matters I believe it to be true.

CLAUS LUTJENS.

Subscribed and sworn to by the said Claus Lutjens, known to me to be a credible witness, before me, this 28th day of January, A. D. 1893.

[SEAL.]

HARRY J. LASK,
*Notary public in and for the City and County of
San Francisco, State of California.*

STATE OF CALIFORNIA, *City and County of San Francisco*, ss:

I, M. C. Haley, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the superior court thereof (which court is a court of record, having a seal), do hereby certify that Harry J. Lask, whose name is subscribed to the annexed instrument, and thereon written, and before whom the annexed oath or affidavit was taken, was, at the time of taking such oath or affidavit, a notary public in and for the city and county of San Francisco, residing in said city and county, duly authorized to take the same, and an officer duly authorized by the laws of said State to take and certify the acknowledgment and proof of deeds to be recorded in said State. And further, that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court, at my office in said city and county, this 31st day of January, A. D. 1893.

[SEAL.]

M. C. HALEY, *Clerk.*

I, Eugene R. Garber, presiding judge of the superior court of the city and county of San Francisco, State of California, do hereby certify that said court is a court of record, having a clerk and seal. That M. C. Haley, who has signed the annexed attestation, is the duly elected and qualified county clerk of the city and county of San Francisco, and was, at the time of signing said attestation, ex officio clerk of said superior court. That said signature is his genuine handwriting, and that all his official acts, as such clerk, are entitled to full faith and credit.

And I further certify that said attestation is in due form of law.

Witness my hand this 31st day of January, A. D. 1893.

EUGENE R. GARBER,
Presiding Judge of the said Superior Court.

STATE OF CALIFORNIA, *City and County of San Francisco*, ss:

I, M. C. Haley, county clerk of the city and county of San Francisco, and ex officio clerk of the superior court of the city and county of San Francisco, State of California, do hereby certify that the Hon. Eugene R. Garber, whose name is subscribed to the preceding certificate, is presiding judge of the superior court of the city and county of San Francisco, State of California, duly elected and qualified, and that the signature of said judge to said certificate is genuine.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court, this 31st day of January, A. D. 1893.

[SEAL.]

M. C. HALEY,
County Clerk and Clerk of Court.

EXHIBIT H.

(Copy.)

LEGATION OF THE UNITED STATES, ST. PETERSBURG,
November 9-21, 1894.

YOUR EXCELLENCY: I am instructed by my Government to present to the Imperial Government the claim of Claus Lutjens, sometimes called Charles Lutjens, an American citizen, owner and master of the American schooner *Kate and Anna*.

It appears that this vessel cleared from San Francisco March 1, 1892, bound for a hunting and fishing voyage to the North Pacific Ocean. That between the 1st day of March, 1894, and the 12th day of the same month, the captain and crew caught and killed, on the voyage and on the high seas, and not in Russian waters, 124 seals, worth \$1,767, and that on the 12th of March, 1892, when in latitude 54° 9' north, longitude 168° 21' east, on a southwesterly course, more than 30 miles from Copper or Bering Islands, on the high seas and not engaged in fishing or hunting in Russian waters, this vessel was stopped by the Russian war cruiser *Zabiaca*. The captain was forced to go on board the cruiser, his seal skins were taken from him, and he was ordered to take his vessel back to San Francisco.

For this loss and interruption the claim of \$10,000 is presented to the Imperial Government, and attention is called to a copy of the memorial of the claimant inclosed herewith.

Following the instructions of my Government, I have the the honor to request of your excellency that early attention be given to this matter.

I avail myself of this occasion to renew to your excellency the assurance of my most distinguished consideration.

CLIFTON R. BRECKINRIDGE.

To His Excellency M. DE GIERS,
Imperial Minister of Foreign Affairs, etc.

EMBASSY OF THE UNITED STATES, ST. PETERSBURG.

I certify that the document hereto annexed, namely, a note of the United States minister to Russia to the Russian minister for foreign affairs, dated St. Petersburg, November 9/21, 1894, is a true copy from the files of this embassy.

In witness whereof I, Herbert H. D. Peirce, charge d'affaires of the United States, have hereto subscribed my name and affixed the seal of the embassy of the United States.

Done at the embassy of the United States in the city of St. Petersburg, Russia, this 18th day of September, A. D. 1900.

[SEAL.]

HERBERT H. D. PEIRCE.

EXHIBIT I.

[Translation.]

No. 3498.]

MINISTRY FOR FOREIGN AFFAIRS,
ASIATIC DEPARTMENT,
August 26, 1895.

Mr. ENVOY: I did not fail to report to the competent quarter the contents of your note of November 9/21, 1894, relative to the affair of the confiscation by the Russian war cruiser *Zabiaca* in the month of August, 1892, of 124 seal skins on the American schooner *Kate and Anna*.

According to a communication which I have just received from the imperial ministry of marine the commander of the *Zabiaca* believed himself to be justified in making this confiscation, inasmuch as, having encountered the schooner at a distance of 30 miles to the south of the Commander Islands, it was shown that the log book had not been kept up for ten days, and that the chart of the voyage bore marks which indicated that during these ten days she had twice been in the channel between Bering and Medny islands.

He concluded that the seals had been killed in Russian waters, and, in confiscating the skins in question, finding no other supporting evidence, he released the schooner, but required of the captain an engagement, signed by him, not to kill seals in Russian waters. Mention was made of this engagement in the log book. According to the statement of the commander of the *Zabiaca* no claim was made at the time by the captain of the schooner.

In view of the above-stated facts and the good faith of the commander of the *Zabiaca* being beyond doubt, it is clear that indemnity to the captain of the schooner *Kate and Anna* could only be due for the 124 seal skins confiscated upon his proving that the seals in question were killed outside the limits of Russian waters.

As to the claim of \$3,233 for loss sustained, owing to the measures taken by the commander of the *Zabiaca*, that can not be taken into consideration, inasmuch as the *Kate and Anna* was not prevented from continuing her hunting outside the prohibited waters.

Please to accept, Mr. Envoy, the assurance of my most distinguished consideration.

Mr. CLIFTON BRECKINRIDGE, *Envoy, etc.*

CHICHKINE.

EXHIBIT J.

Identical with Exhibit T, *Cape Horn Pigeon*.

EXHIBIT K.

Identical with Exhibit V, *Cape Horn Pigeon*.

EXHIBIT L.

Chart of Bering Sea—Identical with Exhibit L, *C. H. White*.

EXHIBIT M.

Identical with Exhibit C C, *Cape Horn Pigeon*.

EXHIBIT N.

Identical with Exhibit E E, *Cape Horn Pigeon*.

EXHIBIT O.

Identical with Exhibit F F, *Cape Horn Pigeon*.

EXHIBIT P.

[In the matter of the claim of Charles Lutgens against the Russian Government for the seizure of certain seal skins from the schooner *Kate and Anna*.]

STATE OF CALIFORNIA, *City and County of San Francisco*, ss:

On this 20th day of November, 1900, before me, William T. Hess, a notary public in and for the city and county of San Francisco, State of California, duly commissioned, and by law authorized to administer oaths in said city, county, and State, and not in any way interested in the above claim, and not being the agent or attorney for any person interested in the above claim, personally appeared Charles Lutgens, personally known to me to be a credible witness, and being first duly sworn, says:

My full name is Charles Lutgens, sometimes also called Claus Lutgens; my age is 59 years; my place of birth is North Germany; I am a citizen of the United States; my residence is Alameda, Cal.; my occupation, master mariner; my residence at the time the events took place in relation to which my testimony is given was San Francisco; my occupation at that time was master mariner. I am the claimant above named, and am, and was at the date of the seizure of the said schooner *Kate and Anna*, the owner thereof. I produce herewith the log book or original book of entry of said schooner *Kate and Anna*, which is marked "Exhibit A," and duly certified by the notary. The said log book is in the handwriting of Jim Crew, mate of said schooner *Kate and Anna*, who is now deceased. I know the handwriting of said Jim Crew. I have seen him write many times, and know his handwriting well, and on the voyage I frequently saw him make entries in said log book, and the facts in relation to this log book are exclusively within my knowledge since the death of said mate, Jim Crew. I was on said schooner *Kate and Anna* acting as captain and master thereof during the voyage of said schooner, commencing March 2, 1892, at

which time we left the port of San Francisco, and up to the time of the return of said schooner to the said port of San Francisco, and particularly at the date of the seizure of said seal skins by the Russian war cruiser *Zabiaca*, August 12, 1892. No entries were made in said log book subsequent to said seizure. The entries in said log book were each made at the date that they severally purport to have been made by said mate, Jim Crew, under my directions, and each of said entries in said log book is true of my own knowledge; and the statement contained in said log book purporting to be signed by B. de Livrein, captain, and reading as follows:

"Schooner *Kate and Anna* was arrested in 54° 9' N. lat. and 168° 21' long., though not in Russian waters exactly; but she has been sealing at the sealing grounds of Commodore Islands. The contravense could not be witnessed by the log book, so the seals are confiscated; but the vessel was not taken, and got free.

"B. DE LIVREIN,

"*Captain of H. I. M.'s Russian Cruiser Zabiaca.*

"AUGUST 12, 1892."

was at the date thereof, to wit, August 12, 1892, by the said B. de Livrein signed and executed, and is and was actually written by him in my presence in the cabin of the said Russian cruiser *Zabiaca*.

As will appear by said log book, during said voyage we had caught 1,376 seals, 124 of which were seized by said Russian cruiser *Zabiaca*, and the other 1,252 seal skins had been, previous to said seizure, by me discharged at Hakodate, Japan, and shipped to London, England, and there sold in open market for the sum of \$14 each, net. I estimate that had it not been for the seizure of said skins and the orders of the captain of said Russian cruiser *Zabiaca*, ordering me to cease sealing, as is more fully set forth in my memorial on file herein, that up to September 15, 1892, during which time the sealing season would have lasted, and which would have been the best month for sealing, the probable catch of said schooner *Kate and Anna* would have been at least 625 seal skins in addition to those seized, which would have netted the same price as the other seal skins sold by me as aforesaid, to wit, \$14 each, or the sum of \$8,750, and that I was then and am damaged to the amount of \$8,750 by the breaking up of my voyage by the Russian cruiser *Zabiaca*, in addition to the value of the skins seized as set forth in my memorial herein. I further state that the schooner *Kate and Anna* carried 4 hunting boats and a full equipment of hunters and sealers to man said boats.

CHARLES LUTJENS.

Subscribed and sworn to before me this 20th day of November, 1900.

W. T. HESS,

Notary Public in and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, *City and County of San Francisco*, ss:

I, Wm. A. Deane, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the superior court thereof (which court is a court of record, having a seal), do hereby certify that W. T. Hess, whose name is subscribed to the annexed instrument, and thereon written, and before whom the annexed oath or affidavit was taken, was at the time of taking such oath or affidavit a notary public in and for the city and county of San Francisco, residing in said city and county, duly authorized to take the same, and an officer duly authorized by the laws of said State to take and certify the acknowledgment and proof of deeds to be recorded in said State. And further, that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court, at my office in said city and county, this 23d day of November, A. D. 1900.

WM. A. DEANE, *Clerk.*

[Seal of the superior court.]

(10-cent stamp.)

11/23/1900.

W. A. D.

EXHIBIT Q.

[In the matter of the claim of Charles Lutgens against the Russian Government for the seizure of certain seal skins from the schooner *Kate and Anna*.]

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

On this 19th day of November, 1900, before me, William T. Hess, a notary public in and for said city and county of San Francisco, State of California, duly commissioned and authorized by law to administer oaths in said city, county, and State, and not interested in anywise in said claim, and not being the agent or attorney of any person interested in said claim, personally appeared George E. Dodge, personally known to me to be a credible witness, who, being first duly sworn, deposes and says:

My age is 38 years; I was born at San Francisco, Cal. My residence is now, and was at the time the events took place in regard to which I am testifying and deposing, at San Francisco, Cal. My occupation is now butcher; my occupation at the time the events took place in regard to which I am testifying and deposing was butcher; but I was then, and prior thereto, and subsequently thereafter, managing owner and part owner of sealing vessels and otherwise interested in the sealing business. I am not interested directly or indirectly in the said claim, nor have I any contingent interest in the same. I am not the agent or attorney of the claimant making the above claim nor of any person whatever interested therein. I will not be entitled to receive any part of any sum which may be awarded under said claim to said claimant. I have been engaged in the sealing business as aforesaid since 1884, and am now interested in said business, and during that time I have been managing owner and part owner of the following-named vessels engaged in the sealing business, viz, *City of San Diego, Vanderbilt, C. G. Wilson, Ellen, Bowhead, and Active*. I know the probable number of seals which a well-equipped sealing vessel would have captured in 1892. I know the schooner *Kate and Anna* well, and knew said schooner in 1892. I knew Charles Lutgens was in every way well acquainted with the sealing business and fully competent for the purpose, and that the *Kate and Anna* was well equipped for the sealing business, and that the crew and hunters were skilled in said sealing business; and I know that during the years from 1890 to 1896, while the said Charles Lutgens was acting as master of said schooner *Kate and Anna*, the said vessel under his management captured fully as many seals in proportion to its size and equipment as any other vessel clearing from the port of San Francisco. I know that in the season of 1892 seals were plentiful from August 12, 1892, to the end of the season of 1892, and I know that during that season seal skins were worth in London as high as \$14 each. I firmly believe and do depose and say that during the remainder of the sealing season of 1892, after August 12, 1892, the *Kate and Anna* would be reasonably expected to capture and catch at least 625 seals, and that the value of the seal skins so caught would have been \$8,750; and I place the probable catch of seals by the *Kate and Anna* for the remainder of the season of 1892, after August 12, 1892, at 625, and the probable value thereof at \$8,750.

GEO. E. DODGE.

Subscribed and sworn to before me this 20th day of November, 1900.

W. T. HESS,

Notary Public in and for the City and County of
San Francisco, State of California.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

I, Wm. A. Deane, county clerk of the city and county of San Francisco, State of California, and ex officio clerk of the superior court thereof (which court is a court of record, having a seal), do hereby certify—

That W. T. Hess, whose name is subscribed to the annexed instrument, and thereon written, and before whom the annexed oath or affidavit was taken, was, at the time of taking such oath or affidavit, a notary public in and for the city and county of San Francisco, residing in said city and county, duly authorized to take the same, and an officer duly authorized by the laws of said State to take and certify the acknowledgment and proof of deeds to be recorded in said State. And further, that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court, at my office in said city and county, this 23d day of November, A. D. 1900.

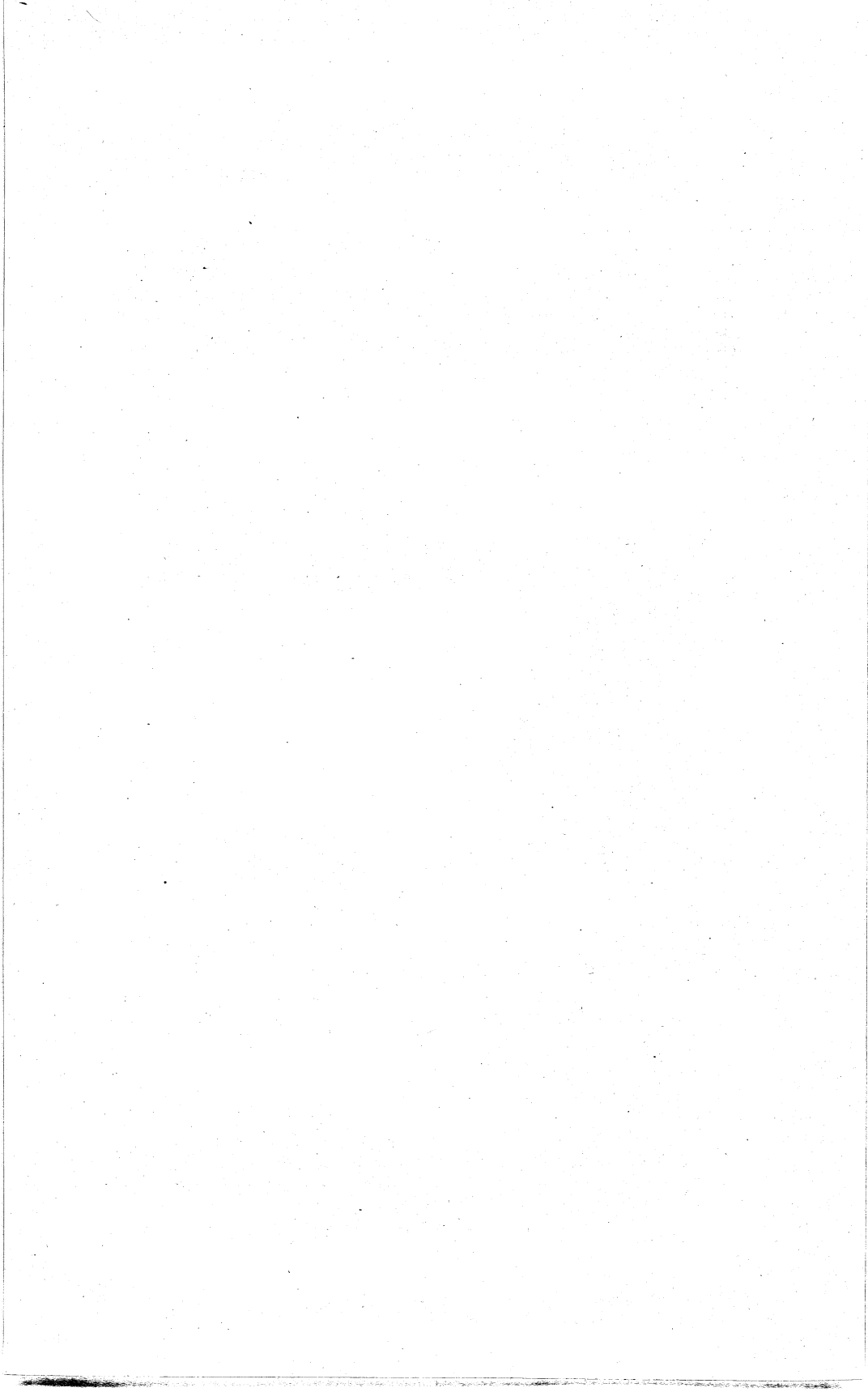
[Seal of the superior court.]

WM. A. DEANE, Clerk.

[10-cent stamp.]

11/23/1900.

W. A. D.

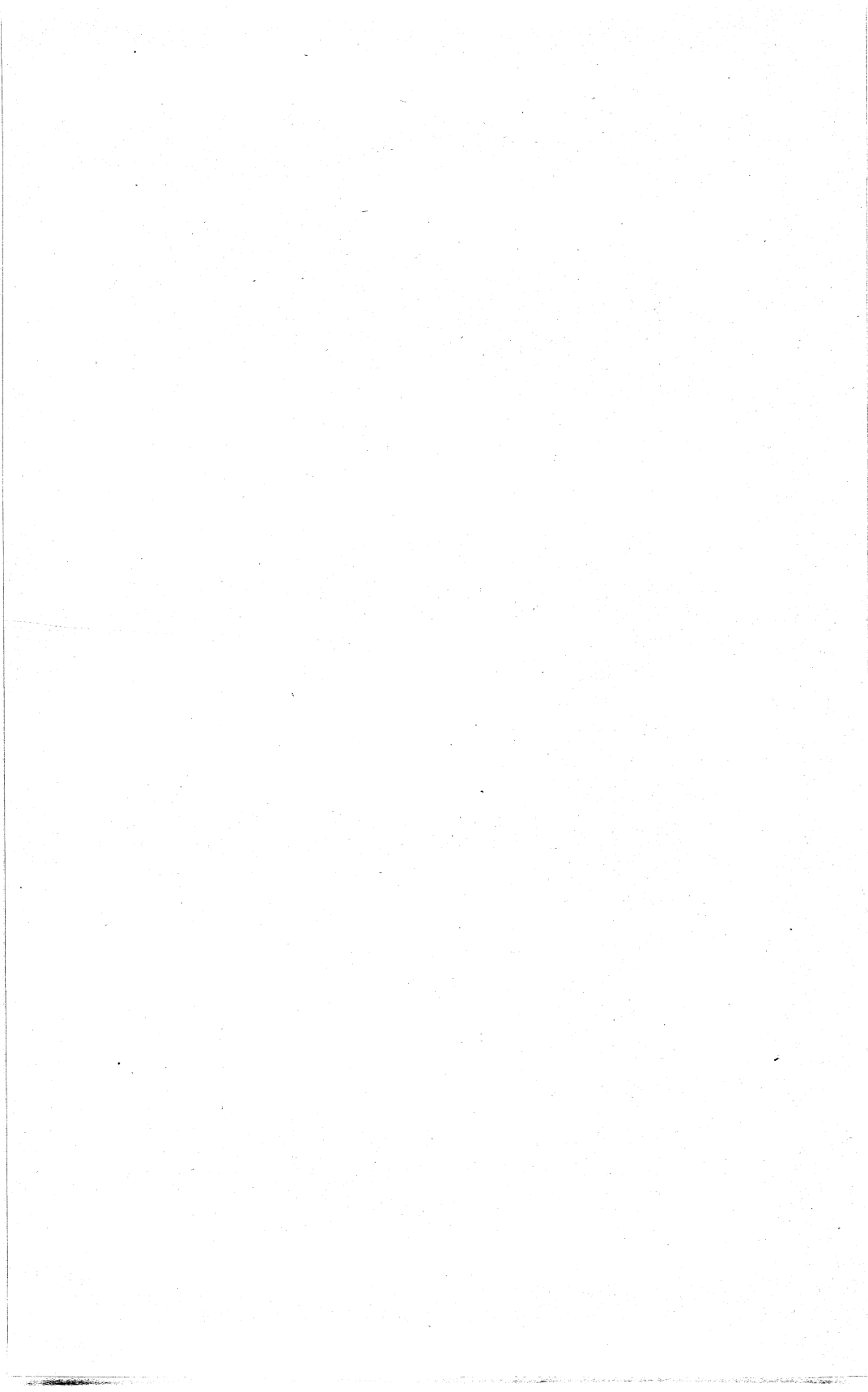


COUNTER MEMORANDUM

OF THE

DEFENDANT PARTY TO THE HONORABLE ARBITRATOR,
MR. T. M. C. ASSER, COUNSELOR OF STATE
OF THE KINGDOM OF HOLLAND.

IN THE ARBITRATION FOR THE PURPOSE OF ADJUSTING THE DIFFERENCES BETWEEN
THE GOVERNMENT OF THE UNITED STATES, CLAIMANT PARTY, AND THE IMPERIAL
RUSSIAN GOVERNMENT, DEFENDANT PARTY, RELATING TO THE DETENTION AND
SEIZURES OF AMERICAN VESSELS *CAPE HORN PIGEON*, *JAMES HAMILTON LEWIS*,
C. H. WHITE, AND *KATE AND ANNA*.



COUNTER MEMORANDUM.

The Imperial Russian Government, having taken cognizance of the data contained in the memorandum presented by the United States Government to the honorable arbitrator, Mr. Asser, has the honor to formulate the following observations relative to the four cases in question:

First case, *Cape Horn Pigeon*.

Second case, *James Hamilton Lewis*.

Third case, *C. H. White*.

And finally, fourth case, *Kate and Anna*.

The defendant party recognizes the party claimant's demands for indemnity for material losses as justified to a certain extent in the Cases I and IV, but rejects from the very foundation the claims which relate to Cases II and III.

As to the question of interest upon the total amount of indemnity which may be due, the defendant party does not consider that it has the right to raise objections, and, in accordance with the customs obtaining in its country, is ready to consent to a tax of 6 per cent per annum.

Before proceeding to examine in detail the four cases under discussion, the defendant party believes it its duty to state the conditions under which these cases occurred.

The question of the protection of seals from destruction, with which they were threatened by marauding vessels, whether on the high seas or in territorial waters, has been for some time a matter of particular solicitude to the Governments of Russia and of the United States of America as the possessors, in the islands of Commander, Pribilof, and Tuleny, of the only landing places at present known of these precious animals.

To this end the Cabinet of Washington was obliged, long before the occurrence of the four cases in question, to treat with the Government of Great Britain because of the fact that seal fishing was specially carried on by Canadians.

The negotiations which took place upon this subject in 1887, in which the Russian Government also took part, did not bring about the desired result.

However, in 1890 the conferences were renewed between England and the United States of America, the latter power demanding that her jurisdiction be recognized far beyond territorial waters, which demand was not admitted by the London Cabinet. An agreement between the two Governments was concluded on the 15th of June, 1891. It was entitled "Agreement for a modus vivendi between the United States and Great Britain in relation to the fur-seal fisheries in Bering Sea."

By virtue of this agreement the two contracting parties engaged to interdict their subjects reciprocally, and as much as possible to pre-

vent them from killing seals during one year—that is to say, until the end of May, 1892—either in that part of the Bering Sea situated to the east of the line of demarcation established by the treaty of 1867 between Russia and the United States or on the Pribilof Islands, with the exception that 750 seals might be killed to supply the needs of the Aleutian population of these islands. Persons and vessels guilty of infringement of this interdiction were liable to seizure.

In concluding this agreement the object of the two powers was to pave the way for future negotiations as well as to be able to procure on the spot necessary data upon the subject of the conditions under which this industry was or might be carried on. This data would serve as material for the solution of differences arising between the two countries, which would have to be submitted to arbitration, as article 4 of the agreement also provided for.

The necessity for exceptional measures on this subject was so well recognized at this time by the interested Governments that the London Cabinet, through the medium of its representative at St. Petersburg, requested the Imperial Government to interdict Russian subjects during the existence of the Anglo-American agreement from sealing beyond the limits of the line of demarcation fixed by this agreement, and even to authorize the English naval authorities to seize vessels under the Russian flag which might infringe upon this interdiction.

This proposition was not accepted by the Imperial Government, which for its part did not fail to take measures for the protection of seals in the western part of Bering Sea, and accentuated this determination by sending a Russian man-of-war to those parts.

Meantime in the proximity of the Russian coasts there began an influx of foreign vessels engaged in poaching, and it was therefore that in 1892 a cruiser of the Imperial navy, furnished with instructions ad hoc, was sent to protect the Russian interests engaged in the preservation of the seal herds. From subsequent data it appears that, according to the estimates of the Russian concessionary company as to the sealing rights in these parts, there were killed in 1891 by poaching vessels 60,000 seals, of which 10,000 were within the limits of Russian territorial waters. American and English vessels had participated equally in this poaching.

As for the measures taken by the American Government on its part during the preceding years against vessels engaged in poaching in waters which it considered under its jurisdiction, it will suffice to refer, among others, to the Annex C of the award of the Paris tribunal of arbitration of the 29th of February, 1892, and in which are mentioned a certain number of seizures made by American cruisers, certain of which took place at considerable distance from the coast, even up to 115 miles.

In presenting the above explanations, to which may be added the facts developed further on in each particular case, the defendant party looks to the high equity of the arbitrator to decide these cases, which occurred, as a matter of fact, in a locality over which the claimant demands the right of jurisdiction far beyond the waters surrounding her own coasts. Under these conditions the defendant party, who had at that time taken such measures as it deemed necessary, was justified in all good faith in believing that the present claimant could not contest the legitimacy of actions having for their object the protection of interests then considered as common.

FIRST CASE.

Seizure of the American whaling bark *Cape Horn Pigeon*.

The American whaler *Cape Horn Pigeon* was seized in the Okhotsk Sea, and released at Vladivostok under the following circumstances:

On the 29th of August (10th September), 1892, at 3 a. m., in 46° 33' latitude north, and 146° 30' longitude east, from aboard the schooner *Maria*, seized by the Russian man-of-war *Vitiaz* for illegal seal fishing, and sailing under command of Lieutenant von Cube, was sighted the whaling bark *Cape Horn Pigeon* lying to, and which, at the approach of the schooner, hoisted red and white lights. Lieutenant von Cube knew that in the western waters of the Pacific Ocean there were vessels which remain at certain distance from the seal fisheries during the season, and fill the roll of store ships, receiving the cargoes of schooners which engage in that industry and which they furnish with provisions. From the appearance and the conduct of the *Cape Horn Pigeon*, the commander of the *Maria* took her for one of these vessels. On questioning Captain Scullun, Lieutenant von Cube learned that the lights hoisted were a signal agreed upon for the American schooner *Mary H. Thomas*, which was engaged in whaling and sealing, and that Captain Scullun himself had been emphatically refused permission by the Russian authorities to engage in whale fishing in the bays of the Sea of Okhotsk. He moreover ascertained other details concerning the relations of said bark with the sealing vessels off the Tuleny Island. He found upon the bark the remains of two whales killed, and he was satisfied by the points indicated upon the navigation chart that the *Cape Horn Pigeon* had entered the gulfs of Aniva and Patience, lingering during the hunt principally in the proximity of the Russian coast.

By reason of this data the Russian commander suspected the American vessel of being engaged in an illegal industry, but finding it impossible to search the vessel and thus confirm the fact upon the spot, he decided to conduct the bark to Vladivostok; to this end he transferred to said bark his own small crew of 12 men, and took with him Captain Scullun. The bark's crew, composed of about 30 men, he ordered to repair to Vladivostok also, aboard the schooner *Maria*. (See detailed account of the incident, Exhibits Nos. I and II.) When the two vessels arrived at the port of Vladivostok a special commission was immediately appointed by an order of the commander of the Pacific squadron, which, having inspected the bark *Cape Horn Pigeon*, examined the log book and other documents relating to the case, acknowledged the measures taken by Lieutenant von Cube to be entirely regular. It was shown among other things that the *Cape Horn Pigeon* had been in communication at sea with the schooner *Mary H. Thomas* and had begun the chase of the first whale at a point 5 miles off the island of Askold; but in the absence of duly established proofs of

incriminating facts, the commission did not find sufficient motives for the confiscation of the detained vessel (Exhibit III). In consequence of this finding by the above-mentioned commission, and in virtue of a decision by superior authority, the American bark was released and restored to Captain Scullun on the 15th of September, 1892 (Exhibit IV).

From the preceding it appears that Lieutenant von Cube, having in view the governmental instructions to protect the seals from the operations of poaching vessels in that region, and having strong presumptions against a vessel apparently suspicious, had no alternative but the fulfillment of the duty imposed upon him to subject the American bark to a preventive detention pending an exhaustive examination of the matter at the nearest port. Nevertheless, admitting that in the present case a regrettable error has been made, and that in connection with a friendly power the Russian Government recognized its responsibility to grant an equitable pecuniary indemnification for the material losses caused to these alien subjects by acts of agents of the Government, as has been declared on several occasions to the American Government. (See annexes to Memorandum of the United States, Exhibit I, etc.) The principle of international right regarding the liberty of the high seas advanced by the party claimant has no claim to consideration here, and the question is limited solely as to the extent of indemnity which remains to be assigned to the injured parties for the temporary arrest of the bark *Cape Horn Pigeon*.

AMOUNT OF INDEMNITY.

Passing to the question of the amount of indemnity, the defendant party finds it necessary to observe here that in the first place the chief grounds for examination as to the justice of the claims presented by the interested parties should be that furnishing the total of loss sustained, which was presented by Captain Scullun on the 15th of September, 1892, and which was sustained by the United States legation (American Memorandum, Exhibits P, Pa, etc.). The amount of indemnity claimed was then established under the still existing impression of facts just as they occurred, and thus merits more consideration than the claim advanced about eight years after the events had transpired.

Regarding the details of the claim, the defendant party deems it proper to submit the following:

1. The chief point is manifestly the one which relates to the claim for indemnity for the loss of profit which the whaler might have realized from the catch—that is to say, from the taking of five or six whales valued at \$45,000. It does not appear to be reasonable to enter at this time into the question of these hypothetical estimates as to the possible number of whales killed at certain periods of the year, and of the possible profits which might have been realized by the bark's crew from certain accessory products of the catch of these animals eight years previous. Moreover, only the depositions of persons interested, or the testimony of persons known to them and obtained outside of judicial course, are admitted as proofs in the matter. The defendant party could not recognize that there is any just basis for the claims on this point. Although, according to the generally accepted views of civil rights, the indemnification for injury done to the property of others relates not only to the material damage (*damnum emergens*),

but also to the loss of profit (*lucrum cessans*); the latter must be understood in the sense of deprivation of a fixed revenue or of a certain profit to be derived from holdings in question (for example, such as the appropriation of another's goods, or of the damage occasioned to a vessel laden and on the point of departure). In the present case it is a question of the profit of an enterprise liable to risks, which may at any moment terminate in the loss to those who participate in said enterprise. It would be impossible to place an exact valuation several weeks previous upon that, whereon the result depends upon a fortuitous success; when starting upon a hunt exposed to dangers, one could not estimate in advance the product of said hunt; one could not affirm that another might not have the benefit of these very same whales which the *Cape Horn Pigeon* alone hoped to capture. As to the statistical deductions advanced, and which extend over a long period, they do not seem adapted to a civil proceeding relating to a precise fact as in the present case.

Nor do the arguments of the party claimant seem justified, either by the precedents cited and which relate to cases arising under other conditions. To the present case might better be likened the decision of the arbitration tribunal of 1872 in the Alabama claims, decision upon which was established the general principle that claims for indemnification for indirect damages can not be allowed. This incontestable principle of jurisprudence was practically applied in 1895 in a similar case, that is to say, in the case of a claim brought against the Russian Government by the British Government for the seizure of the Canadian schooners *Willie Mac Gowans* and *Ariel*. The Russian Government in declaring a willingness to indemnify the actual loss caused by the seizure of the American bark *Cape Horn Pigeon* rejected all responsibility for hypothetical losses occasioned by the vessel's temporary cessation from whale fishing (note of minister of foreign affairs of Russia, June 12, 1893, Exhibit I). For the above-mentioned reasons the demands of the party claimant looking to obtaining indemnification of \$45,000 for loss of catch should not be granted.

Still less justified seems the demand for indemnity of \$31,000 for enforced service of 31 men of crew of *Cape Horn Pigeon* aboard the schooner *Maria*, and for the bad treatment to which they were subjected on shore by the authorities of Vladivostok. In the first place, it must be stated that therein is a repetition of claim for indemnity by the same crew for service rendered in conducting the schooner *Maria* to Vladivostok (\$1,000 to \$1,200), a claim which was originally filed by the interested parties in 1892. But the chief objection is that all of the allegations on the subject of acts of violence and cruelty committed against these aliens rest solely in complaints made by the parties concerned without the requisite proofs. The Russian Government protests energetically against these allegations, and refers in this particular to the view taken by the representative of the United States himself. (Memorandum, Exhibit K.) Suffice it to recall that when the two vessels met at sea the American crew was twice and one-half as numerous as that of the Russian vessel; that Captain Scullun refused the lodging offered him in the town, presenting a bill for the entertainment of his men on shore, and that advice of the incident of the *Cape Horn Pigeon* was at once sent to St. Petersburg. Moreover, as appears from the list joined to the memorandum (Exhibit C) among the crew of the *Cape Horn Pigeon*, there were, besides the American

citizens, Spaniards, Portuguese, English, Danes, Dutch, Swedes, and Germans, in defense of whose rights their respective Governments should intervene. However that may be, such claims would require positive proofs, which in the present case are absolutely lacking.

Relative to the two points above mentioned it may be remarked that they represent the greater part of the indemnity claimed, and that still more than \$40,000 interest for the nine years must be added. It would also be well to examine that claim with particular care, without relieving the party claimant from the onus probandi required upon all the points.

3. As to the claim for indemnification of the bark *Cape Horn Pigeon* for conducting the schooner *Maria* to Vladivostok, it is admitted as just to the amount of \$1,000 conformedly with a declaration made at the time by Captain Scullin, but not to the amount to-day unduly augmented to the sum of \$1,200.

4. Neither does the defendant party contest the party claimant's demand of \$200 for living expenses; \$210 for lodgings, and \$50 for the personal expenses of the captain.

Regarding the total amount for general expenses of the shipowners, estimated at \$3,040, the defendant party maintains the opinion already expressed, viz, that the claimants should be content to receive, as general surplus, a sum of \$1,040, since they have not presented vouchers covering this point (telegrams, correspondence, etc.), and that at present they refer still to expenses for the future conducting of the case; that is to say, they recognize themselves that their estimates were not entirely accurate.

5. Finally, the addition of legal interest, as has already been shown in the counter-memorandum, is recognized as perfectly regular from the moment when the party claimant may exact the payment of the principal that may be due.

There remains still one observation to be made. Although the party claimant has reserved liberty of future action, still in proposing lately to close the affair by a payment of \$42,000, without interest (instead of \$124,278 at present claimed), he manifestly expressed a doubt as to the convincing character and the accuracy of the estimates presented by him (note of 17th January (2d February) 1899, Memorandum, Exhibit T).

CONCLUSION.

Conformably with the preceding, the defendant party acknowledges its obligation to pay by way of indemnity the sum of \$2,500 (\$100, \$200, \$210, \$50, \$1,040) with interest at 6 per cent from the 15th (27) September, 1892, and requests that the other claims be rejected.

ANNEXES.

Protocol of the seizure of the bark *Cape Horn Pigeon*, dated the 29th August (10th September), 1892. II—Report of the Russian officer having command of the schooner *Maria*, dated 7th September, 1892. III—Proceedings of the commission appointed by order of the commander of the Pacific squadron, dated 11th September, No. 100; and IV—Report of the commander of the cruiser *Vitiaz*, dated 15th September, 1892, No. 389.

The defendant holds the originals of these documents at the disposition of the arbitrator.

EXHIBIT I.

PROTOCOL.

On the 29th of August (September 10), 1892, at 3 a. m., in 46° 33' latitude north and 146° 30' longitude east, on board the schooner *Maria*, under command of Lieutenant von Cube, a bark was sighted, lying to, which, upon the approach of the schooner, hoisted a white light and under this a red light. An officer was at once sent from the schooner in a ship's boat to request the captain of the bark to report aboard the schooner with his sailing papers. When the captain, Thomas Scullun, had been questioned and his papers examined, it was found that the American bark *Cape Horn Pigeon* was engaged in whaling in the Sea of Okhotsk, and moreover, from the points indicated on the chart, it was evident that she had entered the Gulf of Aniva and of Patience, and that her general course was in a direction to the south-east of the island of Tuleny. The captain of the bark declared that he had mistaken the Russian schooner for the American schooner *Mary H. Thomas*, which was engaged in whaling and sealing, that he was waiting to communicate with her, and to this end had hoisted the signal agreed upon. It was announced to the captain of the bark that he would be conducted with said bark to Vladivostok for investigation into the question of his right to engage in such industry and to sojourn in our waters.

The crew of the American bark was transferred to the schooner, and the crew of the Russian schooner to the bark; Captain Scullun, with his servant and steward, were left aboard the bark. At 10 o'clock in the morning the two vessels weighed anchor and repaired to Vladivostok.

ENSIGN SIMANSKY.
LIEUTENANT VON CUBE.

AUGUST 29, 1892.

I, the undersigned, Thomas Scullun, master of the *Cape Horn Pigeon*, declare that I agree with the statement of the facts in this act, with the exception of the lines marked with red ink, which I reject because—

First. I called in the bays of Aniva and Terpenia two years ago to get water, and not this season, and during my five years' cruise in these waters never sighted Robben Island; and,

Second. I was told by the officer who seized the bark that I was taken for whaling in the Okhotsk Sea, and that he would not have taken me if I had not had whales on board.

THOMAS SCULLUN,
Master Bark *Cape Horn Pigeon*.

EXHIBIT II.

REPORT OF THE COMMANDING OFFICER OF THE SCHOONER MARIA TO THE COMMANDER OF THE PACIFIC SQUADRON.

In conformity with the orders received from your excellency I took command of the schooner *Maria* on the 20th of August. This command was transmitted to me by the chief of district of the Commander Islands, and I began at once to put the schooner in order. I had all of the quarters scrubbed with the brush, as also the upper deck. I took on a supply of drinking water and dissipated the bad odor by frequently introducing water by means of the pumps. I took on provisions for the crew sufficient to last two months, and on the 24th of August I was ready to sail.

On the 24th of August at 8 p. m. I left by the outer road from Petropavlovsk. On the 25th of August at 9 a. m. the first-class cruiser *Vitiaz* weighed anchor, tendered me a cable, and at 10 o'clock, towed by the cruiser, I directed my course toward the outlet of the bay of Avatchinsk. Leaving the bay, I sailed in a direction parallel with the shore at a speed of from 6 to 8½ knots. From time to time when the wind permitted I augmented sail. During the night of August 26 the west wind became strong, the schooner was much shaken by the rolling and tossing of the sea, and was taking in water.

On August 26 toward 3 p. m. we entered the third strait. At about 6 p. m. the fog had somewhat lifted, I could take my bearings. At 10 p. m., leaving the fifth strait, still towed by the cruiser, I directed my course westward. I followed this direction until August 27 at 1.30 p. m., when the tow cable tendered by the cruiser broke.

Having received by signal the order to proceed to my destination, I spread sail and took the southwesterly direction. During the first three hours I maintained a speed of 9 knots, but at 6 o'clock in the evening the wind became so strong that it was necessary to reef sails, after which the speed diminished to no more than 6 knots. I continued in same direction until the 28th of August at 4 p. m., when I verified my position at 47° 10' latitude north and 147° 24' longitude east. The wind was still from ENE. After this verification I continued the same course. The wind abated gradually, and at midnight passed from S/2 to WSW.

At 3 a. m., I sighted at two points to starboard a vessel which I was not able to clearly distinguish on account of the fog. This vessel at my approach hoisted a white light above a red light, which was evidently a signal agreed upon. Approaching to a distance of less than a cable throw, and having ascertained that it was a whaling vessel, I dropped anchor, lowered a boat, in it placed armed oarsmen, and I sent Ensign Simansky to learn its mission, and to request the captain to report to me with his documents and charts. Capt. Thomas Scullun having boarded the cruiser declared that the said bark bears the name of *Cape Horn Pigeon*, and is engaged in the industry of whaling in the sea of Okhotsk; that he had killed two whales this year, of which the oil and bone could be found on the bark. To the question put by me as to the meaning of the two lights hoisted upon the bark, he answered they were a signal agreed upon, addressed to the schooner *Mary H. Thomas*, for which he had mistaken my vessel. The schooner *Mary H. Thomas* is engaged in whaling and sealing.

Having examined the navigation chart of the bark, I was convinced that she had followed a direction principally to the south of the island of Tuleny, but that she had been off the east coast and the northwest coast of that island at a distance of 10 miles. Taking into consideration the facts that the Tuleny Island is almost in a state of siege, the relation between the bark and a schooner engaged in sealing, and her continued presence at points not far from the said island, I concluded that this bark, besides its special calling, had some sort of bearing upon the seal fisheries in the vicinity of the island. It is possible that she furnishes the schooners with provisions or that she serves them as a storeship. For this reason I resolved to conduct her to Vladivostok. I learned, moreover, from the captain that his first mate, William Jong, had landed twelve years ago from a schooner upon the island of Tuleny, where he had killed 13,000 seals during one summer, from which it appears that among the bark's crew there were experts at this industry.

Finding it impossible to inspect the hold, and thus convince myself of the bark's participation in this sort of illegal industry, I took the above-mentioned determination, to the end, moreover, that a commission, specially appointed, might examine the hold and ascertain the truth.

I learned from the captain that he had asked through the medium of the governor of the maritime province permission to engage in whaling in the bays of the sea of Okhotsk, and had offered our Government \$500 dollars to obtain that privilege, but permission was emphatically refused. I knew that the clipper *Abrek* had overhauled and detained this same bark off the Chantarsky Islands, but had not seized her because she had no whales on board, but had warned her that the industry was illegitimate. Having examined her chart I found that she had lingered several times near the Russian coast, even in the gulf of Peter the Great, between the island of Askold and the shore, in the gulfs of Patience and of Aniva, off the coast of Cape Aniva, and had engaged at that place in whaling, all of which I judge from the signs upon the chart I learned from the captain that in these waters the bark *Morgan*, belonging to the same party, and the schooner *Mary H. Thomas* were engaged in whaling. The bark *Morgan* not succeeding in her effort in these parts had gone to the north coast of the peninsula of Kamchatka, and had proposed to the captain of the *Cape Horn Pigeon* to accompany her, but the latter had refused. The captain declared that to the north of the sea of Okhotsk, in the bays, were two English steamers, the *Northless* and the *Norwall*, and the American brig *Hidalgo*, engaged in whaling. Taking into consideration all the preceding and having weighed all of the circumstances for and against, I concluded to conduct the said bark to Vladivostok, in order that the matter might be carefully investigated whether or not the industry in which she engaged and her sojourn in our waters was legitimate. For this purpose I required the bark's crew to board the schooner *Maria*, with the exception of the captain, the steward, and a small boy in the captain's service. The first mate, William Jong, was named in the capacity of captain of the schooner, to whom the order was given to conduct her to Vladivostok.

I, with Ensign Simansky and all of my crew, composed of twelve men, went aboard the bark. The whole affair was accomplished at half past 9 in the morning, and at 10 o'clock in the morning of August 29 the bark and the schooner filled away

toward the Strait of Laperouse. The schooner soon disappeared in the fog. Astern was another schooner, which also soon disappeared. At half past 7 in the evening a brisk wind, SSE., arose. As the bark had no balast I brailed up sails. The vessel leaned to greatly; it was evident she oscillated greatly. The first day the crew was occupied cleaning the quarters, which were in very bad condition. At night the wind changed from SSE. to NW. I continued in the same direction and sighted the summits of Cape Aniva; in the morning I augmented sail. At noon, August 30 (11th September), I stood in $46^{\circ} 18' 5''$ latitude north and $144^{\circ} 14'$ longitude east. In the evening, the wind becoming brisk, I diminished sail. At 7.40 in the evening I sighted Cape Aniva, 2 miles distant. The night of August 31 I was in the Strait of Laperouse. Heavy fog; course WSW. $\frac{1}{2}$ W.; now and again two lights were seen to starboard and port. Wishing to avoid danger, I sailed to SW.; having made 10 miles in that direction, I turned WNW. At 7 a. m. I sighted the light-house of Soiou.

At 8 a. m., having doubled Soiou, I took the course 10 miles to the north of Rebouksiri. At 2 p. m. I sailed toward Cape Nizmeny. Throughout this time a steady wind was blowing from NE.; speed from 5 to 8 knots. At noon September 1 (13) there were no astronomical observations taken. The wind had changed to NW. and toward evening began to freshen. I diminished sail. The wind abated about morning; I augmented sail. At noon September 2 (14) I made $42^{\circ} 25'$ latitude north and $136^{\circ} 48'$ longitude east. I had been carried southward. I had steered west as much as a NNW. wind permitted. Wind feeble; speed 3 knots.

At noon September 3 (15) I made observation $42^{\circ} 13'$ north latitude, $135^{\circ} 48'$ east longitude. After midday I sailed to NW., nearer to shore, hoping to profit of the coast wind. On the morning of September 4 (16) I sighted the coast. At 9 a. m. I tacked. At noon I ascertained $42^{\circ} 59'$ latitude north and $135^{\circ} 61'$ longitude east. From Cape Krasny to the southeast for 23 miles. Wind W/5. I went about. The bark tacks well without losing headway. We lost much time while tacking, on account of the unskillfulness of the men at the helm. On September 5 (17) I tacked opposite the shore to WSW. At 8 o'clock I had favorable wind and sailed westward. At 6 o'clock I took my bearings; island of Petrow at No. 1, 40 to $13\frac{1}{2}$ miles. At 9.50 p. m. I sighted a revolving light, which soon disappeared in the fog. During the night of September 6 (18) I continued my course westward. In the morning contrary wind from WNW. I sailed northward. At noon of 6th (18) $42^{\circ} 17'$ latitude north and $133^{\circ} 0' 6''$ longitude east. At 2.45, nearing the shore, I tacked to westward. When it grew dark the Askold light could no longer be seen, in spite of the short distance. The night of the 7th (19th) off Askold, dead calm, the lights were not visible. At 7 o'clock a northwest wind prevailed. I sailed in a northwesterly direction, advancing on the light-house of Skryplew. At 10.30 the schooner *Vancouver Belle* came to meet me. I signaled (B. L. M.) asking that steam launches be sent to tow me.

At 3 o'clock I entered Vladivostok and cast starboard anchor.

During the entire passage both crews behaved well. The schooner's crew was divided into three watches, the bark's into two; 5 men in each. Knowing the fatigue of two watches, I endeavored to give the men as much free time as possible and to avoid superfluous work. They were often obliged to pump the water from the hold, for during the day it accumulated to a depth of from 10 to 20 inches. It is very evident that somewhere about the bark there is a leak.

The health of the crew was excellent throughout the passage. No one applied to me for medical assistance.

LIEUTENANT VON CUBE.

VLADIVOSTOK, September 7, 1892.

EXHIBIT III.

In conformity with order No. 160 of the commander of the Pacific Squadron dated the 11th September, 1892, the commission appointed by that order, and composed of the Ship's Captain Hessen, president; Ship's Captain Zarine, Captains of Frigate de Livron and Philissow, and of the auditor chief counselor of the college Yanevitch-Yanevsky, members, with Lieutenant Petrow, executive officer, proceeded to execute the work intrusted to them, took cognizance of the circumstances of the seizure of the American whaling bark *Cape Horn Pigeon*.

From the report of Lieutenant von Cube, who seized said bark, it appeared that he had been detailed from aboard the first-class cruiser *Vitiaz* aboard the schooner *Maria*, seized by the cruiser for illegal seal fishing, for the purpose of conducting her to Vladivostok during the voyage, when in $46^{\circ} 33'$ latitude north and $140^{\circ} 30'$ longitude east he sighted the bark *Cape Horn Pigeon*, and, suspecting it of engaging in the same

illegal industry, he sent his Second Ship's Ensign Simansky with armed sailors to ascertain what vessel it was, and what its mission. Having learned from the bark's Captain Thomas Scullun, who returned with Lieutenant Simansky, that it was a whaling vessel having aboard at that moment the product of two whales killed by him, Lieutenant von Cube found it impossible to abandon his first intention. Moreover, on examining the log book and the navigation chart of the bark, he was convinced that the latter had on several occasions approached the Russian coast of the sea of Okhotsk, where whaling is absolutely interdicted to foreigners. Furthermore, Lieutenant von Cube was confirmed in this opinion by the circumstance that at the approach of the schooner the bark had hoisted a signal, which, according to Captain Scullun's explanation, had been intended for the schooner *Mary H. Thomas*, expected that same night, and which also engaged in whaling and sealing. In view of these facts, Lieutenant von Cube considered it incumbent upon him, in the interest of the Russian Government, to conduct said bark to Vladivostok in order that the question might be decided at once whether or not she should be confiscated. But not having at his disposal a crew sufficiently numerous to put a portion of it upon the bark, and not wishing to trust to the bark's crew, he decided to go aboard the bark with his entire crew, and to keep with him the bark's captain he transferred the captain's mate, with the entire crew of the bark, aboard the schooner *Maria* and ordered them to repair to Vladivostok. The *Cape Horn Pigeon* arrived at Vladivostok on the 7th September and the schooner several days earlier.

The commission at once took cognizance of the statements relating to this affair, as well as of the documents in evidence, such as the log book kept by Lieutenant von Cube on the schooner *Maria*, and afterwards on the bark *Cape Horn Pigeon*, the log book of the latter kept by Captain Scullun, the sailing papers of the bark taken from the captain by Lieutenant von Cube, the navigation chart of the bark and the instructions given to commanders of Russian cruisers on being sent north, to regulate their conduct when boarding and seizing schooners suspected of marauding.

From the above-mentioned documents and the examination of said bark made by the commission (of which the protocol is hereunto attached) results the following:

1. The bark *Cape Horn Pigeon* having left Vladivostok on June 22 (7th July) of this year without obtaining the permission sought for to take whales in the bays and coast waters of the Sea of Okhotsk, caught two whales in said sea; she sighted the first of these and began the chase at 5 miles from the island of Askold, but was not successful in catching it there.

During her cruise to the west of Cape Aniva, she communicated several times while at sea with the schooner *Mary H. Thomas*, which, according to Captain Scullun's statement, is engaged in whaling and sealing.

2. Whaling in the Sea of Okhotsk is not interdicted to foreigners except in the bays, the gulfs, and straits, and in coast waters or along shore. It is even permitted to foreign fishing vessels in cases of extreme necessity to enter the bays and gulfs, provided they do not enter into such negotiations with the inhabitants as are forbidden by law.

3. Upon the bark were found the oil and bone of two whales killed, as said the captain, in the Sea of Okhotsk, in that part wherein whale fishing is permitted; but although the statements of the captain were confirmed by the log book and the chart, the commission did not consider this fact sufficiently proven.

4. The conduct of Lieutenant von Cube at the time of the seizure of the bark is considered by the commission perfectly regular, inasmuch as overhauling a suspicious vessel, in a suspicious locality, he could not do otherwise than seize it and submit to an investigation as to the legitimacy of the seizure by a superior authority. The commission will not fail to notice here that the mere feat alone of detaining a bark with a crew numbering 30 men by the much less numerous crew of the schooner shows the initiative spirit and resolution of Lieutenant von Cube.

In consequence of the preceding and the impossibility of establishing the fact that the two whales had been taken by the bark in that portion of the Sea of Okhotsk where whaling is prohibited, the commission is of opinion that the position of the bark near the Russian coasts does not of itself constitute an illegal act, and it declares that for this reason the bark *Cape Horn Pigeon* can not be convicted of having engaged in illegitimate business, and it does not see sufficient motives for its confiscation.

(Signed) Members:

YANEVITCH-YANEVSKY, Presiding Counsellor of College.
 Captain of Frigate PHILISSOW,
 Captain of Frigate DE LIVRON,
 Ship's Captain ZARINE,
 President, Ship's Captain HESSEN,
 Executive Officer, Lieutenant PETROW,

EXHIBIT IV.

REPORT OF THE COMMANDER OF THE SECOND-CLASS CRUISER VITIAZ TO THE COMMANDER OF THE PACIFIC SQUADRON, DATED AT VLADIVOSTOK, SEPTEMBER 15, 1892, No. 389.

I have the honor to report to your excellency that in conformity with order No. 4003 of the office of administrator of the port of Vladivostok, dated 12th of September of present year, the American whaler *Cape Horn Pigeon*, which had been detained, was restored to the captain of said bark by Lieutenant von Cube.

(Signed)

Ship's Captain ZARNE.

Examiner:

N. N.

SECOND CASE.

Seizure and confiscation of the schooner *James Hamilton Lewis*.

The American schooner *James Hamilton Lewis* was detained and confiscated under the following circumstances:

On the 21st of July (August 2), at 4.40 a. m., from on board the screw ship *Aleout*, Russian man-of-war, coming from the western coast of the island of Medny, and being about 2 miles north of the southern extremity of that island, a sailing schooner was sighted ahead nearing the shore to northeast which was found to be the American schooner *James Hamilton Lewis*, from San Francisco, under command of Captain MacLean. Having orders from his superiors to effectually protect the Russian fisheries of Bering Sea against foreign marauders, Captain Brandt advanced immediately upon the suspected schooner, which was, judging from the clearness with which her sails were visible, at a distance of 6 miles at the most from the *Aleout*, and of 5 miles at most from the southern extremity of the island of Medny. (See the points A, B, and C on the appended chart.) Remarking the conduct of the man-of-war, the American schooner veered immediately to the southeast and fled under full sail. The *Aleout*, increasing her speed, went in pursuit of the *James Hamilton Lewis*, from the deck of which some objects were being thrown overboard. On approaching the latter at 6.15 the *Aleout* hoisted her colors and fired a blank shot, upon which the sailing schooner lay to. Lieutenant Lebedew and Ensign Engmann were sent in a ship's boat to board her, and received at first, by way of explanation from Captain MacLean, that the afore-named schooner was engaged in fishing and hunting of sea birds; that it carried a crew of 25 men, and that it had already delivered the fruits of their industry to another schooner off the coast of Alaska. On investigation it was found that the present crew numbered 22 men in all. In the main hold were evidences of a hasty removal of objects and a washing (a tub with reddened water, covered with a shirt, etc.); also a large quantity of salt in the scantling along the ship's side and in sacks, with seal skins scattered about. Moreover, upon the schooner were found a great many arms, powder, and paraphernalia for catching seals. In the schooner's log book delivered by the captain the last entry related to the 7th (19th) of June; the ship's journal bore no inscription. In consequence of the report of Lieutenant Lebedew as to what he had found, Captain Brandt sent this same officer again with six sailors to the schooner *James Hamilton Lewis* to notify the captain that the vessel was seized and to order him to report with a portion of his crew on board the *Aleout*. Not only did Captain MacLean refuse to comply with this order, but made an insolent reply, as did also his mate, MacDonald, and, weighing anchor, attempted to sail away from the boat, seeing which Lieutenant

Lebedew fired his revolver in air by way of signaling his commander. The *Aleout* in great haste fired a cannon shot ahead and gave verbal order to the American vessel to lay to. The latter, however, continued her course in the same direction. A second shot was fired into her rigging, and the order to lay to was repeated, but without result, after which the *Aleout*, sailing in front of the *James Hamilton Lewis*, barred her course. The American vessel, after a third shot fired at her starboard side, was overhauled at 11 or 12 miles off the island of Medny and taken in tow. After an inspection in detail of the arrested schooner a large number of seal skins were discovered and a new bag net for catching beaver, and two seal skins so small that from their age they could not have been killed elsewhere than on the shore. Deciding to confiscate the American vessel for illegal fishing in Russian waters, Captain Brandt dispatched her to Petropavlosk and Vladivostok, under the command of Lieutenant Lebedew. Captain MacLean, with the crew, was likewise dispatched by special steamer under surveillance on account of the resistance he had made to his arrest. A statement was drawn up relating all of the measures taken by the *Aleout*. Captain MacLean set forth his views in his protest of August 12, 1891. (See Exhibits I, II, III, IV, V, VI, and VII.)

OBJECTIONS TO THE GROUNDS OF THE CASE.

All of the facts above mentioned are exactly confirmed by the reports duly submitted by the officers of the Russian man-of-war, by the log book of the latter, by the chart showing the locality where the incident occurred, and by the formal statements drawn up on the subject of the seizure of the American schooner. These documents on account of their contents and of their import can not be invalidated by the allegations devoid of sufficient proofs furnished by persons interested in the case. It is therefore proper to consider as an established fact that the schooner *James Hamilton Lewis* having in the morning approached the coast of the Medny Island, concerning which restrictive measures had been taken, and being at the most 5 miles off the southern extremity of this island, veered about suddenly on perceiving the *Aleout*, which appeared unexpectedly in her course; that it endeavored in every way to elude the latter in open sea, and that thanks solely to the great speed of the *Aleout* it was obliged to lay to, on hearing the warning cannon shot; that Captain MacLean's first explanations were not truthful and were given the lie at once by the Russian officer, who discovered the true character of the American schooner, having satisfactory proof that the aforesaid captain, seeing himself convicted of falsehood, endeavored to extricate himself by flight, and after a useless resistance to the orders of Captain Brandt, yielded finally to Russian arms; that upon the detained schooner were found hidden evidences of recent seal fishing and two skins of seals so young that they could not have been killed elsewhere than upon the shore of the Commander Island.

All of these facts sufficiently prove that on the 21st July (August 2), 1891, the schooner *James Hamilton Lewis* was at sea with the secret intention of continuing, off the Medny Island, the occupation of illegal seal fishing, while the product of her former catch was already stored away in the hold of the vessel, and that fear alone of having to answer for his actions explains Captain MacLean's behavior.

Certainly the important allegations made by the latter that he had approached shore to verify his chronometer could not be substantiated by any of the ship's documents, calculations, etc. This statement appears as unlikely as his other explanations, which were totally untrue, particularly his statements that the two skins of small seals found aboard were skins of animals taken from the bodies of their mothers which had been killed in mid seas, which are contradicted by the testimony of an expert, the chief of the Commander Islands, rendered upon the basis of an examination of the actual objects under discussion; and for this reason the opinions presented by the claimant on the subject of the *modus vivendi* of seals of both sexes are not convincing in the matter. Finally, the refusal of the captain to comply with the order of the commander of the Russian man-of-war constitutes strong proof of his guilt of infraction of the order maintained in those parts.

The assertion of the party claimant that the schooner *James Hamilton Lewis* had not previously entered Russian territorial waters and had but that very day approached the Medny Island merits special attention. This essential circumstance of the affair should be, above all, proven by the vessel itself, more particularly as the Russian officer asked to see the documents which would indicate the previous course of the American schooner in open sea or in proximity to the coast. In any event Captain MacLean, intentionally it would seem, turned over only the official log book, which had no bearing upon the present question, but withheld the daily journal, in which the vessel's exact course could be determined by the daily entries.

Realizing, therefore, the extreme importance of having failed in this particular and of not having performed his duty, the party claimant then refers in its claim to extracts or copies from the log book, wherein were noted the geographical positions of the *James Hamilton Lewis* at different stages of her voyage, but the original documents remained always in its own hands, and were never shown except during verbal explanations with the representative of the United States in 1898. Finally, owing to repeated demands by the defendant party, on the 21st of May of this same year, that is to say, six years and nine months after the incident of the 21st of July (August 12), 1891, said log book was transmitted to the defendant party, after which, by Russian authority, the following note was made upon the original: "This log book has been examined by the minister of marine and returned to the minister of foreign affairs by an act of August 4, 1898, No. 527." This inscription is not found in the copy of the document now given to the defendant party, which fact he believes necessary to state here.

It would be difficult to find an explanation giving ground for a favorable interpretation of the fact that the log book of the schooner *James Hamilton Lewis*, as principal proof of his full right, was not presented at the critical moment of his seizure. The least likely explanation would assuredly be that of lack of confidence, which must have been offensive, on the part of the captain toward the commander of the Russian man-of-war. Still less comprehensible is the delay of the party claimant to present this justificatory document, to which both parties can not fail to attach the greatest importance, in the examination of the claim, and for this reason the defendant must be circumspect in regard to his admission of the authenticity of its contents.

Having examined the original in 1898, he was convinced of the utter inapplicability of that element of proof to the defendant's interests. The log book represents a record of the fishing trip of the schooner *James Hamilton Lewis*. On the title page is written, "Illegally seized August 2 by the Russian man-of-war *Aleout*." That is to say, there is a note foretelling that which took place about five months after the departure of the vessel from San Francisco, the 7th of March, 1891. The impression is at once given that this title and the corresponding text were written after the events of which the log book should serve as decisive proofs. This opinion is corroborated by the outward suspicious appearance of the document in question; the inscriptions are made with the same ink, and appear to be copied from some other record; they have not the appearance of inscriptions made on different dates during the entire period between the 7th of March and the month of August, 1891, but all at one time. The added protest of Captain MacLean at the end of the diary, and the mention of the number of seals killed at sea in 1891, viz, 424 seals illegally caught, equally testify to the ulterior composition of the document, the value of which could only consist in having been preserved intact, such as it was on the 21st of July (August 2), 1891. All of the above data is convincing that aboard the *James Hamilton Lewis* at the time of her seizure there were no regular entries as to her daily navigation in the ship's journal, as has been previously shown in the act of confiscation on the 30th July (August 11), 1891. (Exhibit II.) Consequently the log book presented by the claimant does not furnish proof of an alibi of the vessel in question; on the contrary, it serves as better evidence for the party opposed to the claim. The *James Hamilton Lewis* had not noted her position at sea on the eve of her seizure, although she was undoubtedly at that time in the proximity of the Russian coast and was engaged in illegal sealing.

In view of these facts, the defendant party concludes that the marauding character of the schooner *James Hamilton Lewis* in Russian waters is sufficiently proven; therefore the Russian Government confirms the decision relating to the confiscation of the vessel, by its sovereign right, and in defense of its legitimate interests against all infringements thereon.

There can be no question as to the right of the constituted agents to pursue delinquent vessels beyond territorial waters, as was done in the present case, when the war ship sighted the schooner in the proximity of Russian coasts; that is to say, 5 miles from the shore, and overhauled her finally at a distance of from 11 to 12 miles from the Medny Island. Therein the principles of the liberty of the high seas are not violated, as they are understood by the representatives of contemporaneous science.

The question which suggests itself here is the one until now contested, viz, what is the extent of the "territorial sea," but in this respect it must be remembered that according to the accepted principle of international law, the limits of territorial waters are really determined by the possibility for the bordering State to establish its sovereignty over a certain extent of sea constituting a prolongation of its territory. (*Terræ dominum finitur ubi finitur armorum vis.*) With the resources of defense which nations have at the present time at their command, the perfection of firearms, the complexity of the conditions of existence, need of order, military, financial, and economical,

all limitations too narrow for the full manifestation of the sovereignty of a country, as, for instance, the fixation at 3 marine miles as the limit of territorial waters of which the party claimant makes mention, should be considered as arbitrary, devoid of all practical sense, and not serving their ends. In any case, the limits of territorial waters according to the doctrine of international law most recently accepted should be extended not only beyond 3 miles, but even beyond 5 miles, starting from low-water mark. (Session de Paris de 1894 de l'Institut de droit international.)

It would be well, moreover, to take into consideration the particulars of the present case arising from acts whose object it is to legally protect the seal fisheries in Bering Sea. From the facts set forth in detail in the case of *C. H. White* (third case) it appears that the United States had come to recognize the necessity for exceptional measures in this respect, yet in spite of these exigencies regarding prohibited zones, went beyond that which was deemed necessary by the Russian Government.

The defendant party does not intend to sustain here the point of view of the American Government according to which seals, not being *feræ naturæ*, are domestic animals having the *animus rivertendi* characteristic of the latter; but it believes it well to recall that at the time the claimant supported that opinion before the arbitration tribunal of Paris, in claiming a property right over all the seals that frequented the islands of Pribilof, American marauders were exterminating seals on the Russian coasts of Commander Islands. The United States Government then arrived at the conclusion that it was necessary to entirely interdict the killing of seals in open sea (pelagic sealing), with a view to preserving that race of animals in the Pacific Ocean. (Revue de droit international, 1893. Tome XXV, p. 434, etc.) After setting forth the above points, which in the opinion of the defendant party render inapplicable the principles invoked by the party claimant as the basis of the affair, it is useless to enter into an examination of the several points of the claim, limiting oneself to the following remarks:

With regard to the allegations not sustained by sufficient proofs concerning the bad treatment to which the men of the crew of the *James Hamilton Lewis* may have been subjected, it is well to note that, on the contrary, the men themselves made the most violent resistance to the orders of the officers of the cruiser *Aleout*, by which they made necessary decisive measures on the part of the Russian authorities. The defendant party energetically protests against these allegations which are not proven. To contest this portion of the claim, of which the total reaches the sum of \$34,000, as well as the claims for indemnity for losses on the value of the confiscated vessel (\$25,000) and her cargo (\$5,936), also that in regard to the claim for indemnity for the loss of a probable profit (\$36,400) and interest (\$54,721.44), it suffices to refer to the explanations given concerning similar questions in the cases of *Cape Horn Pigeon*, *C. H. White*, and *Kate and Anna*. (Cases I, II, III.)

There still remains to be mentioned that the compromise recently proposed in regard to the payment of a sum of \$82,000 instead of \$156,057.44, now claimed, plainly shows that the first calculations of the claimant were not well founded.

CONCLUSION.

In view of all the preceding, the defendant requests that the demands of the claimant be rejected upon all points.

EXHIBITS.

I. Report of the commander of the schooner *Aleout*, dated August 3, 1891, No. 385.

II. Proceedings of the confiscation of the schooner *James Hamilton Lewis*, dated July 30 (August 11), 1891, No. 383.

III. Report of Lieutenant Lebedew, July 22, 1891, No. 41.

IV. Report of same officer dated July 23 of the same year, No. 42.

V. Certified copy of the report of the captain of frigate *Brandt*, October 20, 1891, No. 489.

VI. Legalized extract from the log book of the schooner *Aleout* on the subject of her navigation on July 21, 1891.

VII. Chart showing locality where the incident occurred, annexed to the report, No. 489.

The defendant party places the originals of these documents at the disposal of the arbitrator.

EXHIBIT I.

REPORT OF THE COMMANDER OF THE SCHOONER ALEOUT TO THE COMMANDER OF THE PORT OF VLADIVOSTOK, DATED AUGUST 3, 1891. No. 385.

I have the honor to report to your excellency that on the morning of July 4, off the southern extremity of the Medney Island, from on board the schooner commanded by me, was sighted a two-mast sailing vessel approaching the island, which, having sighted the *Aleout*, fled under full sail. For the purpose of inspecting, I overhauled her 12 miles from the island, and having made the inspection, suspecting her of engaging in illegal sealing, I detained and confiscated her on discovering aboard many seal skins salted down, arms, powder, and shot. This incident is set forth in the act hereunto annexed of the confiscation of the schooner. This act has been read and signed by the captain of the schooner and in this act his protest is set forth. All of the seal skins were turned over by me to the chief of district of the Commander Islands to be sent to London and sold on behalf of the Government, thinking thus to obtain better prices than at Vladivostok.

The schooner was at once conducted to Petropavlosk, and will thence be sent to Vladivostok under command of Lieutenant Lebedew. As it was impossible to spare enough men from the *Aleout*, I placed 6 of her sailors aboard the sailing vessel with 6 of the American crew already there. Captain MacLean and the 10 remaining men of his crew I put under surveillance, to be sent on the steamer *Vladivostok* to Vladivostok, in conformity with instructions which I received, on account of the resistance made when arrested, when it proved necessary to take decisive measures to compel her to stop her course. While the attitude of the crew was for the most part apparently passive, next to the captain the most noticeable was the first mate, MacDonald, who, according to accounts, not entirely confirmed, however, drew a knife at the moment of arrest; therefore I decided to send the entire crew to Vladivostok, that the local authorities might pass upon the matter. The chief of district of Petropavlosk, in view of the great need of boats by the inhabitants of that town and the neighboring villages, asked me if I could not sell some of the boats of the confiscated vessel. I consented, and of the six boats I authorized the sale of three at auction. The sum realized by this sale will be handed by me to the administrator of the port of Vladivostok. I also transmit herewith to your excellency the ship's papers of the confiscated schooner *James Hamilton Lewis*. I send the said documents by steamer *Vladivostok*, although the sailing vessel *Lewis* will probably reach Vladivostok before the steamer.

(Signed)

Captain of Frigate BRANDT.

EXHIBIT II.

DECREE OF THE CONFISCATION OF THE AMERICAN SAILING SCHOONER JAMES HAMILTON LEWIS OFF THE COMMANDER ISLANDS BY THE SCREW SHIP ALEOUT, PETROPAVLOSK, JULY 30 (DECREE AUGUST 11), 1891. No. 383.

On the 21st of July (August 2), 1891, near the Isle of Medney, off the western coast of said isle and 3 miles north of its southern extremity, at 4.40 a. m., a schooner was sighted bearing, as it appeared, to northeast and approaching the island.

For the purpose of inspecting we advanced straight upon her, but, sighting us, she filled away, augmenting sails. While pursuing her we noticed that something was being hurriedly thrown overboard. At 6.15 we neared her and, hoisting our colors, fired a blank shot, on which the vessel hoisted the American flag and lay to. Two officers, sent to board her, returned reporting that she was a sailing vessel from San Francisco bearing the name *James Hamilton Lewis*, and that on board were guns, many cartridges, powder and shot, slender rods of bamboo with hooks and grappling irons for drawing seals from the water, 6 long boats and a crew of 16 men, a large quantity of salt, and evident signs of the operation of removing the skins from seals. In the official log book which was produced the last inscription was on the 7th (19th) of June. The journal of navigation bore no inscription.

Taking this data into consideration, an officer was sent, with 6 sailors, to inform the captain that his schooner was under detention, and to require him to report with a portion of his crew on board the schooner *Aleout*. The captain refused to comply with this order, and sailed away. Leaving the ship's boat to follow, the schooner *Aleout* pursued the vessel, and, in order to compel her to stop, fired a cannon ahead, in spite of which, and the verbal order to come to, the schooner did not lay to, but continued her course. The *Aleout* passed close under her stern and, repeating the verbal order to stop, fired a second shot into her forward rigging. The *James Hamilton Lewis* did not lay to, but continued her flight.

The *Aleout* increasing her speed barred the way, when the *James Hamilton Lewis*, fouling the starboard side of the *Aleout*, was seized and taken in tow. Captain MacLean with his entire crew was conducted on board the *Aleout* and was informed that his vessel was seized and would be taken to Nicolsk, on Bering Island. Being taken in tow, the *James Hamilton Lewis* was, upon inspection, found to contain a large quantity of seal skins, a bag net for catching sea otters, and two skins of small seals, which from their tender age, according to the opinion of an expert, the chief of the Commander Islands, could not have been killed elsewhere than upon the shore. The ship's papers were taken, and the captain was informed that the vessel *James Hamilton Lewis* was confiscated for having engaged in illegal and unauthorized hunting in Russian waters.

(Signed)

Ensign ENGMANN.
Ensign KOLIUBAVINE.
Ensign TRENTOVIVS.
Lieutenant SACHS.
Lieutenant LEBEDEV.
Captain of Frigate BRANDT,
Commanding Screw Ship Aleout.
ALEXANDER MACLEAN.

I, the undersigned, do hereby protest, in behalf of the schooner *James Hamilton Lewis* and her owners against the illegal seizure of said vessel, her cargo, and hunting outfit and tackle, made by the Russian man-of-war *Aleout*, the 2d of August, 1891, upon the high seas and neutral waters of the ocean.

All seal skins on board of said schooner were killed upon the water with shotguns, and the pup skins were taken from the inside of the seals after they were taken on board of the vessel, and there had been no seals taken on board of the vessel for forty hours previous to the time of seizure. I hereby hold the Russian man-of-war *Aleout* and her Government responsible for the detention and losses caused by the illegal seizure of said schooner, with her tackling and cargo and hunting outfit.

ALEXANDER MACLEAN,
Master of Schooner J. H. Lewis.

AUGUST 12, 1891.

EXHIBIT III.

REPORT OF LIEUTENANT LEBEDEW TO THE COMMANDER OF THE SCREW SCHOONER
ALEOUT.

On the 21st of July, as we sailed in sight of the island of Medny, in obedience to your order, I left the ship commanded by you, and taking my place in a long boat at about 7 a. m., with Ensign Engmann, I advanced upon a schooner carrying the American flag, which lay to at a distance of about 3 cables' length to leeward. Having covered about half the distance I read upon the stern of the schooner the name *James Hamilton Lewis*, San Francisco.

Approaching her from windward, I boarded her on the starboard side and ascended to the deck and put the following question: "Who is captain here? I must speak with him." A man approached who said he was captain of the schooner. I next asked him if he was the ship's owner, to which he replied in the negative, and designated as owner a certain Lewis or some such name. To my question, What was the schooner's business, he replied; "Hunting and fishing" (hunting of sea birds). When I asked the number of men in the crew he at first replied 25, but when I required the captain to call all of his men on deck and asked him for his ship's papers and the log book to verify the crew, he delivered his papers and informed me that his crew numbered 22, but that two had deserted and four had been lost in the fog while fishing off Sandy Point.

Having told the captain that I was sent by the commander of the Russian man-of-war to inspect his vessel, I left Ensign Engmann on the deck to watch the crew, and I with the captain descended to the hold. There I ordered the removal of the planks beneath which were casks of fresh water. Then I ordered a hand pump to be brought, and while the captain busied himself lifting the planks I put the pump in place and began to examine this place, and found there salt piled in sacks along the sides and a quantity loose upon the floor. There was also a tub containing reddened water covered with a red flannel shirt. Over all were noticeable signs of a hasty putting to rights and of washing.

To my question where they keep the fish they had caught, the captain answered that the cargo had already been transported to another schooner off the coast of Alaska, and that they had but this very day arrived in our waters. Pretending to be satisfied with these replies, I next inspected the quarters of the crew. These quarters were very narrow and communicated with the kitchen or galley by means of a window or slide through which dishes could be passed. I next inspected the cabin astern, containing eight beds, and bunks in which four more persons could easily sleep. At the end of the common cabin there was a door opening into the captain's cabin; I did not enter there. Along the partitions near the bunks I saw eight guns of different models, and there also were wooden rods in greater number than the guns. Returning to the deck I examined the long boats; in one there was a box covered with a coarse red cloth containing ship's biscuit and other edibles; in another were two bamboo rods with pointed ends and iron hooks. Having informed the captain that I must show his log book to my commander, I received it and left in the boat to return to the *Aleout*, where I made my verbal report of all I had seen and heard, and expressed the opinion that the arrested schooner was a poacher and not merely engaged in fishing and hunting. Having then received orders to return to the vessel with a quartermaster and five armed sailors to bring the captain and a portion of his crew aboard the *Aleout*, and to assume command of the schooner to conduct her whither you should order, I left in the rowboat. During this time the distance between the *Aleout* and the schooner had noticeably increased. Approaching the *James Hamilton Lewis* I ascended to the deck, boarding her on starboard side, and delivered your order to the captain. I received by way of answer that he could not leave his vessel at sea, and if my commander desired to speak with him he could come to him. This reply was received with marked approval by a portion of the crew: "Certainly; let him come to us if he wishes; we are beyond Russian waters," etc.

During my interview with the captain one of his men seemed especially to sustain him; it proved to be the first mate; the latter passed back of me as if to seize me from behind; I turned suddenly upon him and informed him he would wait a long time for my commander to come aboard, and that the captain and crew would do well to comply at once with his orders. I had not finished speaking when the vessel filled away, leaning dangerously above our small boat, and sailed away. Then I returned in the ship's boat to the *Aleout* to report to you.

On nearing the *Aleout* I called to you "Fire upon them, they are rascals." Scarcely hoping that you had heard me, I pointed to the flying vessel and fired my revolver

in air. Approaching still nearer, I heard your order to follow in the ship's boat, which I did, endeavoring to avoid any interference with your movements or your guns. I submit this my report of the preceding.

Lieutenant LEBEDEV.

EXHIBIT IV.

REPORT OF LIEUTENANT LEBEDEV TO THE COMMANDER OF THE SCREW SHIP ALEOUT,
DATED JULY 23, 1891, No. 42.

In addition to my report of July 22 (No. 41), I now report to you that while towing the *James Hamilton Lewis* from the island of Medny to Bering Island the schooner was by me searched in detail. There were found aboard of her guns underneath the mattresses. A pocket revolver was taken from the cook; in the galley were found two small seal skins hanging on nails in the partition to dry; in the forehold, under the trap, ten or more large tin boxes containing gunpowder; in the hold to starboard of traps were wooden boxes filled with large shot and cartridges, and similar cartridges and shots were found under the bunks and beds in the after cabin.

Under a platform and under the mess table were cases filled with cartridges of larger caliber, charged with shrapnel; other boxes contained cartridge shells which had not been filled. There was also a large bag net, quite new, worth \$600, as said the American sailors who remained aboard the schooner; this bag net was used for catching sea otters.

During the inspection of the main hold by the quartermaster, Lestchew, it was found upon scattering the salt piled on the floor that seal skins had been packed therein. Being convinced that among the sacks containing salt one had been hastily filled with seal skins, I ordered that all be left intact until the examination by the commission; that is to say, until the arrival in the village of Nikolsky, on Bering Island.

(Signed)

Lieutenant LEBEDEV.

EXHIBIT V.

REPORT OF THE COMMANDER OF THE SCREW SCHOONER ALEOUT TO THE COMMANDER
OF THE PORT OF VLADIVOSTOK, DATED OCTOBER 20, 1891, No. 489.

[Resolutions sent to the military governor. Signed, K. A. Ermolaiew, October 23.]

In fulfillment of the order of October of the present year, I make report that, according to the log book of the schooner under my command, being on the morning of July 21 off the southern extremity of the island of Medny, I sighted the sailing vessel *James Hamilton Lewis*. At that moment the sails were distinctly visible, and the schooner was bearing toward the southern extremity of the island. To better elucidate the circumstances, I transmit herewith an extract from the ship's log and a chart, upon which is indicated the point at which the schooner commanded by me was situated when the sailing vessel was sighted (point "A"). Judging from the clearness with which her sails could be seen, the utmost limit of distance between the two vessels could not have exceeded 6 miles; that is to say, the *James Hamilton Lewis* was not more than 5 miles off the southern extremity of the Medny Island; that is, at point "C."

At this moment she neared the shore until she sighted the *Aleout*, when she veered quickly and, augmenting sails, hastily fled beyond the limit of territorial waters.

The schooner was seized at point "B," which was 13 miles from the point "A" and 11 miles from Medny Island.

(Signed)

Captain of Frigate BRANDT.

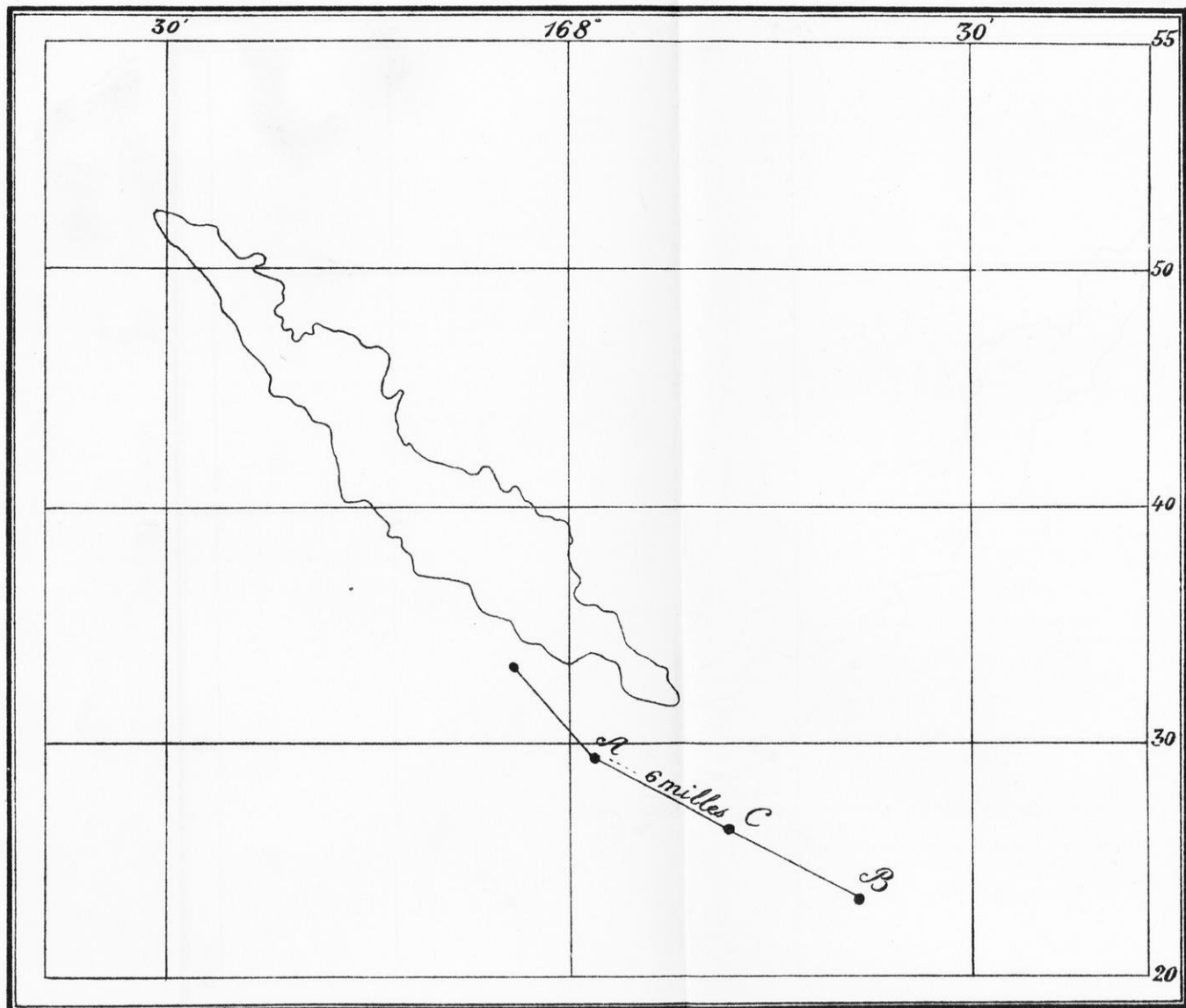
EXHIBIT VI.

EXTRACT FROM THE LOG BOOK OF THE SCHOONER ALEOUT CONCERNING THE
NAVIGATION OF JULY 21, 1891.

At 4.40 a. m. a sailing vessel was sighted, bearing to northeast, which at once veered about and passed to southeast before the wind; we accelerated the engine to 80 turns. At 5 o'clock the crew were aroused. Prayer and breakfast. At 5.47 carry-

PIECE PRODUITE VII.

Annexe au rapport N^o 489.



ing of coal from the hold to the coal bins. At 6.15, nearing the schooner, we fired a blank shot, upon which the sailing vessel hoisted the American flag and fled. At 6.20 we lowered a long boat and sent two officers to inspect her. It was found that aboard the schooner, named *James Hamilton Lewis*, was a quantity of salt, piled in the hold and in sacks, also powder and bamboo rods, with hooks and grappling irons for lifting seals from the water. On the return of the boat the crew was armed with revolvers.

At 7 o'clock the rowboat, with an officer and a number of the crew, were again sent to detain the vessel. The captain refused to quit his vessel, and sailed on. Leaving the rowboat to follow, we quickened our speed and pursued the schooner. At 7.43 we fired a gun ahead, but the schooner continued her flight in the same direction. Fog began to gather.

At 8 o'clock, according to report, all goes well; there are no sick men, no men under arrest, no water in the hold.

The captain of the sailing vessel obstinately continued his course, and struck our schooner with his bowsprit a little ahead of the bridge. Her jib boom became tangled with the starboard beam; the jib boom was broken, but the shock was deadened, and the vessel hove alongside, shattering the hammocks in two places, and with one of her sideboards tore the port edge of the starboard side, bent the beam of the stern boat, damaged the awning stay, and scratched the side with her port anchor, which then became detached and fell into the sea. In the meantime Ensign Trentovius, with a portion of the crew, boarded the sailing vessel, which lay alongside, and ordered the captain to report to the commander of the *Aleout*. As the vessel was still under sail and striking our side, in brailing up sails she cut a part of our rigging. At 8.25 we tendered her a tow cable; and the boat which had approached in the meantime went to get the remainder of the crew. There were 16 men of the crew, of whom 4 were at once placed aboard the *James Hamilton Lewis*, and 12, with Captain MacLean, were left on board the *Aleout*. Lieutenant Lebedew with 6 men were left aboard the sailing vessel; at 8.50 we started.

(Signed)

Lieutenant TCHERNIKOW,
Officer of the Pilot Corps.

EXHIBIT VII.

ANNEX TO THE REPORT No. 489.

- A. Point from which was sighted the schooner *James Hamilton Lewis*.
- B. Point at which the schooner *James Hamilton Lewis* lay to and was overhauled by the *Aleout*.
- C. Supposed situation of the *James Hamilton Lewis* when it was sighted by the schooner *Aleout*.

(Signed) Captain of Frigate BRANDT.

Certified conformedly.

J. STEBLINE-KAMENSKY,
Deputy of Jurisconsulate of Minister of Marine.

THIRD CASE.

Detention and confiscation of the American schooner *C. H. White*.

The American schooner *C. H. White* was detained and confiscated under the following circumstances:

On the 3d (15th) of July, 1892, at 10.30 p. m., the Russian cruiser *Zabiaka*, under command of Captain de Livron, being in $54^{\circ} 30'$ latitude north, and $167^{\circ} 15'$ longitude east from the port cathead in the direction southeast 68, observed at a distance of 2 miles a schooner without distinctive lights sailing toward the southern extremity of the island of Medny, in a westerly direction.

Having for special mission the protection of the coasts of the Commander Islands in Bering Sea, and suspecting this vessel of being engaged in illegal seal fishing, the commander of the cruiser fired a blank shot, and on approaching the schooner commanded her to lay to. When this order was complied with an officer was sent in a ship's boat to the vessel, which was found to be the American schooner *C. H. White*, under command of Captain Furman. The officer, after a short inspection of the schooner, discovered in the hold a quantity of seal skins and several seals but recently killed. It was evident from documents presented by the captain that the log book had not been kept during the last two days; and from the entries in the journal, in spite of the explanations made by the captain concerning his previous navigation, it was plain that the schooner had during the two weeks preceding this encounter remained in the proximity of the Commander Islands. For instance, the 12th of June, when according to his statements they were engaged in hunting and fishing 40 miles south of the Agatha Island, they were in reality 8 miles off the Medny Island; the course followed by the schooner on her return voyage brought her 3 miles off the southern extremity of that island. In view of this data the schooner *C. H. White* was conducted to the village of Nicolsk, on Bering Island, where a formal inspection by a special commission was made, which established the presence on board of about 12 tons of salt, 15 seal skins, 5 seals newly killed, different accessories for catching these animals, powder, and other articles. A protocol relating the details of the episode was immediately drawn up; Captain Furman in it set forth his observations, and his first mate, Andren Ronning, signed the document unreservedly.

On the part of the crew of the schooner not the slightest resistance was made to the measures taken by the commander of cruiser. Upon the basis of this protocol, and regulated by the instructions received from governmental authorities, Captain de Livron, by a resolution of 4th (16th) of July, 1892, decided to confiscate the *C. H. White* and to send her to Vladivostok; moreover to send the captain and crew to Petropavlovsk, allowing them to return freely to their country. This decision was strictly carried out; Captain Furman and the members of the crew were authorized to remove such effects as belonged to them,

and which in no way constituted the accessories of equipment of the schooner. Furthermore, in conformity with the decision of the commander of the cruiser *Zabiaka*, the aliens, who had thus been taken upon Russian territory, whether those of the schooner *C. H. White* or of the other confiscated vessels, were conveyed to America on the brig *Majestic*. (See Exhibits I, II, and III; Exhibit S annexed to American memorandum, third case.)

OBJECTIONS CONCERNING THE BASIS OF THE AFFAIR.

From the preceding it appears, in the first place, that the American schooner *C. H. White* was detained in her course and seized in $54^{\circ} 10'$ latitude north and in $167^{\circ} 10'$ longitude east, and not in $54^{\circ} 18'$ latitude north and $167^{\circ} 10'$ longitude east—that is to say, in all, a distance of 23 miles, as Captain Furman pretends. The unsubstantiated statements of the latter are contradicted by the official protocol drawn up at that time on the cruiser *Zabiaka* (Exhibit I) and by the official log book of the cruiser for the year 1892 (Exhibit III) while the log book of the schooner was not kept in order precisely during the last days preceding her seizure. Even the observations of the captain of the *C. H. White* in the protocol of July 3 (15), 1892, show that he well understood the meaning of the document which he signed, since he endeavored to justify his situation at the time of his encounter with the Russian man-of-war. At all events, the suspicious character of the schooner *C. H. White* was established by the fact alone that in flagrant violation of international maritime laws it was sailing far enough into the night without distinctive lights. Moreover, the log book of the vessel served to show the inaccuracy of the captain's statements relating to his previous course, and proved the schooner's recent presence in the proximity of the Russian coasts; the course followed on her return voyage indicated a passage at 3 miles off the southern extremity of the Medny Isle. Finally, a casual examination of the hold revealed to the Russian officers the presence of products of illegal seal fishing and confirmed Captain de Livron in his opinion that he had effectually caught up with the marauders almost upon the spot where the offense had been committed, or shortly after the accomplishment of same. Under these circumstances the Russian cruiser, whose special mission it was to strictly guard the fisheries off Commander Islands, could not fail to pursue and seize a foreign vessel which after all doubts as to her pretended nonculpability have been dispelled should have been confiscated in conformity with the prescribed regulations (Exhibit II).

In sanctioning the measures taken by her agents in this respect, the Imperial Government does not intend to dispute the principle of international law which recognizes the liberty of the high seas, but thinks there is reason to attribute particular importance to the essential circumstances of this affair without, however, losing sight of the fact that the limits of territorial waters are not at present clearly determined (see second case). It must be chiefly considered that this vessel, which was found to be a poacher (since it is impossible to lend even a semblance of likelihood to the supposition that the schooner, having been detained with the products of a recent catch of these costly animals, could have been engaged in legitimate business during the two weeks which were spent in the proximity of the Russian coasts, where poaching is interdicted), was sighted by the Russian cruiser at a

moment when, after being engaged in illegitimate seal fishing near Russian territory, it was stealing away in the darkness from the pursuit to which it had rendered itself liable. The schooner *C. H. White* was definitely seized at a relatively inconsiderable distance from land, but after spending entire days on the point of a seizure, in coast waters, had not time to escape beyond the reach of the armed force of the country upon whose rights it had infringed. The cruiser *Zabiaka*, whose special duty it was to watch all suspected vessels about the Commander Islands, had the right to pursue the fleeing schooner and seize her even beyond the limits of territorial waters, according to the Russian law. This point of view must not be regarded as a denial of the principle of the freedom of the high seas, whose object is to attain an advantage of universal interest; that is to say, to protect aliens of all countries in peaceful occupations, but not individuals guilty of harmful attacks upon the rights of others. It is not to be expected that vessels engaged in marauding will not be seized in every case beyond the immediate proximity of the coasts; the protection of the immense extent of Russian coasts in the Pacific Ocean would thus be almost impossible. If the offense had been committed within the limits of the jurisdiction of the local authority, the right to pursue the delinquent still farther could not be ignored. In the case of the Costa Rica packet which is cited quite a different case is in question, that of the pillage of a canoe abandoned at sea, but having been the object of a pursuit proceeding from the Russian coasts, which excludes all question of violation of the principles of international law.

Independently of the preceding considerations, it would be well to note the following particulars of the present case:

The question of preservation of fur seals against the destruction to which they are exposed from marauding vessels, either on the high seas or in territorial waters, has been for a long time a matter of solicitude to the Russian Government and the Government of the United States, who are the possessors of the only territory whereon these animals land—on Commander, Pribilof, and Tuleny islands. Great Britain was implicated in this question on the occasion of disputes which arose in consequence of fishery carried on by Canadian vessels. On June 3 (15), 1891, the Cabinets of London and Washington agreed to establish a provisory *modus vivendi*, by virtue of which aliens of both countries were interdicted during the period of one year from engaging in fur-seal fishing in that portion of Bering Sea east of the line of demarcation fixed by the treaty concluded in 1867 between Russia and the United States; that is to say, at a time when the American Government claimed exclusive sovereignty over these parts, founded upon the ancient rights of Russia, acquired at the same time as Alaska and the neighboring islands. This provisory state of things was continued until the decision of the Paris tribunal of arbitration, which passed upon the American claims. (See *Review of International Law*, Vol. XXV, 1893, p. 417.)

As a consequence of the practical application of this measure for the interdiction of seal fishing, there was an extraordinary influx of poaching vessels in the proximity of Russian coasts in the western part of Bering Sea.^a

^a In the documents of the confiscated vessels there were shown inscriptions made by English or American officers ordering these vessels to go beyond the line of demarcation of the forbidden zone, and not to enter again under penalty of confiscation.

This circumstance obliged the Russian Government to send a cruiser, furnished with suitable instructions, to the Pacific ocean to protect the fur-seal fisheries. The attitude of the aliens of the party claimant was such as to require Russia to take a stand of legitimate defense. At this time, among other very numerous vessels, both English and American, the schooner *C. H. White* was seized for engaging in illegitimate fur-seal fishing off the Commander Islands. Then in the month of May, 1893, a special agreement was concluded between England and Russia, by which the English Government engaged to temporarily interdict her subjects from seal fishing in a zone of 10 miles along the Russian coasts, along the whole extent of Bering Sea and the western part of the Pacific Ocean, as well as in a zone of 30 miles around the Commander and Tuleny islands. An arrangement of the same nature was concluded on April 22 (May 4), 1894, between Russia and the United States of America. On a parallel with the above facts the Paris tribunal of arbitration of the 15th of April, 1893, settled the difference between England and America, concerning the general question pending between the two Governments, by fixing obligatory rules regarding the protection of seals, by which it was agreed, among other things, that the two countries should completely prohibit their subjects the catching of these animals within the limits of a zone of 60 miles around the Pribilof Islands. This last decision gave partial satisfaction to the claims of the Washington Cabinet. The application of the decisions of the Paris tribunal of arbitration by the two countries was assured, so far as regards England, by means of a bill adopted by Parliament and in America by an act of Congress dated April 5 and 6, 1894. In fact, the United States Government showed itself disposed to sign a convention with Russia, England, and Japan on the subject of the extension of the decision of the Paris tribunal of arbitration to all of the waters of the Pacific north of 35° of latitude.

Thus it is evident that the points of view of the Russian and American Governments, in a question of such importance for both countries as the preservation of the seals, were, upon the whole, concordant. According to the principle of reciprocity, the United States Government, which claimed the right of control over a great extent of sea, alleging rights in which, according to its own statement, it had taken the place of Russia, and which (Government) availed itself thereof for the protection of its own industry in the territories and waters which belonged to it, was obliged to recognize, on its part, the control of Russia, at least to the limited extent to which the latter proposed to exercise it, without disputing the legality of the measures which the Russian Government thought it necessary to take in order to preserve its own coast against pirates, and without giving its support to the claims of American citizens who infringed upon the regulations adopted by Russia in an interest that was common to both countries. It is incontestable that the Russo-American agreement, concluded after the confiscation of the schooner *C. H. White*, not having retroactive force, could not, strictly speaking, be applied in the present case; but it is beyond doubt that the agreement only sanctioned in a formal manner the previous point of view in the question of common interest to both countries. Therefore the seizure of an American vessel at a distance of 23 miles from the Russian coast, which vessel may have been guilty of infringement upon interests which the Russian Government meant to protect, could not in justice give grounds to claim of the party claimant.

By contesting in its entirety, upon the basis of the preceding considerations, the sound basis of the claim of party claimant, the defendant party thinks it necessary to pause at certain points of detail of the said claim.

1. Particular weight should be attached to the personal claims of Captain Furman (\$25,000), of his first mate, Ronning (\$15,000), and of the fisherman Wolfgang (\$10,000); also to the claim presented in the name of the entire crew of the confiscated vessel, which reaches a sum of \$20,000. All of these claims, stripped of sufficient proofs to a total of \$70,000, with interest for nine years, are based upon the pretended facts which follow: The captain of the American vessel had been compelled by force, under penalty of transportation to Siberia, to sign a document in a foreign language which he did not understand, and to submit to a severe imprisonment on the Russian cruiser. Cruelties were committed against the crew in general, either at sea or on shore, on account of which they must have suffered greatly both physically and mentally. In fact, certain trifling objects belonging to Furman, Ronning, and Wolfgang were lost and were not restored to them when they were given their liberty. Then the inquiry which was made and the decision of the superior authority as to these facts established not only the complete inaneity of these allegations, offensive to the honor of the Russian navy, but still more the fact that many of these aliens at Petropavlovsk expressed their thanks to the Russian officers for the good treatment they received and the assistance that was given them for their return to their own country. (See Exhibit H.) As for the particular point of the argument drawn from the fact that uncomfortable lodgings in the town had been assigned to these parties, it is explained by the insufficiency of the local resources and not from any intention to treat the aforementioned persons as criminals. On the contrary, the Russian authorities renounced all personal judicial action against the parties who aboard the *C. H. White* engaged in illegal fishing, confining itself to confiscating the seized vessel. (Exhibits II and III.) In view of the preceding, the mention made by the party claimant of the precedent of the decision of the Commission of Washington in 1871, where, according to the memorandum, it is a question of the illegal confinement of persons in a prison or in a fortress at the time of the war of secession is not applicable in the present case, and the defendant party believes it right to reject in a manner most emphatic all claims bearing upon personal bad treatment to which the interested parties may have been subjected.

2. As to the claims relating to the loss of probable profit which might have been derived from the seal fishing and from the catch of fish (\$34,700—\$10,300), the defendant party considers it sufficient to refer to his explanations concerning the case of the *Cape Horn Pigeon* (first case).

3. The sum for loss representing the value of the confiscated vessel and of her cargo (\$35,000—\$280—\$160—\$260) is not justified except by the testimony of interested persons and can not be considered as regularly established. (See fourth case.)

4. It naturally follows that the claim for interest since the year 1892 (\$81,388.80), added to the principal of the claim, could not be admitted by the defendant party once the latter is rejected by him.

Finally there remains to be mentioned that the proposition recently made by the party claimant to settle the affair by compromise for the

sum of \$112,500, instead of \$232,108.80 at present claimed, shows plainly the absence of accuracy in the estimates of the party claimant.

CONCLUSION.

By virtue of the preceding the defendant party requests that the entire claim of the party claimant be rejected.

EXHIBITS.

- I. Verbal proceedings of the seizure of the schooner *C. H. White*, dated July 3 (July 15), 1892, No. 376;
 - II. Act of the confiscation of the said vessel dated July 4 (16), 1892, No. 377; and
 - III. Certified copy of the log book of the cruiser *Zabiaka* for the year 1892.
- The defendant party holds the original of these documents at the disposal of the arbitrator.

EXHIBIT I.

OFFICIAL REPORT OF THE CONFISCATION OF THE AMERICAN SCHOONER C. H. WHITE ON THE 3D (15TH) JULY, 1892, IN BERING SEA, ON BOARD THE CRUISER ZABIKA.

On the 3d (15th) July, at 10.30 p. m., being in 54° 30' latitude north and 167° 15' longitude east, bearing toward southeast 68, from the port cathead, at a distance of 2 miles, was sighted a sailing vessel without distinctive lights, which bore in the direction west of the southern extremity of the island of Medny. A blank shot fired from a 9-pounder, and approaching the schooner she was ordered to lay to, which injunction was at once obeyed. An armed rowboat was sent from the cruiser under command of Lieutenant Panferow, who having superficially examined the hold discovered a number of seal skins, and of five seals but recently killed. Lieutenant Panferow, remaining aboard the schooner, sent her captain with the log book and the ship's papers aboard the cruiser, from which was learned the following:

- 1. During the last two days the log was not kept.
- 2. The schooner *C. H. White*, under the United States flag, belonging to John Prien, left San Francisco the 7th (19th) May, under command of Capt. L. M. Furman, with an European crew of ten men, among whom the said Captain Furman, his first mate, Andrew Roning, and the cook, Julius Furman, were remunerated according to the number of skins of seals killed. Besides the persons above mentioned, forming part of the crew and not on the ship's roll, were four Aleouts speaking Russian. The captain with seven men were left aboard the cruiser. Lieutenant Panferow, being sent aboard the schooner, took the towline tendered by the cruiser and conducted the schooner into the roadstead of the village of Nikolsk on the Bering Island, where, after inspection by a commission composed of the ship's executive officer, Second Lieutenant Arnautow, of the examiner, Lieutenant Bezkrorny, of first pilot officer, Lieutenant Lakhtine, and of Lieutenant Nasonow, it was shown that the schooner contained about 12 tons of salt, 15 seal skins, 5 seals newly killed, 23 guns of different systems, with cartridges, 10 tin boxes containing powder, a variety of groceries, manufactured articles, and various small objects made of iron. There was no opposition or resistance by the captain or crew.

The contents of the official report were communicated to the captain, who made no objections.

(Signed)

[L. s.]

Lieutenant NASONOW.
 Lieutenant LAKHTINE.
 Lieutenant BEZKROVNY.
 Lieutenant ARNAOUTOW.
 Captain of Frigate DE LIVRON.
 ANDREN RONNING.
 L. M. FURMAN,
Master Schooner C. H. White.

EXHIBIT II.

DECISION MADE ON BOARD THE SECOND-CLASS CRUISER ZABIKA ON THE WAY TO THE VILLAGE OF NICOLSK ON BERING ISLAND, No. 337.

On July 4, 1892, upon the basis of the official report of the examination of the schooner *C. H. White*, drawn up on July 3 by the commission appointed by my order dated June 28, No. 60, and founded upon the publication by the Russian Imperial Government, published in 1881, as well as by virtue of the decision of the governor-general of eastern Siberia of the 1st November, 1883, No. 1171, and of the instructions given to the cruiser by the commander of the port of Vladivostok, dated April 22, 1892, No. 1425, I, commander of the above-mentioned cruiser, captain of frigate *Boris Karlovitch de Livron III*, have decided:

First. To confiscate the schooner *C. H. White* and to dispatch her to Vladivostok under command of Lieutenant Koltchak.

Second. To convey the captain and crew to Petropavlovsk, allowing them freely to return to their country.

Third. To draw up a complete inventory of the schooner's cargo upon her arrival at Petropavlovsk.

Fourth. To sell at auction at Petropavlovsk, for the benefit of the State, all of the cargo susceptible of deterioration and the unnecessary long boats, as well as arms.

Fifth. To deliver without receipt the seal skins to the chief of district of Commander Islands.

Sixth. To deliver without receipt one of the seven long boats to the chief of district of the Commander Islands, in compliance with the request of said chief.

Seventh. To submit the present decision to competent superior authority.

Eighth. To deliver to the captain copies of this official report and of the present decision.

(Signed)

BORIS DE LIVRON, [L. s.]
Commander of the Second-Class Cruiser *Zabiaka*.

EXHIBIT III.

EXTRACT FROM THE JOURNAL KEPT ABOARD THE SECOND-CLASS CRUISER ZABIKA DURING HER CRUISE FOR THE PROTECTION OF THE COMMANDER ISLANDS IN 1892.

Name and nationality of vessel: United States of America, *C. H. White*.

Cargo: Twenty seal skins, salt, powder, shot, arms, various implements for the taking of seals. Provisions and a variety of merchandise for commerce by means of barter.

Tonnage: Eighty-four.

Name of captain: L. M. Furman.

Circumstances of the case: On the 3d (15th) July, 1892, at 10.30 p. m., in 54° 30' latitude north and 167° 15' longitude east, while sailing in the direction southeast 68, we sighted at a distance of 2 miles a sailing vessel without distinctive lights following a course to the west of the southern extremity of the island of Medny. A blank shot was fired from the cruiser, and on approaching the schooner was enjoined by verbal order to lay to; this she did. Two officers and 11 sailors were sent aboard. On inspection it was discovered that the schooner contained 15 seal skins and 5 seals newly killed, after which a towline was tendered and she was towed to the village of Nicolsk. There was no resistance on the part of the captain from the moment of his arrest.

Number of crew: Fifteen.

Decision: The schooner and the cargo are confiscated and the crew will be sent to America on the brig *Majestic*.

(Signed)

Captain of Frigate DE LIVRON.

The present extract is in conformity with the original of the log book among the papers of the acting major-general of marine, 1895, No. 30.

St. Petersburg, March 24, 1901.

P. MIKHAILOV,
Governor of Chancery of the Ministry of Marine.
S. STEBLINE KAMENSKY,
Deputy of the Jurisconsulate.

[L. s.]

FOURTH CASE.

Confiscation of sealskins from the American schooner *Kate and Anna*, detained in her course by the Russian cruiser *Zabiaka*.

STATEMENT OF CASE.

The American schooner *Kate and Anna* was detained and afterwards permitted to continue her course under the following circumstances:

On the 31st of July (August 12), 1892, at 7 a. m., the Russian naval cruiser *Zabiaka*, under command of Captain de Livron, detained off the Medny Island, in Bering Sea, three small boats engaged in poaching, and belonging to the English schooner *Sayward*, and afterwards another marauding schooner, the *Vancouver Belle*, seeking the *Sayward*, which had disappeared, when it sighted through the fog at a short distance still another sailing vessel, which was found to be the American schooner *Kate and Anna*.

The *Zabiaka* detained the latter in her course in $54^{\circ} \frac{9}{10}'$ latitude north and $168^{\circ} \frac{31}{2}'$ longitude east, 30 miles south of the Commander Islands. From the ship's papers, which were presented by Captain Lutjens, the commander of the *Zabiaka* discovered that the log of the schooner had not been kept for ten days past, and that it was generally not in order. According to the lines of route indicated on the chart of navigation, as also from the points noted at noon, the commander of the *Zabiaka* was convinced that the *Kate and Anna*, during the last ten days, had twice entered the strait between the Bering and Medny Islands. Consequently, not trusting to the explanations made by the captain that he had entered the strait on account of bad weather, and believing that he had engaged in illegitimate seal fishing in the proximity of the Russian coasts, Captain de Livron seized the 124 sealskins which were aboard the schooner. As he had no more convincing proofs he permitted the schooner to continue her course, after compelling the captain to sign an agreement not to kill seals in Russian waters. This warning was inscribed in the log book of the *Kate and Anna*, and Captain Lutjens made at that time no further claim. (See Exhibits I and II; compare Memorandum, Exhibit E.)

GROUND'S FOR LEGAL RESPONSIBILITY.

There is no doubt, in consideration of the conditions of the encounter with the *Kate and Anna* and from the evidence of her ship's papers, that the commander of the cruiser *Zabiaka* had serious reasons to suspect this vessel and even to conclude that at least a portion of her catch had been obtained by poaching in Russian territorial waters. However, the setting at liberty of the vessel, after having seized the cargo which rendered it suspicious, shows a lack of purpose in the decision of the naval cruiser's commander, which might be partly explained by

want of positive proofs of the culpability of Captain Lutjens regarding the wrong attributed to him. Therefore the Russian Government, in conformity with its desire to maintain on all occasions amicable relations with the American Government, is ready to acknowledge its obligation to indemnify the actual losses caused the individual by the lamentable fact concerning the schooner *Kate and Anna*. In view of the preceding there is no reason to enter into an examination of the principle of international law regarding the freedom of the high seas, and the question now is the settlement of the amount of indemnity to be paid to the injured parties for the decision taken at the moment the said vessel was stopped.

AMOUNT OF INDEMNITY.

All the claims in this affair are filed in the name of the captain, owner of the vessel *Kate and Anna*, Charles Lutjens, who thinks he has the right to claim not only reimbursement of the value of 124 confiscated sealskins, but also an indemnity for the interruption of her voyage during the fishing season. The total amount of Lutjens's claims was limited in 1893 to \$10,000; at present, with interest added, it reaches the sum of \$16,148.44. (See Memorandum, Exhibits C, H, and statement of case.)

I. Regarding the most important portion of the alleged losses, which is estimated at \$8,750 and which relates to the interruption of the schooner's course, the defendant party considers that this feature of the claim is devoid of all juridical grounds. It is plain that in warning the suspected vessel of the legal responsibility it incurred by navigating in Russian waters, the cruiser *Zabiaka* did not forbid her to continue fishing outside the aforesaid zone, and did not touch upon the freedom of the further navigation of the schooner upon the high seas, open alike to all. This warning consisted only of a necessary reminder of the obligation not to infringe upon the rights of others, and not a forbidding of the American vessel to exercise her legitimate rights. At all events, the commander of the Russian cruiser had not ordered the captain of the schooner to "stop seal fishing and go home" (as the claimant pretends); confining himself to the confiscation of the sealskins, he inscribed in the schooner's log, that "the vessel was not taken and got free," so it appears from the explanations of the claimant himself. Therefore De Livron's warning to the captain alone did not oblige the schooner to quit at once the western waters of the Pacific and to return to San Francisco. In a word, there could be no question of enforced interruption of the voyage of the *Kate and Anna* until the close of the fishing season, or of the loss which the vessel may have sustained of a probable profit derived from legitimate fishing in open sea. Judging superfluous a return to the questions developed in case of *Cape Horn Pigeon* (first case) concerning the inapplicability in a civil action of hypothetical calculations as to the number of animals that might have been killed, a quantity estimated in the present case at 625, the defendant party rejects on his part said claim as unfounded.

II. Captain Lutjens's claim for indemnity for 124 sealskins which were confiscated from him is recognized as essentially legitimate, but the amount of the claim upon this point seems exaggerated. To justify the sum of \$1,736 claimed to-day, while in 1893 the sum of \$1,737 was claimed, reveals the fact that according to the word of the ship's owner

of the *Kate and Anna* (Memorandum, Exhibit G), the 1,252 skins previously delivered to Hakodate that same season were sold on the London market at \$14 each. But, independent of this, the fact alleged is not proven in a documentary manner (compare Memorandum, Exhibit Q). It will be seen that the claimant party in his statement cites the case of the valuation of sealskins at \$8 each. There also appear data contained in the books of the imperial ministry of marine that, at the time of the sale through an intermediary of the firm of Lindholm at London of sealskins confiscated from different vessels in 1892, sums amounting to 15 rubles 61 copeck and 18 rubles 44 copeck each were realized; that is to say, from about \$8 to \$9.50, valuing the dollar at 1 ruble 95 copeck.

From the preceding, and considering that the party claimant does not present exact data on the subject of the then price of the raw products on the San Francisco market, that is to say, from the starting point to the destination of the schooner *Kate and Anna*, the defendant party thinks it quite sufficient to take as mean value of one seal-skin \$10 as a maximum, and declares a willingness to pay for said 124 skins a sum total of \$1,240.

III. The addition of legal interest, as has been stated above in the counter memorandum, is recognized as just by the defendant party, to date from the day of confiscation of the seal skins in question. In fine, it suffices to say that the compromise recently proposed to fix the indemnity at \$7,500 instead of \$16,148.44, now claimed, shows a lack of accuracy in the calculations of the party claimant. (Memorandum Exhibits T and U of the first case.)

CONCLUSION.

On the basis of all that precedes, the defendant party recognizes the obligation to pay an indemnity amounting to \$1,240, with added interest at 6 per cent per annum from the 31st July (August 12), 1892, and requests that the claims of the party claimant upon the other points be rejected.

ANNEXES.

I. Extract from the report of the commander of the cruiser *Zabiaka* dated August 11, 1892, No. 354.

II. Extract from the log of the cruiser *Zabiaka* during her protective cruise off the Commander Islands in 1892.

The defendant party holds the originals of these documents at the disposal of the arbitrator.

EXHIBIT I.

EXTRACT FROM THE REPORT OF THE COMMANDER OF THE SECOND-CLASS CRUISER ZABIKA DATED AUGUST 11, 1892, No. 354.

On the 31st of July, being sheltered by the southern extremity of the Medny Island, and off the western coast, I was notified between 12 and 1 o'clock by a signal from shore that from the western coast of the island a schooner had been sighted. I at once circled the extremity of the island, and saw at a distance of 3 miles from shore three sails, which disappeared in the distance. On approaching we discovered that they were three poaching vessels, which fled at the approach of the cruiser.

On reaching these boats, which were found to belong to the schooner *Sayward*, I gave orders to seize them. The boats, with nine men, guns, and eight seals just killed, were taken aboard the cruiser and confiscated. The boats and guns were sold at auction in the village of Nicolsk for 200 rubles. At the court of inquiry these aliens declared to me the point at which the schooner lay, at southwest 45°, and I made way thither. Shortly thereafter we sighted the schooner, and at 4.30 we hove to in close proximity to the latter. The captain being requested to report aboard the cruiser with his ship's papers, presented himself; but I discovered that I had made a mistake. The poachers had misdirected me. This vessel proved to be the English schooner *Vancouver Belle*, commanded by Capt. W. H. Copp, 23 men in crew. There were aboard the schooner nearly 600 seal skins, salt, powder, and arms. I ordered her confiscation, since it developed from her log book that a portion of the seals had been caught in the strait between the islands. I took the captain and crew aboard, and I charged Lieutenant Koltchak to conduct her to Petropavlovsk. Immediately after the seizure a dense fog gathered, which robbed me of all possibility of discovering the cruiser *Sayward*. At 6.15 the fog lifted somewhat, and at a short distance I again sighted a schooner in 54° 10' latitude north and 168° 22' longitude east. The captain being requested to come aboard, presented his papers and his log book.

I learned from the log book that the American schooner *Kate and Anna*, detained by me at considerable distance off the islands, had twice been in the strait between the islands of Bering and Medny; that according to the captain's word he had passed into the strait on account of the bad weather, and had not caught any seals in Russian waters.

There were absolutely no convincing proofs against the schooner; therefore, on account of the irregularities of the log book, I took all the seal skins to the number of 124 and allowed the latter to depart, after giving him warning.

(Signed)

Captain of Frigate DE LIVRON.

The above extract is in conformity with the original report, which was upon the books of the acting major-general of marine, 1892, No. 194.

(Signed)

P. MIKHAILOW, [L. s.]

Governor in Chancery of the Ministry of Marine.

J. STEBLINE-KAMENSKY,

Deputy of the Jurisconsulate.

EXHIBIT II.

EXTRACT FROM THE JOURNAL KEPT ON BOARD THE SECOND-CLASS CRUISER *ZABIKA*, DURING THE PROTECTIVE CRUISE OFF COMMANDER ISLANDS IN 1892.

Name and nationality of vessel: American sailing schooner *Kate and Anna*.

Cargo: One hundred and twenty-four seal skins, salt, shot, etc.

Tonnage: _____.

Name of captain: Charles Lutgens.

Number of crew: _____.

Circumstances of the case: On the 31st of July at 6.15, being in 64° 10' latitude north and in 168° 22' longitude east, we met the sailing schooner *Kate and Anna*. Having detained the schooner, we required the captain to report, with his papers. It was found that the schooner log had not been kept during the past ten days and the ship's journal in general could afford not the least justification. Moreover, the points indicated on the navigation chart caused me to suspect that the seals had been killed in our waters. For this reason they were confiscated. The captain made no resistance.

Decision: On account of the irregularity of the log book I confiscated the seal skins and required the captain to sign agreement not to kill seals in Russian waters and to enter on log book the warning he received.

(Signed)

Captain of Frigate DE LIVRON.

REJOINDER

OF THE

PARTY CLAIMANT TO THE COUNTER MEMORANDUM OF THE
DEFENDANT PARTY TO THE HONORABLE ARBITRATOR,
MR. T. M. C. ASSER, COUNSELLOR OF STATE OF
THE KINGDOM OF THE NETHERLANDS,

IN THE ARBITRATION TO REGULATE THE DIFFERENCES BETWEEN THE GOVERNMENT
OF THE UNITED STATES OF AMERICA, PARTY CLAIMANT, AND THE IMPERIAL GOV-
ERNMENT OF RUSSIA, PARTY DEFENDANT, RELATIVE TO THE ARRESTS AND SEIZ-
URES OF THE AMERICAN VESSELS, CAPE HORN PIGEON, JAMES HAMILTON LEWIS,
C. H. WHITE, AND KATE AND ANNA.



REJOINDER OF THE PARTY CLAIMANT.

The Government of the United States of America has the honor to submit to the honorable arbitrator, Mr. Asser, the hereunto annexed rejoinder to the counter-memorandum of the Imperial Government of Russia, in the cases of American vessels *Cape Horn Pigeon*, *James Hamilton Lewis*, *C. H. White*, and *Kate and Anna*, now under arbitration.

The party claimant notes that the defendant party recognizes that an indemnity is due in the Cases I and IV; that is to say, the *Cape Horn Pigeon* and the *Kate and Anna*; therefore the sole remaining question to be solved in these two cases is the amount of indemnity due to party claimant, and furthermore that in justice interest at the rate of 6 per cent per annum on the entire sum awarded, from the day these damages were caused to the party claimant until the day of payment of indemnity, is due.

The defendant party, in its general reference to the conditions under which the seizure of the vessels in question took place, advances certain statements which relate to negotiations of the United States Government concerning the protection of fur seals in the Pacific Ocean. Whatever may be the bearing of that question upon the seizure of the three other vessels, it can in no way be applied to the *Cape Horn Pigeon*, which was only engaged in whale fishing in the Sea of Okhotsk and had no thought of seal fishing.

It is true that the United States Government entered into negotiations with the Governments of Great Britain and Russia for the purpose of preventing the destruction of seals in the North Pacific Ocean, and to that end proposed to the two Governments the adoption of a temporary *modus vivendi*, pending the decision of the Paris Tribunal concerning the several questions to be arbitrated between the United States and Great Britain. Unfortunately the Imperial Government found it impossible to unite with the Government of the United States and that of Great Britain in agreeing upon a *modus vivendi*.

Had it done so the three Governments might have acted in unison for the suppression of fur-seal fishing pending the decision of the Paris tribunal.

By the terms of the *modus vivendi*, which was agreed upon in 1891, each of the contracting parties, the United States and Great Britain, took upon itself to prohibit its respective citizens and subjects from seal fishing in certain waters beyond the ordinary territorial limits pending the decision of the Paris tribunal regarding the limits of the jurisdiction of the United States in those waters. This prohibition of seal fishing in said waters became a temporary municipal law of each of the two powers concerning their respective subjects or citizens, but it should not, and indeed could not, be imposed by either Government upon the citizens of the other. By special agreement the right was

respectively conferred upon these Governments each to arrest subjects of the other found violating this municipal law, but with the express stipulation that the persons and vessels thus seized should be handed over to the authorities of the country to which they respectively belong for trial and punishment. At the expiration of this *modus vivendi* in 1892 a new understanding was arrived at between the two Governments in a revised *modus vivendi*, by the terms of which it was agreed that if the claims of the United States to an extended jurisdiction in the waters of Bering Sea were not sustained by the tribunal of Paris, the United States Government would indemnify the subjects of Great Britain for abstaining from fur-seal fishing pending the decision of said tribunal, and the amount of such indemnity should be founded on the probable catch which the vessel might have made during that period.

Copies of these two conventions are hereunto annexed and submitted in evidence, marked respectively Exhibits "A" and "B," and reference is made to them, not only as supporting the points herein expressed in reply to the counter-memorandum, but as international conventions bearing directly upon the subject of the present arbitration and in support of the demands of the party claimant, especially as to the question of the loss of time of the seized vessels, and the amount of damage thus sustained through the loss of a probable catch.

These special and limited conventions of a purely temporary nature between the Governments of the United States and Great Britain surely can not be interpreted as conferring upon the Government of Russia rights over citizens of the United States and their property which neither of the high contracting parties possesses over the other.

If, however, the defendant party takes the ground that this *modus vivendi* gave it particular rights for the temporary protection of the fur-seal fisheries, according to which it was permitted to seize and punish violators of this municipal law in waters beyond the ordinary maritime jurisdiction, then it can not escape the obligations imposed upon the United States in the *modus vivendi* of 1892 to indemnify for losses in case the Paris tribunal should decide, as it did, that no country possesses territorial rights in Bering Sea beyond the limits of ordinary maritime jurisdiction. The *modus vivendi*, nevertheless, while it accorded certain rights and privileges, imposed also certain responsibilities, and the defendant party can not now, after refusing to unite with the other high contracting parties and to share the responsibilities, claim to-day rights and privileges which would exceed those enjoyed by the contracting parties themselves.

The quotation from the *modus vivendi* was made by the defendant party as being applicable in the case of the present arbitration, but the party claimant protests against the application of this special and private convention between two contracting parties as a rule of conduct for a third party unless it be accepted in its entirety. Therefore if the *modus vivendi* is really applicable as a rule of conduct for the defendant party, it was obliged on seizing the vessels, the cargoes, and the crews to hand them over to the United States Government as soon as practically possible, and in default of having done so—depriving these citizens of the United States of their interest in the use of their property and preventing the officers and crew from making their living in their own way, according to the very spirit of the *modus vivendi*—the defendant party becomes responsible for the loss occa-

sioned these claimants, measured by a just estimate of the probable catch of the vessels in question.

As for the last *modus vivendi*, which the defendant party cites as being applicable to these cases, the party claimant protests against the consideration of this citation. The terms of the protocol deny specifically all retroactive force, and recourse may not be had to this *modus vivendi* to justify these seizures made by another party before its existence.

One head of damages set up by the party claimant which relates to all of the four cases of this arbitration, and the justice of which the defendant party vigorously disputes, is that of the loss of catch.

Many precedents have been cited by the party claimant in support of this claim, but the *modus vivendi* of 1892, which the defendant party cites as relating to the present arbitration, gives still more force to the argument of the party claimant that the loss of the catch is the true measure of damage for loss of service of the seized vessel. Article V of this convention says specifically that if the decision of the tribunal should be adverse to the claims of jurisdiction advanced by the United States as to the extent of said jurisdiction over the waters of Bering Sea the latter shall indemnify the subjects of Great Britain for abstaining from the exercise of their right to engage in seal fishing in these waters, measured by the catch which said subjects might have made.

The defendant party, according to the argument contained in its counter memorandum in the case of the *Cape Horn Pigeon*, admits the loss of profits as measure for damages for the loss of service of the vessel, but expresses the opinion that "this last should be taken in the sense of deprivation of a determined income, or else of a certain profit to be derived from holdings in question. For instance, in the case of appropriating the property of another, or of damages occasioned a vessel laden and on the point of departure" continuing, that the case in question is an enterprise subject to risks which might result in the loss of the property of the participants. The party claimant maintain that such distinctions have not the least bearing upon the obligation of the defendant party to make *restitutio in integrum* for the illegal detention of the citizens and vessels of the party claimant. To deprive a person of the use of his property, which represents to him the tool of the workman, and to deprive him of the use of it in his legitimate business does, according to all principles of equity, give him the right to indemnity for such deprivation of his property. The profits which he could reasonably expect from the use specified is the sole measure of damage sustained by him in the deprivation of his property. The question of possible risk or danger of the enterprise has no bearing on the responsibilities incurred by interruption or by seizure. The possibility of losses enters into all commercial enterprises, and above all in navigation at sea. The vessel laden and ready to go to sea is quite as liable to disaster at sea as the one awaiting a cargo, and all hope of profit in commercial enterprises may prove deceptive. The two enterprises, whaling and sealing, are recognized as legitimate, for which there is always capital to be invested, and the interruption of these enterprises has been admitted in international arbitrations as a subject for indemnification on the basis of the loss of catch, as has been cited in the memorandum of the party claimant, namely, in the decision of the "Alabama claims," in the arbitration of the claims of Great

Britain against the United States for seizures made in Bering Sea, and in the sentence of the arbitrator in the case of *Costa Rica Packet*.

The defendant party cited the decision of the arbitration tribunal on the cases known as the "Alabama claims" as establishing the principle of not allowing indemnity for claims for indirect damages. The indirect damages excluded by the tribunal at Geneva in adjudication of the "Alabama claims" were the loss in the transfer of the American merchant marine to the English flag; additional payments for insurance; the prolongation of the war, and the addition of a large sum to the expense of the war, and the suppression of the rebellion.

Furthermore, in the case of the whalers *James Mawry*, *General Pike*, *Milo*, and *Nile*, seized by the Confederate States cruiser *Shenandoah*, for whose acts the Tribunal of Geneva found Great Britain responsible, damages specifically stated to be in lieu of loss of catch were allowed by the Court of Claims. The decision of the court in these four cases has been cited in the memorandum.

The amount of claims submitted by the Government of Great Britain for the seizure by Russia of the Canadian schooners *Willie Magowan* and *Ariel*, cited by the defendant party, has no bearing whatever on the question of amount of damages preferred here. That the English Government claimed and received or did not claim and did receive all of the indemnity for these seizures to which it was entitled can in no way affect the justice of the claims here presented nor furnish a precedent in the adjudication. These negotiations constitute a private agreement between the Governments of Russia and Great Britain.

The indemnity here claimed for loss of the catch is not in the nature of future benefits, but for the loss of the use of their property and the means of livelihood of which these claimants were deprived. They are entitled to restitutio in integrum. This could only be accomplished by restoring their property and their rights at the time and place of the seizure or in allowing them a compensation for the deprivation to which they were subjected. The latter is the only means to which it is now possible to resort. The measure of damages suffered through such deprivations can only be estimated upon the basis of the profit which the claimants could expect from the business they were engaged in.

One principle of the claim common to the three cases is that for the seizure and detention of the officers and crew of the vessels, and the bad treatment experienced by them, the estimate of which the defendant party finds excessive.

In further support of these claims, the party claimant submits the official report of the correspondence and of the action of the United States in the case of the arrest of the Russian subject, Gustav Isaak Dahlberg, master of the bark *Hans*, hereunto annexed and marked Exhibits "C" and "D," respectively.

Dahlberg was arrested and detained five days and, when it was demonstrated that his arrest was not legal, the United States Government paid him an indemnity of \$5,000, which sum was proposed by the Russian Government as being satisfactory. This will demonstrate that the sums claimed under this head by the parties interested in the present arbitration are far from being exaggerated.

In each case of the present arbitration the defendant party has cited in the counter-memorandum the note of the United States ambassador dated January 27 (February 8), 1899 (Exhibit T of the *Cape Horn*

Pigeon), in which, in the hope of settling these cases promptly terms of compromise settlement were proposed by the United States.

For the purpose of discrediting the bonus fides of these claims, the defendant party in making this citation in each case draws a comparison between the sums proposed by way of compromise without adding the interest, which naturally would be due at the time of settlement, and the amounts of the claims as they are at present shown, with interest added.

The party claimant protests against the citation or the consideration of the offer of settlement in such manner. The party claimant has entirely and specifically safeguarded all possible interpretation of abandonment of his rights to recover the entire amount of the claims.

The offer was made for a distinct and specific purpose, and not having been accepted by the defendant party, it can not now be cited as affecting in any way whatsoever the amount of indemnity to be recovered.

The counter-memorandum being, according to the terms of the protocol, the only argument of the defendant party to which the party claimant is permitted to reply, should be understood as representing all the defense of the defendant party except in that which concerns the argument on the present rejoinder of the party claimant, and therefore, as it is not open to the party claimant to rebut new testimony or to refute the application of new citations or of new arguments on the memorandum, the party claimant respectfully submits to the honorable arbitrator that no new testimony or arguments on the part of the defendant party should be admitted in the arbitration except to rebut the new facts, arguments, and citations contained in the present rejoinder.

EXHIBIT A.

MODUS VIVENDI RESPECTING THE FUR-SEAL FISHERIES IN BEHRING SEA.

*Signed at Washington, June 15, 1891.
Proclaimed June 15, 1891.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an agreement for a modus vivendi between the Government of the United States and the Government of Her Britannic Majesty, in relation to the fur-seal fisheries in Behring Sea, was concluded on the fifteenth day of June in the year of our Lord one thousand eight hundred and ninety-one, word for word as follows:

Agreement between the Government of the United States and the Government of Her Britannic Majesty for a modus vivendi in relation to the fur-seal fisheries in Behring Sea.

For the purpose of avoiding irritating differences and with a view to promote the friendly settlement of the questions pending between the two Governments touching their respective rights in Behring Sea, and for the preservation of the seal species, the following agreement is made without prejudice to the rights or claims of either party.

I. Her Majesty's Government will prohibit, until May next, seal killing in that part of Behring Sea lying eastward of the line of demarcation described in Article No. 1 of the treaty of 1867 between the United States and Russia, and will promptly, use its best efforts to ensure the observance of this prohibition by British subjects and vessels.

II. The United States Government will prohibit seal killing for the same period in the same part of Behring Sea and on the shores and islands thereof, the property of the United States (in excess of 7,500 to be taken on the islands for the subsistence and care of the natives) and will promptly use its best efforts to ensure the observance of this prohibition by United States citizens and vessels.

III. Every vessel or person offending against this prohibition in the said waters of Behring Sea outside of the ordinary territorial limits of the United States, may be seized and detained by the naval or other duly commissioned officers of either of the high contracting parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong, who shall alone have jurisdiction to try the offense and impose the penalties for the same. The witnesses and proofs necessary to establish the offense shall also be sent with them.

IV. In order to facilitate such proper inquiries as Her Majesty's Government may desire to make, with a view to the presentation of the case of that Government before arbitrators, and in expectation that an agreement for arbitration may be arrived at, it is agreed that suitable persons designated by Great Britain will be permitted at any time, upon application, to visit or to remain upon the seal islands during the present sealing season for that purpose.

Signed and sealed in duplicate at Washington, this fifteenth day of June 1891, on behalf of their respective Governments, by William F. Wharton, Acting Secretary of State of the United States, and Sir Julian Pauncefote, G. C. M. G., K. C. B., H. B. M., envoy extraordinary and minister plenipotentiary.

WILLIAM F. WHARTON [SEAL.]
JULIAN PAUNCEFOTE [SEAL.]

Now, therefore, be it known that I, Benjamin Harrison, President of the United States of America, have caused the said agreement to be made public, to the end that the same and every part thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this fifteenth day of June, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

[SEAL.]

BENJ. HARRISON.

By the President:

WILLIAM F. WHARTON,
Acting Secretary of State.

EXHIBIT B.

CONVENTION BETWEEN THE UNITED STATES AND GREAT BRITAIN FOR THE RENEWAL OF THE EXISTING MODUS VIVENDI IN BERING SEA.

Signed at Washington, April 18, 1892.
Ratification advised by the Senate, April 19, 1892.
Ratified by the President, April 22, 1892.
Ratifications exchanged, May 7, 1892.
Proclaimed, May 9, 1892.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a convention between the United States of America and Great Britain for the renewal of the existing modus vivendi in Behring Sea was signed by their respective plenipotentiaries at the city of Washington, on the eighteenth day of April, one thousand eight hundred and ninety-two, the original of which convention, being in the English language, is word for word as follows:

Convention between the United States of America and Great Britain for the renewal of the existing "modus vivendi" in Behring Sea.

Whereas by a convention concluded between the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, on the twenty-ninth day of February, one thousand eight hundred and ninety-two, the high

contracting parties have agreed to submit to arbitration, as therein stated, the questions which have arisen between them concerning the jurisdictional rights of the United States in the waters of Behring Sea and concerning also the preservation of the fur seal in, or habitually resorting to, the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur seal in, or habitually resorting to, the said waters; and whereas the high contracting parties, having differed as to what restrictive regulations for seal hunting are necessary during the pendency of such arbitration, have agreed to adjust such difference in manner hereinafter mentioned, and without prejudice to the rights of either party:

The said high contracting parties have appointed as their plenipotentiaries to conclude a convention for this purpose, that is to say:

The President of the United States of America, James G. Blaine, Secretary of State of the United States;

And Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Sir Julian Pauncefote, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Most Honourable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States;

Who, after having communicated to each other their respective full powers, found in due and good form, have agreed upon and concluded the following articles:

ARTICLE I.

Her Majesty's Government will prohibit, during the pendency of the arbitration, seal killing in that part of Behring Sea lying eastward of the line of demarcation described in Article No. I of the treaty of 1867 between the United States and Russia, and will promptly use its best efforts to ensure the observance of this prohibition by British subjects and vessels.

ARTICLE II.

The United States Government will prohibit seal killing for the same period in the same part of Behring's Sea, and on the shores and islands thereof, the property of the United States (in excess of seven thousand five hundred to be taken on the islands for the subsistence of the natives), and will promptly use its best efforts to ensure the observance of this prohibition by United States citizens and vessels.

ARTICLE III.

Every vessel or person offending against this prohibition in the said waters of Behring Sea outside of the ordinary territorial limits of the United States may be seized and detained by the naval or other duly commissioned officers of either of the high contracting parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong, who alone shall have jurisdiction to try the offence and impose the penalties for the same. The witnesses and proof necessary to establish the offence shall also be sent with them.

ARTICLE IV.

In order to facilitate such proper inquiries as Her Majesty's Government may desire to make with a view to the presentation of the case and arguments of that Government before the arbitrators, it is agreed that suitable persons designated by Great Britain will be permitted at any time, upon application, to visit or remain upon the Seal Islands during the sealing season for that purpose.

ARTICLE V.

If the result of the arbitration be to affirm the right of British sealers to take seals in Behring Sea within the bounds claimed by the United States, under its purchase from Russia, then compensation shall be made by the United States to Great Britain (for the use of her subjects) for abstaining from the exercise of that right during the pendency of the arbitration upon the basis of such a regulated and limited catch or catches as in the opinion of the arbitrators might have been taken without an undue diminution of the seal herds; and, on the other hand, if the result of the arbitration shall be to deny the right of British sealers to take seals within the said waters, then compensation shall be made by Great Britain to the United States (for itself, its citizens and lessees) for this agreement to limit the island catch to seven thousand five

hundred a season, upon the basis of the difference between this number and such larger catch as in the opinion of the arbitrators might have been taken without an undue diminution of the seals herds.

The amount awarded, if any, in either case shall be such as under all the circumstances is just and equitable, and shall be promptly paid.

ARTICLE VI.

This convention may be denounced by either of the high contracting parties at any time after the thirty-first day of October, one thousand eight hundred and ninety-three, on giving to the other party two months' notice of its termination; and at the expiration of such notice the convention shall cease to be in force.

ARTICLE VII.

The present convention shall be duly ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty; and the ratifications shall be exchanged either at Washington or at London as early as possible.

In faith whereof, we, the respective plenipotentiaries, have signed this convention and have hereunto affixed our seals.

Done in duplicate at Washington this eighteenth day of April, one thousand eight hundred and ninety-two.

JAMES G. BLAINE. [SEAL.]
JULIAN PAUNCFOTE. [SEAL.]

And whereas the said convention has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the city of London, on the seventh day of May, one thousand eight hundred and ninety-two;

Now, therefore, be it known that I, Benjamin Harrison, President of the United States of America, have caused the said convention to be made public, to the end that the same, and every article and clause thereof, may be observed in good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this ninth day of May, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and sixteenth.

BENJ. HARRISON.

By the President:

JAMES G. BLAINE, *Secretary of State.*

EXHIBIT C.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING A REPORT FROM THE SECRETARY OF STATE AND ACCOMPANYING PAPERS RELATING TO THE CLAIM AGAINST THE UNITED STATES OF THE RUSSIAN SUBJECT, GUSTAV ISAK DAHLBERG, MASTER AND PRINCIPAL OWNER OF THE RUSSIAN BARK HANS.

[April 27, 1898.—Read, referred to the Committee on Foreign Relations, and ordered to be printed.]

To the Congress:

I transmit herewith a report from the Secretary of State and accompanying papers relating to the claim against the United States of the Russian subject, Gustav Isak Dahlberg, master and principal owner of the Russian bark *Hans*, based on his wrongful and illegal arrest and imprisonment by officers of the United States district court for the southern district of Mississippi, and, in view of the opinion expressed by the Department of Justice that the said arrest and detention of the complainant were wrongful and without authority of law, I recommend the appropriation by Congress of the sum of \$5,000 to reimburse the master and owners of the vessel for all losses and damages incurred by reason of his said wrongful and illegal arrest and detention.

WILLIAM MCKINLEY.

EXECUTIVE MANSION,
Washington, April 27, 1898.

The PRESIDENT:

The undersigned, Secretary of State, has the honor to submit for transmission to Congress, if deemed proper, a memorial of the claim of Gustav Isak Dahlberg, a Russian subject, master and principal owner of the Russian bark *Hans*, based on his wrongful and illegal arrest and imprisonment by officers of the United States district court for the southern district of Mississippi.

The facts of the case appear to be that the complainant was arrested on board his vessel, then lying off Ship Island, Mississippi, in the early morning of February 10, 1896, by a United States deputy marshal, provided with a warrant issued by the deputy clerk of the United States district court for the southern district of Mississippi, at the suit of one Perttison, a member of the crew of said vessel, the said warrant having been issued in violation of the provisions of Article VIII of the treaty of December 18, 1832, between the United States and Russia, which stipulates that the consular officers of the contracting parties shall have jurisdiction over disputes between the master of a vessel and the members of his crew.

The captain was taken by the marshal to Mississippi City and there confined in a dirty jail, in company with criminals, from February 10 to February 15, inclusive. He protested against the unlawfulness of his detention, and demanded a hearing before a judicial officer, but he was given no opportunity of having the lawfulness of his imprisonment examined into until the Russian consular officer at Mobile, Ala., intervened, and, having employed legal counsel, obtained, on February 14, a writ of habeas corpus in his behalf, returnable on the 17th of the same month.

On the day after the issue of the writ, and before the case could be heard, the jailor informed Captain Dahlberg that he was free and could leave the jail, but furnished him with no explanation either of his imprisonment or his release.

The complainant then went to Mobile for consultation with the consular officer of his nation. He alleges further that, having appeared with his counsel at Mississippi City on the 17th of February, the return day of the writ of habeas corpus, and also the return day of the warrant of arrest, just as he was about to enter court with his counsel, they met the judge from whose court the warrant had issued, and that the said judge stated to him that there was no case against him. That he then asked, "Is that all the redress I am to get?" to which the judge replied, "I already decided Saturday that there was no case."

The complainant states that, in addition to the physical suffering, discomfort, and humiliation caused by his arrest and imprisonment, he was subjected to considerable expense in attempting to obtain his release; that he was unable to return with his ship; that the ship was delayed for several days because of his arrest, and that, in consequence of these facts, he has suffered considerable pecuniary damages.

The case was referred to the Department of Justice for investigation, and, on May 20, 1896, the Acting Attorney-General reported to this Department that "the arrest and imprisonment and detention of Captain Dahlberg were altogether without authority of law."

In view of this opinion of the Department of Justice, and of the appeal made to the sense of justice existing in the Government of the United States, I have the honor to recommend that the case be submitted to Congress, and that body be requested to appropriate the sum of \$5,000, to be paid to the Russian diplomatic representative in this capital, in full satisfaction of losses and damages incurred by Captain Dahlberg and the owners of the said Russian bark *Hans*, by reason of the arrest and imprisonment of said master.

Respectfully submitted.

JOHN SHERMAN.

DEPARTMENT OF STATE,
Washington, April 25, 1898.

List of papers.

Memorandum filed by Russian legation, March 16, 1896.
Mr. Olney to Mr. Harmon, March 17, 1896.
Mr. Olney to Mr. de Kotzebue, No. 42, March 17, 1896.
Mr. Harmon to Mr. Olney, March 21, 1896.
Mr. de Kotzebue to Mr. Olney, No. 233, April 10, 1896.
Mr. Harmon to Mr. Olney, April 10, 1896.
Mr. Olney to Mr. Harmon, April 14, 1896.
Mr. Harmon to Mr. Olney, April 15, 1896.
Mr. Olney to Mr. de Kotzebue, No. 48, April 18, 1896.

Mr. Olney to Mr. Harmon, April 22, 1896.
 Mr. Conrad to Mr. Olney, April 28, 1896.
 Mr. Olney to Mr. de Kotzebue, No. 53, May 1, 1896.
 Mr. Conrad to Mr. Olney, May 20, 1896.
 Mr. Olney to Mr. de Kotzebue, No. 59, May 23, 1896.
 Memorandum of Russian legation, June 17, 1897.
 Mr. Sherman to Mr. McKenna, June 24, 1897.
 Mr. McKenna to Mr. Sherman, June 30, 1897.
 Mr. Sherman to Mr. de Wollant, July 8, 1897, No. 114.
 Mr. de Wollant to Mr. Sherman, No. 520, December 2, 1897.
 Mr. Sherman to Mr. de Wollant, No. 138, December 18, 1897.
 Mr. de Wollant to Mr. Day, No. 148, April 8, 1898.
 Mr. Day to Mr. de Wollant, April 14, 1898.

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Memorandum filed by Russian legation March 16, 1896.

MR. ALEXANDER DE SOMOW,
Chargé d'Affaires ad interim of His Majesty the Emperor of Russia,
at Washington, D. C.

The petition of Gustaf Isak Dahlberg, subject of His Majesty the Emperor of all the Russias, respectfully represents to your excellency that he was born at Ulaborg, in the grand duchy of Finland, in the year 1855, and that for twenty-eight years he has been a seaman, since 1879 being the ——— of a vessel. That the Captain Dahlberg who, in 1867, rescued the crew of the American ship *Toscana* in North American ocean was deponent's father.

That about the 15th day of October, 1895, the deponent sailed from Cardiff, in Great Britain, as commander of the Russian bark *Hans*, of which bark he is also the principal owner. The *Hans* was bound for Mobile Bay, Alabama, for orders, and outside of Mobile Bay received orders to proceed to Ship Island to load cargo, from whence she was to return to Europe with such cargo.

That on the 3d day of December, 1895, deponent arrived at the anchorage of Ship Island, in the State of Mississippi, where the vessel anchored. At about 1 a. m. in the morning of February 10, 1896, a United States marshal boarded the said bark *Hans* and placed deponent under arrest, showing him at the same time, but not leaving with him, the original nor a copy thereof, although deponent requested that the warrant be left with him.

That the said deputy marshal thereupon compelled the deponent to leave his ship and to accompany him, although the deponent protested against the arrest as unjust and illegal; but he, however, made no resistance, and was taken by the said deputy marshal to Biloxi, a distance of some 23 miles from his ship, and was from there transported to Mississippi City, where he arrived about 7 p. m. on the 10th of February, 1896.

That upon arriving at Mississippi City deponent was confined in a loathsome and filthy jail, in company with criminals, and subjected to much discomfort and suffering. That through the whole period of his confinement, extending from the 10th day of February to the 15th day of February, 1896, deponent continually protested that his detention was illegal, unlawful, and without jurisdiction.

He also demanded that he should be brought without delay before some judge or magistrate for an immediate hearing.

The deponent further states that, in answer to his repeated protests and his reiterated demands to be brought before a magistrate, he was asked to give a bond in the sum of \$1,000. This deponent was not in a position to furnish such a bond as was required of him as a condition for his restoration to liberty, and protested that he was innocent of any wrong, and his detention and the exaction of such bond entirely unlawful and without jurisdiction. He insisted upon having an immediate hearing, or at least being given an opportunity of going before a magistrate or judge of the United States. Upon the 12th day of February, 1896, deponent communicated with the Russian consul at Mobile, asking for protection, and through his good offices he obtained counsel.

That the said counsel immediately prepared a petition for a writ of habeas corpus, to wit, on the 14th day of February, but owing to the illness of the judge the hearing upon said writ was postponed by said judge to the 17th instant; that on the 15th day of February, at about the hour of 10.30 a. m., the jailer came to deponent, who was confined in a cell, and informed him that he was free and could leave the jail,

without furnishing any further explanation of his incarceration or its pretext. Deponent then immediately went to Mobile and communicated with the Russian consul at that place, Mr. Murray Wheeler. On the 17th, the day fixed for the hearing on his writ of habeas corpus, as well as the return day of the warrant of arrest as to him, he returned to Mississippi City with his counsel and with witnesses, in readiness for the argument on said writ of habeas corpus and for the trial of any pending question, though protesting against the jurisdiction of the court in the premises.

That as the deponent was about to enter the said court-house with his counsel they were met by the United States judge by whom the warrant of arrest against deponent had been issued and before whom the writ of habeas corpus was returnable, and the said judge stated to deponent that "there was no case" against him. Deponent then asked him, "Is that all the redress I am to get?" to which the judge replied, "I already decided on Saturday that there was no case."

Deponent further alleges that at the time of his arrest by the United States deputy marshal on board his bark *Hans*, upon the 10th of February, he was shown the warrant, but not the complaint upon which the warrant was obtained; that the said warrant, as appears from the copy hereto annexed, was stated to have been obtained by one H. Perttison, who was alleged to have commenced a civil and maritime action for damages against deponent for assault, although deponent's recollection of the warrant exhibited to him is that it referred to a complaint for "wages, damages, and hitting."

That it was not until after his confinement and through the efforts of his counsel, Mr. Noland, that deponent was finally able to obtain a copy of the complaint made by such Perttison, upon which the warrant was issued, a copy of which complaint is hereto annexed.

That according to the said complaint this was a mere civil action for damages, and not a proceeding of a criminal nature. While deponent denies that he was guilty of the ill treatment of said Perttison as alleged in the said complaint, and while he further states, and as appears from the records of the ship's log, that the said Perttison was guilty of a breach of contract in that he having shipped in Cardiff for a voyage and refused to work on board ship lying at Ship Island anchorage, yet deponent believes these matters to be immaterial by reason of the fact that his arrest and subsequent imprisonment was illegal and contrary to the laws of the United States, completely without jurisdiction, and was in violation of the treaty existing between the United States of America and the Emperor of Russia, proclaimed May 11, 1833, of which the following is an extract:

"ARTICLE VIII. * * * The consuls, vice-consuls, and commercial agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or the tranquillity of the country, or the said consuls, vice-consuls, or commercial agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country."

That in addition to the physical suffering, discomfort, and humiliation undergone by deponent he was subjected to considerable expense in attempting to obtain his release, and that further he was unable to return with his ship, and that the ship was delayed for several days because of deponent's arrest, and therefore has suffered considerable pecuniary damages in consequence of these facts. Deponent claims that the illegality of the arrest consisted in—

First. That under the treaty between the United States of America and the Empire of Russia, made and proclaimed on the 11th day of May, 1833, all controversies between a Russian master and members of his Russian crew upon a Russian vessel are to be settled before the consular courts of the Empire of Russia.

Second. That the courts of the United States have no jurisdiction over civil controversies arising between Russian subjects upon a Russian vessel, and that the action of the United States judge in ordering the arrest of deponent was entirely without jurisdiction, a usurpation of authority, null and void.

Third. That the proceedings were contrary to and in violation of the admiralty rules and laws of the United States.

Fourth. That the procedure in the case was irregular and contrary to law.

Fifth. That the imprisonment was contrary to the constitution and statutes of the State of Mississippi.

Wherefore deponent claims that he has suffered damages and injury to his person and character by the unauthorized act of the United States judge in ordering his

arrest and of the United States deputy marshal by actually putting him in confinement, and he begs that the Government of His Imperial Majesty the Emperor of Russia, in vindication of the rights of one of His Majesty's subjects, will claim redress and indemnity from the Government of the United States.

G. I. DAHLBERG,
Of Ulaborg, Finland, Russia.

[H. M. A. Perttison v. G. I. Dahlberg. Libel in personam.]

In the district court of the United States of America, southern division, southern district of Mississippi, at the February term, A. D. 1896.

A statement of facts regarding the imprisonment of Gustaf I. Dahlberg, master of the Russian bark *Hans*, in the jail of the county of Harrison, State of Mississippi, growing out of the proceedings of the court in the above-entitled cause, made by T. V. Noland, attorney at law, of the bar of Mississippi City, Miss.

I became professionally connected with the case about 8 o'clock in the night of February 12, 1896, at the request of Murray Wheeler, esq., Russian vice-consul at Mobile, Ala., and afterwards on same night being retained by Captain Dahlberg to take steps for his release from imprisonment in the said jail. At the time aforesaid I accompanied Mr. Wheeler to the said jail and was there introduced to Captain Dahlberg, who was then confined and restrained within the walls of the jail. Captain Dahlberg made a statement to Mr. Wheeler and myself of the circumstances of his arrest on board his ship, and his transportation thence to his then present quarters by Mr. E. Sugden, United States deputy marshal, etc. On examination next day of the papers in this case, in the office of the clerk of the court, I resolved to institute habeas corpus proceedings in behalf of Captain Dahlberg. I prepared the necessary papers therefor, and in the afternoon of the 14th February I presented the same to Hon. H. C. Niles, judge of the court, etc., who only a few hours before had arrived at Mississippi City.

Judge Niles, who was then quite unwell, informed me that he could not hear this matter until Monday, that being the 17th of February. On the morning of the 15th February, Mr. Meriwether, the proctor of record of the libellant in the cause, came to me and said that he was going to instruct Mr. Sugden, the deputy marshal, to release Captain Dahlberg from the jail, and then proceeded to the direction of Mr. Sugden's residence. Very soon thereafter, while I was conferring with Captain Dahlberg in jail, the turnkey of the jail came in and announced to Captain Dahlberg that he was released. This was done, as I understood at the time, by the direction and order of the said deputy marshal. Captain Dahlberg then being at liberty, no further steps were needed or taken regarding the habeas corpus proceedings.

I, the undersigned, hereby certify that the foregoing is a true and correct statement of the facts concerning the matter hereinbefore mentioned.

Witness my signature at my office in Mississippi City, Miss., the 19th day of February, A. D. 1896.

T. V. NOLAND, *Attorney at Law.*

United States of America, southern division of the southern district of Mississippi, ss.
In admiralty.

The President of the United States of America to the marshal of said district, greeting:

You are hereby commanded that you arrest G. I. Dahlberg, if he shall be found in your district, and him so arrested you keep under safe and secure arrest, so that his body may be had and forthcoming before the judge of the district court of the United States for the said district, at the city of Mississippi City, on the 17th day of February, 1896, there to answer unto H. M. A. Perttison in a cause of damage, civil and maritime; and further to do and receive in this behalf as to justice shall appertain, and that you duly certify the aforesaid judge what you shall do in the premises, together with these presents.

Witness the Hon. H. C. Niles, judge of the aforesaid court, at Mississippi City, Miss., this the 8th day of February, A. D. 1896.

[SEAL.]

L. B. MOSELY, *Clerk,*
Per C. PHELPS, *Deputy Clerk.*

I, Geo. P. Hewes, sheriff of Harrison County, Miss., hereby certify that the foregoing is a true and correct copy of the copy of the warrant delivered to me by E. Sugden, deputy United States marshal, the 10th day of February, 1896, and I further

certify that said G. I. Dahlberg was received in my jail on said 10th February, and was released by order of said deputy marshal on the 15th February, 1896.

GEO. P. HEWES, *Sheriff*.

Mr. Olney to Mr. Harmon.

DEPARTMENT OF STATE,
Washington, March 17, 1896.

SIR: I have the honor to inclose copy of the complaint of Captain Dahlberg, a Russian subject, commander of the Russian bark *Hans*, alleging that he was arrested and detained in prison on a warrant in a civil case issued by the United States court for the southern district of Mississippi.

The complaint has been presented to this Department by the Russian minister at this capital, and I have to request that you will inform the Department as to the proceedings complained of, which (the action being brought by a member of the crew against the captain) appears to have been in violation of the complainant's treaty rights.

I have the honor to be, sir, your obedient servant,

RICHARD OLNEY.

(Inclosure: Complaint of Capt. G. I. Dahlberg.)

Mr. Olney to Mr. de Kotzebue.

No. 42.]

DEPARTMENT OF STATE,
Washington, March 17, 1896.

SIR: I have the honor to acknowledge the receipt of the copy of the complaint of Capt. G. I. Dahlberg, of the Russian bark *Hans*, alleging that in contravention of his treaty rights he was arrested and imprisoned on a warrant in a civil case, issued by the United States district court for the southern district of Mississippi, the action having been instituted by a member of the crew against the commander of the vessel.

In reply I have the honor to say that I have submitted the matter to the Attorney-General for his examination.

In compliance with your oral request, I return the copy of the complaint left by you at the Department.

Accept, etc.,

RICHARD OLNEY.

(Inclosure: Complaint of Capt. G. I. Dahlberg.)

Mr. Harmon to Mr. Olney.

DEPARTMENT OF JUSTICE,
Washington, D. C., March 21, 1896.

SIR: I have the honor to acknowledge the receipt of your communication of the 17th instant, inclosing a copy of the complaint of Captain Dahlberg, a Russian subject, commander of the Russian bark *Hans*, alleging that he was arrested and detained in prison on a warrant in a civil case issued by the United States court for the southern district of Mississippi, and requesting that I will inform the Department as to the proceedings complained of.

I will at once communicate with the United States attorney for the southern district of Mississippi, and obtain through him all information he may be able to procure, and will then report more fully, in compliance with your request.

Respectfully,

JUDSON W. HARMON, *Attorney-General*.

Mr. Kotzebue to Mr. Olney.

[Translation.]

No. 233.]

RUSSIAN LEGATION,
Washington, April 10, 1896. (Received Apr. 11, 8.09 p. m.)

MR. SECRETARY OF STATE: Referring to the note dated the 17th of March last, whereby your excellency was pleased to inform me that the case of Mr. Dahlberg,

captain and owner of the Russian schooner *Hans*, has been transmitted to the Department of Justice, I have the honor to have recourse to your accustomed courtesy, begging that you will communicate to me the conclusions of the Attorney-General.

If the facts have been in effect such as have been communicated to me, they present an incontestable gravity. Moreover, Captain Dahlberg, assailed in his material interest as well as in his moral position, claims to be indemnified.

In case the procedure in his case has been really illegal and contrary to the stipulations of our treaty of commerce and navigation of 1832, I deem it my duty to recommend this reclamation to your most serious attention.

I embrace this opportunity, etc.,

KOTZEBUE.

Mr. Harmon to Mr. Olney.

DEPARTMENT OF JUSTICE,
Washington, D. C., April 10, 1896.

SIR: Referring to your letter of March 17, 1896, the receipt of which was acknowledged at the time, requesting me to inform your Department as to the proceedings complained of in the matter of the arrest and detention in prison of Captain Dahlberg, a Russian subject, on a warrant in a civil case issued by the United States court for the southern district of Mississippi, I beg to say that I at once called upon the United States attorney for that district for all information in regard to the case, in response to which I have just received from him what purports to be an authenticated transcript of the entire proceedings, which I enclose for your information, together with a copy of a letter accompanying the same. No report from the United States marshal appears to have been received by the district attorney in response to his applications to the marshal. When the same is received at this Department it will be forwarded to you.

Respectfully,

JUDSON HARMON, *Attorney-General.*

[Inclosure.]

MADISON, MISS., *April 6, 1896.*

SIR: As stated in my letter of 24th ultimo, I received your communication relative to a complaint made by Captain Dahlberg, a Russian subject, commander of bark *Hans*, alleging that he was arrested and detained in prison on a warrant in a civil case issued by the United States court for the southern district of Mississippi, and the Secretary of State requests that I shall inform him as to the proceedings complained of, which appear to have been in violation of the complainant's treaty rights, and requesting me to make an investigation and report. As this is a matter in reference to which I have no personal knowledge, I referred a copy of your communication to United States Marshal J. S. McNeily, accompanied by a letter from me making inquiry as to the facts, and requested him to make a report.

I also wrote to the United States circuit court clerk requesting copy of the pleadings. I herewith inclose a copy of the pleadings filed in the case, which explain themselves.

I have not heard from the United States marshal, so I have again written him. As soon as I receive a reply I will report further.

Very respectfully,

R. C. LEE,
United States Attorney, Southern District Mississippi.

The ATTORNEY-GENERAL,
Washington, D. C.

[Subinclosure.]

The district court of the United States for the southern district of Mississippi. In admiralty.

Hon. HENRY C. NILES,
*Judge of the District Court of the United States
in and for the Southern District of Mississippi:*

Hugo Mikael Alfred Perttisen, of Ylinciska, Finland, Russian Empire, late mariner and carpenter on board the Russian bark *Hans*, whereof G. I. Dahlberg, of Uleaburg,

Finland, is or lately was master, brings this his libel against the said G. I. Dahlberg, in a cause of damage, civil and maritime, and the said libelant alleges and propounds as follows:

First. That on or about the 14th day of October, A. D. 1895, at the port of Cardiff, the said bark *Hans*, whereof the said G. I. Dahlberg was master, then being at the port of Cardiff and destined on a voyage from the said port of Cardiff to any port or ports in the United States of America and thence to any port in Europe, the libelant shipped to serve as a carpenter on board the said bark during the said voyage; that the bark soon proceeded thereafter upon the said voyage with the libelant on board and in due time arrived at Ship Island, in the State of Mississippi; and that during the whole of said voyage the libelant did well and truly perform his duty on board the said bark as such carpenter and was obedient to all the lawful commands of the said master and other officers on board the said bark.

Second. That during the said voyage, to wit, on or about the 11th day of December, 1895, the said G. I. Dahlberg, at Ship Island Harbor, cruelly assaulted, beat, wounded, and illtreated libelant for no other reason than that libelant, in answer to a question put by a professional diver, told how much the bark leaked.

Third. That on the 13th of December, 1895, while libelant was sick in bed, he asked the said master for permission to go to the hospital; that the said master, pretending to feel libelant's pulse, seized him roughly by the wrist with one hand while with the other he seized libelant by the throat and dragged him out of bed, breaking down the bed. The said master then ordered libelant to follow him to the deck, which order libelant obeyed, when said master again cruelly beat and ill used libelant. Libelant asked permission to see the Russian consul, and the master replied that he was the consul and the king, and that he would whip him as much as he pleased, and that any of the seamen may whip him and that nothing would be heard of it. The master then told libelant that he was a prisoner and refused to give him anything to eat, and threatened to punish any of the seamen if they should give him anything to eat; that said cruel treatment was continued by said master until on or about the 24th of January, 1896, when libelant asked the said master for his wages and for permission to go ashore. The master told him to go, but refused to pay him his wages.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this honorable court.

Fourth. That by reason of the wanton cruelty and unlawful violence to which the libelant has been subjected by the said master, as hereinbefore alleged and set forth, the libelant has suffered great pain, distress, and he has been damaged to the amount of \$5,000.

Wherefore the libelant prays that a warrant of arrest, in due form of law according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may be issued against the said G. I. Dahlberg, and that he may be cited to appear and answer all and singular the matters aforesaid before this honorable court on the 17th day of February, 1896, at Mississippi City, then and there to answer the libelant in the premises, and that this honorable court would be pleased to decree to the libelant the payment of the said amount due to libelant in a cause of damage, civil and maritime, aforesaid, with interest and costs, and that the libelant may have such other and further relief as in law and justice he may be entitled to receive.

C. S. MERRIWETHER, *Proctor for Libelant.*

THE UNITED STATES OF AMERICA, *Southern District of Mississippi:*

On this 4th day of February, 1896, before me, at my office in the town of Scranton, Miss., personally appeared the within-named Hugo Mikael A. Fertisen, and made oath that he had heard read the foregoing libel and knows the contents thereof, and that the same are true.

HUGO M. ALFRED PERTISEN.

Sworn to and subscribed before me this 4th day of February, 1896.

A. H. DELMAS,
Commissioner of the Circuit Court of the United States for said District.

Filed February 8, 1896.

L. B. MOSELEY, *Clerk,*
Per C. PHELPS, *Deputy Clerk.*

United States of America, southern division of the southern district of Mississippi, ss.
In admiralty.

The President of the United States of America to the marshal of said district, greeting:

You are hereby commanded that you arrest G. I. Dahlberg, if he shall be found in your district, and him so arrested you keep under safe and secure arrest, so that his body may be had and forthcoming before the judge of the district court of the United States for said district, at the city of Mississippi City, on the 17th day of February, 1896, there to answer unto H. M. A. Perttisen in a cause of damage civil and maritime, and further to do and receive in this behalf as to justice shall appertain, and that you duly certify the aforesaid judge what you shall do in the premises, together with these presents.

Witness the Hon. H. C. Niles, judge of the aforesaid court, at Mississippi City, Miss., this the 8th day of February, A. D. 1896.

[SEAL.]

L. B. MOSELEY, *Clerk,*
Per C. PHELPS, *Deputy Clerk.*

[Marshal's return.]

Received in my office this 8th day of February, A. D. 1896.

J. S. MCNEELY, *United States Marshal,*
Per E. SUGDEN, *Deputy Marshal.*

Executed by arresting the within-named G. I. Dahlberg and transporting him to Mississippi City and confining him in jail in default of bond, which he refuses to give, this 10th day of February, A. D. 1896.

J. S. MCNEELY, *United States Marshal,*
Per E. SUGDEN, *Deputy Marshal.*

Returned and filed February 15, 1896.

L. B. MOSELEY, *Clerk,*
Per C. PHELPS, *Deputy Clerk.*

[H. M. A. Perttisen v. G. I. Dahlberg. Libel in personam.]

Libellant, by attorney, comes and moves the court for leave to amend his said libel, by striking out the words "warrant of arrest," in first and second lines of the prayer of said libel, and inserting in lieu thereof "a citation."

And further, by striking out the word "against," in fifth line of said prayer, and inserting in its place the word "to." And that a new citation be immediately issued to the defendant, as directed by libel as amended.

C. S. MERRIWETHER, *Proctor for Libellant.*

Filed February 18, 1896.

L. B. MOSELEY, *Clerk,*
Per C. PHELPS, *Deputy Clerk.*

United States of America, southern division of the southern district of Mississippi. In admiralty.

The President of the United States of America to the marshal of the said district of Mississippi, greeting:

Whereas a libel has been filed in the district court of the United States in and for the southern division of the southern district of Mississippi, on the 8th day of February, A. D. 1896, by H. M. A. Perttisen against G. I. Dahlberg, in a certain action, civil and maritime, for damages therein alleged to be due the said libellant, amounting to \$5,000, and praying that a citation may issue against the said defendant, pursuant to the rules and practice of this court:

Now, therefore, you are hereby commanded to cite and admonish the said defendant, if he shall be found in your district, that he be and appear before the said district court on Monday, the 2d day of March, at — o'clock in the forenoon of said day, then and there to answer the said libel and to make allegations in that behalf. And have you then there this writ.

Witness the Hon. H. C. Niles, judge of said court at Mississippi City, this 18th day of February, A. D. 1896, and in the one hundred and — year of the independence of the United States.

L. B. MOSELEY, *Clerk,*
Per C. PHELPS, *Deputy Clerk.*

[Marshal's return.]

Received February 18, 1896.

J. S. McNEILY, *United States Marshal*,
Per E. SUGDEN, *Deputy Marshal*.

After diligent search, not found in my district, this 2d day of March, A. D. 1896.

J. S. McNEILY, *United States Marshal*,
Per E. SUGDEN, *Deputy Marshal*.

Returned and filed March 2, 1896.

L. B. MOSELEY, *Clerk*,
Per C. PHELPS, *Deputy Clerk*.

Mr. Olney to Mr. Harmon.

DEPARTMENT OF STATE,
Washington, April 14, 1896.

SIR: In connection with my letter to you of the 17th ultimo, touching the complaint of Captain Dahlberg, I have now the honor to inclose copy of a note from the Russian minister of the 10th instant, asking to be made acquainted with your conclusions in the matter and intimating the possibility of a claim for indemnity in favor of Captain Dahlberg.

I shall be glad to be placed in possession of all the facts in the case so far as you are able to ascertain them.

I have, etc.,

RICHARD OLNEY.

Mr. Harmon to Mr. Olney.

DEPARTMENT OF JUSTICE,
Washington, D. C., April 15, 1896.

SIR: Referring to correspondence heretofore had on the subject of the arrest and imprisonment of Captain Dahlberg, a Russian subject, under process issuing from the United States district court for the southern district of Mississippi, I beg to transmit herewith a copy of a communication just received from R. C. Lee, United States attorney, inclosing reports from the sheriff of Harrison County, Miss., the deputy United States marshal, and the deputy clerk of the circuit court, containing, together with the report of the United States attorney, heretofore forwarded to you, all the information which I have been able to gather on the subject.

Respectfully,

JUDSON HARMON, *Attorney-General*.

[Inclosure.]

MADISON, MISS., *April 11, 1896.*

SIR: As a supplementary report to my communication of April 6, 1896, in reply to your communication of March 21, 1896 (S. G., 4801), I herewith inclose copies of letters received from the sheriff of Harrison County, Miss., where the defendant, G. I. Dahlberg, was confined; also a letter from E. Sugden, deputy United States marshal, who made the arrest; also a letter from Mr. C. Phelps, deputy United States circuit court clerk at Mississippi City, Miss., who has charge of the office there, and who issued the writ upon which the said G. I. Dahlberg was arrested; also a letter from J. K. McNeily, chief deputy United States marshal.

Very respectfully,

R. C. LEE,

United States Attorney Southern District Mississippi.

The ATTORNEY-GENERAL, *Washington, D. C.*

[Subinclosure.]

MISSISSIPPI CITY, MISS., *April 8, 1896.*

SIR: In reply to your request for a statement concerning the imprisonment of Captain Dahlberg in the jail of my county, I beg leave to state that the Captain was

brought to my jail on the night of February 10 by Mr. E. Sugden, deputy United States marshal, and assigned to the lower story of the jail, the compartment kept exclusively for white prisoners. He was furnished with a mattress and clean and ample bedding. The Captain's statement that the jail was filthy and unclean is false. The jail is examined by the members of the board of supervisors each month, and their testimony will bear me out in the assertion that the jail was always well kept and clean.

The criminals the Captain speaks of consisted of one Sam McKinnis, charged with running a "blind tiger," and, like the Captain, had failed to furnish a bond, and a young man named John Miller, who was serving out a sentence of thirty days for stealing a bicycle. These are the "criminals" in whose company he was placed.

In conclusion I beg to say that the Captain never at any time during his imprisonment complained of the condition of the jail or the treatment received. The Captain was released from my jail by order of Mr. Sugden, deputy United States marshal.

Respectfully,

GEORGE P. HEWS,
Sheriff of Harrison County, Miss.

Hon. R. C. LEE,
United States Attorney Southern District Mississippi, Madison, Miss.

[Subinclosure.]

MISSISSIPPI CITY, MISS., *March 30, 1896.*

DEAR SIR: Replying to yours of the 24th instant, state on the 8th day of February, 1896, a warrant of arrest for G. I. Dahlberg was issued by the clerk and executed by me on the 10th instant, on board the bark *Hans*, lying at Ship Island. I urged the Captain to make bond, and proposed to go with him to any point in my district for that purpose, which offer was refused. When we landed at Biloxi, the Captain had a conversation with Mr. F. W. Elmer, deputy collector of customs, who advised him to make bail.

Messrs. John E. Johnson and H. C. James offered to make the bond, and advised him to accept it and not to go to jail, but the Captain insisted on being locked up. He was brought to Mississippi City and delivered to the jailor on the night of the 10th, and was released on the morning of the 15th by instruction of the plaintiff's attorney. In conclusion, the Captain was treated with the utmost courtesy, as a number of reputable persons will testify.

Yours, respectfully,

E. SUGDEN.

Capt. J. K. McNEILY,
Chief Deputy United States Marshal, Jackson, Miss.

[Subinclosure.]

MISSISSIPPI CITY, MISS., *April 11, 1896.*

SIR: I am in receipt of your letter, inclosing copy of letter from the honorable Attorney-General, and in reply respectfully make the following statement and explanation:

On the 8th day of February, 1896, a libel in personam was filed in admiralty by H. M. A. Perttison against G. I. Dahlberg, captain of the Russian bark *Hans*. After consideration of the matter, having knowledge of the fact that Ship Island was wholly without both the civil and criminal jurisdiction of the State of Mississippi, jurisdiction both civil and criminal having been ceded to the United States by act of legislature in 1858 (which fact disposed of the "imprisonment for debt" feature), and that the rules in admiralty especially prescribed that suits for damages for assaults must be brought in personam only; that the assault was committed at Ship Island, within the jurisdiction of the United States, and, lastly, the fact that the libelant was no longer attached to the vessel but had been discharged by Captain Dahlberg, in my opinion put the matter outside of treaty stipulations.

I filed the libel and issued the warrant of arrest, as prayed for by the rules in admiralty.

I delivered the warrant of arrest to Mr. E. Sugden, United States deputy marshal, who proceeded to execute it. Of course I have no personal knowledge of what transpired from the time Mr. Sugden left here until his return, but I have been told

by reliable parties that Captain Dahlberg was treated with great consideration by Mr. Sugden and was repeatedly requested by Mr. Sugden to give bail for his appearance on the 17th and save him (Sugden) the disagreeable duty of putting him in jail, but this he emphatically refused to do. Mr. H. C. James and several other gentlemen voluntarily offered to sign an appearance bond for the Captain, but he refused their offers. The Captain simply courted imprisonment.

After being incarcerated the Captain acted like a maniac, making all sorts of threats, etc., and finally the jailer asked me to go over and talk to him. I did so, and was spoken to very harshly by the Captain after I had offered to do anything in my power to assist him in getting bail. Told him I would assume the responsibility of sending some one with him (the deputy marshal having gone away to serve a writ) to any point in the district to enable him to give bail, and his answer was that he could give bond easily in either Scranton or Biloxi, but that he would not do so, but demanded his unconditional release. This, I told him, was out of my power, and I left him talking in a loud and excited manner.

As for the jail being filthy, that is false. He was placed in the lower part of the jail, which is reserved for white persons only and which is always kept clean, and the criminals he complains of being confined with consisted of a white man who, like himself, was there in default of bail for stealing a bicycle. The jailer's mother took a mattress with clean and ample bedding from the residence portion of the jail and furnished it to the Captain.

I am entirely ignorant of any habeas corpus proceedings.

On February 18 a motion was filed by libellant's proctor, praying leave to amend the libel, which was granted, and on same day a citation issued.

In conclusion, I wish to say that I certainly acted without malice in the matter, but simply did what I thought the law required me to do, and have had no reason so far to change my opinion, although libellant has changed his mode of procedure.

If I have made a mistake I am, of course, sorry that it occurred, and can only say that it was an error of judgment. I inclose copies of the different papers referred to.

Hoping that the foregoing will cover the information desired,

I remain yours, very respectfully,

C. PHELPS, *Deputy Clerk.*

Hon. R. C. LEE,

United States Attorney, Jackson, Miss.

JACKSON, MISS., *April 8, 1896.*

SIR: Your letter in reference to the arrest and imprisonment of G. I. Dahlberg received.

You will notice that the warrant of arrest was issued by the clerk of the United States court at Mississippi City upon the complaint of Perttison, and commands the marshal to arrest the defendant. The writ contains no notice that the defendant or the libellant is either a Russian subject, and Deputy United States Marshal Sugden proceeded to execute the writ as commanded. By act of the legislature of Mississippi in 1858 the island of Ship Island and adjacent waters was ceded to the United States. The State of Mississippi in 1844 abolished imprisonment for debt, but the locus of the arrest being beyond the jurisdiction of the State court, the State statutes had no application, as the island and its waters are exclusively within the jurisdiction of the Federal court. There is no general statute of the United States repealing imprisonment for debt that I have found, only in reference to those States which have abolished such imprisonment by statute.

In relation to the treaty stipulations between the United States and the Russian Government, I will say that none of the officers of the southern district of Mississippi were advised. This is evidenced by the fact disclosed by the records that the presiding judge allowed the libellant to amend his pleadings and ordered a citation to issue, as in civil proceedings in admiralty in ordinary cases. The deputy marshal having no notice that the defendant, Dahlberg, was a Russian subject, and the writ having been issued under lawful authority, believed it to be his duty and that he was compelled to serve the writ according to its commandments.

There was no illtreatment of the defendant, and the deputy, as shown by his returns, urged the defendant to give his appearance bond, which he declined to do.

Respectfully,

J. K. McNEELY,

Chief Deputy United States Marshal.

Hon. R. C. LEE,

United States Attorney, Southern District of Mississippi, Madison, Miss.

Mr. Olney to Mr. de Kotzebue.

No. 48.]

DEPARTMENT OF STATE,
Washington, April 18, 1896.

SIR: Referring to your note of the 10th instant and previous correspondence relative to the arrest and detention of Captain Dahlberg, of the Russian vessel *Hans*, on process issued by the United States district court for the southern district of Mississippi, I have the honor to inclose copy of a letter from the Attorney-General of the United States, transmitting evidence in the case.

Accept, etc.,

RICHARD OLNEY.

(Inclosure from the Attorney-General, April 15, 1896, with inclosures.)

Mr. Olney to Mr. Harmon.

DEPARTMENT OF STATE,
Washington, April 22, 1896.

SIR: I have the honor to acknowledge the receipt of your letter of April 10 replying to mine of March 17 last in regard to the arrest and imprisonment of Captain Dahlberg, master of the Russian bark *Hans*, by officers of the United States district court for the southern district of Mississippi.

The complaint of the Russian Government in behalf of Captain Dahlberg was that on February 10, 1896, a United States deputy marshal boarded the bark *Hans* and arrested Captain Dahlberg; that the marshal took Captain Dahlberg to Mississippi City and there confined him in a loathsome and filthy jail in company with criminals, and subjected him to much discomfort and suffering; that throughout the whole period of his confinement, extending from February 10 to February 15, Dahlberg protested against the unlawfulness of his detention and demanded a hearing before a judicial officer; that a bail bond of \$1,000 was demanded of him as a condition of his temporary release; that he was given no opportunity to have the lawfulness of his imprisonment inquired into until the Russian consul at Mobile, Ala., intervened and obtained on February 14 a writ of habeas corpus, returnable on the 17th of that month; that on the 15th of February—one day after the writ of habeas corpus had been obtained and two days before the time set for the hearing—the jailer informed Captain Dahlberg that he was free and could leave the jail, without furnishing any explanation of his imprisonment or of his release.

Your letter incloses what purports to be a copy of the court record of the proceedings against Captain Dahlberg. In this record it appears that on the 4th of February, one Perttisen, a seaman of the bark *Hans*, brought a suit in the district court against Captain Dahlberg for damages, based on allegations of assault and cruel treatment, and in the said libel prayed: "That a warrant of arrest in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may be issued against the said G. I. Dahlberg;" that in pursuance of this libel and prayer a warrant for Dahlberg's arrest was issued on February 8 by the clerk of the court; that by the marshal's return on this warrant it was "executed by arresting the within-named G. I. Dahlberg and transporting him to Mississippi City and confining him in jail in default of bond, which he refuses to give this 10th day of February, A. D. 1896;" that on 18th of February the libellant moved to amend his libel by substituting a prayer for a citation in lieu of the prayer for the defendant's arrest made in the original; that on the same day a citation was issued to the defendant, Dahlberg, admonishing him to appear before the district court on the 2d day of March to answer the said libel, upon which the marshal's return was "after diligent search not found in my district. This 2d day of March A. D. 1896."

The record does not show when or how Captain Dahlberg was released from imprisonment. The release does not appear to have been made by any judicial or formal order. It does not appear of record that he was released at all.

In view of these facts, I have the honor to request that you will consider whether Captain Dahlberg was unlawfully imprisoned by the authorities of the United States district court for the southern district of Mississippi, with special reference (1) to the laws which govern the procedure of that court, and (2) to the rights of Captain Dahlberg as master of a Russian vessel under the treaty of December 18, 1832, between the United States and Russia, Article VIII of which provides that "The consuls, vice-consuls, and commercial agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge

without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country, or the said consuls, vice-consuls, or commercial agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country."

If you should arrive at the conclusion that this complainant was unlawfully imprisoned, I should be glad to have a suggestion from you which I may use in replying to his Government as to the legal practicability of his obtaining redress in the courts of the United States. As the law now stands he can not bring suit against the Government for alleged tortious misfeasance of an officer of the Government. If the sureties of the officers concerned in the arrest and imprisonment are liable in case the arrest and imprisonment were unlawful, I should be glad to know it.

I have, etc.,

RICHARD OLNEY.

Mr. Conrad to Mr. Olney.

DEPARTMENT OF JUSTICE,
Washington, D. C., April 28, 1896.

SIR: I have the honor to acknowledge the receipt of your letter of the 22d instant, in regard to the arrest and imprisonment of Captain Dahlberg, master of the Russian bark *Hans*, by officers of the United States district court for the southern district of Mississippi.

You request me to consider whether Captain Dahlberg was unlawfully imprisoned by the authorities of the United States district court, with special reference to the laws which govern the procedure of that court, and the rights of Captain Dahlberg under the treaty between the United States and Russia.

In order to a more intelligent consideration of the questions than the meager reports received from the officers of the United States district court will allow, I have caused one of the examiners of this Department to visit the places of the arrest and imprisonment of Captain Dahlberg, to interrogate the United States officers concerned in the arrest and imprisonment, to elicit all the information that can be obtained, and to make full and speedy report of the result of his investigations.

On the receipt of this report I shall without delay consider the questions indicated by you, and forward to you the conclusions to which I may be brought.

I have, etc.,

HOLMES CONRAD, *Acting Attorney-General.*

Mr. Olney to Mr. de Kotzebue.

No. 53.]

DEPARTMENT OF STATE,
Washington, May 1, 1896.

SIR: Referring to your note of the 10th ultimo, in regard to the complaint of Captain Dahlberg, of the Russian bark *Hans*, I have the honor to say that the Department of Justice has appointed an examiner to collect the evidence necessary to ascertain whether Captain Dahlberg was unlawfully imprisoned, and whether his rights growing out of the treaty between the United States and Russia were violated.

Accept, etc.,

RICHARD OLNEY.

Mr. Conrad to Mr. Olney.

DEPARTMENT OF JUSTICE,
Washington, D. C., May 20, 1896.

SIR: In my letter to you of April 28, 1896, in regard to the arrest and imprisonment of Captain Dahlberg, master of the Russian bark *Hans*, by officers of the United States district court for the southern district of Mississippi, I stated that I had caused one of the examiners of this Department to visit the places of the arrest and imprisonment of Captain Dahlberg, to elicit all the information that he could obtain on the subject and make full report of the result of his investigation.

I beg to hand you herewith a copy of the report of Mr. Willoughby Newton, the examiner of this Department who was sent to conduct the investigation, which was received here on yesterday.

From this report it would seem that the arrest and imprisonment and detention of Captain Dahlberg were altogether without authority of law, and that personal liability rests upon each of the individuals who were concerned in his arrest and imprisonment.

The action of Phelps, deputy clerk of the United States court, in issuing the warrant of arrest was without legal right or authority, and both the clerk, Moseley, and the deputy, Phelps, are each liable on their official bond for breach of the conditions thereof.

The action of the deputy marshal, Sugden, in arresting Captain Dahlberg, in detaining him, and in imprisoning him in jail was without authority of law, and subjects the United States marshal, McNeeley, and the deputy, Sugden, severally, to personal action for the trespass committed by them.

C. S. Merriwether, the attorney for the plaintiff, appears to have procured the issuance and the execution of the warrant of arrest, and he also is liable to a personal action for false imprisonment.

The sheriff, Hughes, who was keeper of the jail at Mississippi City, and who received Captain Dahlberg from the deputy marshal, and confined him in his jail and detained him there, and released him on the request of Merriwether, the attorney for plaintiff, appears to have acted throughout without color of authority, and he also is personally liable.

The liability of each of these persons, in damages, for the wrong committed by them, respectively, is to Captain Dahlberg himself, and to no one else.

The officers of the United States court who were concerned in the wrongdoing are liable to such punishment as the Government may be authorized to impose, extending to their removal from office.

The cause of action set up by the plaintiff, Pertison, in his complaint, appears to have grown out of a difference which had arisen between Captain Dahlberg, as master of the Russian bark *Hans*, and Pertison, as one of the crew of that bark, and consequently was one of those "differences" referred to in Article VIII of the treaty of December 18, 1832, between the United States and Russia, as to which the "consuls, vice-consuls, and commercial agents shall have the right as such to sit as judges and arbitrators * * * without the interference of the local authorities." etc.

While that treaty remains in force the courts of this country would seem to be without jurisdiction to entertain and adjudicate a cause of action originating under such circumstances.

There can be no doubt, in my opinion, that Captain Dahlberg has a just and complete cause of action against each of the persons above named who were concerned in his arrest and imprisonment, and have no doubt but that such cause of action can be successfully maintained and adequate recovery had by recourse to the courts of the country.

Very respectfully,

HOLMES CONRAD, *Acting Attorney-General.*

MISSISSIPPI CITY, MISS., *May 16, 1896.*

SR: Referring to your instructions of the 1st instant relative to the arrest and incarceration of Capt. G. I. Dahlberg, master of the Russian bark *Hans*, while at anchor at Ship Island, southern district of Mississippi, I have the honor to report that I have examined carefully into said matter and find that Captain Dahlberg was arrested on board his ship, the Russian bark *Hans*, on February 10, 1896, by United States Deputy Marshal Edward Sugden, on a warrant of arrest regularly addressed to the United States marshal of this district, "commanding said marshal to arrest G. I. Dahlberg and to keep him under safe and secure arrest, so that he may be forthcoming before the judge of the United States district court for said district at Mississippi City on the 17th day of February, 1896, there to answer unto H. M. A. Pertison in a cause of damages, civil and maritime," said warrant dated February 8, 1896, and signed "L. B. Moseley, clerk, per C. Phelps, D. C."

This writ was issued by United States Deputy Clerk C. Phelps without the authority, direction, or even the knowledge of H. C. Niles, judge of the United States district court, southern district of Mississippi, was executed by United States Deputy Marshal E. Sugden on February 10, 1896, by arresting G. I. Dahlberg, master of the Russian bark *Hans*, carrying him to Mississippi City, and confining him there in jail in default of bond, which Captain Dahlberg refused to give.

The penalty of the bond required of Captain Dahlberg was fixed by Deputy Marshal Sugden and C. S. Meriwether (of Stranton), attorney for the plaintiff, Pertison, at \$1,000.

Captain Dahlberg was kept in jail until February 15, 1896, when he was released unconditionally by Deputy Marshal Sugden, upon the request and at the suggestion of C. S. Meriwether, attorney for the plaintiff, Pertison, in an irregular manner and without any formal discharge from any source whatever. I have been unable to find any mittimus committing Captain Dahlberg to the jail at Mississippi City. Sheriff Hughes informed me that there was a mittimus committing Dahlberg, but he has made diligent search among his jail records and has been unable to show me anything of the sort. The fact is, there was no mittimus, and the prisoner Dahlberg was received at the jail without any commitment of any sort or kind whatever. I have carefully examined the court minutes, dockets, etc., and find that there is not a line or a scratch of a pen relative to the arrest, imprisonment, or release of Captain Dahlberg, not a word on said records relative to Dahlberg or the plaintiff, H. M. A. Pertison.

Deputy Clerk Phelps informs me that he was not directed or authorized by anyone to issue the writ for the arrest of Dahlberg, master of the Russian bark *Hans*, lying at Ship Island, southern district of Mississippi, but that he did it of his own violation and on his own responsibility, thinking that the issuance of such a writ by him was legal, proper, and in the line of his duty as deputy clerk, acting for L. B. Moseley, clerk of the United States district court, district of southern Mississippi. He could refer me to no United States statute authorizing such a procedure on his part.

H. C. Niles, judge of the United States district court in this district, knew nothing of the issuance of the warrant of arrest by Deputy Clerk C. Phelps and the proceedings thereunder until some time after the arrest and imprisonment of Captain Dahlberg, when habeas corpus proceedings were commenced by T. V. Noland, Dahlberg's attorney, for the release of Captain Dahlberg.

Deputy Marshal Sugden informs me that he was not authorized by any court, or by anyone else having authority, to release Captain Dahlberg from jail, but did it because C. S. Meriwether, attorney for plaintiff, requested him to release him, and he supposed that as the plaintiff, Pertison, was the interested party it would be right and proper for him to release the prisoner on the request of the plaintiff's attorney.

This was the most extraordinary, irregular, illegal, and unprecedented proceedings from start to finish, and all parties concerned should, in my opinion, be held to the strictest accountability for same.

As to financial standing of parties concerned: United States Clerk Moseley lives at Jackson; is a man of very moderate means; his official bond is good.

United States Marshal McNeely lives at Vicksburg, and he is a man of considerable property; his official bond is believed to be good.

Deputy Clerk C. Phelps lives at Mississippi City; owns his house and nothing more; gives no official bond to the clerk. Deputy Marshal Sugden is worth nothing.

C. S. Meriwether, attorney for plaintiff, is worth nothing.

Sheriff George Hughes is worth considerable property; his official bond as sheriff, \$20,000, is said to be good.

Very respectfully,

WILLOUGHBY NEWTON,
Examiner, Department of Justice.

The ATTORNEY-GENERAL, Washington, D. C.

Mr. Olney to Mr. de Kotzebue.

No. 59.]

DEPARTMENT OF STATE,
Washington, May 23, 1896.

SIR: In my note of the 1st instant I informed you that the Department of Justice had appointed an examiner to collect the evidence necessary to ascertain whether Captain Dahlberg was unlawfully imprisoned, and whether his rights under the treaty between the United States and Russia were violated.

I have now the honor to inclose herewith copy of the examiner's report, and of the Attorney-General's letter of transmittal. The conclusion of the Department of Justice is that the arrest, imprisonment, and detention of Captain Dahlberg were altogether without authority of law, and that he has a just and complete cause of action against each of the individuals concerned therein, which, in its opinion, can be successfully maintained, and adequate recovery had by recourse to the courts of the country.

Accept, etc.,

RICHARD OLNEY.

(Inclosure: From the Attorney-General, May 20, 1896.)

Memorandum of Russian Imperial legation.

WASHINGTON, June 17, 1897.

Captain Dahlberg was arrested the 10th February, 1896, on his ship *Hans*, being 13 miles from shore, near the island Ship Island, on the Mississippi.

Letter of the Secretary of Justice to the Secretary of State from 20th May, 1896: "From this report it would seem that the arrest and imprisonment and detention of Captain Dahlberg were altogether without authority of law," etc.

The action of Phelps, deputy clerk of the United States court, in issuing the warrant of arrest was without legal right and authority. Article VIII of the treaty of December 18, 1832, between the United States and Russia, as to which the consuls, vice-consuls, and commercial agent shall have the right to sit as judges and arbitrators, * * * without the interference of the local authorities.

This was the most extraordinary, irregular, illegal, and unprecedented proceeding from start to finish, and all parties concerned should, in my opinion, be held to the strictest accountability for same. (From the same letter of the Department of Justice.)

Mr. Sherman to Mr. McKenna.

DEPARTMENT OF STATE,
Washington, June 24, 1897.

SIR: Referring to a letter from your Department of May 20, 1896, I now have the honor to say that on the 17th instant the chargé d'affaires ad interim of Russia called at the Department and made inquiry concerning the arrest and imprisonment of Capt. Gustaf Isak Dahlberg, master and principal owner of the Russian bark *Hans*, while at anchor at Ship Island, Mississippi, February 10, 1896.

I have made a thorough examination of the complaint and find that the letter of Mr. Conrad's of May 20, 1896, presents it in detail upon an examination and report by an examiner of your Department. Mr. Conrad's conclusion is to the effect that the arrest, imprisonment, and detention of Captain Dahlberg were altogether without authority of law, and that personal liability rests upon each of the individuals who are mentioned by name and who were concerned in his arrest and detention. Each of these individuals, with the exception of G. S. Meriwether, the plaintiff's attorney, who, also regarded as "liable to a personal action for false imprisonment," is an officer of the United States; and adds Mr. Conrad, "The officers of the United States courts who were concerned in the wrongdoing are liable to such punishment as the Government may be authorized to impose, extending to their removal from office."

I am convinced from a reading of the letter of Mr. Conrad that the action of the officials concerned constitutes a flagrant outrage upon the person of Captain Dahlberg and a violation of the treaty concluded with Russia December 12, 1832. While your Department is technically correct in referring Captain Dahlberg to the courts of this country, in which it is thought adequate recovery may be obtained against each of the individuals, yet, as the Russian Government does not think that Captain Dahlberg should be so remanded to the courts, which opinion I share, I am disposed to tender to him, through the Russian chargé d'affaires, the sum of \$1,000 in full satisfaction of his claim. Before making the tender, however, I would be glad to have your views upon the subject. Besides the money consideration, which I think ample on account of his arrest, imprisonment, and detention for five days, I suggest that the Federal officers concerned in this vexatious and unwarranted proceeding be immediately dismissed from their positions. If this is done, it will prove a salutary lesson and possibly prevent a recurrence of like acts in the future.

Awaiting your reply before addressing Mr. de Wollant upon the subject,

I am, respectfully, yours,

JOHN SHERMAN.

Mr. McKenna to Mr. Sherman.

DEPARTMENT OF JUSTICE,
Washington, June 30, 1897.

SIR: I beg to acknowledge the receipt of your communication of the 24th instant, in which, after referring to the arrest and imprisonment of Captain Dahlberg, master of the Russian bark *Hans*, while at Ship Island, Mississippi, you say that you are

"disposed to tender Captain Dahlberg, through the Russian chargé d'affaires, the sum of \$1,000, in full satisfaction of his claim;" but you express the wish to have my views on the subject before making the tender.

You suggest "that the Federal officers concerned in this vexatious and unwarranted proceeding be immediately dismissed from their positions."

As the tender by you of \$1,000 to Captain Dahlberg presents no question of law arising in the administration of your Department, I regret that I am not allowed to aid you by the expression of an official opinion on the subject.

And with regard to the suggestion as to the dismissal of the Federal officials who appear to have been connected with the assault upon Captain Dahlberg, I beg to say that the matter shall have prompt attention.

Very respectfully,

JOSEPH MCKENNA, *Attorney-General.*

Mr. Sherman to Mr. de Wollant.

No. 114.]

DEPARTMENT OF STATE,
Washington, July 3, 1897.

SIR: Referring to your recent visit to the Department, I have now the honor to say that since that time I have had the case of Capt. Gustav Isak Dahlberg, master and principal owner of the Russian bark *Hans*, who was arrested while at anchor at Ship Island, Mississippi, February 10, 1896, fully examined in the light especially of the letter of the Acting Attorney-General of May 20, 1896, to which you then called my attention. It is unnecessary to repeat the statements touching Captain Dahlberg's arrest, which were admittedly without warrant of law. He was discharged from custody February 15, 1896. Taking into consideration the fact that Captain Dahlberg has his remedy in the courts of this country against the individuals concerned in his arrest, and where adequate recovery may, in the opinion of the Acting Attorney-General, be had against each one of them, I have, by direction of the President, to tender to Captain Dahlberg, through yourself, the sum of \$1,000 in full satisfaction of his complaint.

I make this tender without thereby assuming liability on the part of the Federal Government, although I may observe that, according to a letter from the Attorney-General of the 30th ultimo, that officer has promised to give immediate attention to my suggestion that the Federal officials who may have been connected with the assault upon Captain Dahlberg be dismissed from the service.

Awaiting your pleasure as to the acceptance by Captain Dahlberg of the amount so tendered, I beg you to accept, etc.,

JOHN SHERMAN.

Mr. de Wollant to Mr. Sherman.

No. 520.]

WASHINGTON, *November 20 (December 2), 1897.*

SIR: Referring to the case of Capt. Gustaf Isak Dahlberg, master and principal owner of the Russian bark *Hans*, who was arrested while at anchor at Ship Island, Mississippi, February 10, 1896, I have the honor to inform your excellency that your note of July 8, 1897, has been duly forwarded through the foreign office at Petersburg to Capt. Gustaf Dahlberg.

Considered that his arrest without warrant of law and his detention until February 15 has been the cause of great pecuniary losses, Captain Dahlberg declares that he can not be satisfied with the sum of \$1,000, tendered by your excellency. In his claim Captain Dahlberg points out he was obliged to find and pay another captain to bring the ship to Europe. The money paid to the lawyers, traveling expenses of the said captain, the loss of time, and disturbance in his money affairs amount to \$5,000.

Captain Dahlberg claims that, having been arrested by the duly appointed authorities in the name of the President of the United States, his claim can not be directed against the individuals concerned in his arrest, they having acted not as private persons but in their official capacity. Not having the necessary means, he considers the advice to find remedy in the courts of this country as a refusal of justice.

Considering for my part, that cases like the unlawful arrest of Captain Dahlberg can not have a favorable influence on the commercial relations of our respective countries, on our tradesmen and people engaged in the shipping business, I will feel

very much obliged to your excellency if you will reconsider the matter and give it your fullest attention in order to bring it to the best possible solution.

Awaiting your pleasure, I beg you to accept, dear sir, the renewed assurances of my highest consideration.

GREGORY DE WOLLANT.

Mr. Sherman to Mr. de Wollant.

No. 138.]

DEPARTMENT OF STATE,
Washington, December 18, 1897.

SIR: I have the honor to acknowledge the receipt of your note of the 2d instant in regard to the claim for damages presented by Captain Dahlberg, master and principal owner of the Russian bark *Hans*, based on a wrongful arrest and imprisonment.

In reply I have the honor to say that the Department is disposed to lay the claim before Congress, if an agreement can be first reached as to a reasonable indemnity to be recommended to that body.

Accept, etc.,

JOHN SHERMAN.

Mr. de Wollant to Mr. Day.

No. 148.]

RUSSIAN IMPERIAL LEGATION,
Washington, March 27 (April 8), 1898.

MY DEAR MR. DAY: Referring to our yesterday's conversation in regard to the claim of Capt. G. E. Dahlberg and to your proposal of recommending to Congress an indemnity of \$5,000 for Captain Dahlberg, I have the honor to state that I am authorized by my Government to give my consent to this arrangement.

Very truly, yours,

GREGORY DE WOLLANT.

Mr. Day to Mr. de Wollant.

Personal.]

DEPARTMENT OF STATE,
Washington, April 14, 1898.

MY DEAR SIR: I have to acknowledge the receipt of your note of the 8th instant, stating that you are authorized by your Government to accept the proposal made by the Department to transmit to Congress the claim of Captain Dahlberg, master and principal owner of the Russian bark *Hans*, based upon a wrongful arrest and imprisonment, the Department recommending the appropriation of \$5,000 to indemnify him for all damages suffered and losses incurred.

In reply I have to say that as soon as the papers in the case can be copied the claim will be transmitted to Congress and the appropriation of the indemnity recommended.

Very truly, yours,

WILLIAM R. DAY, *Assistant Secretary.*

EXHIBIT D.

[Public—No. 136.]

AN ACT making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and one, and for prior years, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to supply deficiencies in the appropriations for the fiscal year nineteen hundred and one, and for prior years, and for other objects hereinafter stated, namely:

To reimburse the master and owners of the Russian bark *Hans* for all losses and damages incurred by reason of the wrongful and illegal arrest and detention of Gustav Isak Dahlberg, the master and principal owner of said bark, by officers of the United States district court for the southern district of Mississippi in eighteen hundred and ninety-six, five thousand dollars.

Four copie conforme.

FIRST CASE.

The Cape Horn Pigeon.

As the defendant party in the case of the seizure and detention of this vessel recognizes that an indemnity is due, there remains but to settle the amount of damage interest to be paid to the party claimant.

The party claimant maintains that it is not bound by the claims presented by the captain of the *Cape Horn Pigeon* as a complete statement of damages suffered. The captain was, at the moment of the seizure and until the moment of arrival in an American harbor, the natural guardian of the interested parties. And it is probable that if the Russian Government had indemnified him according to the conditions which he proposed, that indemnity would have been agreed to by all the interested parties as a compromise. But once the captain's proposition was rejected it has no more weight, and the claimants are free to present new claims, including damages sustained by them of which the captain had lost sight.

There is no longer any question of how much Captain Scullun or other agent of the claimants may then have asked, but of how much is due in equity to the claimants for the damages they sustained.

1. The opinion of the party claimant that the loss of the catch constitutes the true measure of damage sustained in the loss of service of the vessel is set forth both in the memorandum and in the observations of this rejoinder, which relate generally to the four cases in litigation.

2. As to the claims for indemnity of each member of the crew in the sum of \$1,000 for their enforced service in the Russian navy and their compulsory navigation of a Russian armed cruiser, as well as the subsequent bad treatment, it appears that the defendant party finds a repetition of the claim for services of the crew in conducting the Russian cruiser to Vladivostok, which is estimated at \$1,200. This is a mistake. The services of the crew in this respect, for which the defendant party admits these men should be remunerated, are entirely distinct from the questions touching the bad treatment or their enforced naval service of a country other than their own.

The defendant party admits that the seizure of the *Cape Horn Pigeon* was a much to be regretted error, for which indemnity is due. Therefore there is no escaping the conclusion that all restraint inflicted upon these men constituted a wrong done them. This being true, the taking them from their own vessel and placing them as crew aboard a man-of-war flying the flag of a country other their own and obliging them to navigate such vessel was an outrage to them, and failure to recognize the gravity of that outrage would be to open the way to seizure of merchant vessels on the high seas and the impressment of their crews into foreign marine service by every armed cruiser that so desired.

Concerning the question of bad treatment sustained by the crew of the *Cape Horn Pigeon* at Vladivostok, the defendant party protests against the allegations of the party claimant in that regard, but is content to quote the opinion expressed by the chargé d'affaires of the United States at St. Petersburg in his note of the 9th (21st) September, 1892 (Exhibit K of the *Cape Horn Pigeon*), and the allegation that the crew of the whaler was twice and one-half as numerous as that of the cruiser. In the first place, the note of the chargé d'affaires expresses only the opinion, "I trust and believe." As to the question of numerical strength, it suffices to say the whaler was a merchant ship without armament, which had to deal with an armed cruiser of the Russian navy, with all which that implies.

It appears that in the case in question the defendant party takes the position that the captain and crew should have made resistance to the seizure, although in the case of the *James Hamilton Lewis* this same resistance is cited as wrong as well as proof of guilt.

The defendant party expresses the opinion in the counter-memorandum that all of the members of the crew of the *Cape Horn Pigeon* were not Americans, and that the claims of such among them as were of other nationalities should be presented by their respective Governments.

The party claimant contests this view. The sailors who embarked upon the *Cape Horn Pigeon* were entitled to the protection of the United States flag which it carried. The owners of the vessel are the guardians of the members of the crew for their share of the catch, or of the indemnity allowed in lieu of it, as also for all compensation they may receive, and the United States Government, whose duty it is to protect sailors who embark under her flag, is not relieved of her obligation toward them until she presents their claims for indemnity for losses and wrongs suffered by them. These claims are not presented by the members of the crew, but by the United States Government. There were no Russian subjects among the crew of this vessel, and the party claimant submits that as guardian of the interests of these men in this respect it is for that nation whose flag was violated to present their claims, and not for the several Governments to which these men respectively owed allegiance to do so.

This principle was recognized in the affair *Trent*, where an English packet was seized in open sea by an armed cruiser of the United States and two persons among the passengers were seized by a belligerent. It was admitted that the Government of Great Britain had the right to demand restitution of these persons into its jurisdiction, which was accordingly done.

The conditions of the protocol do not fix the limits of nationality of the claimants, but on the contrary it states that the two high contracting powers are of accord in submitting to arbitration the case of the whaling vessel *Cape Horn Pigeon*, her shipowners, captain, officers, and crew. The arbitration is declared to be between the two Governments. Thus the Government becomes the guardian of the interests of all the crew without distinction of nationality.

3. Regarding the claim of \$1,200 for services of the officers and crew of the *Cape Horn Pigeon* for navigating the Russian cruiser, the claimant party refers again to the arguments on this subject contained in the memorandum, wherein the grounds for this claim are set forth.

What the captain demanded when he was in a position to act as agent

for the claimants should have no consideration here. It is rather a question of what is the just and equitable indemnity for the services rendered in this regard that is in litigation. The admission of the defendant party that a sum of \$1,000 for indemnity is due shows very clearly that the ordinary wages of the sailors are not considered sufficient compensation under the circumstances. The defendant party assents to the round sum demanded by the captain, but does not indicate how that sum should be distributed among the crew.

4. The sums of \$200 for provisions consumed, and \$210 for lodgings, and \$50 for the personal expenses of Captain Scullun are not disputed.

5. As to the principal of \$3,040 the claimant party must again refer to the memorandum wherein the details of this total are fully set forth.

6. The matter of interest not having been disputed as a principle, the party claimant does not think necessary to return to that portion of the claim.

To sum up, the party claimant reiterates the demand for indemnity for damages which are set forth in the memorandum for the seizure and detention of the *Cape Horn Pigeon*, her officers and crew, by submitting to the honorable arbitrator that the defendant party has failed in any way to rebut the evidence presented in the memorandum in support of these claims stop. The party claimant asks therefore that the total amount of indemnity claimed be granted, including interest from the moment of seizure until the day of the receipt by the party claimant of the amounts which may be allowed.

Regarding the question of the duty of the United States Government to protect the sailors of the *Cape Horn Pigeon* who were not American citizens, the defendant party cites the sentences of the Court of Claims for the settlement and distribution of the sums allowed in the arbitration at Geneva on *Alabama* claims.

According to the act of 1874 no claim was admitted "arising in favor of any person not entitled, at the time of his loss, to the protection of the United States in the premises."

The court decided that this did not exclude men enrolled, at the time their claims were brought up, in the merchant marine or in whaling vessels under the United States flag, such men being entitled to the protection of the United States even though they be foreigners not naturalized.

The court decided, however, that this rule does not apply to English subjects, for it did not intend to make them beneficiaries in the amount of indemnity granted. (Report of John Davis, clerk of the Court of Commissioners of Alabama Claims; case of Benjamin Worth v. The United States, opinion of Judge Raynor in the same court.)

SECOND CASE.

The James Hamilton Lewis.

On the 18th (30th) of May, 1896, the Imperial Russian Government presented to the United States diplomatic representative at St. Petersburg a memorandum emanating from the imperial minister of the Russian navy, which undertook to demonstrate, from the Russian point of view, the facts of the seizure of the *James Hamilton Lewis*. (Exhibit H of the memorandum, case of *James Hamilton Lewis*.) In the memorandum it is declared that the schooner was overhauled by the Russian cruiser at 5.15 a. m. at 12 miles from the Copper Island, after having sighted her at 4.40 o'clock on the same morning at a point alleged to be within the Russian jurisdiction.

On July 23 (August 4), 1898, the United States diplomatic representative, referring to these figures, called the attention of the Imperial Government to the fact that the seizure having been made at 12 miles from the coast, after a chase lasting not over half an hour, it was impossible for the *James Hamilton Lewis* to have been in Russian territorial waters at the moment it was sighted, and that the nearest point of proximity possible was 6 miles from the coast. (Exhibit N of the memorandum, case of the *James Hamilton Lewis*.) In reply to that communication the Imperial Government caused another memorandum to be sent to the United States ambassador from the minister of marine (Exhibit N), under date of October 19, 1898, which, without noting any alteration with regard to the hour of the overhauling the *James Hamilton Lewis* by the Russian cruiser, shows that the distance was 11 miles from the Russian coast at the moment of arrest. The exhibits attached to the counter memorandum are now seen for the first time by the party claimant, although the correspondence on the subject of the seizure of the *James Hamilton Lewis* has continued for more than six years, and it is only now informed that the hour of the seizure was 6.15 instead of 5.15, as stated in the first place.

It must be admitted that there is here a certain lack of accuracy in the figures, which might be found, also, in the definite statements as to the positions of the vessels, that of the *James Hamilton Lewis* when it was sighted being determined by appearances, which are known to be excessively deceptive, and which vary with atmospheric conditions. As to the point at which the *James Hamilton Lewis* was overhauled by the cruiser, the defendant party has not submitted one single proof to establish her distance from land, and it is even evident that the captain of the cruiser had but vague impressions on this point, since he states in one document that the seizure took place at 12 miles and in another at 11 miles from the Copper Island.

But in any event, the defendant party has never pretended that the *James Hamilton Lewis* was found in a proximity of less than 5 miles from Russian land. To justify the seizure, the defendant party claims

a jurisdiction over the waters to that distance from the coasts. It can not be pretended now that the *James Hamilton Lewis* was within 5 miles of the Russian coast on the morning in question, and if it was not within that distance of the land it was not within the limits of the jurisdiction to which the defendant party claims a right.

But the Imperial Russian Government has declared on several occasions in its public documents, as well as in its correspondence, that the limits of its jurisdiction did not extend beyond 3 miles from the coast. See Exhibits B B and C C of the *Cape Horn Pigeon*, in the memorandum, and Exhibit A, hereunto annexed, viz, a certified translation of clause 21 of the imperial Russian navy prize rights, wherein is shown the limit of maritime jurisdiction claimed and recognized by Russia as being 3 miles. And from the publication of these documents until the moment of the seizure of the *James Hamilton Lewis* Russia has never publicly claimed a more extended maritime jurisdiction.

The party claimant does not propose to enter into a discussion of the question of the extent of marine jurisdiction which should be recognized to-day and which is not within the scope of the present litigation, but it holds to the opinion that no government having publicly proclaimed that its marine jurisdiction is limited to 3 miles can exercise a more extended jurisdiction, in order to enforce its municipal laws, without previous notice to those whom it may concern.

But aside from the question of marine jurisdiction over the point in which the *James Hamilton Lewis* was navigating, the counter memorandum of the defendant party does not contain the least affirmative proof that this vessel, her master, or her crew had ever been engaged in any illegitimate business whatsoever, either against international law or the municipal laws of the Russian Empire. The defendant party has not presented proofs that it sustained any damage or losses of any description in which the *James Hamilton Lewis* could justly be accused of being implicated.

Now, the case presents only the facts that the Russian Government owns certain islands whereon there are fur seals; that near these islands its agents found a vessel whose occupation was catching fur seals in mid sea, a business well recognized at that time as legitimately carried on on the high seas, and the Russian Government, through the medium of its agents, seized and confiscated said vessel simply on the suspicion that, being in Russian territory, it had violated Russian municipal laws. The party claimant, far from denying that aboard the *James Hamilton Lewis* were found skins of fur seals, on the contrary declares that this vessel, while pursuing its legitimate business, had caught fur seals on the high seas, and it is for the skins of the seals thus caught and later confiscated by the Russian Government that it now seeks payment in the present arbitration.

The reports of Thomas Morgan and John Malowansky, cited in the memorandum (case of the *James Hamilton Lewis*, Exhibit F), prove that these skins, being the skins of females, constituted a typical pelagic catch. That is to say, that the seals in question were not taken either on or near land, but on the high seas, as has been declared by the captain and crew of the *James Hamilton Lewis*.

Neither is the fact contradicted that aboard the vessel were the skins of two small seals, too young to swim; but Exhibit F of the same case of the memorandum is again quoted as evidence in support of the fact that the presence of these two skins constituted, on the contrary,

a proof that the schooner was engaged in fishing on the high seas. The party claimant has abundantly demonstrated that young seals are often taken alive from the bellies of their mothers, that it is a common occurrence in pelagic sealing, and that the skins of these young seals constitute a class of merchandise regularly quoted on the London market. However, the defendant party still holds the view that the presence of these skins of young seals aboard the *James Hamilton Lewis* was a proof that they had been caught on the islands. But the defendant party failed to produce any testimony as to the nature of these skins of young seals, or that they were other than as sworn to by the master of the schooner. The defendant party states that an expert declared that these skins were of young seals taken on the islands, but as he furnished no testimony in support of this declaration it should not be admitted as evidence. In fact, this testimony is based only on hearsay. In order that the presence of these skins of young seals aboard the *James Hamilton Lewis* weigh against the corroborative testimony presented in Exhibit F, in support of the sworn statements of Captain MacLean it must be very clearly shown that these young seals had been taken not only on land, but on Russian land, for it must be remembered that the American Seal Islands were quite as convenient to poachers as those of Russia.

The defendant party maintains the opinion that the resistance to seizure on the part of the master of the *James Hamilton Lewis* constitutes proof that he felt guilty. Such interpretation of his action is not justified. The master felt he was where he had perfect right to be and was engaged in legitimate business, and believing that no one had the right to molest him he exercised his absolute rights by resisting his seizure on the high seas. Neither does the fact, if it be a fact, as stated but not proven, that he had hidden the skins of seals he had caught, admit of interpretation of possession without right.

If the captain feared that they would be confiscated if discovered, although he had obtained them legitimately, it appears that his fear was but too well founded, seeing the confiscation of the sealskins aboard the *Kate and Anna*, which the defendant party admits was illegal.

The defendant party undertakes, in the counter memorandum, to demonstrate that the fact that the captain of the *James Hamilton Lewis* failed to produce the log book of the schooner is a proof of guilt. One may not rightfully put such a construction on the captain's reticence. As has been shown in the memorandum, the captain presented all of the documents they had the right to ask on the high seas according to international law. He kept in reserve his journal to prove an alibi when the proper moment should arrive—that is to say, when he had been conducted before a prize court where he would have a chance to furnish testimony in his own defense before competent judges and not before his captors. But this opportunity was never accorded him. His case was tried by his captors, who showed him the act of confiscation after having signed it. It was then that he inscribed his protest in the act, still reserving his evidence until he should reach his own country, there to present it to his Government with all the proofs in support of his claim and of the shipowners and crew of his vessel.

A copy of this log book was included with the documents annexed to the note of the United States minister at St. Petersburg, presenting

the case to the attention of the Imperial Government the 11th July, 1894 (Exhibit G of the present case of the memorandum), and that it was duly received is clearly demonstrated by the note of the imperial Russian minister of foreign affairs of the 18th May, 1896 (Exhibit R of the memorandum of the same case).

The defendant party has no reason to complain of the delay in the delivery of the original of this document, nor to express doubt of its authenticity on account of that delay. The captain of the *James Hamilton Lewis* was not obliged to prove an alibi to the commander of the Russian cruiser; on the contrary, the onus probandi of wrongdoing rested solely upon the latter. Even though the *James Hamilton Lewis* had been at the moment she was sighted in Russian territorial waters her pursuit into open sea, where she was seized, required absolute proofs of the wrong of infraction of the municipal laws within the jurisdiction of Russia to justify her detention if only for an instant.

The defendant party permits itself to be carried away by its desire to discredit the authenticity of the log book. No repeated demands were made by the defendant party of the party claimant for the production of the log book; on the contrary, a copy of the log book, which it seems is in every respect the counterpart of the original, was submitted to the defendant party, as has been stated above, in the presentation of the case. This took place three years after the seizure. In 1896 the party claimant expressed the desire to submit the original log book to the defendant party for examination in order that he might compare it with the copy and assure himself of its authenticity, which the party claimant believed to be evident, and in fact this desire was verbally repeated several times by the diplomatic representative of the party claimant, but not until a year later did the defendant party consent to examine the document.

The defendant party in its counter memorandum disputes the authenticity of the log book; but it has never presented any testimony, either expert or of facts, to support its position. It expresses the opinion that the fact that a number of entries are made with the same ink is suspicious. It is more than probable that a vessel of this character was not provided with a great variety of inks, and that the same officer being in charge of the entries always used the same ink. As to the simple opinion of the defendant party regarding the authenticity of the log book, the party claimant refers to his former arguments on that subject in its memorandum and the fact that the captain and several members of the crew testified under oath to its authenticity.

Thus, in the absence of contrary testimony, this document should be accepted as valid and authentic.

The defendant party raises the fact that the party claimant, in submitting the copy of the log book presented to the honorable arbitrator, failed to include the indorsement in Russian written upon the original log book by the imperial minister of marine on the occasion of its delivery to the Imperial Government for examination by the diplomatic representative of the United States. The party claimant considers this indorsement, made long after the occurrence of the events which form the subject of the present arbitration, as entirely inapplicable and unimportant.

Moreover, any indorsement upon a document thus submitted is unjustifiable and irregular, and can not be considered as forming a part of the log book. Such as it is, however, it remains upon the log book,

which is now in the hands of the honorable arbitrator, and the defendant party evidently possesses a copy.

Regarding the treatment which the captain and crew of the *James Hamilton Lewis* suffered at the hands of the Russian authorities, the defendant party is content to protest in general against the testimony offered by the party claimant. It is, however, difficult to say what further proofs could have been produced by the party claimant in support of allegations of such nature. The party claimant presented the sworn depositions of five witnesses relative to the alleged bad treatment. The burden of refutation of this testimony remains, therefore, upon the defendant party, who failed to furnish any proofs whatever that would show the contrary or would in any way destroy the credibility of these witnesses. On the contrary, the defendant party admits that because of their resistance these men were submitted to "more rigorous measures" than would have been employed if they had not resisted arrest. But their arrest being illegal and on the high seas they had a perfect right to resist, so that damages are due them on account of the severe measures which the defendant party acknowledges having taken against them.

But apart from all question of bad treatment, these men are entitled to indemnity on account of their illegal seizure and their detention as prisoners, and in this connection the arguments set forth in the general consideration of the questions submitted to arbitration are again cited here, together with the testimony showing the amount of damages awarded to the Russian Captain Dahlberg for having been illegally arrested by the United States authorities.

The counter memorandum of the defendant party has in no way altered this case such as set forth in the memorandum of the party claimant.

The *James Hamilton Lewis* was seized in open sea, entirely beyond Russian jurisdiction, which this vessel never reached.

The Russian Government produced no proof to show that it had penetrated such jurisdiction, that any wrong whatsoever had been committed by anyone whomsoever within Russian territory, or that the *James Hamilton Lewis*, or anyone whomsoever aboard this vessel, had in any way contravened the municipal law of Russia within Russian jurisdiction.

The vessel was seized simply upon a suspicion, which was in no way verified.

On the ground of this suspicion the vessel was confiscated without submitting its case to a prize court, as the laws of nations require, but upon an act of confiscation drawn up by a commission composed of those who had made the seizure. That is to say, that the officers who made the seizure were their own judges, and their decision by which they justified their act was rendered not only without permitting the captain and crew of the *James Hamilton Lewis* to justify themselves, but contrary to all the evidence in the case.

Nothing in the evidence of the officers of the Russian cruiser can in any way implicate the *James Hamilton Lewis*, her captain, or crew in sealing in Russian waters. It is admitted that this vessel was engaged in pelagic sealing; and consequently there were aboard her a variety of instruments necessary to that occupation. The officer detailed for the investigation declared that he discovered evidences of a hasty putting in order, but he does not specify in what that haste consisted. This fact

can not be accepted as proof, even though it was demonstrated. He discovered a tub containing reddened water covered with a red flannel shirt. This shows that a member of the crew had been employed in washing a red shirt of inferior dye, but it does not prove that the *James Hamilton Lewis* had been sealing in Russian waters any more than the fact, if it were a fact, that the seal skins were strewn with salt to preserve them is a proof of guilt.

The Copper Island is the most remote Russian possession in Bering Sea. To the east, to south, and southeast of that island there is no Russian territory. The Russian territory nearest that island is the Bering Island, situated a little to northwest. The schooner *James Hamilton Lewis* was, when sighted by the Russian cruiser, sailing toward the Copper Island, coming from the southeast. It was nearest the Copper Island at the moment it veered from north. If she had been engaged in sealing in Russian waters, how could her course have been northwest, advancing toward Copper Island? It has not been claimed that this vessel nor any other vessel had been navigating in the vicinity of Russian land.

No proof has been produced by the defendant party to refute either the statements made by Captain MacLean or the proofs submitted by the party claimant. And no proof has been presented to corroborate the simple suspicion formed by the Russian officers that the *James Hamilton Lewis* had already been, or contemplated, trespassing upon Russian jurisdictional waters.

On the other hand, it has been clearly demonstrated that the *James Hamilton Lewis* was confiscated and that her officers and crew were detained prisoners, all the evidence showing that these men suffered harsh treatment.

The claimant party therefore submits to the honorable arbitrator—

1. That the *James Hamilton Lewis* was illegally seized in open sea by the defendant party, and that for such seizure, as well as for the subsequent confiscation, the owners of the *James Hamilton Lewis* are entitled to damages amounting to the entire value of the vessel and of her equipment.

2. That because of the illegal seizure of the *James Hamilton Lewis* in the midst of the sealing season the defendant party unjustly deprived the owners, the officers, and crew of the *James Hamilton Lewis* of the use of their vessel, and consequently of the legitimate pursuit of their calling, and that for the deprivation of the services of the vessel they are entitled, *restitutio in integrum*, to an indemnity, the just measure of which is the probable catch of seals that the vessel would have made during the remainder of the season.

3. That with the confiscation of the vessel the defendant party confiscated 424 seal skins, valued at the time at \$14 each, for which the owners, officers, and crew of the *James Hamilton Lewis* are entitled to full indemnity.

4. That the officers and crew of the *James Hamilton Lewis* are entitled to an indemnity for having been illegally imprisoned and ill treated.

5. That according to the admission of the defendant party there is due upon the total that may be granted interest at the rate of 6 per cent from the moment of the seizure until the day of payment of the indemnity for these losses, to the interested parties.

EXHIBIT A.

[Konrad A. Goetz, notary public, St. Petersburg. Stamp.]

CODIFIED COLLECTION OF DATA FOR THE CODE OF MARINE REGULATIONS. VOLUME V, JUDICIAL RULES FOR THE NAVY. PART 17. DRAWN UP BY THE ADMINISTRATION OF CODIFICATION OF THE MINISTER OF MARINE. ST. PETERSBURG, 1876. No. 58. COLLECTION OF REGULATIONS CONCERNING MARINE PRIZES AND REPRIZES.^a

CHAPTER III.—*Concerning the places where captures may take place.*

SEC. 21. The right of seizure is in force only on the high sea. By the denomination "high sea" is understood the waters which are beyond cannon shot of neutral fortresses, or which are at a distance of 3 nautical miles from the neutral coasts. * * *

I, the undersigned, Konrad Aristovitch Goetz, notary public of the St. Petersburg exchange, having my office in the district of the admiralty, Grand Morskaia street, No. 29, do hereby certify that the above is an extract in conformity with the book entitled Systematic Collection of Data for the Code of Marine Regulations, presented before me by the ambassador of the United States of North America at St. Petersburg. In testimony whereof I affix my signature and the seal of my office.

St. Petersburg, June 17, 1901.

(Signed) K. A. GOETZ, [L. s.]
Notary of the Exchange.

[Stamps are here.]

I, the undersigned, Konrad A. Goetz, notary of the exchange at St. Petersburg, Grand Morskaia street, No. 29, certify that the preceding is a correct and exact translation of the certified copy in the Russian language, hereunto annexed. * * *

In testimony of which witness my signature and the seal of my office.

St. Petersburg, June 9 (22), 1901.

In witness whereof—

(Signed) KONRAD A. GOETZ. [L. s.]

No. 11079.

^a Remark of the administration of codification: These rules were elaborated by a special commission in 1869, and in submitting them to the director of the ministry of marine his excellency ordered the following resolution: "Send this collection to the commander of the Pacific Squadron for his information and guidance; also to endeavor to send these rules to all vessels about to sail abroad on the 16th of September, 1869." In executing this resolution to transmit them to vessels, there were printed 200 copies. In 1871 a new commission was called, under the presidency of Admiral Istomine, to examine the rules concerning capture and recapture. That commission has not yet completed the duty with which it was charged.

THIRD CASE.

The C. H. White.

The exact position of the *C. H. White* at the moment of seizure is of small consequence. That is to say, it matters little whether it was in $54^{\circ} 10'$ or $54^{\circ} 18'$ latitude, since it is admitted by the defendant party that the seizure took place 23 miles from the Russian coasts.

It is also immaterial that the master of the schooner, basing his assertion upon the best information that he possessed, declared that it was at 80 miles from Russian land. He showed exactly the geographical position of the vessel, and his declaration that said position was 80 miles distant from Russian land constitutes only an error of calculation. However, it is but just to say that when measuring the distance to make his declaration after the seizure Captain Furman used an erroneous chart published by the United States Coast Survey, which showed the Copper Island in latitude $55^{\circ} 35'$, which would have made that island 80 miles distant from the point where the *C. H. White* was at the moment of her seizure. The chart used by Captain Furman for the navigation of the vessel was confiscated by the commander of the Russian cruiser. In support of this explanation of the error of Captain Furman and to prove his veracity, a copy of said erroneous chart is annexed hereunto, marked "Exhibit A."

The defendant party declares in the counter memorandum that the seizure took place 23 miles from Russian territory; it was consequently beyond Russian jurisdictional waters.

The sole justification for the seizure of this vessel presented by the defendant party is, it was suspected of having navigated in Russian waters and of having therein committed an infraction of Russian municipal laws.

This suspicion is based, according to the argument of the defendant party, upon the following alleged circumstances, which are entirely unsupported by proof:

1. That the vessel was sailing without distinguishing lights;
2. That the log book showed that the vessel had been in the proximity of the Russian coasts, and that this log had not been kept during two days;
3. That the course followed by the vessel showed a passage at 3 miles off the southern extremity of the Copper Island; and
4. That aboard the vessel were found skins of fur seals.

Regarding the first declaration, it must be observed that the seizure took place in latitude $54^{\circ} 10'$ or in $54^{\circ} 18'$ on the 3d (15th) July, at 10.30 p. m., at which hour on that date in those latitudes it is not yet dark and there is no need of lights. That is clearly demonstrated by the fact that the vessel was sighted at a distance of 2 miles distinctly enough to enable the cruiser to give a detailed and exact description

of the schooner. It is even doubtful if it is possible to see colored lights in that light, therefore it is not proven that the vessel carried none.

The use of distinctive lights is required by the marine regulations as a measure of precaution when navigating at night, but when it is possible to see distinctly a vessel 2 miles distant the necessity for showing lights does not exist. In any event, the failure to show distinguishing lights when navigating the open sea during the night, while it constitutes an infraction of the international marine regulations, is not an act which justifies the seizure and confiscation of a foreign vessel by an armed cruiser. Nor can it be said that the absence of distinguishing lights under the existing conditions, and which rendered the *C. H. White* distinctly visible 2 miles distant, is a proof of an attempt at escape from observation on the part of the guilty vessel. On the contrary, from the *C. H. White* the cruiser was as plainly visible as the schooner was from the latter, and it was well known that here was a Russian man-of-war which had seen them, and if the captain wished to save himself, surely he would do nothing that would expose him to the cruiser's suspicions.

As to the allegations of the defendant party relating to the statements contained in the log book of the *C. H. White*, aside from the question whether or not a government has the right to seize a foreign vessel on the high seas upon suspicion that it has violated the municipal laws of that government, the fact remains that the defendant party did not produce the log book of the *C. H. White*, which was confiscated with the vessel, there does not exist any testimony in support of the allegations of the defendant party concerning the declarations said to be contained in the log book, and consequently of the deductions that have been drawn therefrom.

The party claimant mentioned in his memorandum that the document is in the hands of the defendant party, and that allegations not supported by the presentation of the log book itself ought to be considered as inapplicable and excluded. And the presentation of the log book should not be admitted now as evidence in the arbitration, since by the terms of the protocol the party claimant is not permitted to rebut it.

The declaration of the defendant party that the course of the *C. H. White* indicated that it had been 3 miles from the Copper Island is a mere supposition not at all supported by evidence. It is not evident upon what ground that conjecture was founded, but the *C. H. White* did not follow any fixed course with the purpose of arriving at a particular point without delay, but was engaged in sealing on the high seas, an occupation which left her free to change her course frequently in a short space of time, and she very probably did so a short time before being sighted by the cruiser. Even though it had been proved that the *C. H. White* had navigated in waters within 3 miles from Russian land, there still remains the right of an innocent passage, and without definite proofs that the vessel had committed an infraction of the laws they had assuredly no right to seize her, even though we admit the right to pursue on the high seas for breaking the municipal laws.

The party claimant admits that the *C. H. White* was a vessel engaged in sealing, a business entirely legitimate at that time; therefore it was equipped for that business, and that it had aboard the skins of seals,

product of such catch. But it submits that the defendant party failed to produce the slightest evidence either to show that it had committed any depredation whatever within the Russian jurisdiction or that the *C. H. White* or anyone aboard her had entered Russian territory.

The allegations of the defendant party that the *C. H. White* was engaged in sealing in Russian waters are simply expressions of opinion. Not only does the counter memorandum contain no evidence in support of these allegations, but furnishes no refutation of the claimant's proofs and arguments contained in its memorandum. It is true that the defendant party replied to the citation of the case of the *Costa Rica Packet* made by the party claimant, that the latter did not resemble the present case: The party claimant begs to call attention to the fact that the case of the *Costa Rica Packet* was cited as a precedent for the recognition of the loss of the catch as measure of damages in the award of an arbitrator, in the case of a vessel illegally seized and detained.

The defendant party objects to the amount of damages claimed for the arrest and detention of the officers and crew of the *C. H. White*. These men were detained as prisoners for nearly a month, and were subjected to treatment which the defendant party, while denying that it was severe, excuses on the plea of lack of facilities, but which the officers and crew unite in declaring under oath to have been extremely harsh. No evidence having been presented to refute these declarations nor the credibility of these witnesses, their testimony must be accepted, and the party claimant refers to this testimony for the details of their treatment.

The degree of ill treatment was certainly much less in the case of the captain of the *Hans* (Exhibit C), who was paid \$3,000 by the United States Government for his arrest and detention of five days. Thus the party claimant is convinced that the honorable arbitrator will find the indemnity claimed under this head far from exaggerated.

The allegation of the defendant party that the valuation of the vessel and its equipment is estimated only by interested persons is entirely without reason and quite erroneous.

Two witnesses of unquestionable integrity and fully competent, besides the president of the company to which the *C. H. White* belonged, testified under oath as to their impartiality, as well as to the value of the vessel and her equipment, whereas another testified as to the probable catch during the remainder of the season after her seizure.

All that is proved by the testimony presented by the defendant party is that the *C. H. White* was seized on the high seas under the simple suspicion of having violated the Russian municipal laws near Russian waters, and for that reason it was confiscated without trial by a prize court and without permitting the captain of the vessel to justify himself, but the officer who arrested her constituting himself judge of his own actions, thus arbitrarily confiscating the vessel.

In fact, the defendant party failed to present any proofs whatever that could refute any of the testimony in support of the claims set forth in the memorandum, or to justify in any way whatsoever the seizure and confiscation of the *C. H. White*, or which could show a sufficient cause why they should not pay the whole amount of damages claimed.

The case of the defendant party should be considered closed, except in so far as concerns the refutation of testimony or of arguments con-

tained in the present rejoinder to the counter memorandum, since the protocol does not prescribe any opportunity for the party claimant to refute any further evidence or arguments which the defendant party may have to present.

The party claimant therefore submits the case to the honorable arbitrator in the firm belief that he will grant the total amount of damages claimed.

The party claimant notes that the printed copy of Exhibit I of the counter memorandum shows that Captain Furman wrote upon this document the following statement:

The position at noon was latitude $54^{\circ} 18'$ north and longitude $167^{\circ} 19'$ east. I was not on deck at the time the man-of-war was sighted and could not answer for the lights not being in order, and I also believed that I was breaking the laws or rules.

Although it is of little importance as regards the right of seizure and of confiscation of the vessel whether or not the captain thought he was violating the rules of navigation concerning the distinctive lights, it is very evident that herein is an error of some sort, either of transcription of the original or on the part of the captain in writing the note in question. The phrase as it appears in the printed copy is illogical, without meaning, and entirely non sequitur.

The phrase as it appears in the transcription begins by saying that the captain was ignorant of the absence of distinguishing lights, and then, although using the conjunction "also," he contradicts himself by saying: "I also believed I was breaking the laws or rules." The most ignorant persons do not use the conjunction "also" to unite such expressions in English. It is quite evident that the captain intended to say, and probably really did say: "And I also believed I was breaking no laws or rules." The mere substitution of the word "the" for "no" strips the phrase of meaning instead of making it appear that the captain acknowledged himself guilty. Consequently the party claimant prays the honorable arbitrator to examine the original of this document, believing he will find that Captain Furman wrote:

The position at noon was latitude $54^{\circ} 18'$ north and longitude $167^{\circ} 19'$ east. I was not on deck at the time the man-of-war was sighted, and could not answer for the lights not being in order, and I also believed that I was breaking no laws or rules.

Which is evidently what he intended to say.

Again, it is possible that the captain, in the agitation of the moment, omitted the word "not."

However, the question of this phrase is not of great importance here because, even if the captain knew that he was at fault regarding the rules governing distinctive lights, it does not follow that he had trespassed upon Russian jurisdiction and does not justify the seizure and confiscation of the vessel.

UNITED STATES OF AMERICA,
Treasury Department, September 12, 1900.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true and correct copy of the original on file in the office of the Coast and Geodetic Survey in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

(Signed)

O. L. SPAULDING,
Acting Secretary of the Treasury.

[Seal of the Treasury Department.]

No. 5644.]

UNITED STATES OF AMERICA, *Department of State.*

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is under the seal of the Treasury Department and is entitled to full faith and credit.

In testimony whereof I, John Hay, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 13th day of September, A. D. 1900, and of the independence of the United States of America the one hundred and twenty-fifth.

(Signed)

JOHN HAY.

[Seal: "Department of State of the United States of America."]

EMBASSY OF THE UNITED STATES OF AMERICA, *St. Petersburg.*

I, Herbert H. D. Peirce, secretary of the embassy of the United States of America at St. Petersburg, agent and counsel for the United States, hereby certify that the documents hereto annexed are true copies of the originals submitted to the honorable arbitrator, Mr. T. M. C. Asser, the copy of the map hereto annexed being a true copy of that part of a map published by the United States Coast Survey showing the Comandorski Islands.

In witness whereof I have hereunto subscribed my name and affixed the seal of the embassy of the United States at St. Petersburg this fifth day of August, in the year one thousand nine hundred and one.

(Signed)

HERBERT H. D. PEIRCE.

[Seal of the United States embassy at St. Petersburg.]

FOURTH CASE.

The Kate and Anna.

In this case the defendant party does not dispute that an indemnity is due to the owner of the vessel for the seal skins confiscated, but it disagrees with the party claimant upon the price of the skins.

Now, it was shown in the memorandum that the skins taken from aboard this vessel in the beginning of the season were sold at the rate of \$14 each. This fact is not denied by the defendant party. It is content with the argument that the skins in question were not upon the London market, but in Bering Sea, and that the price should be reduced on account of that fact, because it would have cost something to transport them from where they were seized to London; consequently it proposes the price of \$10 apiece.

The defendant party does not show whereon it bases this estimate of the cost of transporting the skins to London; but in any case, no claim for the reduction of price should be admitted.

The owner had the right to transport the skins in any way he chose, and the price he received in the beginning of the season, viz, \$14 apiece, is the only just estimate for his cargo.

The defendant party denies the sworn testimony of the master of the *Kate and Anna* concerning the orders which were given him by the commander of the Russian cruiser. It was shown that Captain Lutjens, as owner of the vessel, is a responsible man, and his sworn testimony should be believed until disproved.

He emphatically swore that the commander of the cruiser ordered him to "stop sealing and go home." This is denied by the defendant party, but without producing sufficient evidence to refute Lutjens's declaration. No denial on the part of the commander of the cruiser has been submitted, although it would have been easy to produce if the officer had been ready to solemnly deny that he had used that language.

The log book of the cruiser shows that the commander obtained an agreement signed by the master of the schooner "not to kill seals in Russian waters."

The question here is what the captain considered "Russian waters." He inscribed in the schooner's log book that "he was seized in 54° 9' north latitude and 168° 21' east longitude, though not exactly in Russian waters;" that is to say, that Russia claimed jurisdiction over the waters near the point where the seizure occurred, and which the defendant party does not deny was more than 30 miles from the Russian coasts. So it appears that the waters which are considered as belonging to Russia were well beyond ordinary marine jurisdiction.

It is quite probable that the report signed by the master of the *Kate and Anna* could be produced, and if it were of a character calculated to refute the statements of the master of the schooner it is difficult to

understand why it was not presented as evidence in the counter memorandum. In fact, the latter is the document in the Russian language which Captain Lutjens swore he was forced to sign, and which he did not understand.

But the arbitrary act of the commander of the cruiser in confiscating these skins on the grounds, as he himself said, that Lutjens could not prove that he had not taken them within Russian waters, although he had no reason for the supposition, showed the master of the schooner the sort of treatment he might expect if he should again be overhauled by a Russian cruiser.

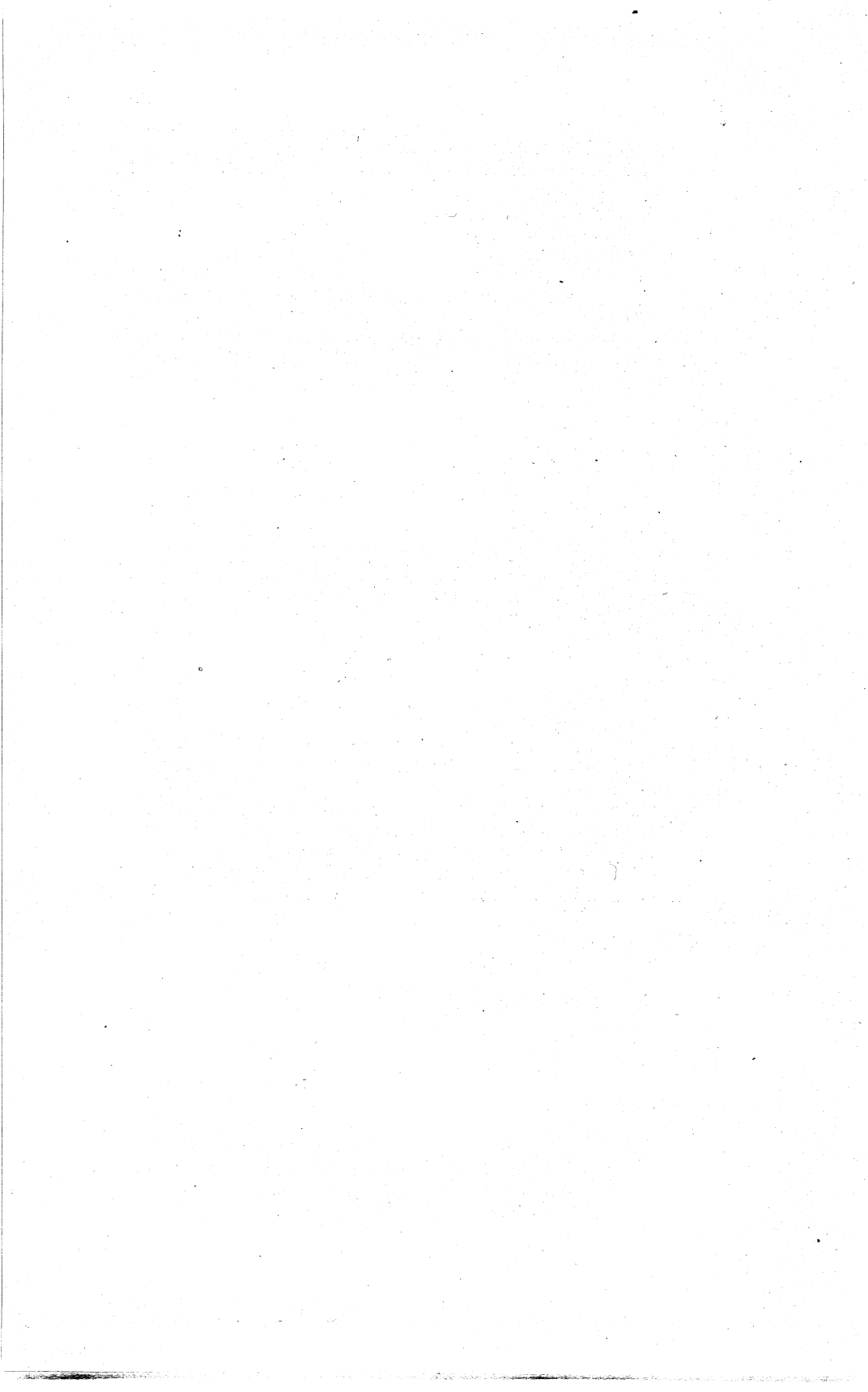
It is not to be supposed that the owner and master of the vessel would abandon his business in the middle of the season if he had been allowed the liberty of continuing it. The testimony submitted in the memorandum in support of the claims for the seizure of the *James Hamilton Lewis*, Exhibit F of said case, again cited here, shows plainly that Lutjens had no need to enter Russian jurisdictional waters to carry on his business. The only reasonable explanation of the abandonment of his voyage is found in his sworn declaration, viz, that he was ordered by the commander of the Russian cruiser to "stop sealing and go home."

Moreover, the admission of the defendant party that an indemnity is due for the seal skins confiscated by Captain de Livron constitutes a distinct admission that the position taken by the latter that the onus probandi that the skins were not taken in Russian waters—that is to say, were not stolen—rests upon the master, is not tenable. It may be added that an officer whose views of personal rights are such that he considers one must prove that the goods in one's possession are not stolen in order to retain legitimate possession of them, would seem to be capable of entertaining different views from other people on the subject of navigating and fishing at sea.

The question of measuring the damages by loss of catch has been considered in the memorandum as well as in the preamble of this rejoinder to the counter memorandum.

The case of the defendant party must be considered as being entirely presented, in view of the fact that the terms of the protocol do not admit of the party claimant presenting new proofs.

The party claimant therefore rests in the firm belief that the honorable arbitrator will in his award allow the total amount of indemnity claimed.



SURREJOINDER

OF THE

PARTY DEFENDANT TO THE REJOINDER OF THE PARTY CLAIMANT TO
THE COUNTER MEMORANDUM OF THE RUSSIAN GOVERNMENT
PRESENTED TO THE HONORABLE ARBITRATOR,
MR. T. M. C. ASSER, COUNSELOR OF
STATE OF THE NETHERLANDS.

IN THE ARBITRATION FOR THE PURPOSE OF ADJUSTING THE DIFFERENCES BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA, PARTY CLAIMANT, AND THE
IMPERIAL RUSSIAN GOVERNMENT, PARTY DEFENDANT, RELATIVE TO THE ARRESTS
AND SEIZURES OF THE AMERICAN VESSELS *CAPE HORN PIGEON*, *JAMES HAMILTON
LEWIS*, *C. H. WHITE*, AND *KATE AND ANNA*.

ST. PETERSBURG.



SURREJOINDER OF THE PARTY DEFENDANT.

The Imperial Russian Government having noted the rejoinder of the party claimant to the Russian counter memorandum in the affairs of the American vessels, *Cape Horn Pigeon*, *James Hamilton Lewis*, *C. H. White*, and *Kate and Anna*, has the honor to submit the following to the honorable arbitrator, Mr. Asser:

In setting forth in its counter memorandum the condition of facts regarding the reciprocal relations of the interested parties in the matter of the protection of the seals at the time when the aforesaid cases occurred, the defendant party called attention to the view that in this litigation it is not alone the opinions of eminent writers on international law on the subject of bordering marine jurisdiction which should be considered.

The defendant party believes itself all the more authorized to do this since the rules of procedure in the arbitration agreed upon between the two parties expressly stipulate that the arbitrator shall be governed in his award not only by the general principles of international law but also by the spirit of international agreements applicable to the subject. In the opinion of the defendant party the opinions cited by the writers in question have rather a theoretical bearing; but there are numerous cases where governments in view of certain interests and of administrative considerations have been obliged in special cases to recognize other solutions of the question of marine jurisdiction. The Government of the United States, the party claimant in the present action, has set up, with regard to the right of jurisdiction in this same Bering Sea, claims extending to much greater limits toward the British Government, as is shown in the acts of the tribunal of arbitration of Paris of August 15, 1893. The fact that the award of the tribunal did not recognize the legality of the said claims does not imply that such was not then the opinion of the United States on the subject of right of jurisdiction. In submitting in advance to the decisions of the arbitrator in 1893, the American Government only conformed to the attitude which each party takes when it resorts to arbitration. It is this same attitude of deference to the decision of the person chosen as arbitrator that the Imperial Government very naturally takes also in the present case.

As to the precedents evoked in the successive memoranda of the party claimant and which are invoked in support of the American demands the defendant party believes it necessary to make it evident that they could only have a consultative bearing. If one arbitrator in a given case renders his decisions inspired by certain principles another arbitrator even in a similar case may be guided by different views. In arbitrations jurisprudence, having the same sanctioning force of law as the sentences of the respective supreme courts in each country, does not exist. It is possible that this may be up to a certain point the case

in the future when the court of arbitration at The Hague, recently instituted, may be called upon to pronounce in a sufficient number of cases giving rise to litigation between governments on contended questions. But, as at present, the awards of arbiters have not been in any manner codified, and as each one of them has ruled on the view of principles of equity which have seemed to him applicable to each particular case, so in the present litigation the defendant party believes that it is justified in demanding that the case of the American vessels in question should be examined in the light of and taking into consideration the special and very exceptional conditions of the question of the protection of seals at the time when the seizures took place.

As in civil law, furthermore, recourse to arbitration is recourse to equity, and it is therefore that the parties agree upon it to settle difficulties.

Although this is no place to state the considerations of equity which may have guided the tribunal of 1893, still it seems admissible to state that in rightfully ruling against the pretensions of the United States to jurisdiction over the eastern half of Bering Sea it admitted that in fact, on a basis of agreement, this jurisdiction might be extended to 60 miles from the American shores of the Pribilof Islands. There was here set forth an exceptional situation. This gave, in a spirit of equity, a certain satisfaction to the claims of the two parties responding to the local necessities.

It is true that the present defendant party was not a participant in the arbitration of 1893; it had not for its part claimed at that time a right of jurisdiction over the western part of Bering Sea equal to that claimed by the United States over the eastern half, but the United States then set up the right of substitution, occupying the place of Russia which formerly, when it still possessed both sides of the said sea, considered it as closed. Russia had ceased to claim a right of total jurisdiction before even she ceded the territory of Alaska to the United States. If the United States obtained, as the result of the arbitration of 1893, the recognition of a jurisdiction of 60 miles around the Pribilof Islands, is it in virtue of the argument that Russia could not set up the claim for her part if she had found it advantageous, since the situation in the eastern part of Bering Sea is not analogous to that of the western part? The arbitration of 1893 only admitted in favor of the United States the interdiction of sealing to the extent of 60 miles around the American coasts in virtue of considerations applicable to the entire sea—that is to say, to the Russian coasts as well as to the American coasts—and not at all because of a special title of America or of a different situation on the west coast than on the east coast. On a basis that that had become its right as one emanating from that of Russia, the present party claimant could only consider the right of the Russian Government as at least equal to its own. The award of the tribunal of 1893 took into consideration the exceptional situation of the American Government with regard to the protection of its interests in the Bering Sea; but the American Government, which took its stand on the ground of its rights and which set forth the existence of the act of cession in 1867, was not in a position to contest before 1893 that the right of Russia was preexistent, and therefore that the Russian Government could not sustain on her side the same pretensions.

Since the award of the tribunal of 1893 in the difference between England and the United States was rendered (Exhibit A) Russia has

not claimed for itself a jurisdiction of 60 miles around its shores in the Bering Sea as that recognized for the United States. It had already taken, previous to this, certain measures, such as sending Russian cruisers into these waters. As early as the year 1881 the chief of administration of the Commander Islands had published in Japan a notice stating the interdiction for the year 1882 of hunting sea animals in the waters of eastern Siberia under pain of confiscation of vessels. A similar notice was published at San Francisco to bring these measures to the knowledge of Americans engaged in the said hunting.

But after an influx of English and American marauders in 1891, when, in consequence of the arrangement of that year between the United States and England, sealing in the eastern part of Bering Sea was interdicted, the measures of protection by Russia were already reenforced. In 1892 the Russian Government instituted a commission under the presidency of Privy Counselor Kapoustine for the purpose of establishing the necessary measures to prevent the extermination of the seals. The commission was inspired in this respect by the principle of force majeure and the protection of the legitimate interests of Russia. Without ignoring the utility of a subsequent international arrangement, which it had on the contrary recommended, it was of the opinion that it was necessary to take certain original measures to interdict foreign vessels from sealing to the distance of 10 miles along the Russian coast and 30 miles along the Commander Islands and the island of Tuleni. The necessity of these two measures had become imperious because of the very exceptional condition or situation caused to Russian industrial companies engaged in sealing by the great number of Canadian and American poaching vessels.

At the time when the commission published its notice—that is to say, January 17, 1893—the tribunal of arbitration of Paris had not yet rendered its award. The United States maintained before that tribunal pretensions very much greater with regard to marine jurisdiction, and the general attitude taken by the American Government as regards the interest of the preservation of seals did not admit of the doubt that it entertained the views advanced by the Government of Russia and approved as minimum the measures taken by the latter, if indeed it did not find them quite insufficient. The question of fixing the right of jurisdiction of the United States was then in suspense, and England, previous to the session of the commission of Kapoustine, while taking the view that the jurisdiction of Russia in the western part of Bering Sea only extended to strictly territorial waters, recognized that the interdictions were in doubt as to the limits of the extent of sea where sealing was interdicted by the Government of Russia.

The Imperial Government simply informed the British ambassador of the decisions which it had taken following the notice of the commission of Kapoustine, and the English Government declared its right to enter into an agreement on this basis, and it was thus that it was concluded by an exchange of notes in 1893 with England relative to the protection of seals in the western part of Bering Sea; but at this time the exceptional character of the situation was again brought by the Russian Government to the attention of England by means of a declaration made simultaneously with the exchange of notes that Russia did not intend to prejudice the right of a state to extend bordering jurisdiction in certain special cases beyond the limit of strictly territorial waters. As to the Cabinet of Washington, when it received the

communication of the Anglo-Russian agreement, it seemed insufficient, in view of the general interest of the protection of seals, since it demanded from the Russian Government to suspend execution of the decision taken, since its publication might have an unfortunate effect on the success of the claims presented to the tribunal of arbitration of Paris by the Federal Government. As a result of subsequent negotiations after the tribunal of Paris had already rendered its award and other combinations for a general agreement on the subject were put forward in succession, Russia concluded with the United States a similar arrangement with that with Great Britain. This arrangement bears the date of April 22 (May 4), 1894 (Exhibit B). The Russian Government, furthermore, made to the United States before concluding this arrangement the same reservations of principle as those made to England and which are mentioned above.

The effects of diplomatic order or of Russian interior administrative order which preceded the conclusion of the said arrangement are here set forth in Annex 1 to the present surrejoinder.

Unquestionably the Russian Government does not invoke in the present litigation the very letter of the arrangement of 1894, indeed article 5 of the act in question excludes all possibility of giving it a retroactive force in the literal sense of the term. In the course of the correspondence exchanged between the two cabinets with relation to the seizure of the four American vessels the Imperial Government has not acted on the ground of that agreement, which was made previous to the seizure. At the present time also as party defendant it limits itself to stating the situation of facts at that time which by prolongation obliged the resort to force majeure and the right of defense of legitimate interests; it also states that in 1891 and 1892 the United States partook entirely the Russian point of view on the subject of exceptional measures for the preservation of the seals and set forth to the British Government with regard to the protection of these animals the arguments which the Russian Government invoked also on its part except that the latter objected to the claim of jurisdiction over an entire half of Bering Sea; the defendant party might therefore object to the party claimant that who claims the most ought to recognize the lesser claims made at the same time.

The defendant party states further that the Government of the United States could not consider the western half of Bering Sea as being under different conditions from the eastern half and it in the course of the negotiations themselves offered to engage to apply to the western extent of the said sea the conditions of the award of Paris with all its consequences. And it is for these reasons that the party defendant believes that it may rest upon the rights accorded to it by the awards of the arbitration of August 26 (September 8), 1900, making itself a party under those general principles of international law which include equally force majeure and the right of legitimate defense and in invoking the spirit if not the letter of international agreements applicable to the subject this spirit extends to the entire assembly of points on which basis is made manifest the solidarity between the two Governments in the course of the development of this question as it is related in Annex 1.

The condition of facts as they presented themselves at that time was as follows: The two Governments had an equal interest in the efficacious and energetic suppression of poaching. But there stood in the

way of this suppression the extent of space to patrol, the necessarily limited number of war vessels for the right of capture, a number which even if it was augmented would never be able to be entirely sufficient, finally the paucity of inhabitants of the shores. The following is a list of Russian vessels of war charged with the services of patrol in the western part of Bering Sea from 1891 to 1895: The schooner *Aleout*, which left Vladivostok for that purpose June 29, 1891, the cruiser *Zabiaka*, in 1892, the cruiser *Zabiaka* and the transport *Vakout* in 1893, the cruisers *Zabiaka* and *Razboinik*, as well as the transport *Vakout* in 1894 and the transport *Vakout* in 1895.

With regard to the destructive action which the poaching vessels then exercised the party defendant can not do better than to refer to the exhibits presented by the Government of the United States to the tribunal of arbitration of Paris; the considerations which they present with regard especially to the mode of life of the seals which rendered it particularly necessary to protect the females. The condition of facts as regards this destructive action is even set forth in Annex 2 of the present rejoinder.

It is indeed on the manner of life of the seals that the delegates of the United States to the tribunal of arbitration of Paris in 1893 based a part of their claim of the right of property of the American Government in these animals whether within or without the limit of territorial waters. The award of the tribunal did not admit this right, but in fact, as has been said before, it took into account the peculiar situation of the United States. This theory was formulated again in the brochure, which the American delegates, Messrs. Morgan and Harlan, published on their return from the tribunal of arbitration, and which contains an exposé of the points of view held by them in the name of their Government. The brochure is entitled Bering Sea Tribunal of Arbitration—Opinions of Mr. Justice Harlan and Senator Morgan. Here is a résumé of these opinions:

The seal herds which frequent the islands of St. Paul and St. George in Bering Sea when they have reached the ocean outside of the ordinary distance of 3 miles from the coast constitute the property of the United States; and when these animals, according to their natural habits, betake themselves to the above-mentioned islands for the purpose of reproduction the United States in their capacity of proprietors of these islands and of the animals which occupy them have the right to apply for the defense of the seals, against their capture at sea, measures, the application of which is the right of private individuals, for the safe-guarding of their interests (pp. 186 and 204).

Independently of the right of property in the herds the United States in their capacity as proprietors of the industry exercised by their authority on the islands of St. Paul and St. George, and in virtue of the right of self-protection, are justified in employing such measures, including force, which may be necessary to prevent those acts which would result in the inevitable rapid extermination of this race of animals forming the object of that industry (p. 205).

In the second part of the brochure is found set forth the opinion developed by Mr. Morgan before the tribunal and according to which the rights of the United States with regard to the seals are the same as those formerly enjoyed by Russia.

Mr. Morgan maintains that Russia has enjoyed its right of property with regard to the seals, exercising supervision over them in Bering

Sea and according to aliens certain privileges for making profits from these animals (p. 52). The property of the United States is established on the following basis:

First. The right existing ab initio and transmitted by Russia for the act of the state and of its nationals.

Second. The right of making laws to provide for the internal administration in a country without prejudice to the fact that the seals quit the islands for a certain length of time to search for food or even to pass later into the Pacific Ocean.

Third. The habits of the seals and their natural tendency, which obliges them to go to the Pribilof Islands.

Fourth. The necessity of governmental supervision over the seals to prevent their destruction. This supervision could not be effectively exercised except by the State on the territory where the animals are born and become its property resona.

Fifth. On the practical possession during ninety years (p. 55).

Under these circumstances the party claimant can not contest that if it acts in the present litigation as claimant in favor of certain of its citizens the defendant party represents the rights and interests of the Russian State, which, according to the theory maintained by the American delegates at the tribunal of Paris, have been injured by the acts of the persons engaged in hunting on the high seas, as shown in Annex 2. As is set forth in the said annex the acts committed by these vessels have brought loss upon the concessionary Russian company in their rights in the seals of Commander Islands, and consequently upon the Russian treasury, which has been obliged to reduce in consequence the agreements entered into by the treasury with that society.

The defendant party states that in the presence of the natural difficulties which the business of preservation of the seals presents the Russian Government has always believed that it should not add new obstacles by a too narrow interpretation of the right of seizure under urgent conditions to those already existing. In 1891 and 1892 there was need of immediate action, and the very dispositions arrived at after the meeting of Kapoustine's commission were judged later to have been insufficient. The Russian Government did not cease to call the attention of the British Government to the necessity of a less narrow interpretation of the right of seizure, and it could not be convinced that the Cabinet of Washington was inspired by narrower principles in this interpretation.

The condition of facts at this time responded then entirely to the case of force majeure and of legitimate defense, and if the arrangement of 1894 could not be considered as having literal and retroactive effect the Russian Government, which had enunciated before the conclusion of this agreement its reservation of principle to the American Government, had always insisted that the entire preceding negotiations and the general understanding on the subject in the case would be maintained.

When the Government of the United States brought up the question of indemnity for the American vessels seized by the Russian cruisers for poaching, it was this same spirit which the Russian Government invoked in the examination of these cases. The Cabinet at Washington, in December, 1895, requested to be informed as to what are the limits which the Russian Government claims for right of jurisdiction

in the waters of the Bering Sea. The imperial minister of foreign affairs, in a note dated the 5th (17th) of January, 1896, replied that the right of jurisdiction which Russia claimed is that stipulated in the arrangement of April 22 (May 4), 1894, concluded with the United States. No doubt the interest which the American Government had for the repression of poaching as efficaciously as possible, the minister of foreign affairs added, the United States itself claimed before the tribunal of Paris a jurisdiction still wider.

It is true that the Imperial Government, as you will kindly note, was not one of the parties between whom the differences submitted to arbitration occurred; that is to say, England and the United States. It is none the less justified in expecting that the Cabinet of Washington, which maintained before the tribunal of arbitration the most liberal doctrines, will not depart from those liberal views in the solution of the affair of the arrest of the American vessels, to which allusion was made in the foregoing note, although anterior to the agreement of 1894.

The note concludes in invoking force majeure and the right of legitimate defense in support of the seizures. (Exhibit C.)

It is this same spirit which inspired the previous communications, which the Imperial Government again invoke in this present controversy.

The party claimant has alleged in its reply to the Russian counter memorandum that the party defendant has maintained that the *modus vivendi* of 1891 between the United States and England was applicable to the present arbitration. The party defendant stated that owing to the conclusion of this *modus vivendi* there resulted a considerable influx of poaching vessels into the western part of Bering sea, a circumstance which obliged it to reenforce its measures of protection.

With regard to the question of damages again set forth in the above-mentioned response of the party claimant, the defendant party believes it its duty in the first place to refer to the general considerations developed above concerning the bearing of precedents in disputed questions submitted to arbitration. Without reverting to the opinions with regard to damages in certain previous arbitral decisions the defendant party renews the point of the consideration of the views set up by it, viz, that in the business of hunting the profits are entirely contingent. By its very essence and taken in the most general sense, the product of the chase is *res nullus* and only belongs to an individual when he is actually in possession of it; effective possession is only recognized when the game has been killed. There are doubtless preserved hunting grounds, and the state may take measures to regulate hunting or fishing within the limits over which its rights extend; but in the ordinary rule the ownership of a private individual only commences with possession. According to the laws of different countries on the subject, suppose that two hunters have followed the same wild boar; it does not belong to one of them until he has effectively got possession of it; it is not even sufficient in order to create property that he should have wounded it. It seems, therefore, to the defendant party that since in the matter of hunting there can only be property when there is actual possession, there can only be indemnity by the deprivation of something which belongs to another.

But if in general when it is a question of hunting living game without a fixed establishment the animal ought to be regarded as *res nullus*, and consequently its ownership is one acquired by an individual only when he has killed it. In the special case of seals by the nature of their

existence indemnity for indirect damages seems still more inadmissible. The defendant party considers that in this respect it may refer to the opinion cited before of Messrs. Morgan and Harlan, who continued to consider, even after the arbitral award of 1893, the seals as being the property of a state on the territory on which their periodical establishment is. If account ought to be taken of this theory, and in the present case the defendant party supposes that the party claimant could not deny it, having formerly sustained it, the deprivation of hypothetical profit resulting from the nontaking of that which in place of being simply *res nullus* and of not yet having in his possession, belonging, indeed, to another state, which was obliged to preserve it, could not afford basis of an indemnity.

The fact that the *modus vivendi* concluded between England and the United States in 1892 admitted in case American claims on the subject of wide jurisdiction in Bering Sea should not be recognized as legitimate by the tribunal at Paris the Federal Government should indemnify the subjects of Great Britain for having abstained from hunting seals during the course of the proceedings in arbitration does not appear to the defendant party as applicable to the present case. In the first place, it was the question of an interdiction of hunting from the entire eastern half of Bering Sea, which constituted a prohibition and consequently an injury much greater caused to the hunting industry and, further, it depended on the contracting States within the limits determined to make a contract between themselves on the subject of indemnity with obligations such as they judged fit. The defendant party has made no engagement in this respect, and on this point it submits itself to the equity of the arbitrator.

The party claimant bringing up again the bad treatment to which certain officers and crews of vessels in question were submitted, the party defendant deems it its duty to observe the following: At the date, October 7 (19), 1891, the legation of the United States at St. Petersburg applied to the imperial ministry to demand its intervention to lend assistance to the captain of the American vessel, *James Hamilton Lewis*, who was in a very precarious situation at Vladivostok after his vessel had been confiscated. (Exhibit D.) The minister of foreign affairs responded the 24th of October, the same year that the captain in question received for his support a ruble and the sailors 50 kopeks per-day, and necessary measures had been taken provisionally by the local authorities in order that whatever was necessary should not be wanting. (Exhibit E.) After the communication of October, 1891, following the confiscation of the vessel, which took place in July of the same year, and against which no protestation on the part of the legation had been made at that time, the party claimant waited until July, 1894, to set up claims with regard to this seizure. It was then that the affair took the character of a difference of a diplomatic nature, and the correspondence with regard to it is to be found in the exhibits annexed to the American memorandum. Without wishing to insist on the motives which may have guided the Cabinet at Washington for deferring the presenting of its claim it may be permissible to state that in November, 1892, as is stated in Annex 1, the legation of the United States declared that the point of view and of action of the Russian Government with regard to poaching vessels was entirely conformable to the intentions and views of the Federal Government, and it expressed the hope that Russia would maintain this ground.

In the litigation now submitted to arbitration, as regards the point of bad treatment, we have on one hand the assertions of crews and companies engaged in an industry the general character of which, leaving aside exceptions, is set forth in Annex 2, and on the other hand the official declarations of the Russian marine authorities charged with a very painful service of state, in which they are only sustained by a profound sense of duty.

The defendant party, in maintaining the principles serving as the basis of the present arbitration, namely, the general principles of international law, including the right of legitimate defense and the case of force majeure, which is the basis of the position taken by it, and furthermore the spirit of international agreements applicable to the subject which in the course of negotiations have marked the solidarity and conformity of the general views between the United States and Russia in the question under consideration, stating, moreover, that the party claimant on account of the attitude taken by it formerly during and after the sittings of the Tribunal of Arbitration of Paris, can not fail to recognize the analogy of the situation of facts in the western half of Bering Sea and in the eastern half of the same sea; that it has in effect recognized this analogy, and that it has even declared in consequence, to the present defendant party, after the four cases of seizure, that the point of view of the Russian Government in its action with regard to poaching vessels was entirely conformable to the views of the United States; believing that the broad spirit in the examination of the case under consideration which the defendant party hoped to see manifest itself later by the party claimant, found expression, on the part of the defendant party, in the equitable character which the latter intended to give to its recognition of the right of the claimant party to obtain on certain points an indemnity, the amount of which is indicated in the Russian counter memorandum, renews the opinion expressed in the said counter memorandum, rejecting the other parts of the demands formulated in the American memorandum, and again submits itself in this respect to the equitable judgment of the arbitrator.

EXHIBIT A.

[English version.]

AWARD OF THE TRIBUNAL OF ARBITRATION CONSTITUTED UNDER THE TREATY CONCLUDED AT WASHINGTON, THE 29TH OF FEBRUARY, 1892, BETWEEN THE UNITED STATES OF AMERICA AND HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND.

Whereas, by a treaty between the United States of America and Great Britain, signed at Washington February 29, 1892, the ratifications of which by the Governments of the two countries were exchanged at London on May the 7th, 1892, it was, amongst other things, agreed and concluded that the questions which had arisen between the Government of the United States of America and the Government of Her Britannic Majesty, concerning the jurisdictional rights of the United States in the waters of Behring's Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seals in or habitually resorting to the said waters, should be submitted to a tribunal of arbitration to be composed of seven arbitrators, who should be appointed in the following manner, that is to say: Two should be named by the President of the United States; two should be named by Her Britannic Majesty; His Excellency the President of the French Republic should be jointly requested by the high contracting parties to name one; His Majesty the

King of Italy should be so requested to name one; His Majesty the King of Sweden and Norway should be so requested to name one; the seven arbitrators to be so named should be jurists of distinguished reputation in their respective countries, and the selecting powers should be requested to choose, if possible, jurists who are acquainted with the English language;

And whereas it was further agreed by Article II of the said treaty that the arbitrators should meet at Paris within twenty days after the delivery of the counter-cases mentioned in Article IV, and should proceed impartially and carefully to examine and decide the questions which had been or should be laid before them as in the said treaty provided on the part of the Governments of the United States and Her Britannic Majesty, respectively, and that all questions considered by the tribunal, including the final decision, should be determined by a majority of all the arbitrators;

And whereas, by Article VI of the said treaty, it was further provided as follows: "In deciding the matters submitted to the said arbitrators, it is agreed that the following five points shall be submitted to them in order that their award shall embrace a distinct decision upon each of said five points, to wit:

"1. What exclusive jurisdiction in the sea now known as the Behring's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?"

"2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?"

"3. Was the body of water now known as the Behring's Sea included in the phrase *Pacific Ocean*, as used in the treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring's Sea were held and exclusively exercised by Russia after said treaty?"

"4. Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring's Sea east of the water boundary, in the treaty between the United States and Russia of the 30th of March, 1867, pass unimpaired to the United States under that treaty?"

"5. Has the United States any right, and if so, what right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary three-mile limit?"

And whereas, by Article VII of the said treaty, it was further agreed as follows:

"If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of regulations for the proper protection and preservation of the fur seal in, or habitually resorting to, the Behring Sea, the arbitrators shall then determine what concurrent regulations, outside the jurisdictional limits of the respective governments, are necessary, and over what waters such regulations should extend."

"The high contracting parties furthermore agree to cooperate in securing the adhesion of other powers to such regulations;"

And whereas, by Article VIII of the said treaty, after reciting that the high contracting parties had found themselves unable to agree upon a reference which should include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented, and urged by it, and that "they were solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions," the high contracting parties agreed that "either of them might submit to the arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability of either Government upon the facts found to be the subject of further negotiation;"

And whereas the President of the United States of America named the Honourable John M. Harlan, justice of the Supreme Court of the United States, and the Honourable John T. Morgan, Senator of the United States, to be two of the said arbitrators, and Her Britannic Majesty named the Right Honourable Lord Hannen and the Honourable Sir John Thompson, minister of justice and attorney-general for Canada, to be two of the said arbitrators, and His Excellency the President of the French Republic named the Baron de Courcel, senator, ambassador of France, to be one of the said arbitrators, and His Majesty the King of Italy named the Marquis Emilio Visconti Venosta, former minister of foreign affairs and senator of the Kingdom of Italy, to be one of the said arbitrators, and His Majesty the King of Sweden and Norway named Mr. Gregers Gram, minister of state, to be one of the said arbitrators;

And whereas we, the said arbitrators, so named and appointed, having taken upon ourselves the burden of the said arbitration, and having duly met at Paris, proceeded

impartially and carefully to examine and decide all the questions submitted to us, the said arbitrators, under the said treaty, or laid before us as provided in the said treaty on the part of the Governments of Her Britannic Majesty and the United States, respectively;

Now we, the said arbitrators, having impartially and carefully examined the said questions, do in like manner by this our award decide and determine the said questions in manner following, that is to say, we decide and determine as to the five points mentioned in Article VI as to which our award is to embrace a distinct decision upon each of them:

As to the first of the said five points, we, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said arbitrators, do decide and determine as follows:

By the ukase of 1821 Russia claimed jurisdiction in the sea now known as the Behring's Sea, to the extent of 100 Italian miles from the coasts and islands belonging to her, but in the course of the negotiations which led to the conclusion of the treaties of 1824 with the United States and of 1825 with Great Britain, Russia admitted that her jurisdiction in the said sea should be restricted to the reach of cannon shot from shore, and it appears that, from that time up to the time of the cession of Alaska to the United States, Russia never asserted in fact or exercised any exclusive jurisdiction in Behring's Sea or any exclusive rights in the seal fisheries therein beyond the ordinary limit of territorial waters.

As to the second of the said five points, we, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said arbitrators, do decide and determine that Great Britain did not recognize or concede any claim upon the part of Russia to exclusive jurisdiction as to the seal fisheries in Behring Sea, outside of ordinary territorial waters.

As to the third of the said five points, as to so much thereof as requires us to decide whether the body of water now known as the Behring Sea was included in the phrase "Pacific Ocean" as used in the treaty of 1825 between Great Britain and Russia, we, the said arbitrators, do unanimously decide and determine that the body of water now known as the Behring Sea was included in the phrase "Pacific Ocean" as used in the said treaty.

And as to so much of the said third point as requires us to decide what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after the said treaty of 1825, we, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said arbitrators, do decide and determine that no exclusive rights of jurisdiction in Behring Sea, and no exclusive rights as to the seal fisheries therein, were held or exercised by Russia outside of ordinary territorial waters after the treaty of 1825.

As to the fourth of the said five points, we, the said arbitrators, do unanimously decide and determine that all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea, east of the water boundary, in the treaty between the United States and Russia of the 30th March, 1867, did pass unimpaired to the United States under the said treaty.

As to the fifth of the said five points, we, the said Baron de Courcel, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and M. Gregers Gram, being a majority of the said arbitrators, do decide and determine that the United States has not any right of protection or property in the fur seals frequenting the islands of the United States in Behring Sea, when such seals are found outside the ordinary three-mile limit.

And whereas the aforesaid determination of the foregoing questions as to the exclusive jurisdiction of the United States mentioned in Article VI leaves the subject in such a position that the concurrence of Great Britain is necessary to the establishment of regulations for the proper protection and preservation of the fur seal in or habitually resorting to the Behring Sea, the tribunal having decided by a majority as to each article of the following regulations, we, the said Baron de Courcel, Lord Hannen, Marquis Visconti Venosta, and Mr. Gregers Gram, assenting to the whole of the nine articles of the following regulations, and being a majority of the said arbitrators, do decide and determine, in the mode provided by the treaty, that the following concurrent regulations outside the jurisdictional limits of the respective governments are necessary and that they should extend over the waters hereinafter mentioned, that is to say:

ARTICLE 1.

The Governments of the United States and of Great Britain shall forbid their citizens and subjects respectively to kill, capture, or pursue at any time and in any manner whatever the animals commonly called fur seals within a zone of sixty miles around the Pribilof Islands, inclusive of the territorial waters.

The miles mentioned in the preceding paragraph are geographical miles, of sixty to a degree of latitude.

ARTICLE 2.

The two Governments shall forbid their citizens and subjects, respectively, to kill, capture, or pursue, in any manner whatever, during the season extending each year from the 1st of May to the 31st of July, both inclusive, the fur seals on the high sea, in the part of the Pacific Ocean, inclusive of the Behring Sea, which is situated to the north of the 35th degree of north latitude and eastward of the 180th degree of longitude from Greenwich till it strikes the water boundary described in Article 1 of the treaty of 1867 between the United States and Russia, and following that line up to Behring Straits.

ARTICLE 3.

During the period of time and in the waters in which the fur-seal fishing is allowed only sailing vessels shall be permitted to carry on or take part in fur-seal fishing operations. They will, however, be at liberty to avail themselves of the use of such canoes or undecked boats, propelled by paddles, oars, or sails, as are in common use as fishing boats.

ARTICLE 4.

Each sailing vessel authorized to fish for fur seals must be provided with a special license issued for that purpose by its Government, and shall be required to carry a distinguishing flag to be prescribed by its Government.

ARTICLE 5.

The masters of the vessels engaged in fur-seal fishing shall enter accurately in their official log book the date and place of each fur-seal fishing operation, and also the number and sex of the seals captured upon each day. These entries shall be communicated by each of the two Governments to the other at the end of each fishing season.

ARTICLE 6.

The use of nets, firearms, and explosives shall be forbidden in the fur-seal fishing. This restriction shall not apply to shotguns when such fishing takes place outside of Behring's Sea, during the season when it may be lawfully carried on.

ARTICLE 7.

The two Governments shall take measures to control the fitness of the men authorized to engage in fur-seal fishing; these men shall have been proved fit to handle with sufficient skill the weapons by means of which this fishing may be carried on.

ARTICLE 8.

The regulations contained in the preceding articles shall not apply to Indians dwelling on the coasts of the territory of the United States or of Great Britain, and carrying on fur-seal fishing in canoes or undecked boats not transported by or used in connection with other vessels and propelled wholly by paddles, oars, or sails, and manned by not more than five persons each in the way hitherto practised by the Indians, provided such Indians are not in the employment of other persons and provided that, when so hunting in canoes or undecked boats, they shall not hunt fur seals outside of territorial waters under contract for the delivery of the skins to any persons.

This exemption shall not be construed to affect the municipal law of either country, nor shall it extend to the waters of Behring Sea or the waters of the Aleutian Passes.

Nothing herein contained is intended to interfere with the employment of Indians as hunters or otherwise in connection with fur-sealing vessels as heretofore.

ARTICLE 9.

The concurrent regulations hereby determined with a view to the protection and preservation of the fur seals shall remain in force until they have been, in whole or in part, abolished or modified by common agreement between the Governments of the United States and of Great Britain.

The said concurrent regulations shall be submitted every five years to a new examination, so as to enable both interested Government to consider whether, in the light of past experience, there is occasion for any modification thereof.

And whereas the Government of Her Britannic Majesty did submit to the tribunal of arbitration by Article VIII of the said treaty certain questions of fact involved in the claims referred to in the said Article VIII, and did also submit to us, the said tribunal, a statement of the said facts, as follows, that is to say:

“FINDINGS OF FACT PROPOSED BY THE AGENT OF GREAT BRITAIN AND AGREED TO AS PROVED BY THE AGENT FOR THE UNITED STATES, AND SUBMITTED TO THE TRIBUNAL OF ARBITRATION FOR ITS CONSIDERATION.

“1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the schedule to the British case, pages 1 to 60, inclusive, were made by the authority of the United States Government. The questions as to the value of the said vessels, or their contents, or either of them, and the question as to whether the vessels mentioned in the schedule to the British case, or any of them, were wholly or in part the actual property of citizens of the United States, have been withdrawn from and have not been considered by the tribunal, it being understood that it is open to the United States to raise these questions, or any of them, if they think fit, in any future negotiations as to the liability of the United States Government to pay the amounts mentioned in the schedule to the British case.

“2. That the seizures aforesaid, with the exception of the “Pathfinder,” seized at Neah-Bay, were made in Behring Sea at the distances from shore mentioned in the schedule annexed hereto marked ‘C.’

“3. That the said several searches and seizures of vessels were made by public armed vessels of the United States, the commanders of which had, at the several times when they were made, from the executive department of the Government of the United States, instructions, a copy of one of which is annexed hereto marked ‘A,’ and that the others were, in all substantial respects, the same; that in all the instances in which proceedings were had in the district courts of the United States resulting in condemnation, such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto marked ‘B,’ and that the libels in the other proceedings were in all substantial respects the same; that the alleged acts or offences for which said several searches and seizures were made were in each case done or committed in Behring Sea at the distances from shore aforesaid; and that in each case in which sentence of condemnation was passed, except in those cases when the vessels were released after condemnation, the seizure was adopted by the Government of the United States; and in those cases in which the vessels were released the seizure was made by the authority of the United States; that the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in Behring Sea at the distances from the shore aforesaid.

“4. That the several orders mentioned in the schedule annexed hereto and marked ‘C’ warning vessels to leave or not to enter Behring Sea were made by public armed vessels of the United States, the commanders of which had, at the several times when they were given, like instructions as mentioned in finding 3, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States.

“5. That the district courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the schedule to the case of Great Britain, pages 1 to 60, inclusive, had all the jurisdiction and powers of courts of admiralty, including the prize jurisdiction, but that in each case the sentence pronounced by the court was based upon the grounds set forth in the libel.”

ANNEX A.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, April 21, 1886.

SIR: Referring to Department letter of this date, directing you to proceed with the revenue steamer *Bear*, under your command, to the seal islands, etc., you are hereby

clothed with full power to enforce the law contained in the provisions of section 1956 of the United States Revised Statutes, and directed to seize all vessels and arrest and deliver to the proper authorities any or all persons whom you may detect violating the law referred to, after due notice shall have been given.

You will also seize any liquors or firearms attempted to be introduced into the country without proper permit, under the provisions of section 1955 of the Revised Statutes, and the proclamation of the President dated 4th February, 1870.

Respectfully, yours,

(Signed) C. S. FAIRCHILD,
Acting Secretary.

Captain M. A. HEALY,
Commanding Revenue Steamer *Bear*, San Francisco, California.

ANNEX B.

In the district court of the United States for the district of Alaska. August special term, 1886.

To the honorable Lafayette Dawson, judge of said District Court:

The libel of information of M. D. Ball, attorney for the United States for the district of Alaska, who prosecutes on behalf of said United States, and being present here in court in his proper person, in the name and on behalf of the said United States, against the schooner *Thornton*, her tackle, apparel, boats, cargo, and furniture, and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:

That Charles A. Abbey, an officer in the Revenue-Marine Service of the United States, and on special duty in the waters of the district of Alaska, heretofore, to wit, on the 1st day of August, 1886, within the limits of Alaska Territory, and in the waters thereof, and within the civil and judicial district of Alaska, to wit, within the waters of that portion of Behring Sea belonging to the said district, on waters navigable from the sea by vessels of 10 or more tons burden, seized the ship or vessel commonly called a schooner, the *Thornton*, her tackle, apparel, boats, cargo, and furniture, being the property of some person or persons to the said attorney unknown, as forfeited to the United States, for the following causes:

That the said vessel or schooner was found engaged in killing fur seal within the limits of Alaska Territory, and in the waters thereof, in violation of section 1956 of the Revised Statutes of the United States.

And the said attorney saith that all and singular the premises are and were true, and within the admiralty and maritime jurisdiction of this court, and that by reason thereof, and by force of the statutes of the United States in such cases made and provided, the afore mentioned and described schooner or vessel, being a vessel of over 20 tons burden, her tackle, apparel, boats, cargo, and furniture, became and are forfeited to the use of the said United States, and that said schooner is now within the district aforesaid.

Wherefore the said attorney prays the usual process and monition of this honourable court issue in this behalf, and that all persons interested in the before-mentioned and described schooner or vessel may be cited in general and special to answer the premises, and, all due proceedings being had, that the said schooner or vessel, her tackle, apparel, boats, cargo, and furniture, may, for the cause aforesaid, and others appearing, be condemned by the definite sentence and decree of this honourable court as forfeited to the use of the said United States, according to the form of the statute of the said United States in such cases made and provided.

(Signed) M. D. BALL,
United States District Attorney for the District of Alaska.

ANNEX C.

The following table shows the names of the British sealing vessels seized or warned by United States revenue cruisers, 1886-1890, and the approximate distance from land when seized. The distances assigned in the cases of the *Carolena*, *Thornton*, and *Onward* are on the authority of U. S. Naval Commander Abbey. (See 50th Congress, 2nd session, Senate Executive Documents N^o. 106, pp. 20, 30, 40.) The distances assigned in the cases of the *Anna Beck*, *W. P. Sayward*, *Dolphin*, and *Grace* are on the

authority of Captain Shepard, U. S. R. M. (Blue Book, United States, N^o. 2, 1890, pp. 80-82. See Appendix, Vol. III.)

Name of vessel.	Date of seizure.	Approximate distance from land when seized.	United States vessel making seizure.
Carolena	Aug. 1, 1886	75 miles	Corwin.
Thornton	do	70 miles	Do.
Onward	Aug. 2, 1886	115 miles	Do.
Favourite	do	Warned by Corwin in about same position as Onward.	
Anna Beck	July 2, 1887	66 miles	Rush.
W. P. Sayward	July 9, 1887	59 miles	Do.
Dolphin	July 12, 1887	40 miles	Do.
Grace	July 17, 1887	96 miles	Do.
Alfred Adams	Aug. 10, 1887	62 miles	Do.
Ada	Aug. 25, 1887	15 miles	Bear.
Triumph	Aug. 4, 1887	Warned by Rush not to enter Behring Sea.	
Juanita	July 31, 1889	66 miles	Rush.
Pathfinder	July 29, 1889	50 miles	Do.
Triumph	July 11, 1889	{ Ordered out of Behring Sea by Rush. (?) As to position when warned.	
Black Diamond	do	35 miles	Do.
Lily	Aug. 6, 1889	66 miles	Do.
Ariel	July 30, 1889	Ordered out of Behring Sea by Rush.	
Kate	Aug. 13, 1889	Do.	
Minnie	July 15, 1889	65 miles	Do.
Pathfinder	Mar. 27, 1890	Seized in Neah Bay ^a	Corwin.

^a Neah Bay is in the State of Washington, and the *Pathfinder* was seized there on charges made against her in the Behring Sea in the previous year. She was released two days later.

And whereas the Government of Her Britannic Majesty did ask the said arbitrators to find the said facts as set forth in the said statement, and whereas the agent and counsel for the United States Government thereupon in our presence informed us that the said statement of facts was sustained by the evidence, and that they had agreed with the agent and counsel for Her Britannic Majesty that we, the arbitrators, if we should think fit so to do, might find the said statement of facts to be true.

Now, we, the said arbitrators, do unanimously find the facts as set forth in the said statement to be true.

And whereas each and every question which has been considered by the tribunal has been determined by a majority of all the arbitrators;

Now, we, Baron de Courcel, Lord Hannen, Mr. Justice Harlan, Sir John Thompson, Senator Morgan, the Marquis Visconti Venosta, and Mr. Gregers Gram, the respective minorities not withdrawing their votes, do declare this to be the final decision and award in writing of this tribunal in accordance with the treaty.

Made in duplicate at Paris and signed by us the fifteenth day of August, in the year 1893.

And we do certify this English version thereof to be true and accurate.

ALPH. DE COURCEL.
 JOHN M. HARLAN.
 JOHN T. MORGAN.
 HANNEN.
 JNO. S. D. THOMPSON.
 VISCONTI VENOSTA.
 G. GRAM.

EXHIBIT B.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE IMPERIAL GOVERNMENT OF RUSSIA FOR A MODUS VIVENDI IN RELATION TO THE FUR-SEAL FISHERIES IN BEHRING SEA AND THE NORTH PACIFIC OCEAN.

*Signed at Washington May 4 (April 22), 1894.
Ratification advised by the Senate May 9, 1894.
Proclaimed May 12, 1894.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas an agreement for a *modus vivendi* between the Government of the United States and the Imperial Government of Russia, in relation to the fur-seal fisheries in Behring Sea and the North Pacific Ocean, was concluded on the 4th day of May, one thousand eight hundred and ninety-four, which agreement being in the English and French languages is word for word as follows:

Agreement between the Government of the United States and the Imperial Government of Russia for a modus vivendi in relation to the fur-seal fisheries in Behring Sea and the North Pacific Ocean.

Arrangement entre le Gouvernement des Etats-Unis et le Gouvernement Impérial de la Russie pour un modus vivendi concernant la pêche des phoques à fourrure dans la mer de Bering et l'Océan Pacifique de Nord.

For the purpose of avoiding difficulties and disputes in regard to the taking of fur-seal in the waters of Behring Sea and the North Pacific Ocean, and to aid in the preservation of seal life, the Government of the United States and the Imperial Government of Russia have entered into the following temporary agreement, with the understanding that it is not to create a precedent for the future, and that the contracting parties mutually reserve entire liberty to make choice hereafter of such measures as may be deemed best adapted for the protection of the fur-seal species, whether by means of prohibitive zones, or by the complete prohibition of pelagic sealing, or by appropriate regulation of seal hunting in the high seas.

1. The Government of the United States will prohibit citizens of the United States from hunting fur-seal within a zone of ten nautical miles along the Russian coasts of Behring Sea, and of the North Pacific Ocean, as well as within a zone of thirty nautical miles around the Komandorsky (Commander) Islands and Tuliengew (Robben) Island, and will promptly use its best efforts to ensure the observance of this prohibition by citizens and vessels of the United States.

2. Vessels of the United States engaged in hunting fur-seal in the above-mentioned zones outside of the territorial waters of Russia may be seized and detained by the naval or other duly commissioned officers of Russia; but they shall be handed over as soon as practicable to the naval or other commissioned officers of the United States or to the nearest authorities thereof. In case of

Afin d'éviter toutes contentions et controverses au sujet de la pêche des phoques à fourrure dans les eaux de la mer de Bering et de l'Océan Pacifique du Nord, et pour aider à la préservation de l'espèce, le Gouvernement des Etats-Unis et le Gouvernement Impérial de Russie ont conclu l'arrangement provisoire suivant, sans la réserve qu'à aucun titre il ne puisse servir de précédent, et que les parties contractantes conservent leur entière liberté dans l'avenir quant aux choix des moyens qu'elles jugeront le plus propre à la préservation des phoques à fourrure, soit au moyen de zones prohibées, soit au moyen de l'interdiction complète de la chasse pélagique du phoque ou de sa réglementation en pleine mer.

1. Le Gouvernement des Etats-Unis défendra aux citoyens des Etats-Unis de chasser le phoque à fourrure dans une zone de dix milles maritimes le la côte russe de la mer Bering et de l'Océan Pacifique du Nord, ainsi que dans une zone de trente milles maritimes au tour des îles Kommandorsky (Commander Islands) et de l'île Tuliengew (Robben Island), et prendra sans retard les mesures nécessaires pour faire respecter cette interdiction par les citoyens et les navires des Etats-Unis.

2. Les navires appartenant aux Etats-Unis se livrant à la chasse aux phoques à fourrure dans les zones susmentionnées en dehors des eaux territoriales de la Russie, pourront être saisis et détenus par les officiers russes de la marine ou tout autre officier dûment autorisés à cet effet, mais ils devront être remis aussitôt que faire se pourra, aux officiers de la marine fédérale ou à tout autre officier

impediment or difficulty in so doing, the commander of the Russian cruiser may confine his action to seizing the ship's papers of the offending vessels in order to deliver them to a naval or other commissioned officer of the United States, or to communicate them to the nearest authorities of the United States as soon as possible.

3. The Government of the United States agrees to cause to be tried by the ordinary courts, with all due guarantees of defense, such vessels of the United States as may be seized, or the ship's papers of which may be taken, as herein prescribed, by reason of their engaging in the hunting of fur seal within the prohibited zones outside of the territorial waters of Russia aforesaid.

4. The Imperial Russian Government will limit to 30,000 head the number of fur seal to be taken during the year 1894, on the coasts of the Komandorsky (Commander) and Tulienev (Robben) Islands.

5. The present agreement shall have no retroactive force as regards the seizure of any seal-hunting vessel of the United States by the naval or other commissioned officers of Russia prior to the conclusion hereof.

6. The present agreement, being intended to serve the purpose of a mere provisional expedient to meet existing circumstances, may be terminated at will by either party upon giving notice to the other.

In witness whereof, we, Walter Q. Gresham, Secretary of State of the United States, and Prince Grégoire Cantacuzène, envoy extraordinary and minister plenipotentiary of His Majesty the Emperor of all the Russias, have, on behalf of our respective Governments, signed and sealed this agreement in duplicate, and in the English and French languages, in the city of Washington, this 4 May (22 April), 1894.

WALTER Q. GRESHAM [SEAL.]
PRINCE CANTACUZENE [SEAL.]

And whereas the Senate by their resolution of May 9, 1894 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the same.

Now, therefore, be it known that I, Grover Cleveland, President of the United States of America, have caused the said agreement to be made public, to the end that the same and every part thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twelfth day of May, in the year of our Lord [SEAL.] one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and eighteenth.

GROVER CLEVELAND.

By the President:

W. Q. GRESHAM, *Secretary of State.*

autorisé à cet effet ou aux autorités des Etats-Unis, les plus proches. En cas d'empêchement ou de difficulté, le commandant du croiseur russe pourra se borner à saisir les papiers de bord des navires en contravention afin de les remettre à un officier de la marine ou à tout autre officier autorisé à cet effet des Etats-Unis, ou pour les transmettre le plus tôt possible aux autorités des Etats-Unis les plus proches.

3. Le Gouvernement des Etats-Unis s'engage à faire juger par les tribunaux ordinaires et offrant toutes les garanties nécessaires, les navires des Etats-Unis arrêtés ou ceux dont les papiers de bord seraient saisis de la manière prescrite dans le présent arrangement, comme s'étant livrés à la chasse aux phoques à fourrure dans la zone prohibée en dehors des eaux territoriales Russes.

4. Le Gouvernement Impérial limitera à trente mille le nombre des phoques à fourrure qui pourront être tués pendant l'année 1894 sur les côtes des îles Kommandorsky et Tulienev (Commander and Robben's Islands).

5. L'arrangement actuel n'aura pas de force rétrospective quant à la saisie de navires des Etats-Unis employés à la chasse aux phoques, par les officiers de la marine ou par tout autre officier russe antérieurement à la conclusion du présent arrangement.

6. Le présent arrangement n'étant qu'un expédient essentiellement provisoire, pourra être terminé par l'une ou l'autre des deux parties en le dénonçant.

En foi de quoi, nous, Walter Q. Gresham, Secrétaire d'Etat des Etats-Unis, et Prince Grégoire Cantacuzène, envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur de toutes les Russies près les Etats-Unis, avons, au nom de nos Gouvernements respectifs, signés le présent arrangement en duplicata dans les langues anglaise et française, et y avons apposé nos sceaux, à Washington ce 4 mai (22 avril) 1894.

EXHIBIT C.

NOTE FROM THE MINISTER OF FOREIGN AFFAIRS OF RUSSIA TO THE MINISTER OF THE UNITED STATES OF NORTH AMERICA AT ST. PETERSBURG, JANUARY 5, 1896, No. 49.

I have had the honor to receive your note of the 5th (17th) December, 1895, in which, by order of your Government, you ask to be informed what are the limits over which the Imperial cabinet reserves unto itself the right of jurisdiction in the waters of Bering Sea.

The Imperial Government, having entered upon an agreement with that of the United States under date of April 22 (4th May), 1894, fixing at 10 maritime miles along the Russian coast, and at 30 miles around the Commander and Tulienu islands as the prohibited zone for fur-seal fishing, the determination of the limits within which the Russian Government reserves the right of jurisdiction in this matter can only conform with the stipulations of the agreement now in force.

The point of view which the Imperial Government has not ceased to take in this affair has always been that of the interest it has in suppressing in a manner as efficacious as possible illegal fur-sealing in the immediate neighborhood of Russian possessions; and we do not doubt that the United States Government is equally impressed with the necessity for that suppression, because the abuses of that industry might result so prejudicially for all of the countries interested in the complete destruction of that race of animals.

Before the arbitration tribunal of Paris, of which mention is made in the aforesaid note, the United States has even claimed a right of jurisdiction still more extended.

If it is true that the Imperial Government, as you will kindly note, was not one of the parties between whom arose the difference submitted to arbitration—that is to say, England and the United States—it is no less justified in expecting that the Cabinet at Washington which sustained before the arbitration tribunal the broadest doctrines will not depart from those broad views in the solution of the affairs of the seizure of American vessels to which allusion is made in the aforesaid note, although previous to the conclusion of the agreement of 1894.

We are convinced that the Federal Government, in view of the principles which it sustained before the arbitration tribunal of Paris, will recognize the case of force majeure and the right of legitimate defense, in virtue of which the vessels engaged in destructive sealing within the zone of 30 miles around Commander Islands were captured—rights which the United States did not hesitate to sanction later by a dual agreement.

Please to accept, etc.

LOBANOW.

EXHIBIT D.

NOTE OF THE MINISTER OF THE UNITED STATES OF NORTH AMERICA AT ST. PETERSBURG TO THE GERANT OF THE RUSSIAN MINISTRY OF FOREIGN AFFAIRS, DATED OCTOBER 7 (19), 1891.

My Government advises me by telegraph that it is reported that 17 seamen of the confiscated sealing schooner *James Hamilton Lewis* of San Francisco are destitute and starving at Vladivostok, and that the Russian authorities will not permit their departure. My Government instructs me to request prompt investigation and relief.

In obedience to this instruction, I have the honor, renewing my personal representation of to-day, to bring this report to the attention of your excellency, and to ask that an immediate inquiry may be made, and, if warrant is found for the statement, that the necessary measures of relief may be promptly taken.

I avail myself, etc.,

SMITH.

EXHIBIT E.

NOTE FROM THE MINISTER OF FOREIGN AFFAIRS OF RUSSIA TO THE MINISTER OF THE UNITED STATES OF NORTH AMERICA AT ST. PETERSBURG, OCTOBER 24, 1891, No. 3598.

I did not fail to communicate to whom it concerned the contents of the letter you had the kindness to address to me under date of the 7th October.

To-day I have the honor to inform you that, according to the information received from the governor-general of the territory of L'Amour, the crew of the schooner

James Hamilton Lewis, seized off the Medny Island for illegal sealing, is now at Vladivostok and receives for its maintenance, the captain 1 ruble, and the sailors each 50 kopecks per day, and that the necessary measures have been taken provisionally by the local authorities in order that they may not lack the necessities.

Please to accept, etc.,

DE GIERS.

ANNEX I.

RÉSUMÉ OF NEGOTIATIONS RELATIVE TO THE QUESTION OF THE PROTECTION OF SEALS, WHICH PRECEDED THE CONCLUSION OF THE ARRANGEMENT BETWEEN RUSSIA AND THE UNITED STATES, DATED APRIL 22 (MAY 4), 1894.

The right of legitimate defense of the Imperial Government against the acts of poaching in which Canadian and American vessels were engaged in the Russian waters of Bering Sea, which acts were considered by the United States as quite as prejudicial in the eastern part of the same sea, found expression in 1891 in the sending of a cruiser for the purpose of the necessary suppression.

In the month of September of the year 1892, the legation of the United States at St. Petersburg, on the occasion of the assemblage of the tribunal of arbitration of Paris, made known to the Imperial Government the point of view of the American Government in the question submitted to the tribunal. In November of the same year the legation, in a verbal communication, the terms of which have been preserved in writing in the ministerial archives,^a expressed, in the name of the Cabinet of Washington, the hope that Russia would maintain her own manner of viewing and acting with regard to poaching vessels hunting seals in Russian waters, which entirely conformed to the views and intentions of the Federal Government. In case Russia thought of modifying its point of view, the Federal Government asked that these modifications should not be made until after the award of the tribunal of Paris.

At the same time the English embassy on the 11th (23d) January, 1893, in accordance with the request of the Canadian sealers to know what were the limits of the prohibited zone during the season of 1893, expressed to the Russian Government the desire to know if it would be inconvenient to inform these sealers that to the west of the line of demarcation of 1867 sealing is prohibited only to the strict limit of Russian territorial waters.

These circumstances obliged the Russian Government to enter into a detailed examination of the questions which had been brought up with regard to the protection of the seal species in the western part of Bering Sea. After having given to the American legation every assurance on the subject of the absence of any intention on the part of Russia to modify its views concerning the suppression of poaching, the ministry of foreign affairs judged the occasion fit to submit the request of the English embassy to the consideration of a special commission to be charged with the determination of what measures were necessary to prevent the future total destruction of these precious animals through illegal hunting of the seals.

This commission was instituted by imperial order under the presidency of Privy Counselor Kapoustine. It was also called upon to examine the claims presented by the English embassy on the subject of the seizure by Russian cruisers of vessels sailing under the British flag during the hunting season of 1892.^b The said commission in its seance of January 17, 1893, arrived at the conclusion that the best means of assuring proper regulation of sealing would be to have resort to an international agreement which should determine the place, time, and conditions of hunting. However, in view of the approaching commencement of the sealing season, the commission deemed it necessary that the Imperial Government should take urgent preservative measures, and to this end to interdict to all foreign vessels hunting seals for a distance of 10 miles along the Russian coasts and 30 miles around the Commander and Tuleny islands. In support of the necessity of these measures the following circumstances were brought forward: The convention of 1891 between the United States and England had created for Russians engaged in sealing a situation unusual and most unfavorable to the interests of Russia; thus among the number of seal skins confiscated by Russian cruisers in 1891 and 1892 there was an average of 95 per cent of females. This circumstance sufficed to show that the poaching was committed within Russian territorial waters, since the females, during the period of reproduc-

^aThis communication was recorded in a document now in the dossier. The memorandum giving a copy of this document is in the handwriting of his excellency Mr. Chichkine, then gerant of the ministry of foreign affairs, to whom the American minister made the verbal declaration aforesaid.

^bThe Government of the United States had at that time brought no claim for arrests of American vessels in 1891 and 1892.

tion, corresponding to that of the sealing, did not absent themselves much from the shores. The establishment of a zone of 30 miles was explained by the necessity of preserving the seals during their excursions seaward in search of nourishment in the depths called the "sealing grounds," and which are at a certain distance from the islands. The commission was of the opinion that the measures proposed by it were not contrary to the general principles of international law, since they had a character essentially provisional and were justified by the rule of "force majeure and legitimate defense." In conclusion, the commission proposed to furnish the cruisers with identical instructions, and to authorize them to chase and search poaching schooners which they might sight in Russian waters, but which, being chased, might reach the high seas. In the second place, to promulgate a special law establishing the civil and criminal responsibility of persons engaged in illegal sealing; and lastly, to send a sufficient number of cruisers to protect the Russian industry and to organize in it a system of armed inspection on the islands themselves.

The commission further expressed the opinion that the British Government should be informed of such of the measures as it should be deemed expedient to make known to it, in order that it might lend its assistance toward their execution by duly warning the Canadian sealers that they should conform to the rules. Finally, the commission judged it well to invite the participation of Japan in the negotiations with England and the United States on the subject of the preservation of the seals because of the special fact of the passage of the animals between the Japanese and Russian coasts.

The decisions of the Kapoustine commission having been duly sanctioned, the ministry of foreign affairs on February 12, 1893 (Exhibit A), informed the English embassy of the resolution taken by the Imperial Government to forbid sealing for an extent of 10 miles from the Russian coasts and within a zone of 30 miles around the Commander Islands. On this occasion the considerations in question set forth by the commission and which actuated these measures were brought to the attention of the embassy. The Russian Government stated distinctly the following: "The insufficiency of a strict application in this relation of the general rules of international law relative to territorial waters was shown by the very fact of negotiations having been opened since 1887 between the three powers principally interested, to the end of agreeing upon special and exceptional measures. The necessity of such measures was confirmed by the Anglo-American agreement of 1891. In entering into these pour parlers and this agreement the British Government had itself admitted the expediency of an eventual modification of the general rules of international law."

The Cabinet of Washington having been informed of these measures through the medium of its representative at St. Petersburg, to whom a copy of the aforesaid note was communicated, the American legation requested the Russian Government to suspend the execution of the measures, since their publication might have an unfortunate effect upon the success of the claims submitted to the tribunal of arbitration at Paris by the Federal Government (Exhibit 6.) A telegram received from the Russian minister at Washington informed the Imperial Government that the Secretary of State of the American Union shared the same opinion. The Federal Government did not, however, make any formal proposition as to the course to be pursued in the affair; meantime the ministry of foreign affairs received the reply of the British embassy dated 9th (21st) March, 1893; after a new note from the Russian Government, dated April 6, 1893 (Exhibit C), the agreement was entered into between the two cabinets; and it is thus that the arrangement with England on this subject was concluded in May, 1893. It was formulated in an exchange of notes between the minister of foreign affairs and the British embassy, the one of May 10 (22), 1893, No. 175, the other of May 18 (30) of the same year.

In concluding this agreement, however, the Russian Government deemed it necessary to make certain reserves of principle—notably, that in consenting to put the vessels infringing this interdiction at the disposal of the British authorities the Government did not mean in any way to prejudice the question of right of a bordering State to extend its jurisdiction in certain special cases beyond territorial waters taken in their restricted sense; in the second place the Russian Government reserved to itself for the future every latitude of choice of any system of preservation of the seals, and, finally, that the arrangement in question should not in any way serve as a precedent and should have an exclusively provisional character. (Note of the Imperial ministry of foreign affairs to the British embassy, dated May 10, 1893, Exhibit D D.)

With the same object of preservation, and on the basis of the decision of the Kapoustine commission, the Russian Government modified and supplemented some legislative measures concerning sealing. A notice of the counsel of the Empire, clothed with the supreme sanction June 1, 1893, established the necessary measures in this respect.

On August 15, 1893, the tribunal of arbitration at Paris pronounced its award in the litigation pending between England and the United States. The decision, which did not sustain the pretensions of the United States, could not naturally have been favorably received by the American public. Although the English point of view had prevailed, as the decision was to a certain extent a compromise, the limitations of the right of sealing caused, also, a certain discontent in Canada.

The States participating in the arbitration of Paris were under obligations to take, by the terms of the decision, legislative, measures and the negotiations between the cabinets of London and Washington were continued.

The Russian Government, for its part, was interested in the question whether the provisions of the award of the Paris tribunal might not properly be extended to the western portion of Bering Sea. Overtures to this end had been made to the Russian Government by the Cabinet of Washington, which believed it equally desirable to induce Japan to participate in this agreement. The Government of the United States finally decided, however, that it was better to await the conclusion of its own negotiations with England, free to adopt the rules which should be worked out in concert with that power as a basis of a more extended agreement.

However, as the arrangement concluded between Russia and England approached its expiration, the Russian Government was obliged to study under what conditions the said arrangement had in practice been applied during the year 1893, and what measures should be taken for the future. It was shown that the prohibited zone of 30 miles protected in some measure the seals which had succeeded in passing the line where the poachers were stationed, but abandoned to the latter the herds of animals which pass the month of June and part of July on what is called the "sealing grounds" as well as the whole of them when they betake themselves to the places where they resort from February till June; in this respect the 30-mile zone was insufficient and the only result had been to modify the methods the poachers, who continued to engage in their industry, less no doubt in the proximity of the islands, but quite as much on the high seas in the places where the seals fed. It was further recognized that the arrangement with England was paralyzed by the fact that America was not included in it. While recognizing the importance of concluding as soon as possible an arrangement with the cabinets of London and Washington on the basis of the provisions of the award of the Paris tribunal, including in it those rules which might be worked out later between the United States and England, and inviting Japan to participate, still, as these negotiations might be prolonged it was necessary to renew the arrangement actually existing with the English Government, but without giving it a term and to proceed to the conclusion of a similar arrangement with the American Government.

It is thus that the arrangement of 1893 with England was renewed, by an exchange of notes between the ministry of foreign affairs and the British embassy dated December 11 (23), 1893, No. 4338, and December 29 (January 10), 1893 (1894). No term was put to this agreement which should remain in force until further notice. At the same time negotiations were entered into with the United States for the conclusion of a similar agreement. On February 8, 1894, the ministry of foreign affairs addressed a note to this effect to the American legation. (Exhibit C.) The Imperial Government therein expressed the conviction that the Federal Government having always professed the broadest and the most equitable views in regard to the protection of the legitimate seal industry, would adhere to the proposition under consideration. In its reply dated March 8, 1894 (Exhibit F F), the American legation stated that the Government of the United States recognized with pleasure the cordial character of the Russian proposition testifying to the desire of the Imperial Government to arrive at an equitable and lasting agreement on the subject. The dispatch addressed by the Department of State to the American minister at St. Petersburg, dated March 30, and which was transmitted to the Imperial Government, was conceived in the same spirit. (Exhibit G G.)

Before proceeding to the signature of the arrangement with the United States relative to the prohibition of the seals, the Imperial Government deemed it necessary to formulate to the American Government the same reserves of principle as to England. It is thus that the minister of foreign affairs transmitted to the legation of the United States at St. Petersburg the note dated March 21 (April 2), 1894, containing these reserves. (Exhibit H H.) They were thus expressed: First. It is understood in the first place that the understanding arrived at between our two governments leaves intact all the rights of Russia in its territorial waters. Second. In delivering to the authorities of the United States the American ships engaged in sealing within the prohibited waters, we do not at all mean to prejudice the question of the right of a bordering power to extend its territorial jurisdiction in certain special cases beyond territorial waters, strictly so called. Third. The Imperial Government reserves its entire liberty of action as to choice in the future between the two systems of protec-

tion of the fur seals, either by a prohibited zone or by a completed interdiction of pelagic sealing or its regulation on the high seas. Fourth. The present arrangement shall be in force only until further notice. It shall possess only a provisional character and shall in no sense serve as a precedent.

The arrangement was signed at Washington April 22 (May 4), 1894.

In the meantime the Imperial Government declared itself ready to enter into negotiations for the conclusion, in concert with England and Japan, of a general agreement looking to the protection of the seals in the limits of the extent of sea north of latitude 35° on the basis indicated by the award of the tribunal of Paris. A written communication in this sense was addressed by the Russian minister at Washington to the Federal Government. The negotiations relative to an agreement of this nature are not terminated.

EXHIBIT A A.

COPY OF A NOTE FROM THE PRIVY COUNSELOR CHICHKINE TO THE BRITISH AMBASSADOR AT ST. PETERSBURG DATED FEBRUARY 12, 1893, No. 509.

In your note of the 11th (23d) January you kindly informed me that several captains of vessels engaged in sealing in Bering Sea having asked to be informed as to the limits in which it would be lawful to practice their industry, the British Government proposed to reply to them that sealing would remain until further order completely interdicted within the limits of the line of demarcation agreed upon in 1891 between England and the United States of America, but that they were at liberty beyond those limits, except the Russian territorial waters.

At the same time your excellency asked me to communicate to him the eventual objections which the Imperial Government might be disposed to make to this statement.

Thanking you, Mr. Ambassador, for the manner in which the Imperial Government takes action, I hasten to inform you that the question of measures to be taken to prevent the destruction of the seals having been for some time the subject of investigation, I have had to await the preliminary results of that work before replying to the note which you were good enough to address to me.

In touching to-day upon the question of sealing, I believe I should first call your excellency's attention to the fact that the insufficiency of the strict application of general rules of international law, relative to territorial waters, has been demonstrated by the very fact of the negotiations opened since 1887 between the three powers principally interested, to the end that special and exceptional measures be agreed upon.

The necessity for such measures has since been confirmed by the Anglo-American agreement established in 1891.

In lending itself to these pourparlers and to that agreement the British Government itself admitted the occasion for a contingent abrogation of the general rules of international law.

One point to which it would be well to call particularly the attention of the British Government is that of the absolutely abnormal and exceptional situation created for Russian interests by the Anglo-American stipulations. In fact the prohibition of sealing within the limits drawn by the *modus vivendi* agreed upon in 1891 had the effect of increasing the destruction of seals on the Russian coasts in such proportion that the complete disappearance of the species was only a question of a short time unless efficacious measures for their protection were taken without delay.

The following figures demonstrate this clearly:

The number of seals to be killed annually being fixed by the administration proportionately to their quantity the years 1889 and 1890, before the establishment of the *modus vivendi* (Anglo-American), gave the number of 55,915 and 56,833, while for the years 1891 and 1892, after the above-mentioned understanding, these figures fell to 30,698 and 31,315. Moreover, according to the statistical data which the Imperial Government was able to procure, the quantity of seal skins of Russian production delivered to the London market increased during these two years in an infinitely greater degree. The number of vessels engaged in sealing and seen about the neighborhood of Commander and Tulienuw (Robin Island) must also have increased considerably, according to the observations made by the local administration. The savage and lawless methods of these traders are shown by the fact that of the seizures made more than 90 per cent of the skins carried off by them are the skins of females, which seldom go to any distance from the coast during the sealing season, and the destruction of which entails that of all the young they may be

suckling. The number of seals wounded and abandoned on the shore or in the territorial waters and afterwards found by the local authorities also testify to the destructive character of the sealing.

In such a state of things we believe ourselves justified, Mr. Ambassador, in expressing our entire confidence in that the British Government will admit the urgency for restrictive measures until an international regulation of sealing can be established by an agreement between the principally interested powers.

The Imperial Government, on its part, does not hesitate to acknowledge that the protection can not be brought about in any really efficacious manner until after such agreement.

Therefore it is disposed from this moment to enter into a conference to that end with the Governments of Great Britain and the United States of America; but it recognizes at the same time the absolute necessity for immediate provisory measures, as much on account of the proximity of the sealing season as to be in ample time to answer to the question asked in your excellency's letter of 11th (23d) January.

To that effect and after a minute examination the Imperial Government believed it necessary to draw up the following measures which would be applicable for the year 1893:

1. Sealing will be prohibited for all vessels not furnished with a special permit, to a distance of 10 miles along all of the seacoast belonging to Russia.

2. This prohibited zone will be 30 miles around the Commander and Tulienev (Robin Island) according to the Russian official charts, which implies the closing for sealing vessels the straits between the Commander Islands.

These measures shall be justified, with regard to the zone of 10 miles along the seacoast, from the fact that vessels engaged in sealing station themselves generally at a distance of from 7 to 9 miles from the coast, while their boats and their crews engage in sealing as often on the coast itself as in the territorial waters; as soon as a cruiser is sighted from afar, the vessels spread sails and endeavoring to recall their crew, sail away beyond territorial waters.

Concerning the zone of 30 miles around the islands, this measure is prompted by the necessity of protecting the banks designated by sealers as "sealing grounds" which are found around the islands, and are not sufficiently distinct upon the charts. These banks serve at certain seasons, as stations for the females, the killing of which is particularly destructive to the seal race at the time of year when the females tend their young or go to seek their own food on the banks called "sealing grounds."

Praying you, Mr. Ambassador, to bring the foregoing to the knowledge of the British Government, I believe it well to insist upon the essentially provisory character of the above-mentioned measures, which are delayed by an exceptional press of circumstances known as a case of force majeure and similar to the case of legitimate defense.

Be it understood that in no way does it enter into the intention of the Imperial Government to dispute the rules generally acknowledged with regard to territorial waters. In its opinion, far from infringing the general principles of international law the measures it believes necessary to take, should on the contrary prove them as the exception proves the rule.

The weight of the arguments hereinbefore set forth will certainly not escape the enlightened appreciation of the British Government and I am firmly confident that it will not refuse to take steps with regard to the English vessels engaged in sealing, in conformity with the measures which the Imperial Government proposes to take for the year 1893.

For its part the Imperial Government will not fail to give to these measures in ample time the publicity they require.

Moreover in order to avoid as far as possible misunderstandings and contentions in case of infraction of the aforesaid provisory measures as well as of the general principles of international law, cruisers will be furnished with precise instructions clearly defining the cases wherein the right to pursue, to inspect, and to seize offending vessels should be exercised.

As has been stated, while remaining outside territorial waters and sometimes even at a distance exceeding 10 miles, the vessels engaged in sealing send a portion of their crew and their boats even to the coasts of territorial waters or nearly so; it will be prescribed in the above-mentioned instructions to pursue and to subject to inspection all vessels whose passengers or crew may have been seen or taken while engaged in sealing on the coast or within the zone prohibited by the provisory measures for the year 1893.

A strong presumption resulting from the fact of the presence of the crews near the coasts in the prohibited zone, even when at first it might be impossible to state whether or not these crews had engaged in sealing, it will be lawful to pursue and subject to inspection all vessels to which such crews belonged.

The seizure on vessels subjected to search of instruments specially used in sealing, even on land, as well as of seal skins of which the greater number might be skins of females, would constitute sufficient reasons for the seizure of the vessel since the female seals seldom go more than 10 miles from the shore (excepting to the banks situated around the islands) during the time they are tending their young.

In informing the captains of vessels destined for sailing of the provisory measures set forth for the year 1893, the British Government may perhaps deem it well to acquaint them also with the emphatic tenor of the instructions with which the Russian cruisers will be provided, by adding that the right of surveillance will be equally given to coast vessels upon whose mainmasts the governor of the Commander Islands will hoist the customs flag of Russia when he is aboard in the exercise of his duty.

Please accept, etc.

EXHIBIT B B.

NOTE OF THE MINISTER OF THE UNITED STATES OF NORTH AMERICA AT ST. PETERSBURG TO THE MINISTER OF FOREIGN AFFAIRS OF RUSSIA, DATED 8TH (20TH) MARCH, 1893.

I have just received from the leading American representative at charge of the case of the United States before the international tribunal at Paris, the Hon. John W. Foster, late Secretary of State, a telegram, of which I inclose a copy.

It will be seen by this that should the proposal of Russia to Great Britain, of which your excellency so kindly sent me a copy, be consummated and publicly made known before the decision of the tribunal is announced it would greatly injure our case, to the detriment of the interests of Russia as well as of the United States.

Under these circumstances, bearing in mind the cordial assurances of cooperation given me by your excellency at a former interview, and the full recognition then given to the identity of Russian and American interests in this matter, I would most respectfully urge that the whole matter may be in some way delayed until after the decision of the tribunal.

I avail myself, etc.,

ANDREW D. WHITE.

Telegram of Mr. John W. Foster to Mr. White, Minister of the United States of North America at St. Petersburg.

We have learned with deepest disappointment of the proposals shown by our investigations. For the protection of seals a 30-mile zone utterly inadequate. Agreement for this season between the United States and Great Britain prohibits sealing for hundreds of miles around seal islands in Bering Sea. If the agreement proposed by Russia is perfected and given to the public, it will greatly prejudice our claim before the tribunal of arbitration. The decision of the tribunal can not long be deferred, and I hope you will be able to delay definite action until after the decision has been made. We are most hopeful of securing decision insuring most satisfactory protection, provided Russia does not abandon us and prejudice the question. Shall forward to-morrow copies of our case and counter case.

FOSTER.

EXHIBIT C C.

NOTE OF THE RUSSIAN MINISTER OF FOREIGN AFFAIRS TO SIR ROBERT MORIER, AMBASSADOR OF ENGLAND AT ST. PETERSBURG, DATED APRIL 6, 1893, No. 1188.

In reply to my note of February 12 (24) your excellency had the goodness to send me a copy of Lord Roseberry's dispatch, dated March 17, by which the British Government proposes to establish immediately a "modus vivendi" on the following basis:

1. The British Government to interdict its subjects from sealing within the zones of 30 and 10 miles, and to offer the cooperation of its cruisers for the execution of this measure. The Imperial Government to engage itself to deliver to the English cruisers or to the nearest British authority the English ships captured outside of territorial waters within the above-mentioned zones, while the English cruisers shall reciprocally deliver the captured Russian ships under similar conditions.

2. The Imperial Government to limit to a fixed number the quantity of seals which are to be killed on the islands.

3. The Imperial Government to authorize an agent of the British Government to go to the islands to confer with the local authorities as to the working and result of the arrangement.

4. It is to be understood that the arrangement shall in no wise affect the privilege hitherto accorded to English ships of refuge, repairs, or provisioning in Russian ports.

5. The arrangement to have no retroactive force—more particularly as regards English ships captured during the past year.

I could not enter on the subject, Mr. Ambassador, without previously having called your attention to the fact that my note of February 12 (24) was intended to notify the British Government of certain measures of legitimate defense made provisionally necessary by exceptional circumstances and not to propose a basis for a "modus vivendi," properly so-called; that is to say, for a dual agreement susceptible of being prolonged until the question should be definitely settled.

It is simply a question of the minimum of protective measures necessary to prevent the extinction of the object of the discussion even before the opening of negotiations on the subject.

In view of the proximity of the sealing season, now already opened, the Imperial Government estimated that on the date of my note there would not be time to consider and draw up a "modus vivendi" which must necessarily touch not only upon questions of interest but also on questions of principle.

If it had intended to propose a basis for such a "modus vivendi," the Imperial Government would not have failed to maintain that a restriction of territorial rights—that is to say, the engagement to limit the number of seals to be killed on land—ought equitably to have as corollary the complete suspension of pelagic hunting on the open sea. It would, above all, have believed it indispensable to make reserves as regards the definite settlement of the question of the seals for the purpose of safeguarding its entire liberty of estimating the measures necessary for the preservation of the seals, either by the prohibition or regulation of hunting on the open seas or by the extension of special rights of protection of the species outside of the various distances commonly designated as the limit of territorial waters.

However, having made these observations, I am authorized, Mr. Ambassador, to inform your excellency that the Imperial Government, being desirous of meeting any conciliatory proposition of the British Government, is prepared to accept that which is made in Lord Roseberry's dispatch, except for some modifications of the first point.

Thus the Imperial Government would be disposed to limit for the current year the number of seals to be killed on the islands to 30,000, thus reducing by 20,000 the average number of 50,000, provided for in its contract with the industrial company.

It would not object to an agent of the British Government going to the islands to interview the local authorities and to gather from them information as to the operation and results of the arrangement. The time and place of this visit should naturally be previously fixed.

There would not be, of course, any modification of the facilities enjoyed by English ships of refuge, repair or provisioning in Russian ports.

The arrangement agreed on would have no retroactive force, since the different cases of capture made during the past year have already been examined by a commission ad hoc on the basis of the general principles of international law.

Finally, as for the first point of the proposition contained in Lord Roseberry's dispatch, the Imperial Government is of the opinion that it would hardly be possible to apply it in its entirety, at least under the conditions named for the present hunting season, notably as to the engagement to deliver to English cruisers or to the nearest English authority the English ships taken in contravention outside of territorial waters within the prohibited zones of 30 and 10 miles.

It might be possible later to find a ground of mutual agreement to meet the practical objections which such an arrangement presents; but at the moment it is beyond a doubt that it would completely paralyze the action of the cruisers of the Imperial navy and render futile the supervision which they must exercise along the coast and around the islands.

In fact every Russian cruiser which might capture an English ship would be confronted with the alternative of either to hunt for an English cruiser, which might take a long time, in view of the extent of coast, or to undertake a voyage of 3,000 miles to conduct the captured vessel to the nearest port, that of Victoria in Columbia.

The Russian cruisers would thus be exclusively occupied in hunting for the English cruisers or in making the voyage to the port of Victoria and return during the entire sealing season, and the "cooperation" of the cruisers of the two nations would become only nominal.

In this condition of affairs, and not pausing for the moment on another essential point—that of absolute want of reciprocity in the British proposition, in view of the

fact that there are not and could not be vessels under the Russian flag engaged in sealing—the Imperial Government deems that for the current year it will be simpler and more practical to leave the newly prohibited zones, as in the case of territorial waters, to the exclusive supervision of the cruiser of the Imperial navy, which will continue, until a final arrangement is arrived at, to conduct all vessels arrested in contravention to Petropavlofsk.

In accepting four out of five points of the English proposition, and in only objecting to the full and immediate application of the fifth, the Imperial Government believes that it has proved its sincere desire to see the pending pourparlers result in an agreement sufficiently for its partial objection, based on purely geographical considerations, not to be interpreted as an act of distrust.

If the British Government on its part accepts, as I confidently hope it will, the proposal of a “modus agendi” set forth above, one could consider all eventual complications for the current sealing season as being disposed of, and, furthermore, the necessary time for agreeing upon a more definite “modus vivendi” would be gained.

Please to accept, etc.,

DE GIERS.

EXHIBIT D D.

NOTE FROM THE MINISTER OF FOREIGN AFFAIRS OF RUSSIA TO THE CHARGÉ D'AFFAIRES OF GREAT BRITAIN AT ST. PETERSBURG, DATED MAY 10, 1893, No. 1763.

In reply to your communication of April 30 (May 12), I have the honor to inform you that the Imperial Government, while accepting the proposed agreement annexed to that communication, prefers to give it the character of an exchange of notes for the reasons following:

Because the too concise wording of the above-mentioned project would leave the way open to certain misunderstandings and perhaps even to complications which it would be desirable to avoid.

Because the Imperial Government could not adhere to the project in question without some reservations for the purpose of securing to itself the liberty of action in the future.

It is well understood that the agreement to be established between our two Governments will leave intact all of Russia's rights in its territorial waters.

With regard to our reservations, they will bear upon the following-mentioned points:

(1) In consenting to turn over to the British authorities the English vessels engaging in sealing within prohibited zones we desire in no way to prejudice the question of right of any bordering power to extend its territorial jurisdiction in certain special cases beyond the territorial waters properly so called.

(2) The Imperial Government intends to maintain its entire liberty to choose in the future between the two systems of protection of seals, whether by means of a prohibited zone or by means of the complete prohibition of pelagic sealing or of its regulation on the high seas.

(3) The present agreement can serve in no way as precedent and will be regarded by us as essentially provisional for the present situation.

These reservations made, we adhere to the British proposition under the following terms:

(1) During the year ending December 31, 1893, the British Government will forbid its subjects to seal within a zone of 10 marine miles over all the Russian coasts of Bering Sea and the North Pacific Ocean, as well as within a zone of 30 marine miles around the Commander and Tuleny islands (Robin Island).

(2) The British ships that engage in sealing in the above-mentioned zone beyond the territorial waters of Russia may be arrested by Russian cruisers, to be turned over to English cruisers or to the nearest British authorities. In case of resistance or of difficulty the commander of the Russian cruiser may proceed to seize the ship's papers of the above-mentioned vessels, in order to hand them to a British cruiser or to send them to the nearest British authorities at the earliest possible moment.

(3) The British Government agrees to give over to the regular tribunals for judgment affording all the guaranties necessary, the English vessels which may be arrested for being engaged in forbidden sealing within the prohibited zones outside of Russian territorial waters.

(4) The Imperial Government will limit to 30,000 head the number of seals to be killed on the coasts of Commander and Tuleny islands (Robin island) in the course of the year 1893.

(5) An agent of the British Government may be admitted to the above-mentioned islands (Commander and Tuleny) in order to gather from the local authorities all the information necessary upon the workings and results of the agreement, but being careful to previously notify the authorities as to the time and place of his visit, which, however, should not be prolonged more than a few weeks.

(6) The present agreement shall have no retroactive force with regard to the seizure of English vessels previously arrested by Imperial naval cruisers.

These points being based on the notes formerly exchanged between our two Governments as well as upon the text of the last British proposition, we hope, Mr. Chargé d'Affaires, that the Government of Her Britannic Majesty will henceforth deem the understanding between us as entirely established with regard to the matter of sealing during the present year.

With the assurances of my highest consideration, etc.

DE GIERS.

EXHIBIT E E.

NOTE FROM THE MINISTER OF FOREIGN AFFAIRS OF RUSSIA TO THE MINISTER OF THE UNITED STATES OF NORTH AMERICA AT ST. PETERSBURG, DATED FEBRUARY 8, 1894, No. 524.

In continuation of the verbal overtures which the Imperial minister of foreign affairs has already made by your interposition relative to the conclusion with the United States of America of an agreement similar to the one which exists between Russia and Great Britain with regard to the hunting of fur seals, it is my duty to address the present note to you with the request that you will be kind enough to inform us of the decision of the United States Government in this regard.

You are doubtless not unaware that the agreement with England relative to the hunting of fur seals, concluded by the Imperial Government last year, had for its object the ending of annoying differences which frequently arose in consequence of the confiscation of English vessels engaged in illicit sealing in Russian waters.

Differences of this sort might arise with the United States of America relating to vessels engaged in this same prohibited industry under the American flag. It would be very desirable to prevent these, or at least to regulate beforehand the manner of legal procedure by means of a friendly understanding that the law interdicting all unauthorized hunting or fishing in our waters has been lately enforced and rendered more strict by new arguments. The Federal Government, besides, having always professed the broadest and most equitable principles with regard to fur sealing, we do not doubt that it will accept our present proposition.

I have the honor to join herewith copy of the notes of the Imperial Government and of the British chargé d'affaires at St. Petersburg, the exchange of which constituted the agreement arrived at between us and Great Britain in the question of fur sealing.

The application of that agreement will require but a few supplementary modifications with regard to the means of carrying out the projects, concerning which it will not be difficult to agree.

Begging you to have the kindness to present to the Imperial minister of foreign affairs the reply of your Government to the preceding as soon as possible, on account of the approach of the season in which sealing is practiced, I avail myself.

DE GIERS.

EXHIBIT F F.

NOTE OF THE MINISTER OF THE UNITED STATES OF NORTH AMERICA AT ST. PETERSBURG TO THE MINISTER OF FOREIGN AFFAIRS OF RUSSIA, DATED MARCH 9 (21), 1894.

Referring to your note of February 8 (o. s.), 1894, I duly submitted its contents to the State Department at Washington, having previously apprised them of the verbal communication made to me on the subject, and have now received under date of March 9 (n. s.), 1894, a dispatch from the Secretary of State taking up the proposals made by the Imperial foreign office as above.

The Secretary states that his reply has been unavoidably delayed by the failure, thus far, of the British Government to commence negotiations for the enforcement of the award of the Paris Tribunal of Arbitration.

He also states regarding that award that it constitutes a valid obligation on the contracting parties, and that every effort is being made by the United States to give it speedy effect in all its ports.

The Secretary also authorizes me to say that the award contemplates that the United States and Great Britain shall extend joint invitations to other powers to give their adhesion to such measures as may be agreed upon for the enforcement of the reported regulations.

He also refers with evident satisfaction to the cordial character of the proposal of Russia as indicating the willingness on the part of the Imperial Government to come into some general, equitable, and durable arrangement as regards the questions concerned.

I avail myself, etc.,

ANDREW D. WHITE.

EXHIBIT G G.

DEPARTMENT OF STATE, WASHINGTON, MARCH 30, 1894. ANDREW D. WHITE, ESQ.,
ETC., ST. PETERSBURG.

On the 9th instant, by my No. 165, I answered your dispatch No. 178, of January 10, in relation to the suggested Russo-American modus vivendi in regard to the fur-seal fisheries of the North Pacific, and pointed out the necessity of deferring a joint understanding reciprocally applicable to the waters within the purview of the award of the Paris tribunal of arbitration, until the invitation contemplated in that award could be extended by the United States and Great Britain acting in concert.

Since then, as the result of conference I have had with the Russian minister here, the way has been opened for the adoption of a more limited understanding with the Imperial Government.

I have given to Prince Cantacuzene a draft of a modus vivendi, a copy of which I inclose, in order that you may submit it to the Russian Government for its information as to what the United States are willing to do in this relation.

It will be observed that the modus vivendi is not reciprocal in its application to the eastern waters of the North Pacific and Bering Sea. Our information is that Russian subjects have never taken seal on our side of those waters, and there is no reason to apprehend that they will do so now. For that reason the United States exact nothing from Russia in the way of reciprocity, relying on the stipulated right to terminate the agreement at will, in the event of Russia permitting her subjects to poach in the waters embraced in the regulations of the Paris award.

My telegram of the 8th instant advised you of the essential features of the proposed modus.

I am, sir, etc.,

W. Q. GRESHAM.

[Inclosure.]

Draft of an agreement between the United States and Russia in relation to seal hunting.

(Identical with Exhibit B.)

EXHIBIT H H.

NOTE FROM THE MINISTER OF FOREIGN AFFAIRS OF RUSSIA TO THE MINISTER OF THE UNITED STATES OF NORTH AMERICA AT ST. PETERSBURG, MARCH 21 (APRIL 2), 1894. No. 1159.

The Government of the United States of North America having consented to an arrangement relating to fur sealing similar to the one already existing between us and Great Britain, I believe it my duty to address you to that effect the following, accompanied by the modifications which we have drawn up with England:

(1) It is understood in the first place that the agreement established between our two Governments leaves intact all of Russia's rights in her territorial waters.

(2) By turning over to the United States the American vessels engaged in fur sealing in prohibited waters we do not in any way mean to prejudice the question of a bordering power's rights to extend its territorial jurisdiction, in certain special cases, beyond territorial waters properly so called.

(3) The Imperial Government retains its full liberty of choosing in the future between the two systems of protection of fur seals, whether by means of a prohibited

zone or by means of the complete prohibition of pelagic sealing or its regulation on the open sea.

(4) The present agreement shall have force only until further notice, shall be only of an essentially provisory character, and may not serve as precedent under any head. These modifications made, we consent to the following conditions:

(1) The Government of the United States of North America will forbid its subjects to hunt fur seals within a zone of 10 marine miles on all the Russian coasts of the Bering Sea and of the North Pacific Ocean, as well as within a zone of 30 marine miles around the Commander and Tulienev (Robin Island) islands.

(2) The vessels belonging to subjects of the United States of North America which engage in hunting fur seals within the above-mentioned zones, outside the territorial waters of Russia, may be arrested by Russian cruisers, to be turned over to United States cruisers, or else to the nearest American authorities. In case of resistance or of difficulty, the commander of the Russian cruiser may limit himself to seizing the ship's papers of the above-mentioned vessels, in order to turn them over to United States cruisers or to send them to the nearest American authorities at the earliest possible moment.

(3) The Government of the United States agrees to give over to trial by the ordinary tribunals, and to offer all the securities necessary, such American vessels as are arrested for being engaged in the forbidden occupation within the prohibited zones outside the Russian territorial waters.

(4) The Imperial Government will limit to 30,000 head the number of fur seals to be killed on the coasts of the Commander and Tulienev (Robin) islands during the current year.

(5) An agent of the United States Government may be admitted upon the above-mentioned (Commander and Tulienev) islands in order to gather necessary information from the local authorities as to the workings and results of the agreement made, but being careful to previously inform the authorities as to the time and place of his visit, which shall not, however, be prolonged beyond a few weeks.

(6) The present agreement shall have no retroactive force with regard to the seizures of American vessels which shall have been previously made by Imperial naval cruisers.

The above-mentioned points being exactly based on the text of our agreements with Great Britain, to which the Government of the United States of North America has already adhered, we do not doubt that the latter will follow suit. The receipt of a simple acknowledgment of the formal adherence of your Government will be deemed sufficient for us to consider the understanding with regard to fur sealing provisorily established between us until further notice.

Please to accept, etc.,

DE GIERS.

ANNEX II.

Brief account of the seal industry on the Russian possessions in Bering Sea.

The fur seals resort at present chiefly to the Commander and Pribilof islands in Bering Sea; these animals are only met with in small numbers on other points of the Northern Hemisphere, as on Tulienev Island, among the Russian possessions, and on the Kurile Islands. On the Southern Hemisphere, where formerly they were somewhat numerous, they hardly exist any longer. In their regular migrations they rarely leave the warm ocean currents, one of which, the Kamtchatka current, takes them to the Commander Islands, and the other, which follows the American coast, carries them to the Pribilof Islands.

The seals ordinarily appear on these islands at the end of April or commencement of May. The males, which are the first to arrive, establish themselves on the shore, always in the same places, each one of them taking a certain extent of ground; the females follow them about a month later; they are for the most part with young and come up on shore often some days, sometimes a few hours, before bringing forth. The newly born seals are nourished by the milk of their mothers and this care obliges the latter to return constantly to shore.

In the interest of the preservation of these animals, seals should be killed on shore at the hauling grounds chiefly in June and July, since at that time their skins have the desired quality, killing only the "bachelor" males, which should be the sole object of the industry, leaving the males serving for reproduction (sekatchi) with their harems of females. Hunting on the open sea, which is done with nets or firearms, is very injurious to the regular industry, since in that way the animals are killed without distinction, young or old, male or female (the latter generally with young); furthermore, the number of animals killed is not proportioned to their reproduction. For every seal killed many are wounded and carried far away without

profit to the sealer. Finally, the fright caused to the animals by pelagic hunting hinders their regular migration to their rookeries; this is why, in the opinion of specialists, that sort of hunting may lead to the complete destruction of the species. It has been frequently stated how great an influence the abuse of the practice of this industry on the open sea has had in the diminution of the seals. The regular industry has only been able to exist owing to the occasional reduction of such abuse.

The sealing industry commenced from the discovery of the Pribilof and Commander islands at the end of the eighteenth century. In the early times its character was that of a veritable devastation, which brought about the consequences indicated above. Although the Russo-American Company, founded in 1799, showed a certain weak desire to put an end to this devastation, still, even during its existence, young seals of four months, male and female, "greys," were destroyed with such persistence that the persons engaged in the industry could no longer even find a sale for their product; they heated their stoves, baths, furnaces, with seal skins, and sometimes threw them into the sea. This condition of things lasted until 1803, when, by order of the Russian administration on the American shore, the business was suspended for two years on the island of St. George, and for four years on the island of St. Paul. After these short interims the devastation recommenced, and the number of seals again began to diminish. In 1830 attention was again brought to the situation on the island of St. Paul, and the killing was limited to males, young or old, from the age of 2 or 3 years upward. On Bering and Medny islands the industry had entirely ceased on account of the diminution of the species there. Later the company, on administrative order, limited its industry to 4,000 skins a year.

When, in 1867, the Territory of Alaska was, with its dependent islands, ceded by Russia to the United States, the Russo-American Company was dissolved and the seal industry on the Commander and Tuleny islands remained in the hands of the Russian Government. Other places of resort of these animals were then discovered on certain points of the eastern coast of Kamchatka and of the Asiatic continent on the shores of the Japan Sea and along the Strait of Tartary.

Sealing was then engaged in by the Aleutes, the aborigines of the Commander Islands, who so reduced the number of these animals that a new company, founded in 1871 to farm the industry in question in the Russian possessions, could only take the first year 3,000 skins. More rational measures were taken to insure the reproduction of the seals. In place of killing the gray seals of 4 months old, the sex of which could not be distinguished exteriorly, only those animals were killed which are called "bachelors," that is to say 3-year-old males, leaving the females of the same age for reproductive purposes. The term of the concession granted to that company expired in 1891, after which the State concluded to contract with a new concessionary company, called the Russian Company, for the exploitation of seals. This exploitation on the Commander and Tuleny islands was confined to it for ten years. Among the conditions imposed on it were the observance of rules concerning the quantity and quality of the animals killed, the time, place, and method of hunting these animals, the skins of which were sent each year to the company by the natives. The Government of Russia has shown itself to be desirous of putting this industry into the most rational condition possible, in the interest of the conservation of a property which is the means of existence of the sparse population of these islands.

The measures taken by the Government, as well as the restrictions imposed on sealing on Russian territory, which were equally binding upon the concessionaires and the natives, were found to be insufficient for the preservation of the species, on account of the damage caused by pelagic sealing, which was pursued regardless of rules. At the time of the Russo-American Company, already foreigners, American or Canadian, engaged in illicit commerce with the natives on the coasts of Bering Sea and the Pacific Ocean, furnishing the inhabitants with guns and strong drink, and unduly exploiting the hunting and fishing industries. After the cession of Alaska to the United States and the suppression of that company, which took certain measures, inefficacious though they were, against the exploitation of these industries by poaching vessels, poaching increased, and especially the sealing in Russian waters. The vessels coming into our waters for that purpose, especially from Canada, knew perfectly well that it was the habit of the seals to assemble at a certain time, corresponding to migrations of the fish in the open sea, at what is called the "sealing grounds;" that is to say, at the places where are to be found the marine plants, and where they found the fish on which they fed. The crews of these vessels killed these animals in great masses, without distinction of sex or age. Each year the importance of this industry, injurious to the preservation of the species, increased. According to an approximate estimate made from 1888 to 1891, there were put upon the market a product of pelagic sealing amounting to about 100,000 skins, of which seven-tenths were those of females bearing young.

Especially the activity of these vessels increased after the conclusion, in 1891, of the agreement between the United States and England, totally interdicting sealing in the eastern portion of Bering Sea, that is to say, in the waters to the east of the line of demarcation of 1867. The freebooters then betook themselves to the western part of that sea. It has been shown that in 1890 43 foreign vessels were engaged in the business under these conditions, and killed 53,136 animals. In 1891 the number of these vessels was 84, having killed 50,000 seals, 9,500 of which were taken in Russian waters; in 1892, 62 vessels, two of which were steamers; their spoils were 45,000 seal skins, 15,000 of which were taken in Russian waters. These figures are certainly below the actual facts, and the local authorities were of the opinion that the number of seals killed was very much greater.

The chief of administration of the Commander Islands stated that in 1892, notably, 60 poaching vessels came to the islands, killing seals on land and sea. Some of the marauders knocked over the beasts, while others exchanged shots with the coast guards employed in protecting the industry. The audacity of these marauders reached the point that they knocked over the seals on their very hauling grounds. As regards the island of Tuleny in particular, the marauders went there each year after the military guard had been withdrawn, owing to the impossibility of leaving them there on account of the climatic conditions on that island, and killed the seals which remained. Then in 1891 the guard, on returning in the spring, found the bodies of 5,000 seals from which the skins had been removed.

This organized marauding was not confined to the acts of captains of vessels; it had become a regular commercial enterprise, in which considerable capital was embarked. According to the report of the Russian consul-general at New York, a certain number of San Francisco capitalists, besides captains of vessels, having brought together for the purpose half a million dollars, participated in the fitting out of vessels engaged in this enterprise, which were sent out from ports of the American Union. The crews of these vessels were composed of men ready for bold undertakings, and to whom the fear of stern measures was but an inducement.

The cruising of Russian war ships in the Bering Sea commenced in 1875, when for the first time the clipper *Haidamak* was sent to put an end to the illegal commerce in strong drinks in which certain American and other vessels were engaged with the natives. These vessels were in reality engaged in sealing. Soon after, war ships were detached from the Russian naval forces for this duty in the Pacific Ocean. To the same end the ministry of marine established, in 1884, on the island of Tuleny, a guard composed of 19 men and 1 officer from the commencement of May until the end of October. But afterwards, when in 1891 a great influx of marauding vessels had commenced, ordinary measures of precaution, such as sending the *Aleute* was, were insufficient. A special vessel was deemed necessary to be employed in permanent service, and therefore the *Yakout*, bought in England for this service, left in 1892 for Bering Sea. Following the sessions of the commission over which Privy Counsellor Kapoustine presided, certain legislative enactments were put in operation; a prohibitive zone of 30 miles was established and recognized by England in the arrangement of 1893. But in his report for that year the governor-general of the Amour, while admitting that the establishment of that zone had a certain good effect, stated that the purpose of preservation was not accomplished, since foreign vessels continued to hunt outside of that zone, killing the seals en masse or frightening them from their accustomed route, and preventing them from following the currents which brought them to the Commander Islands and other places where they passed the summer. To this circumstance it was necessary to attribute the diminution of the production of the industry on these islands farmed by the Russian Company.

The diminution of this production was so great in 1895 that only 16,652 skins resulted, making a considerable difference in the provisions of the contract entered into with the company, in which 50,000 animals was estimated as the number to be taken annually. Such a difference existed notably, in fact, in 1891, when the operations of the company commenced.^a Still smaller returns were to be expected in 1896, and should be from 8,000 to 12,000 skins, since the operations on Medny Island had greatly declined, following the disappearance of many colonies of the animals. According to authentic reports, marauding vessels in 1895 hunted between the coast of Kamchatka and Bering Island, on the shores of which thousands of newly born seals were found, the mothers of which had evidently been killed at a short distance from the shore; this supposition becomes a certainty when the manner of life of these animals is given. For these reasons, and in consideration of the damage caused to the company farming the industry, the Russian Government consented to a reduction of the obligations due its treasury by that company.

^aThe annual returns are as follows: 1891, 30,689 skins; 1892, 31,315; 1893, 32,830; 1894, 27,237.

CASE I.

The "Cape Horn Pigeon."

In the first case, as in those following, the defendant party refers to the arguments submitted above to the honorable arbitrator in the present rejoinder and its annexes and maintains the same conclusions developed in the counter-memorandum.

Regarding the fact that this is a question of a whaler, set up by the party claimant, the defendant party declares that the interdiction of hunting under penalty of confiscation of vessel and cargo, contained in the notice published in 1881-82, extended to all the animals of the sea (Exhibit F) and consequently also to whales. As has been said in the counter-memorandum, if Lieutenant von Cube, commanding the Russian schooner *Maria*, believed that the seizure was in consonance with the duty with which he was charged of arresting vessels engaged in illicit sealing, it was because he suspected the *Cape Horn Pigeon* of being one of those vessels which act as depots for the spoils of such hunting.

The defendant party has declared itself ready to reimburse the parties in interest to the amount of \$2,500 (\$1,000, \$200, \$210, \$50, \$1,040), with interest at 6 per cent from September 15 (27), 1892, but it rejects all the other demands.

The defendant party maintains on its behalf that there is a repetition for the same object in the American memorandum in relation to the indemnity to the crew for services rendered in bringing the schooner *Maria* to Vladivostok. Discarding all idea of outrage, the defendant party recalls attention to the very exceptional situation at that time regarding the supervision of the western portion of Bering Sea, and states that Lieutenant von Cube acted in perfect good faith in bringing to Vladivostok an American bark regarded by him as suspicious, and obliging the crew thereof to take service on a Russian war ship. The defendant party is ready, however, to turn over the sum of \$1,000 for such service, as well as the sums of \$200 expenses of board, \$210 for lodgings, and \$50 for the personal expenses of the captain, and further, \$1,040 for the general expenses of the owners of the bark.

With regard to the bad treatment alleged to have been inflicted on the crew, the defendant party protests, as it has always done, against these allegations, which are bare of any sufficient evidence.

The defendant party believes that it has sufficiently developed in the counter-memorandum and in the present rejoinder the reasons why it is unable to admit that the present case, as well as the others, could offer grounds for indirect damages, inasmuch as the arguments set forth above are not specially applicable to sealing, but relate to the hunting of all marine animals. The defendant party further points out that the party claimant has put forward very particularly the obligation of making restitutio in integrum. But it does not seem that this term

of Roman law is applicable to the present case; it relates to the canceling of the legal consequences of a certain act, that is to say, the reestablishment of the original situation of rights by reason of certain circumstances, for instance, for the state of minority of the person who has concluded a contract.^a The special rule which concerns cases of this nature can not be confounded with the qualifications of settlement of damages. It must be stated again in this connection that even by the term *lucrum cessans* could not be understood every sort of profit that a person might eventually be able to obtain if an unexpected circumstance had not occurred to prevent, but by it should be understood the profit on which that person could count with certainty. The Roman laws (Fr. 29 ad leg. Aquil. 9, 2) said positively that if a net was damaged one could not estimate the value of the fish which, owing to that circumstance, could not have been taken. The defendant party only feels itself bound to make restitution for the real damage, *damnum emergens*, as having acted in a case of force majeure and of legitimate defense owing to exceptional circumstances, and in making use of that which was its right within the limits which the party claimant can not do otherwise than recognize; consequently the defendant party invokes in this place the adage, *qui jure suo utitur, neminem loedit*.

EXHIBIT F.

NOTICE.

The Russian Imperial Government hereby publishes for general knowledge the following:

(1) Without a special permit or license from the governor-general of Eastern Siberia, foreign vessels are not allowed to carry on trading, hunting, etc., on the Russian coast, or islands in the Okhotsk and Bering seas or on the northeast coast of Asia, or within their sea-boundary line.

(2) For such permits or licenses foreign vessels should apply at Vladivostok exclusively.

(3) In the port of Petropavlovsk, though being only the port of entry in Kamchatka, such permits or licenses shall not be issued.

(4) No permits or licenses whatever shall be issued for hunting, fishing, or trading at or on the Commodore and Robben islands.

(5) Foreign vessels found trading, fishing, hunting, etc., in Russian waters without a license or permit from the governor-general, and also those possessing a license or permit who should infringe on the existing by-laws on hunting, shall be confiscated, both vessels and cargoes, for the benefit of the Government. This enactment shall be enforced henceforth, commencing with A. D. 1882.

(6) The enforcement of the above will be intrusted to Russian men-of-war and also to Russian merchant vessels, who, for that purpose, will carry military detachments and be provided with proper instructions.

^a Windscheid. Manual of Pandectic Law, section 114 et seq.; Gudsmidt. Courts of the Pandectes, section 109 et seq.

CASE II.

The "James Hamilton Lewis."

With regard to the second case, the defendant party states, first, that the party claimant insists upon the distance from the coast at which the seizure occurred. But it is a point which the defendant party believes can not be disputed, that if a wrong is committed in waters over which the jurisdiction of a State extends, pursuit can be continued onto the high seas, the common property of all nations. The limit of permissible pursuit ends where the border jurisdiction of another State begins. The application of this principle was particularly necessary when it was question of exercising supervision over a great extent of coast with a very limited number of vessels and in view of the audacity of the poachers. The defendant party dismisses, therefore, discussion as to the exact spot where the seizure occurred, and refers to the documents previously submitted by it.

With regard to the point at which the *James Hamilton Lewis* was sighted by the Russian war ship *Aleout*, the defendant party, while maintaining that the American schooner was then at least 5 miles from the coast, believes it is warranted in invoking in this case all of the arguments submitted above in this rejoinder. In maintaining the necessity of admitting an exceptional modification of the generally admitted rule regarding the extent of territorial waters, the defendant party might possibly have counted a more conservative view on the part of England, which, however, had by the agreement of 1893 admitted that the situation justified such modification, thus consenting by contract; but the defendant party could not have supposed that the party claimant would one day contest the right of seizure exercised under these conditions. Besides, even from a theoretical point of view, the limit of marine jurisdiction is to-day considered by authorities on questions of international law as extending beyond 3 miles.

Undoubtedly the *James Hamilton Lewis* was not surprised in the act of sealing when she was sighted, but she was violating the terms of the notice of 1881, which had also been published at San Francisco (see above Case I), giving to the term "Russian waters" a meaning so broad that it could not be mistaken by the American Government, and which the situation warranted.

The defendant party may also refer to certain understandings proposed previous to 1892 between the two Governments, but which did not result, it is true, in an agreement with England, which had participated in these negotiations. At the time when the arrangement known as the Blaine Memorandum was being negotiated, the Cabinets of St. Petersburg and Washington, in 1889, incidentally agreed upon the following point: They deemed it proper to make seizures in cases flagrante delicto as well as those where it could be shown that a vessel had engaged in prohibited hunting before being sighted by a

cruiser. (Exhibits G and H.) A proclamation by the President of the United States was issued in that sense on March 21, 1889,^a in conformity with the law passed by Congress the 2d March, 1889. (Exhibit I.)

The defendant party believes that that arrangement between the two Governments may be justly taken into consideration, although it did not result in a definite agreement. As for Exhibit A of the rejoinder of the party claimant, it could not be applicable to the present case. It is question of a certified translation of clause 21 of the Imperial Marine Prize Laws, wherein is set forth the limit of marine jurisdiction, claimed by Russia to be 3 miles. It might be argued in the first place that the term "cannon range" used in this document as alternative to that of "3 miles," implies moreover a much greater extent in view of modern technical progress. But in the present case there is no question of prize of war, properly speaking, but of the necessary protection of an industry of great importance to Russian interests in the Pacific Ocean, an industry for which was invoked the principles of legitimate defense. They were confronted with marauders, with whom they must deal severely.

Furthermore, it appears from the contents of the document itself cited by the party claimant that it was not intended to deal definitely with the subject. The regulations of 1869 had to be submitted to another examination, and to legislative steps of a definite nature, to date only from the publication of the Regulations of Marine Prizes of March 21, 1895. By virtue of article 16 of this regulation^b the idea of "open sea" was left without express meaning, for the reasons set forth briefly in the counter memorandum of the defendant party.

The defendant party points out in the rejoinder of the party claimant that the latter characterizes sealing in open sea as an industry legitimately prosecuted at that time. The inconveniences of that operation at certain distances from the coast were, however, well known by the party claimant. The use of nets for sealing was then considered by the party claimant as extremely injurious to the legitimate sealing industry, yet there was a net aboard the *James Hamilton Lewis*. Annex II to the present rejoinder sufficiently shows the injury done by killing female seals; the defendant party, on this point, can not do better than to refer to the argument advanced by the American delegate before the tribunal of arbitration at Paris in 1893, as also to the interdiction of the United States Government itself, which has been legalized as shown by a legislative act to that effect passed by Congress.

The defendant party maintains that the proceedings of the hunt in question being contrary to what was then the United States law, the party claimant is not warranted in submitting them as being justified.

So far as the authenticity of the log book is concerned, the defendant party maintains the opinions it expressed in the counter memorandum and declares itself ready to admit all the expert testimony that the arbitrator may deem necessary.

The defendant party continues of the opinion that the flight before the Russian man-of-war constitutes in itself an acknowledgment of

^a It is to this proclamation that reference is made in Exhibit H.

^b Arrest, inspection, and seizure of enemy or suspected vessels and cargoes is permitted over the whole extent of sea and other waters, except such as are under control of a neutral power, or else have been set aside from war operations by virtue of special diplomatic agreement.

guilt on the part of the American vessel. It rejects in the present case all allegations as to ill-treatment inflicted on the members of the crew of the *James Hamilton Lewis*, as also all damages on account of their arrest.

With regard to the similarity which the party claimant undertakes to set up between the present case and those of marine prizes in alleging that an admiralty court was not instituted, the defendant party again declares that it does not come under the head of marine prize cases, properly speaking. The seizures were made in consonance with the Russian law according to the notice published in San Francisco; it is for the Imperial Government to determine whose shall be the authority to decide as to the legitimacy of the seizure.

For all of the above-mentioned reasons the defendant party repeats its request that the demands of the party claimant on all the points be rejected.

EXHIBIT G.

TELEGRAM FROM THE MINISTER OF FOREIGN AFFAIRS OF RUSSIA TO THE CHARGÉ D'AFFAIRES AT WASHINGTON, DATED MAY 25 (JUNE 7), 1889.

According to your opinion, that our cruisers should proceed on the high seas to inspect and seize vessels in flagrante delictu regarding prohibited sealing, it seems to us improbable that seizures can be made under these conditions, and besides, the proclamation of the President of the United States announcing that all persons and vessels engaged in or having engaged in prohibited hunting shall be liable to arrest and seizure. The term "having engaged in" implies according to us the idea that seizure will result not only in cases of vessels taken in flagrante delictu, but will also extend to vessels convicted of having engaged in sealing, which may be proved by the presence on board of sealing equipments, skins of animals, etc.

Seeing the necessity of avoiding all misunderstandings and of insuring the efficacy of protective measures, I advise you to clear up this point without delay.

EXHIBIT H.

TELEGRAM FROM THE CHARGÉ D'AFFAIRES OF RUSSIA AT WASHINGTON TO THE MINISTER OF FOREIGN AFFAIRS AT ST. PETERSBURG OF MAY 26 (JUNE 8), 1889.

Your interpretation of the proclamation of the President is perfectly correct, and Blaine has just repeated to me that American cruisers have instructions to carry it out to the letter.

We certainly may seize vessels convicted of having practiced prohibited sealing without fear that the Americans will not do likewise on their part. The terms "engaged in sealing," or, according to the English, "engaged in hunting fur seals," used in paragraph 9 of the memorandum draft, are sufficiently general to include the cases of flagrante delictu, as well as those wherein can be shown by conclusive proofs that a vessel had engaged in prohibited hunt before being sighted by a cruiser. It appeared to us, in discussing terms, inopportune and superfluous to further particularize even in the text of the memorandum, the proclamation of the President being very explicit in this respect and our executive administrative orders issued since 1882 being of the same tenor.

EXHIBIT I.

A PROCLAMATION BY THE PRESIDENT.—VIOLATORS OF THE ALASKA SEAL LAWS TO BE VIGOROUSLY PUNISHED.

WASHINGTON, *March 22, 1889.*

The following proclamation was issued late this afternoon:

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION:

The following provisions of the laws of the United States are hereby published for the information of all concerned:

Section 1956, Revised Statutes, chapter 3, title 23, enacts that:

"No person shall kill any otter, mink, martin, sable, or fur seal, or other fur-bearing animal, within the limits of Alaska Territory, or in the waters thereof, and every person guilty thereof shall, for each offence, be fined not less than \$200 nor more than \$1,000, or imprisoned not more than six months, or both, and all vessels, their tackle, apparel, furniture, and cargo, found engaged in violation of this section shall be forfeited, but the Secretary of the Treasury shall have power to authorize the killing of any such mink, martin, sable, or other fur-bearing animal, except fur-seals, under such regulations as he may prescribe, and it shall be the duty of the Secretary to prevent the killing of any fur seal, and to provide for the execution of the provisions of this section until it is otherwise provided by law, nor shall he grant any special privileges under this section." * * *

Section 3 of the act entitled "An act to provide for the protection of the salmon fisheries of Alaska," approved March 2, 1889, provides that:

"Section 1956 of the Revised Statutes of the United States is hereby declared to include and apply to all the dominion of the United States in the waters of Bering Sea, and it shall be the duty of the President at a timely season in each year to issue his proclamation, and cause the same to be published for one month at least in one newspaper (if any such there be), published at each United States port of entry on the Pacific coast, warning all persons against entering such waters for the purpose of violating the provisions of said section, and he shall also cause one or more vessels of the United States to diligently cruise said waters and arrest all persons and seize all vessels found to be or to have been engaged in any violation of the laws of the United States therein."

Now, therefore, I, Benjamin Harrison, President of the United States, pursuant to the above-recited statutes, hereby warn all persons against entering the waters of Bering Sea, within the dominion of the United States, for the purpose of violating the provisions of said section 1956, Revised Statutes, and I hereby proclaim that all persons found to be, or to have been engaged in any violation of the laws of the United States in said waters, will be arrested and punished as above provided, and that all vessels so employed, their tackle, apparel, furniture, and cargoes will be seized and forfeited.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twenty-first day of March, in the year 1889, and of the Independence of the United States the one hundred and thirteenth.

BENJAMIN HARRISON.

By the President:

JAMES G. BLAINE,
Secretary of State.

CASE III.

The "C. H. White."

With reference to the third case, the defendant party also sets forth that the affair presents itself as a difference arising between the two Governments in opposition to the bilateral understandings entered upon in the course of negotiations since 1887, and which answered the common purpose sought for. In the opinion of the defendant party, the understandings under discussion and the attitude assumed by the party claimant at that time in the whole matter ought to be decisive in the examination of the case at issue. The attitude then assumed by the party claimant gave rise to disputes between it and England, with whom the defendant party was treating on the same question, in the same spirit as the Government of the United States, without, however, emulating the latter in the very extensive claims which it brought. But in the present arbitration England is not the party claimant; it is the Government of the United States that finds itself at present in the position then occupied by the London cabinet, and is thus led by this reversion of rôles, as is stated in the American memorandum and rejoinder, to avail itself now of the arguments then invoked by the British Government. The defendant party deems that the case of the *C. H. White* should be considered as taking into account the special tie created between the American and Russian Governments by their common attitude with England, as well as of the point of view sustained by the Washington Cabinet, which found expression with regard to the suppression of maraud in the Presidential proclamation of 1889, above mentioned, and in the legislation of the United States.

With regard specially to the American vessels, the Russian Government could not suppose that the well-founded measures taken by it would some day be contested by the party claimant, and that it might find itself confronted by a controversy arising from actions condemned at that time by the Government of the United States. There could not be *injuria* in the case of the party claimant, when it is a question of acts not overreaching the limits assigned by it to the principles it had proclaimed as being the *jus*, and which it had introduced in its own legislation.

Captain de Livron, commander of the Russian cruiser *Zabiaka*, stated that the American schooner *C. H. White* had aboard seal skins and seals newly killed, guns, powder, and other accessories of the hunting of these animals. He furthermore stated that at a certain time the *C. H. White* had passed at 3 miles off the southern extremity of Medny Island. As is mentioned in Exhibit G, if it was question of efficacious suppression of maraud, it could not be hoped, considering the small number of war ships, to always overtake the marauders at the precise moment they were engaged in sealing. The suppression would thus

have to be illusory. Captain de Livron acted in conformity to Russian governmental instructions, published in 1881-82, as well as in the spirit of the agreements between the Russian and American Governments, in confiscating the schooner *C. H. White*, which decision was submitted to the highest maritime authority, who found it perfectly regular.

The defendant party rejects, for the same reasons as in the case of the *James Hamilton Lewis*, the argument drawn from the fact that an admiralty court had not been instituted, and it again protests against the allegations of ill treatment claimed to have been inflicted upon the crew of the *C. H. White*.

Concerning the fact that the log book of the *C. H. White* was not presented conjointly with the counter memorandum of the Imperial Government and the statement of circumstances and motives of the arrest is supported by the report of the Russian commander who made the seizure, the defendant party deems it well to observe the following: The said report of Captain de Livron states that the log book of the *C. H. White* showing that the vessel had remained in the proximity of the Medny Island, and that the course followed by her on her return led her to pass 3 miles off that island, has the appearance of a Russian official document whose authenticity is certified to by the Imperial Government, which, through the medium of its highest maritime authorities, attested the correctness of the allegation of Captain de Livron set forth in the above-mentioned report.

For the above reasons, the defendant party again requests that the demands of the party claimant be rejected in all its points.

CASE IV.

"Kate and Anna."

The defendant party in its counter memorandum set forth the reasons why it feels obliged to pay for the 124 seal skins confiscated from the *Kate and Anna* a sum of \$1,240, with interest at 6 per cent.

The defendant party discards the claim relating to indirect damages for the reasons specified in the present rejoinder. It considers that indemnity for indirect damages is so much less applicable to the present case, because the American vessel above mentioned was only detained in her course without having been confiscated, and that consequently it was entirely free to continue sealing, in so far as was legitimate. It was only notified by the commander of the Russian cruiser to stop sealing in Russian waters. Proof of this is given in the document submitted to the arbitration which, in the present case, is in itself sufficient evidence of the warning given by the Russian commander.

Moreover, the said commander could not assume the authority to give prohibitory orders overreaching the instructions furnished to him, and the methods at his command. At any rate he could not compel the American captain to return to the United States. He could not, above all, suppose that Captain Lutjens would comply with such order, had it really been given, for it was very evident there was no reason for such order.

From the above arguments the defendant party sustains the conclusions which it has submitted, concerning this affair, in the counter memorandum.

THE HEARING BEFORE THE HONORABLE ARBITRATOR, MR. T. M. C. ASSER, IN THE ARBITRATION FOR THE PURPOSE OF ADJUSTING THE DIFFERENCES BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA, PARTY CLAIMANT, AND THE IMPERIAL RUSSIAN GOVERNMENT, PARTY DEFENDANT, RELATIVE TO THE ARRESTS AND SEIZURES OF THE AMERICAN VESSELS "CAPE HORN PIGEON," "JAMES HAMILTON LEWIS," "C. H. WHITE," AND "KATE AND ANNA."

Mr. Asser to Mr. Newel.

[Translation.]

THE HAGUE, *June 3, 1902.*

MR. MINISTER: The administrative council of the Permanent Court of Arbitration having kindly placed at our disposal for the sitting of the Arbitration Tribunal in re affairs relating to the vessels *Cape Horn Pigeon*, *James Hamilton Lewis*, *C. H. White*, and *Kate and Anna*, its offices and organization, I have the honor to advise your excellency that said sittings will be held in the quarters of the said court, at Prinsengracht, in this town, on Friday, the 27th instant, at 1.30 p. m., to be continued on Saturday, the 28th.

At the same time I take the liberty to transmit to your excellency a notice containing the points in regard to which information will ultimately be required from the counsels and the experts appointed by the high parties, as appear desirable to me. I venture to add that I do not deem it of service at the present moment to formulate precisely the questions, and I venture to reserve the right of addressing to the counsels and the experts such questions as may arise from the information obtained.

I seize this occasion, Mr. Minister, to present to your excellency the renewed assurances of my highest consideration.

T. M. C. ASSER.

MR. STANFORD NEWEL,

*Envoy Extraordinary and Minister Plenipotentiary
of the United States of America, etc., at The Hague.*

Notice.

[Translation.]

The points in regard to which the arbitrator ventures to ask for information from the counsels and the experts, viz:

LEGAL POINTS.

I. Treaty of the year 1867 between the United States and Russia establishing a line of demarkation in the Bering Sea. (First contra-memorandum of the partie defenderesse, p. 2.)

II. (a) Motives for the refusal on the part of Russia to accept the proposition made by England, tending to prohibit the Russian subjects from seal hunting beyond the line of demarkation fixed by the English-American agreement so long as the same should be in force. (Ibid., p. 2.)

(b) Signification given to the expression "partie occidentale de la mer de Behring" by the Imperial Government in regard to which this Government took special measures, maintained by the sending of a war ship. (Ibid., p. 2.)

III. Point of view of the American Government in regard to the seizures mentioned. (Ibid., p. 2.)

"CAPE HORN PIGEON."

I. Number of the officers and crew of the equipage. (31 or 44(?) Memorandum of the partie demanderesse, p. 9 and p. 32, 34.)

II. Whale fishing:

Fishing season in the cases in question.

Commencement and close of the season.

The most favorable part of the season.

Distance between the fishing grounds and the port of Vladivostock. (Allegations to the memorandum of the partie demanderesse, p. 11.)

III. Estimate of the number of whales which would be taken up till the end of the season.

IV. Value of a whale. (Weight and value of the whalebone; quantity and value of the oil.)

SEAL HUNTING.

I. Season of the seal hunting: Commencement and close of the season; most favorable part of the season in the Behring Sea.

II. Estimate of the probable capture of seals in a fixed period. Value of a seal skin (at the place where it is captured and at the London market).

Session of Friday, June 27, 1902.

The first session is opened at 1.30 p. m. in the hall of Permanent Court of Arbitration at The Hague.

There are present: The honorable arbitrator, the counselor of state, T. M. C. Asser; Mr. Herbert H. D. Peirce, Assistant Secretary of State, delegate of the United States; Mr. Komarow, delegate of Russia;

Mr. Charles W. Clifford, American expert; Mr. Charles H. Townsend, of the "Department of Fisheries," American expert; Captain Baker, American expert; Prof. Alexander Kroupsky, Russian expert, and Mr. Ed. Grunwaldt, Russian expert.

There are also present: L. L. E. E. Baron Melvil de Lynden, minister of foreign affairs; Mr. Stanford Newel, minister of the United States of America, and Mr. Ruysseenaers, secretary-general of the Permanent Court of Arbitration.

The arbitrator made the following address:

"Before proceeding to our work, permit me to express my sincere gratitude to the administrative counsel of the Permanent Court of Arbitration for the hospitality he has kindly extended to us in the palace, as well as to the honorable secretary-general and the first secretary of the court for the gracious manner in which they have executed the resolution of the counsel.

"I am happy that, thanks to that resolution, we are enabled to inaugurate the home of the court by the proceedings in a litigation between two great powers, one of which has for sovereign the august initiator of the peace conference, while the other was represented by eminent delegates, who took a conspicuous part in the preliminary work of the convention for the pacific settlement of the international differences.

"I hope that the institution of the court will contribute largely to the maintenance of peace."

Mr. Asser proposes to designate as secretary Mr. W. Roëll, first secretary of the international bureau of the Permanent Court of Arbitration.

Mr. Asser says that the French language is recognized as the official language of the arbitration. English will be optional for the experts.

The arbitrator states that he has arrived at no decision. The questions must not be regarded as indicating any opinion of the arbitrator. They simply serve for the more complete clearing up of some points by the representatives of the parties and their experts. It is necessary that technical data should not be lacking, after which the difference will have to be examined from a legal point of view.

The arbitrator wishes, before proceeding to the examination of the four cases under discussion, to touch upon the three points of law following:

I. The treaty of 1897 between the United States of America and Russia, establishing a line of demarcation in Bering Sea and cited in the first counter memorandum of the defendant party.

II. (a) Russia's motives for refusing to accept England's proposition tending to the interdiction of Russian subjects from sealing during one year outside the limits of the line of demarcation fixed by that agreement.

(b) The significance given by the Imperial Government to the expression "western part of Bering Sea," for which Russia took special measures by sending a warship to those parts.

III. Point of view of the American Government when making the seizures mentioned in the counter memorandum.

The floor is given to the delegate of Russia to furnish explanations on the subject of Questions I and II, which are treated together.

Mr. KOMAROW expresses himself in the following terms:

"In addressing you within these walls I can, as a Russian, but say how happy I am in the hospitality which the administrative counsel of

the International Court of Arbitration has extended to us in our labors. The Imperial Government in its reply to the summons which was addressed to it by Mr. Asser has already given expression to its gratitude, for the decision arrived at by the administrative counsel in placing its home and its organization at the disposal of the arbitrator and of the litigants. Thus, for the first time, explanations will be made here by the delegates and experts of the two Governments which have had recourse to this most salutary mode of adjusting differences between states, that of arbitration, the rulings of which constituted one of the most important labors of the peace conference. We find ourselves under the auspices of the Government of the Netherlands which made the great work particularly its own by its notable participation in the labors which so happily terminated the united efforts of all the countries of the civilized world. The arbitrator who is at present called upon to decide the questions pending between the United States and Russia is one of the shining lights of judicial science in the Netherlands. It is therefore an homage which I earnestly address to Holland in the persons of the eminent men who are here present, and chiefly to his excellency the minister of foreign affairs.

The work of the peace conference is especially dear to Russia's heart. The Russian Government is one of those which believes firmly in the efficacy of arbitration for the solution of international differences. It has given striking proof of this by submitting to this jurisdiction its difference with a friendly power, the United States, in the affair of the seizure and detention of American vessels in Bering Sea. It is well known in Russia that arbitration is the highest source of international justice. It is that justice which may be expected to result from the exchange of explanations. The Russian Government is ready for its part to contribute all the light desired to illuminate the points not yet sufficiently elucidated. For the entire collection of questions treated in the written communications exchanged between the parties, there have been brought here on the part of Russia new enlightenment. It will remain for the arbitrator to decide the moment when he shall judge that the matter is clear, and that an end should be put to the perhaps necessary oral amplification of a case in which more-over during many years a solidarity of interests and views have been maintained between the Russian and American Governments."

The delegate of the United States reserves the privilege of replying on another day.

Mr. KOMAROW produces the text of the treaty of 1867 between Russia and the United States concerning the cession of the territory of Alaska.

Beginning with the examination of point II^a of the list of questions of law asked by the arbitrator, Mr. KOMAROW states that Russia was not in a position to itself join in the agreement concluded in 1891 between the United States and England with regard to the interdiction of sealing in Bering Sea during one year. To explain the motives for Russia's refusal the delegate of the Russian Government thinks it proper to briefly review the diplomatic negotiations which had been carried on between Russia, the United States, and England, since 1887, on the subject of the protection of seals; to that effect it will be necessary to produce certain documents:

Mr. Morier to Mr. De Giers, St. Petersburg, May 29 (June 10), 1891.

Mr. Howard to Mr. De Giers, St. Petersburg, May 23 (June 4), 1891.

Mr. Morier to Mr. De Giers, St. Petersburg, July 10 (22), 1891.

Mr. De Staal to Mr. De Giers, London, April 23 (May 5) 1891.

Note from Mr. De Giers to Mr. Morier, St. Petersburg, June 14, 1901.

Mr. PEIRCE maintained that it is not permissible to produce new documents, the evidence in the case having been set forth in the memorandum, the counter memorandum, the rejoinder of the United States Government, and the surrejoinder of the Russian Government.

Mr. KOMAROW submits that the rules of the procedure in the arbitration do not prescribe when documents may be produced. The arbitrator having asked for supplementary information to be given verbally, the verbal explanations may be accompanied by documentary evidence as well as if the information were furnished in writing.

The ARBITRATOR decides that the delegate of the Russian Government may be free to give his statement of the case the form which he deems necessary.

Mr. KOMAROW makes a brief historical review of the negotiations relating to the protection of seals since 1887. These negotiations had had for starting point a note from the chargé d'affaires of the United States at St. Petersburg to the Secretary of State De Giers August 22, 1887, and by which the Russian Government was invited to enter into an agreement for the regulation of sealing in Bering Sea and to put an end to the practices of extermination which threatened to drain at its very source an important branch of industry. On November 27, 1887, the Russian Government expressed its adherence to that proposition for agreement, but as it was necessary to assure itself of England's concurrence in the projected work the United States legation at St. Petersburg, in a note of January 21, 1888, informed the Russian Government that the same steps had been taken with the British Government by expressing the hope that these steps would be supported by the Imperial cabinet, "whose interests in this matter are entirely analogous with those of the Cabinet of Washington." That solidarity of Russo-American interests which have not ceased to be proclaimed by both sides in the course of the negotiations was affirmed from the very beginning by sending to the Russian ambassador at London the instructions in the sense asked for by the United States.

Differing with regard to the nature of the measures successively suggested for arriving at the proposed end, the agreement between the two Governments remains firm on certain points. One of the most important of these is that which was formulated by Mr. Bayard to the chargé d'affaires of Russia at Washington and which the latter set forth in his dispatch of July 19 (31), 1888.

Mr. Bayard expressed himself as follows:

We occupy the same premises (we are in the same boat to certain extent), having to combat the same evil in the Territory of Alaska, and we encounter the same difficulties. However, the right of every sovereign power to provide for the security and inviolability of its territory by all means of prevention and of suppression in its power is unlimited and incontestible.

The negotiations with England did not end, however, in that first phase of the question, and the two Governments—Russian and American—always considering themselves as closely united with regard to the end to be attained, took on their side measure, which they judged incumbent upon them at the moment. It is thus that the proclamation of the President of the United States of March 21, 1889, was pub-

lished, which is reproduced in the surrejoinder of the defendant party. The Russian Government was, for its part, engaged in the reorganization of the sealing industry and the preservative measures to be taken. The two Governments did not, however, neglect to study how to deal with England, and it is thus the document known as the Blaine memorial was drawn up in 1889, which was to constitute a formal demand to be made by the two combined cabinets. That document, which the two joint cabinets did not finally send to the British Government, was published in the collection of diplomatic documents at the time.

The British Government then showed itself disposed to resume the negotiations at Washington, but without attaining appreciable results in the practical form of an understanding between the three cabinets. The Cabinet of Washington, which independently of the general questions involved in the matter, had yet to treat with England on the solution of the affairs of the seizures of English vessels by American vessels in Bering Sea, concluded with the British Government the agreement of June 15, 1891, with regard to all of these litigations, which was called "Agreement for a modus vivendi between the United States and Great Britain relating to the fur-seal fisheries in Bering Sea."

To reply to the question asked by the arbitrator on the subject of the motives and the nonadherence of Russia to the Anglo-American agreement of 1891, Mr. Komarow reads the following documents:

1. Dispatch from Mr. De Staal, ambassador of Russia at London, of April 23 (May 5), 1891.

2. Note from Sir H. Howard, chargé d'affaires of England at St. Petersburg, of May 23 (June 4), 1891.

3. Note from Sir R. Morier, British ambassador to St. Petersburg, of May 29 (June 10), 1891.

4. Dispatch from Mr. De Staal of June 12 (24), 1891.

5. Note from Mr. De Giers to Sir R. Morier of June 4, 1891, No. 2110.

6. Note from Sir R. Morier of July 10 (22), 1891.

Mr. PERCE said that he would take cognizance of these notes, reserving the right to object to their being submitted to the arbitrator for his consideration.

Mr. KOMAROW then said from all of these documents it is evident that Russia, invited by England to participate in the Anglo-American agreement of 1891, deemed it necessary that the interdiction of sealing in the western part of Bering Sea be applicable to subjects of the three States as in the eastern part.

The impossibility, alleged in the note of Sir Robert Morier of July 10 (22), 1891, for the Government of the United States to enact soon enough a prohibition to its citizens to seal in the western part of the Bering Sea rendered illusory the measures which the cabinets of London and St. Petersburg proposed to take with regard to their subjects. Sir Robert Morier concluded by declaring that under these conditions the agreement would not be desirable.

Mr. Komarow stated that in spite of Russia's nonadherence to the Anglo-American agreement of 1891, the general agreement on the subject of the protection of seals between the cabinets of St. Petersburg and Washington remains quite within the limits maintained in the course of the negotiations, notably with regard to the sending of cruisers for the suppression of poaching and the right of the interested

States to take such measures of preservation as they deemed necessary over an expanse so vast and so difficult to efficaciously protect. Russia, moreover, has always maintained for its part that certain of these industries were entitled to special privileges. That doctrine is notably affirmed in the note of Mr. De Giers of May 28, 1892. (See memorandum of the party claimant.)

It is known that in certain countries the coast industries are the object of special protection as regards the extent of jurisdiction. A list of these industries is to be found in volume 10 of the Proceedings of the Tribunal of Arbitration of Paris in 1893.

Mr. PEIRCE says that opinions set forth in the arbitration of Paris can not serve as evidence.

Mr. KOMAROW (continuing) says that as it was stated in the sur-rejoinder of the defendant party that the Russian Government considered itself justified in enacting, in 1893, after the decision rendered by the Kapoustine commission, the measures which it deemed necessary for the protection of seals, it enacted these measures unilaterally, and contented itself with imparting them to the British Government.

The Anglo-Russian agreement of 1893, subsequent to the measure in question, did not create Russia's right to that special jurisdiction; it only established the fact of England's recognition of that pre-existent right. It was the same with the agreement of 1894 with the United States of America.

This point of view of the Russian Government was sustained, moreover, by the United States before the tribunal of Paris. (Acts of the Tribunal of Paris, Vol. XV, pp. 112 and following.) The American delegate, Mr. Phelps, stated that Russia had simply notified England of the decisions of the Kapoustine commission fixing the right of jurisdiction of Russia.

Mr. PEIRCE, delegate of the United States, had the floor to reply to the question as to the line of demarcation. The American Government, he said, accepted the property which Russia sold to the United States, with the line of demarcation established by the treaty of 1867 and interpreted the line of demarcation of the treaty of 1837 as attributing to it a property right over the eastern part of Bering Sea, consequently a special jurisdiction. The award of the tribunal of Paris of 1893 did not recognize this right of the United States. According to the award of 1893 it does not own the waters of that part of Bering Sea situated to the east of the line cited, which the American Government believed it had acquired.

It must again be stated that the United States and Russia are in arbitration on the same question. The United States have paid; they now exact that Russia pay for the vessels seized.

The arbitrator, Mr. T. M. C. ASSER, then invited Mr. Komarow to explain himself as to the Question II (b), with regard to the significance given by the Imperial Government to the expression "Western part of Bering Sea" for which that Government took special measures by sending vessels to those parts.

Mr. KOMAROW stated that after the conclusion of the treaty of 1867 between Russia and the United States of America the Russian Government did not claim the right of jurisdiction over the whole of the western part of Bering Sea. By the western part of Bering Sea must be understood the extent of that sea which is situated to the west of the

line of demarcation of 1867. The line of demarcation according to the interpretation of the Russian Government did not imply a property right over all of the respective maritime extents, but it meant that all the land—that is to say, the islands and dependencies with the adjacent waters, situated in one or the other part of Bering Sea—belonged, respectively, to Russia and America. At that epoch certain islets may have been ignored or, perhaps, no precise names had been attributed to them. For this reason, in order to simplify matters, in 1867 a general designation had been employed.

Mr. PEIRCE accepted this explanation.

Mr. KOMAROW stated that he did not intend to enter into the discussions formerly raised before tribunals of arbitration on the subject of the ukases of Emperor Paul in 1799, and of Emperor Alexander I of 1821, as also of the treaties of 1824 and 1825, concluded by Russia with England and the United States. Assuredly, therefore, until 1867—that is to say, so long as Russia possessed all of the extent of coast bordered by Bering Sea and adjacent waters it exercised its right of protection over the maritime industries dependent upon that region. But with regard to sovereignty, Russia has not claimed it over the western part of Bering Sea as the United States have claimed it over the eastern part.

Mr. PEIRCE stated that the question of jurisdiction in Bering Sea has been settled by the award of the tribunal of Paris, and thus the American point of view with regard to the seizure of vessels is taken in the light of that decision.

Mr. KOMAROW set forth that Russia was not participant in the arbitration of 1893, and that consequently it is not affected by that decision, insomuch as it may affect the relations between the United States and England. As for the seizures of American vessels by Russian cruisers, Mr. Komarow believes they should be considered from the standpoint of the situation at the time—that is to say, of the actual situation and of the situation created by the agreements between the Russian and American Governments and by the doctrine superior even to those agreements, sustained by the United States against England. When one sets up a claim against a party, that claim should be considered binding on him who invokes it.

Mr. Komarow furthermore stated that before the tribunal of arbitration of Paris, the American delegate, Mr. Phelps, official agent of his Government interrogated at different times on the subject of how the Cabinet of Washington regarded the seizures of English and American vessels already accomplished (1893) by Russian vessels, replied to the arbitrator that these seizures had been perfectly regular. (Proceedings of the Tribunal of Arbitration of Paris, Vol. XII, 42, 415.)

Passing to the question 3 of the programme, the arbitrator asks Mr. Peirce to express himself on the subject of the seizures made by the United States Government before 1893.

Mr. PEIRCE answered that the Government of the United States then believed itself to be justified in making the seizures, but that point of view has changed since then, because then they were ignorant as to the extent of the property they had acquired by virtue of the treaty of 1867.

Mr. ASSER asked Mr. Peirce if the United States are now convinced that they were wrong in making the seizures mentioned in the counter

memorandum and what is the extent of jurisdiction which the United States claim to-day in Bering Sea.

Mr. PEIRCE answers affirmatively: At that time we did not know the limits of the property. The jurisdiction which the American Government now claims is an extent of 3 miles.

Mr. KOMAROW stated that in any event the United States in fact have jurisdiction over 60 miles, which was sanctioned by the Anglo-American agreement and granted by the award of the Tribunal of Paris.

Mr. PEIRCE protested against the application of a later special convention between Great Britain and the United States. That convention has no bearing upon the present arbitration. The 60 miles relate only to the "modus vivendi" between the United States of America and England. The Arbitrator made a remark relating to the number of the crew of the *Cape Horn Pigeon*. According to the memorandum they numbered 30, besides the captain, and according to the ship's roll, which is annexed to the memorandum, they numbered 42.

Mr. CLIFFORD, expert, says it is always necessary to take more sailors, on account of accidents and deserters. Indemnity was asked for 31 men, yet 3 men must be deducted (the captain and 2 men having been taken aboard the Russian vessel); for 8 officers at \$10 during six days (\$480), and for 20 men at \$5 during six days (\$600); for the 28 men (\$1,080).

The ARBITRATOR proposed to first question the Russian experts.

Mr. KOMAROW gives the following information on the subject of whaling. (See Annex A.)

The session then adjourned to to-morrow, Saturday morning, at 10 o'clock.

Session of Saturday morning, June 28, 1902.

The session opened at 10 o'clock in the morning.

The ARBITRATOR said that examination of the technical points will be resumed. In the first place he would question the American experts, then the Russian experts.

Mr. PEIRCE said that it was decided yesterday, in the preliminary morning session, that the Russian experts should be examined first, as Mr. Komarow has already given information on the subject of whaling.

The ARBITRATOR had no objection to the Russian experts being examined first, provided it is so agreed by both parties.

Mr. KOMAROW agreed that the examination be reversed.

Mr. PEIRCE handed to the arbitrator the notes (see session of Friday, June 27, p. 6) which Mr. Komarow gave him yesterday, also a printed document with regard to the vessels which were seized under the same conditions. (The Bering Sea question, embracing the fur-sealing industry of the North Pacific Ocean, 1898. 8°. Ottawa. Government Printing Bureau, 1899. Printed.)

He added that in his opinion the introduction of new testimony was not regular, and he wished to reserve the right to object to the introduction of new arguments.

The ARBITRATOR said that he desired some information on the whaling season in Okhotsk Sea and on the average number of whales that can be killed there between the 1st and 10th of October, as well as before the 1st of October, as the captain of the *Cape Horn Pigeon* claims an indemnity for the time of his detention at Vladivostock

(from September 10, 1892, to October 1, 1892). We must know the number of whales which the captain could have taken during the remainder of the season.

He believed he should again state that he asks this information without in any way having decided any question. In case the question of right be affirmatively decided, the arbitrator must be enlightened by the experts in order to fix the amount of indemnity claimed by the party claimant.

Mr. PEIRCE observed that not only must the whaling season but also the time necessary to traverse the entire distance between Vladivostok and the whaling grounds of the Okhotsk Sea be ascertained.

Mr. ASSER asked the expert, Professor Kroupsky, whether the method of average can be accepted, and if the method of the party claimant, which takes the average number of whales taken by the captain in his former expeditions in the same waters and deducts the two whales which he had taken during the voyage in question, is just.

Mr. KROUPSKY, Russian expert, gave a copy of a publication emanating from the United States Fish and Fisheries Commission.

In Bering Sea, he said, the most favorable season for whaling (during a great part of the year the sea is covered with ice) is during the months of August and September. Among the documents presented to the arbitrator will be found detailed information. Data may also be found in other publications entitled United States Commission of Fish and Fisheries, Part XVI; Report of the Commission for 1888 to June 1889, Washington, 1892. Page 81 reads:

The season in the Okhotsk usually begins about the last of May to the 1st of July and continues to the latter part of October. The whaling season on the Japan grounds is commonly from May to November.

The ARBITRATOR asked what is the distance from Vladivostok to the fisheries in the Okhotsk Sea.

Mr. CLIFFORD said that it is necessary to take into consideration the current, the north winds, and the fog. A great speed can not be attained under these unfavorable conditions. It takes about 10 days to traverse the distance from Vladivostok to said fisheries. The distance is 650 miles, but on account of the winds it is necessary to traverse a distance of about 1,000 miles. It must be remarked that there is a typographical error on page 41 of memorandum. It should read December 18, not September 28.

The ARBITRATOR asked Professor Kroupsky to kindly indicate upon a marine chart the part of the sea where the fisheries are located.

Mr. KROUPSKY produced a marine chart of that region and showed that the distance between Bering Island and the coast of Vladivostok is about 30 degrees of longitude (165° - 135°). In a direct line the distance is, approximately, 1,800 kilometers.

The ARBITRATOR stated that the two parties are agreed upon this calculation. He asked how many whales could have been taken.

Mr. KOMAROW wished to state, before Mr. Kroupsky answers, that the defendant party, which he represents here, sets forth in his counter memorandum and in his surrejoinder the reasons why it does not admit the indirect damages. As the question relates to the indirect damages, he wishes to state that he maintains the same view as the Imperial Government.

The ARBITRATOR said that he has already stated that these questions decide nothing.

Mr. KROUPSKY. As to the estimate of the number of whales which could have been taken, it is difficult to make an estimate; it is a calculation of probability. In making this reservation he says that in eighteen days, at the rate of three days to each whale, 6 might be caught.

The ARBITRATOR asked him again, "What average do you admit?"

Mr. KROUPSKY saw no more reason for admitting 6, 7, 8, than more. An average of $6\frac{1}{2}$ might be taken for eighteen days.

The ARBITRATOR, continuing to question the professor, told him that the captain had already taken two whales, and that, according to the exhibit, the product from one whale, based upon the two whales already taken, is estimated at from 1,100 to 1,300 pounds of bone per whale and of 100 barrels of oil per whale. He asked the expert whether that estimate is correct, and whether the value of the bone is from \$4 to \$5 per pound, and whether a whale can be estimated at \$1,250 for the year 1892.

Mr. KROUPSKY said it is only a question of the bones of the head. He estimates that the average of bone obtained from one whale is 1,200 pounds and of oil 100 barrels. The price of the bones was from \$4 to \$5 per pound in 1898. The price of the oil may be estimated at \$13. The prices do not differ from year to year.

The ARBITRATOR asked if that is the price in the San Francisco market.

Mr. CLIFFORD said that for the oil and bone it is the price of the San Francisco market.

The ARBITRATOR asks if an import duty must be paid.

Mr. GRUNWALDT said "No."

The ARBITRATOR stated that consequently the price of \$4 to \$5 represents the value of the whalebone on the market.

Mr. GRUNWALDT said that throughout Russia the average value of a whale is 2,500 roubles.

Mr. PEIRCE asked if the Russian experts have ever seen the whales that are caught at sea or those that are found in the bays.

Mr. KROUPSKY said that he speaks of the big whales (bowheads) which are caught at sea. There are two kinds—the "bowheads" and the "right" whales.

Mr. KOMAROW further stated that the Russian experts depend upon the figures contained in an American report, which will be sent to the Arbitrator.

The ARBITRATOR asked how the business is carried on.

Mr. KROUPSKY says that the products of the whale are prepared upon the vessels or on the coast by the captains of whalers.

The ARBITRATOR said that consequently the captain sells only the product, and not the whale. He asks what is the price of the bone and oil.

Mr. KROUPSKY presented a report from the governor-general of the province of the Amoor. He said that the merchants—that is to say, the retail dealers—make a profit of 100 per cent; that makes a value of 25,000 roubles for one whale. They buy the product at their own risk.

Mr. PEIRCE said that the price for which the product of one whale is sold to the retail trade has nothing to do with the market price for oil and bone.

The ARBITRATOR stated also that it is only for the retail trade that the whale is valued at \$25,000; but for whalers the price of bone is from \$4 to \$5 per pound. There are two values, the value of the bone

and oil in the market and the value of the different products in the retail trade.

Mr. PEIRCE said he would like to know if Mr. Kroupsky has any experience in the trade in question.

Mr. KROUPSKY said that he is versed in this business, as he lives where it is carried on.

The same question is asked of Mr. Grunwaldt who says that he understands this business.

The ARBITRATOR asked Mr. Clifford to make his deposition.

Mr. CLIFFORD said that as advocate he is interested with all matters appertaining to commerce. Seventy-five or eighty years ago the New Bedford captains made voyages of from four to five years' duration and sold their cargoes at San Francisco. Since the existence of the railroad the vessels are in the ports of the west coast (San Francisco), and it is there the captains go aboard their vessels. They go to the whaling grounds, catch the whales, prepare and put the oil into barrels and bone in the holds of their ships. They do not sell the whales, but the bone and oil. They unload the cargo at San Francisco. The captain and crew are paid according to the San Francisco prices, in shares. If the *Cape Horn Pigeon* had taken seven whales, the bone and oil of those whales would have been sold at San Francisco and the captain and crew would have been paid their share of the profit of that voyage. The price of the bone was \$6; now it is from \$4 to \$5. In 1890 Captain Baker had received \$5.75.

The ARBITRATOR put several questions to Captain Baker, experienced in whaling.

Captain BAKER said the oil and bone are sold at San Francisco, and sometimes at New Bedford. The price of the bone in 1890 was \$5.75, and of the oil \$13 per barrel. Regarding the catch, he said 6 is a catch, 10 a good catch, 4 a bad catch. During late years he was sent to a new ground by speculators. The catch never exceeded 6 whales in twenty days. He has never sold a whale, always the products; he would not know how to value a whale, nor even one of the whales one sees from time to time in exhibitions.

The session here adjourned from noon to 3 o'clock.

Session of Saturday afternoon.

The session was opened at 3 o'clock.

Mr. ASSER asked Mr. John W. Garret, secretary of the legation of the United States of America, and Mr. Stanislaus Gutowski, attaché of the Imperial embassy at Berlin, acting secretary of the Russian legation at The Hague, to have the kindness to perform with Mr. W. Roel the functions of secretary.

Mr. ASSER then asked Captain Baker what was his share of the catch. The captain says that he had received a twelfth or a tenth of the catch, which brought him from \$3,800 to \$4,000.

Mr. KOMAROW asks if Captain Baker is in the business himself.

Mr. BAKER answers, Not as a tradesman. He was not in the business but he says he knows the price of the bone and oil of the whale.

Mr. PEIRCE desired to ask several questions.

Mr. PEIRCE asked Captain Baker: You have been engaged in whaling for forty-two years, during which you have become thoroughly acquainted with Russian waters?

Captain BAKER. Yes; both Okhotsk and Bering.

Mr. PEIRCE. Do you know anything about whaling practices except what you have done yourself?

Captain BAKER. Yes; Eskimo and Siberian natives whale along shore when ice breaks up early in season. They take grampuses or calves of the right whale or bowhead or finback.

(Grampus is a fish with bottle nose, between a whale and a porpoise; it has no whalebone; finback has no bone. Calves of right whales or bowhead have no bone.)

Mr. PEIRCE. Do right whales ever go into the bays?

Captain BAKER. No.

Mr. PEIRCE. What is the value of whales when taken near shore?

Captain BAKER. Forty to fifty barrels of oil, perhaps. No large whales are taken from shore. Couldn't well be taken.

Mr. PEIRCE. In cruising these waters did you ever see a Russian whaling ship?

Captain BAKER. No.

Mr. PEIRCE. A Russian whaling captain?

Captain BAKER. No.

Mr. PEIRCE. Did you ever have in your crew a Russian subject or other national?

Captain BAKER. Never a Russian, but many others.

Mr. PEIRCE. Did you ever hear tell from others of captains of Russian whaling ships?

Captain BAKER. No.

Mr. PEIRCE. Ever hear tell of a Russian being in a crew?

Captain BAKER. No.

Mr. PEIRCE. Do you consider that, except fishing from shore, there is much Russian experience in whaling?

Captain BAKER. No, sir.

Mr. PEIRCE handed to the arbitrator a printed document which relates to the *Cape Horn Pigeon*, from which the Russian delegate yesterday read some passages. He took cognizance of the contents; he is satisfied to leave it in the hands of the honorable arbitrator, but he believes he ought to state that it is an unsigned document, which deprives it of all value from a juridical point of view.

Mr. KOMAROW did not understand the meaning of these words. He said that the publication above mentioned contains only that which he had the honor to say yesterday. The printed matter is returned to Mr. Asser. He added that in the neighborhood of the Medny Islands there are scarcely any whales; it is this that caused the supposition that the *Cape Horn Pigeon* was engaged in sealing. Moreover, its arrest was acknowledged to be illegal by the Imperial Government. The captain of the man-of-war was punished.

Mr. PEIRCE again questioned Captain Baker with regard to the above-mentioned publication about the *Cape Horn Pigeon*.

Mr. PEIRCE. Did you know bark *Corral*?

Captain BAKER. Yes.

Mr. PEIRCE. In 1898 she was in Okhotsk, fishing?

Captain BAKER. No; she went out of service three or four years before that.

Mr. PEIRCE. Did you know the *Stamboul* in 1898?

Captain BAKER. She went out of service three or four years before that.

Mr. PEIRCE. You know *Cape Horn Pigeon*? You sailed in her?

Captain BAKER. Yes.

Mr. PEIRCE. She went down at sea, didn't she? When was it?

Captain BAKER. I think about 1896 or 1897.

Mr. PEIRCE. But this document shows all of these vessels were whaling in year 1898.

Captain BAKER. That is a mistake.

Mr. PEIRCE. The *Josephine*—did you know her?

Captain BAKER. She was fishing in 1898—sperm whaling outside Japan Sea.

Mr. PEIRCE. But this document says she was whaling in the Okhotsk Sea in 1898.

Captain BAKER. They have made a mistake in that year.

Mr. PEIRCE. Were the *Corral*, the *Cape Horn Pigeon*, and the *Josephine* fishing in Okhotsk Sea in 1888?

Captain BAKER. Yes.

Mr. PEIRCE. Was *Corral* fishing in Okhotsk Sea in 1899?

Captain BAKER. No; she was not in 1899; she was fishing along Alaska coast.

Mr. PEIRCE. Did you know the *Tropic Bord*?

Captain BAKER. Yes.

Mr. PEIRCE. Was she fishing in Japan Sea in 1881?

Captain BAKER. Yes.

Mr. PEIRCE. What sort of ship was she?

Captain BAKER. Third class, small, about 100 tons; crew of about 23 or 24 men; not capable of getting much of a catch; couldn't hold it if she got it.

Mr. PEIRCE. Did you know the *Reindeer*?

Captain BAKER. Yes.

Mr. PEIRCE. Was she fishing in Okhotsk Sea in 1883-84?

Captain BAKER. Yes.

Mr. PEIRCE. She didn't get much bone or oil?

Captain BAKER. No; she didn't finish the season there; she was there in May to July. If she had stayed till September she would have done better. She was too early for whaling in Okhotsk Sea.

Mr. PEIRCE. The *Cape Horn Pigeon*; did you know her?

Captain BAKER. Yes.

Mr. PEIRCE. Was she third class?

Captain BAKER. No; first class.

Mr. PEIRCE. What do you mean by a first-class ship?

Captain BAKER. Anywhere from 210 to 350 or 360 tons.

Mr. PEIRCE. Was she well equipped?

Captain BAKER. She was; she had 4 boats; first-class equipment and first-class captain.

Mr. PEIRCE. Was she a successful whaler?

Captain BAKER. Yes; always made money for her owners.

Mr. PEIRCE. Could she command a good captain?

Captain BAKER. Yes.

Mr. PEIRCE. You know her well?

Captain BAKER. Yes.

Mr. PEIRCE. Was she staunch?

Captain BAKER. Yes; I would take her anywhere.

Mr. PEIRCE. She was the sort of boat that would get a good captain?

Captain BAKER. Yes.

Mr. PEIRCE. You were her captain at one time?

Captain BAKER. Yes; I was captain in 1871-1879.

Mr. PEIRCE. Who owned her at that time?

Captain BAKER. William Potter.

The ARBITRATOR. Not Wing & Co.?

Captain BAKER. No; they owned her later.

Mr. PEIRCE. You knew her when Scullen was sailing her?

Captain BAKER. Yes.

Mr. PEIRCE. Is there much difference between whaling captains?

Captain BAKER. As much as there is in other men; some work hard and some don't.

Mr. PEIRCE. Knowledge plays a considerable part in success of a whaling captain, does it not?

Captain BAKER. The experienced and intelligent whaleman has the better chance.

Mr. PEIRCE. Was Scullen a good captain?

Captain BAKER. He had a high reputation in San Francisco and in New Bedford.

Mr. PEIRCE. Were the whales you caught in Okhotsk Sea small?

Captain BAKER. No. They were large where I fished.

Mr. PEIRCE. Was that the same place where Scullen would be likely to fish?

Captain BAKER. Yes.

Mr. PEIRCE. You wouldn't bother with small whales?

Captain BAKER. No; because they haven't much bone.

Mr. PEIRCE. When you were whaling, what was the money value of bone?

Captain BAKER. \$3.50 to \$5.50 per pound. On one voyage I got \$5.75.

Mr. PEIRCE. You got that price yourself from your owners?

Captain BAKER. Yes, sir.

Mr. PEIRCE. As your share?

Captain BAKER. Yes. For the last three or four years previous to that I got about \$3.30.

Mr. PEIRCE submitted copy of "Whaleman's Shipping List," dated February 23, 1897, showing prices from 1851 to 1897; year 1892 average price \$5.50 per pound for bone.

The ARBITRATOR asks if Mr. Komarow has nothing to add on the question of whales.

Mr. KOMAROW requested that Mr. Grunwaldt be heard.

Mr. GRUNWALDT said that Mr. Liebes, of San Francisco, founder of the Alaska Company, pays to the captains of whalers a certain sum of money from the contractors before their departure. Thus they go whaling at their risk and cost. It might be that such an arrangement had been made with the captain of the *Cape Horn Pigeon*. Therefore it is difficult to fix the price of whales.

The ARBITRATOR said that the contract indicates that the captain had a share of the catch. He asks if the risks that are run can be insured to the contractor who paid the money to the captain.

Mr. CLIFFORD said that only the cargo—that is to say, the bone and oil which are aboard the vessel—is insured. The premium is 6 per cent per season.

The ARBITRATOR said that the affair of the *Cape Horn Pigeon* may be considered as closed.

Mr. CLIFFORD and Captain BAKER asked permission to withdraw.

The parties and the arbitrator have no objection.

The ARBITRATOR said that the affair of the whaler being closed, it is now time to consider the questions as to best season for sealing, the length of the season, and the date of the beginning and the ending of the sealing season.

Mr. KROUPSKY said that the season of the regular catch of seals on the landings of the Commander Islands is chiefly during the months of June and July and sometimes half of the month of August. Sometimes sealing is begun again by certain sealers in the month of September. The herds begin to arrive at their grounds on the islands in the month of May. Toward June the families, or harems, are formed, and in July the season of sexual life is at its height. It continues to August and September, so that the young are born in from four to five months. Toward October the migration begins, and the greater part of the herd departs to winter in the south.

He thinks that further details could be given by Mr. Townsend.

The ARBITRATOR asked if the young are brought forth in mid seas or upon ground.

Mr. KROUPSKY. They come ashore expressly for the purpose of bringing forth upon the islands. The females come there to give birth to their young. The nursing of the young follows quickly after the birth. The females, again enceintes, go with the herd.

The ARBITRATOR asked if there is any essential difference between the seals of the Pribilof and those of the Commander islands (the American seals and the Russian), as is set forth in one of the annexes of the American memorandum.

Mr. KROUPSKY said there is some difference noticeable enough with regard to the conditions of life and nourishment, but the animals are the same except for some very fine distinctions, which are developed to some extent under the influence of the conditions of life, these conditions, as regards the two races, not being identical. These conditions, developed, so to speak, in the Darwinian way, cause the zoologists of our day to distinguish the subspecies by different scientific Latin names. It would be an exaggeration to say that there is any very marked difference between these two species.

The ARBITRATOR asked if these differences, so far as they exist, extend to the females and their habits.

Mr. KROUPSKY. One may say no, unless it be in the conditions of the surroundings and the food. The female seals come ashore upon the islands to give birth to their young. For the time being they are lazy and inactive. After the young are born and while they are nursing, still watched over by the males, they seldom go out to sea. The female seals never go to any great distance, and never to a distance of 6 miles from Commander Islands, during the month of July and even the beginning of August. They prefer to remain during that time on the "rookeries." The male seals remain during the months of June and July on the islands.

Mr. KOMAROW said that he noted of what has just been said on the subject of female seals to show that the mother seals on the Commander Islands do not go far to seek their food, which constitutes a fact set forth by Mr. Grebnitsky in his memorial entitled New Data

on the Life of Fur Seals. This fact agrees entirely with the indications of the line of marine depths (*J. H. L. log book*, p. 5). He adds that Mr. Townsend's charts confirm the opinion of Mr. Grebnitsky.

Mr. KROUPSKY claimed the privilege of giving this memoir set forth in Russian to the arbitrator. In continuing he says that according to the American publications already presented it appears from the log books of the schooners that the more the sealing is in the proximity of the shore in July and August, the more females are there killed. In the month of August the young females appearing upon the islands are not yet reproducing (*J. H. L. log book*, p. 5); moreover, on the chart of maritime enterprise in fur sealing drawn up in 1883 and 1893 by Townsend, it is seen that in the month of July near the Commander Islands seals are hunted nearer shore than in June, which shows acquaintance with the laws of their migration (*J. H. L. log book*, p. 5).

At the request of Mr. KOMAROW, Mr. KROUPSKY submitted that chart to the arbitrator, as well as another chart, entitled "Map of the western portion of Behring Sea," by Leonhard Stejneger, 1896, on which are marked the places where sealing is done around Commander Islands and upon which certain directions of the course of the schooner *James Hamilton Lewis* are marked. It was not possible to indicate all of them, the chart ending at 175° east longitude (*J. H. L. log book*, p. 2).

Mr. KROUPSKY continued: In the Senate Document No. 137, Part II, Fifty-seventh Congress, first session, there are annexed three charts of Bering Sea and of the northern part of the Pacific, indicating the points where the sealing industry was carried on in 1883-1893 (Chart I), for 1893, and 1894, and in these charts no indication is found of facts of sealing relating to the longitudes and latitudes alleged by the schooner *Hamilton Lewis*. The data which served in the composition of the charts was borrowed from the log books of the American, Canadian, and English schooners (*J. H. L. log book*, p. 2), adding that Colonel Woloschinow (1885) claims the same thing on the subject of the habits of seals, Townsend says the same, as does also Prosorow in his publication in the Russian language, Brief Sketch of the Okhotsk and Kamtschatka Regions (St. Petersburg, 1902), Sawitsch (report for 1893), and Dr. Slumine (Industrial Resources of Kamtschatka and the Commander Islands, 1895). These works have been remitted, besides that of Sawitsch and Woloschinow.

Examination of charts, with designation of the parts of the sea where seals are taken in the pelagic sealing at different periods of the year, and the migration habits of seals.

Three charts were handed to the arbitrator.

Mr. KROUPSKY showed on the chart (Western portion of Behring Sea, by Leonhard Stejneger, 1896) the places where pelagic sealing is carried on around Commander Islands, and on which are marked the course of the schooner *Hamilton Lewis*. It was, however, impossible to mark the whole course, the chart ending at 175° east longitude.

The ARBITRATOR again asked Mr. Kroupsky about the taking of the mother seals in pelagic sealing; if it is possible to distinguish from a distance whether the animal is male or female.

Mr. KROUPSKY said that the females are very easily distinguished by their relatively small bodies. The males having attained mature

age (about 4 years), are nearly twice as large as the females, and nothing is more simple than to differentiate at sight, even at a considerable distance.

Mr. TOWNSEND said that sometimes some females go out to distance of 200 miles from shore. It is then possible to presume that the *James Hamilton Lewis* could have taken all of the skins of female seals in mid seas, even at the period stated.

The ARBITRATOR observed that according to what has been said in the arbitration of Paris, the places where female seals seek their food are much more distant.

Mr. KOMAROW answered that at the arbitration of Paris it was a question of American seals of the islands of Pribilof. It is now a question of the seals around the Russian islands of Commander, of which the conditions of life are slightly different by reason of the places where they find their food. The Russian and American waters differ as regards depths and character.

Mr. PEIRCE said that this does not relate to the present matter (to the question of the sealing of the *J. H. L.*).

The ARBITRATOR is of different opinion. It is a question of the value of the statements that there is a difference between females of the Pribilof Islands and those of the Commander Islands and between the depths about those islands. He stated that it has been said by Mr. Kroupsky that it was impossible to find female seals at a distance of 5 or 6 miles from the Commander Islands, and asks if the professor can produce documents to prove it.

Mr. KROUPSKY insisted that it is impossible to find in the said season female seals in predominating quantity around the Commander Islands. He sustained his deposition by a citation from an American source. (Stejneger.)

Mr. PEIRCE said that it can not be admitted that it would be impossible to find female seals in the North Pacific between the longitudes where the *James Hamilton Lewis* passed. He wishes further explanations on that allegation.

Mr. KROUPSKY particularized, and said that some females can be found in midocean. If it is on the one hand incontestible that seals are never met with between longitude 171° and 185° , on the other hand it may be said that sometimes, by chance of nature and within the zoological possibility, exceptions may be found, but very rarely. For instance, animal species which are only found in certain climates or places which are their proper homes, or where zoologically they belong, can be accidentally met with in unique and, so to speak, erratic examples in regions where one would not expect to find them in their normal condition. Thus it is with seals, as with all other sorts of living things—the possibility of an accidental appearance in regions where they are generally never found. I admit that accidental possibility, but I do not believe that in such regions it would be a question of hunting erratic individual seals, at least not without running the risk of taking but one or two in a long time. Consequently, it is very difficult to suppose that the *James Hamilton Lewis* could have taken that proportion of 90 per cent of female seal skins precisely in the regions so exceptional for that purpose, viz, the great distance of the place from Medny Island, and still more the fact that the sealing must have taken place in the longitudes between Attu and the Adakes.

Mr. KOMAROW drew attention to the fact that 90 per cent of mother seals had been taken. The mention made in the memorandum of the party opposed to the deposition of Mr. Morgan as to how that circumstance would prove that the skins were taken from animals killed in mid sea is not justified. What Mr. Morgan said must be otherwise interpreted. He had simply stated that that lot of skins had been taken from mother seals, but in his deposition he made no statement that this would serve as proof that sealing had been done in mid seas. (*J. H. L.*, log book, p. 5.)

The ARBITRATOR asked about the hibernating places of seals.

Mr. KROUPSKY said that the places of hibernating are always in the sea. It has never been remarked that seals spend the winter on land or on other islands. The winter "sealing grounds" are not known. The seals go into the depths of the sea. It is difficult to determine in an exact manner the places of hibernation in the sea. What is known is merely the migration of the herds, which go at the approach of winter toward the south; those of the Commander Islands in the direction of Japan; those of the Pribilof Islands in the direction of San Francisco.

Mr. KOMAROW produced a marine chart to establish that, according to the log book, the captain had taken seals in longitude where they never come.

Mr. PEIRCE said that this point should have been refuted in the memorandum, and that it is not a question to be discussed here.

The ARBITRATOR was of opinion that all liberty should be accorded to the delegate from Russia.

Mr. KOMAROW found that that relates to the supplementary information, and says the Report of Fur Seal Investigation of 1896-97, Part I, page 44, reads—

The fur seals of the North Pacific comprise three distinct herds, which do not intermingle in any way, having distinct breeding grounds, feeding grounds, and routes of migration.

In the same Report, Part III, in the article of Charles H. Townsend, "Pelagic sealing" (p. 234 and following), it reads:

The Asiatic herd traverses from longitude 141°-171° east; American herd traverses from longitude 119°-175° west.

Having examined on the chart the directions indicated in the log book of the *James Hamilton Lewis* from the 13th July, it appears that the schooner took fur seals in latitudes and longitudes in which fur seals have never been found by anybody. One concludes therefrom that if the schooner indicated in an exact manner her sojourn in those latitudes and longitudes she could not have taken any seal skins, and that the skins had been taken elsewhere, and as it will be shown further on, probably in the proximity of the Medny Island. (*J. H. L.*, log book, p. 2.)

Mr. KROUPSKY gave explanations on the chart, and adds that the fact of the proximity to the shore, which explains the possibility of taking a certain number of skins, 90 per cent female seals, as is the case with the *James Hamilton Lewis*, has become exceedingly common for the schooners of the pelagic fleet. In the report of the chief of the district of the islands of Commander for 1891 we read:

The poaching schooners have again begun to approach the shore, first observing the prohibited zone, and not approaching the coast except in fogs. Seeing that their

acts remain unpunished, and that there were no Russian cruisers nor other vessels, also supposing perhaps that the Imperial Government did not desire to put any obstacle in the way of their raids, the schooners in 1890 and 1891 remained and sealed off the coasts of Medny Island, carefully remaining beyond the range of gunshot. In the places inaccessible for the inhabitants, or far from the principal landings, they sealed even upon the shores. Their audacity reached such a point that in 1891 the captains offered resistance to the war ships which were in those parts.

Page 191 of the Report, Part IV:

But not all the schooners were satisfied with taking the seals outside of the territorial water of Russia. They adopted the tactics of sending the boats inshore to hunt on the rookeries, and as a consequence many of them had to feel the claws of the bear.

The seizures of the schooners in 1890, 1891, and 1892 were cases considered as quite ordinary. (P. 226 of the Report, Part III.) Prior to 1892 the desultory sealing carried on about the Commander Islands virtually amounted to sealing on the rookeries, the seals having been taken in foggy weather close to the shores, or, when opportunity afforded, on unguarded rookeries.

In Part IV of the Report of the Fur Seal Investigation, pages 189 and 190, one reads:

The captains of most of the schooners were becoming wary, however, and, to avoid being captured within the 3-mile limit of the territorial waters, adopted the tactics of keeping some distance at sea, only sending their boats or canoes to kill the seals on or off the rookeries, as the case might be.

Mr. TOWNSEND said that he knew the chart which was produced, but that it is not quite exact. He consulted another marine chart to demonstrate where the seals are at different periods of the year, and the route they follow during their migration. He said that there is no reason for not admitting that seals had been taken in the places indicated on the log book. (Pointing on the map, he said that it was possible the *Lewis* got the seals where she claimed.)

The ARBITRATOR asked Mr. Townsend for information with regard to sealing, and their habits.

Mr. TOWNSEND. Seals arrive from the Pacific in a great body about July, in Bering Sea, and are present at the Pribilof and Commander islands in July and August and till late in the fall. They are found at all distances up to 200 miles from both groups of islands. The males stay on the islands; the females bring forth young early in July, and then, being hungry, nursing their young, they go away to feed. Young males and very young females not under the same pressure for food, not nursing, stay most of the time on land. Females go away out to sea, where they can get the most food in the shortest time.

The ARBITRATOR (referring to p. 143) asked if it is stated that males remain on ground, never eating.

Mr. TOWNSEND. They become very hungry and thin. I refer only to breeding males in the harems. They first come last of May. From the time the big males take up their position they never eat nor drink for two months. Then leaving the rookeries they go to sea very little, sleep on sand beaches—seem to want to sleep for the first month after their breeding duties are over. The young are born early in July—they remain on rocks. They can't swim till a month old. When the females arrive they have young at once. They nurse them for five or six days, till they come in heat and are then covered by the bulls. They then go to sea. They go long distances and come back to nurse their pups, and then go out again. Two hundred miles out I have caught

female seals in milk in July, also in August and September. Sealing stops about the middle of September on account of the weather.

Mr. PEIRCE asked if he knew of any cases where the young seals had been taken from the bodies of the mothers.

Mr. TOWNSEND said that sometimes in the month of July on opening the bodies of female seals which come from the south, little seals are found with hair on them; but after the month of August the females have only milk in them.

Mr. PEIRCE asked if the *J. H. L.* could have taken during the voyage indicated in the log book 424 seals; or how many she could have taken without going within the 3 miles.

Mr. TOWNSEND. These are all late June and July dates except August 1. The American seal herd enters through the passes out to sea, 172°. The *J. H. L.* landed her winter catch in Alaska. She could have found good sealing in the neighborhood in July. There should be an abundance of seals going through passes at this date.

Mr. PEIRCE. What could the *J. H. L.* have taken after August 1 without going within 3 or 5 miles of Russian land?

Mr. TOWNSEND. Good sealing in Bering Sea around both American and Russian islands at great distance from islands—out to 200 miles. Sealers working free outside 60 miles protected zone around Pribilof.

Mr. KROUPSKY asked if it is probable or possible that the *J. H. L.* could have taken so large a number of seals in the waters indicated in the memorandum on the high seas.

The ARBITRATOR asked the same question.

Mr. KOMAROW said in the United States Fish and Fisheries Commission, Part XVIII, page ci, we read:

The Attu men never saw fur seals east of the Semichi group, and the *Albatross's* experience in traversing the whole length of the Aleutian Archipelago from Unalaska to Attou without seeing even a single individual, seems to confirm the native belief that the Commander Islands herd do not enter or leave the sea east of Attu, and the Pribilof herd do not enter or leave west of the Four Mountain Pass.

This mention relates to the year 1892, that is to say to an epoch close to the confiscation of the schooner *James Hamilton Lewis*, and it does not establish any really determined data as to the actual limits between the herds of the Asiatic and American shores, that which was only executed in 1896. It was up to that time that the log book and the sealing account was most likely made.

In the United States Fish and Fisheries Commission, in the article "The Russian fur-seal islands," was produced a chart of the fur sealing about the Commander Islands, which is annexed to the fourth part of the report of fur-seal investigation. From the data therein, borrowed from the American official publications, it appears that from the 141° longitude east to 175° longitude west—that is to say, over an extent of 14 degrees—there are no herds of fur seals, and if there were any of these animals it could only be a sporadic case, analogous to the phenomena which relates to the development of the life of all sea animals in general, while the schooner notes the catch of a large quantity of seals in those parts. Moreover, there must necessarily have been seals of the American herds, which are noticeably distinct from those of the Asiatic waters, as it was well known then by all who were interested in the sealing industry. The fact of the presence of that sort of skins could not escape the attention of an expert in those matters, such as Mr. Morgan, who, concurrently with the administra-

tion of the islands in question, examined all of the skins for the purpose of determining the percentage of female skins (mothers), which required a very minute examination. Thus all of the skins were recognized to have been taken from the Asiatic herds, the limits of which is marked at 171°. The sealing account (pp. 213, 214) does not quite agree with the chart now presented.

Mr. PEIRCE. The log book does not indicate precisely where seals were taken. In a few cases it gives the places.

Mr. TOWNSEND (p. 214). Seals referred to were taken from 170° to 177° longitude west. There is no reason why seals should not have been taken here; 169° to 172° east longitude, latitude 50° 30' to 52° 40' are points on migration track and on border of sealing ground. They claimed to have killed last seal from 24th to 30th of July at this point (pointing to map). There is no reason why he should not have taken seals here.

Mr. PEIRCE. You have data showing catch of seals in August and September?

Mr. TOWNSEND. Yes, a great many. In August there is good sealing; July, ditto; September, all right, if doesn't blow too hard, up to 20th.

Mr. PEIRCE. How many seals could well-equipped sealer take in August and the usual part of September?

Mr. TOWNSEND. There is a great difference in vessels. A first-class, well-found vessel with an energetic master could pick up, I suppose, from 1,500 to 2,500 seals from August 1 to September 15. I have known vessels to pick up 1,800 during August.

The ARBITRATOR. Do you consider *J. H. L.* a good vessel?

Mr. TOWNSEND. The *J. H. L.* was of good size, of larger class. Thirty to 40 tons would be about the smaller class. The *J. H. L.* was of 73 to 75 tons.

The ARBITRATOR, correcting, said 78 tons.

Mr. KOMAROW said that the color of the seals fading toward the end of August the price of the skins taken at that time must be lower.

Mr. TOWNSEND. I do not think so. The pelagic catch is the same in winter and summer, and there is no reason why August and September skins should not be the same.

Mr. PEIRCE. Might it not be that seals living on land will be differently affected by season than are seals on the high seas?

Mr. TOWNSEND. Undoubtedly. The best time to kill on land is in July to early August. The pelagic catch consists of skins taken when and where you can get your hands on them. Male seals on the islands are best in July and August.

The ARBITRATOR asked the Russian expert, Mr. Grunwaldt, if the seals taken in the last months of the territorial catch, viz, the months of August and September, are equivalent or inferior as merchandise to the seals taken during the height of season.

Mr. GRUNWALT said that that makes a difference of 75 per cent for the seals which have been killed in the month of September. The skins of the American herd have the greater value.

The ARBITRATOR stated that according to Mr. Grunwaldt there is a difference for pelagic sealing, 60 to 75 per cent.

Mr. KROUPSKY said that there is no essential difference between the pelagic seal and the territorial. They are the same animals, not only

from the point of view of the different seasons of their life, but also from that of the character and significance of chase. The pelagic sealing is not regular sealing; it injures the industry of both the two parties—American and Russian—equally. The territorial industry, organized in conformity with the zoological conditions of the species, is the only reasonable one. It gives besides the best product as to quality. Pelagic sealing should be interdicted in the interest of the preservation of seals, for which we are responsible.

Mr. TOWNSEND. Fur dealers will take seals of different ages and caught at different times. How can you tell whether the skins were taken in September or August?

Mr. GRUNWALDT maintained that the merchants can see.

Mr. TOWNSEND. I am not aware that any difference exists.

The ARBITRATOR asked Mr. Townsend what must be understood by "pelagic sealing."

Mr. TOWNSEND. Sealing on the high seas from vessels, but the Russian and American Governments take some male seals on the islands; this is not "pelagic." Killing on land means killing of the surplus males by the Governments.

Mr. PEIRCE. On the groups of islands where the seal rookeries are, owned by Russia and the United States, are there not two companies, one for each group, which control seal killing?

Mr. TOWNSEND. They have the lease. The Governments control killing and prescribe how many seals shall be killed.

Mr. PEIRCE. What do they kill?

Mr. TOWNSEND. Three-year-old males.

Mr. PEIRCE. Where and how do they pass the summer?

Mr. TOWNSEND. They stay close to islands. The Government kills on island; they are not very much in water.

Mr. PEIRCE. Is it your impression that a fur seal most of the summer out of water would be in the same condition in September as a seal that had been during that time swimming in the Bering Sea?

Mr. TOWNSEND. The fur is under the hair; the female may change color slightly, but the fur underneath is the same.

Mr. PEIRCE. After the seals are caught and skin taken off, what is done with the skins before they are put on the fur market as a finished article?

Mr. TOWNSEND. They are plucked and dyed before being manufactured.

Mr. PEIRCE. Would color make much difference if they are dyed?

Mr. TOWNSEND. No. Skins are graded by age and size; not by season of catch.

The session adjourned to Monday morning at 10 o'clock.

Session of Monday morning, June 30, 1902.

The session opened at 10 o'clock a. m.

The ARBITRATOR said that he would now consider the second and third questions; that is to say, of the valuation of the probable catch during the remainder of the season and the value of the skins. He states that the *James Hamilton Lewis* was seized on the 2d August, 1891, and the *White* on the 15th July, 1892. The arbitrator again repeated that he asks the questions without prejudicing the cases.

The probable catch of the *James Hamilton Lewis* for a stated time must be estimated from the 2d August to the end of the season and for the *C. H. White* from the 15th July to the end of the season.

Mr. PEIRCE stated that the publication which the defendant party wished to hand to the arbitrator is not signed, consequently is valueless as evidence.

Mr. KOMAROW. In handing certain publications to the arbitrator and to the opponent party, I do so only to prove the passage I read and which bears upon the question treated. The publication is only a reminder to facilitate the memory of what has been said by me. As for the title of this publication it need not be considered.

The ARBITRATOR said it is now a question of the number of seals which the *James Hamilton Lewis* could have taken.

Mr. KROUPSKY. An average can be taken from the entire number of seals that are ordinarily caught at that time of year. The number of seals taken on Commander Islands does not exceed 15,000 per season during the last years. The sealing season lasts about ten weeks, consequently the catch per diem is about 200 head or a little over. For the seal catch in a stated time by pelagic sealing vessels we must refer to Mr. Townsend.

Mr. KOMAROW stated that Mr. Grebnitsky, on the basis of American documents, has collected a certain amount of data on the number of seal skins taken by vessels engaged in sealing, and that is why Mr. Kroupsky insists that the vessels could not have taken 2,600 seal skins, as is alleged by the party claimant. The sealing season ceases in the last third of the month of August, after which the skins have little value, because their color fades. According to the figures for 1894 (Report on Fur Seal Investigation) near the Commander Islands, 37 schooners took 7,688 skins; according to the figures for 1893, 38 schooners took on the side of Russian territory 12,052 skins. According to the figures for 1892, 87 schooners took 17,242 skins, but that figure includes the sealing on the Japan shores (by English vessels). On page 262 of the Report, Part III, it is shown that all the sealing in 1891 was done in the Asiatic waters; there were taken 8,432 skins, of which 6,616 were the catch of English vessels and 1,826 of American vessels.

Mr. PEIRCE protested against the introduction of a deposition by Mr. Grebnitsky, an expert who is not present.

The ARBITRATOR said that each State can name the expert it wants, thus Mr. Komarow could have been named in the capacity of expert. In an arbitration between States it is of far greater interest than in purely juridical proceedings to draw forth all evidence, whether direct or indirect, which may serve to give full light.

Mr. PEIRCE said that as Mr. Grebnitsky is not present he can not be cross-examined.

The ARBITRATOR observed that the hearing of the experts by the arbitrator could have taken place without the presence of the other party.

Mr. PEIRCE again said that it can not be known whether the deposition of Mr. Grebnitsky is entirely correct. The document in question was prepared by him for his own Government.

The ARBITRATOR said that he will take into consideration that the figures have not been discussed. Besides, he states that in the affair

of the *Costa Rica Packet* Mr. de Martens sat at Brussels and discussed with the experts. A debate with the experts did not take place.

Mr. PEIRCE, after having again stated that Mr. Grebnitsky was obliged to make as favorable report as possible to his Government, he says that he will submit to the decision of the arbitrator. He wishes, however, that his protest be inserted in the verbal proceedings.

The ARBITRATOR said again that these are not evidence, and that it is to the interest of both parties not to be too strict as to form. He will, however, take account of what the delegate of the United States says.

Mr. PEIRCE said that in his opinion it was not a question of form, but of figures. He found himself in an unfortunate position, since it was impossible to ask Mr. Grebnitsky for explanations.

Mr. KOMAROW believed that credence should be given to the work of Mr. Grebnitsky, who has been charged by the United States Senatorial Commission to give its opinion on these questions.

Mr. KROUPSKY. The sealing statistics are published each year. The figures for the years preceding 1894 are sometimes twice as large as for the years following after 1894.

He produced the figures. He set forth in a few words that besides the allegation in question a matter of much greater gravity is involved. It is question of the preservation of seals in which Russia and the United States are involved.

Mr. PEIRCE said that question is not now under consideration; this session is not a scientific reunion.

The ARBITRATOR stated that the professor first said 15,000, but from the statistics which he now hands to him it is 33,000. Consequently, the figures must be changed.

Mr. KROUPSKY said that what he is speaking of relates to the regularly organized sealing on the sealing ground. As for pelagic sealing, he refers to Mr. Townsend.

Mr. KOMAROW. The name of Mr. Grebnitsky, whatever may be his personal value as expert, vanishes before the fact which he cites, and we also, the American figures. He reiterated that according to the United States official documents the total number of seals captured by the 37 British vessels (including the six confiscated) was 17,242 head in 1892, being an average of about 460 skins per schooner. The English vessels, according to the United States data, are always more lucky in sealing. In the number above mentioned are included five schooners which sealed also in the Japanese waters. The greatest number of seals (900) was captured by the schooner *Sayward*, but that schooner sealed on the coast of Medny Island. The greater part of the schooners captured from 200 to 400 each.

The ARBITRATOR asked Mr. Grunwaldt if he had anything more to add to what has been said regarding the number of seals which could have been killed after the 2d of August.

Mr. GRUNWALDT said that Townsend and Grebnitsky are savants equally recognized as competent by both America and Russia; neither their honor nor their competence can be questioned, even though they are in the service of the Government. He admits entirely the figures of Grebnitsky.

The ARBITRATOR asked Mr. Townsend as to the probable catch of the *James Hamilton Lewis* and the *C. H. White* from August 2.

Mr. TOWNSEND said that the average is 600 per diem, which makes 1,800 in one month. The following data were given by him: For 1886, schooner *Mary Ellen*, 961 seals in fifteen days in the month of August; for 1887, schooner (Canadian) *Favorite*, vessel as large as the *James Hamilton Lewis*, took 1,800 seals in eighteen days in the month of August; for 1895, the *Savannah*, 1,200 seals in twenty-three days. According to him the *James Hamilton Lewis* could have taken 1,000 (according to the note of Mr. Garrett, 2,000; according to those of Messrs. Gutowski and Roëll, 1,000) seals after the 2d of August. Seals were not decreasing in 1891, 1892, and 1893 as much as later on; the restrictions of Paris tribunal affected the sealing. Subsequent to 1892 fewer were taken. Pelagic sealing has never been so good since Paris tribunal.

The ARBITRATOR. You say there was no decrease in 1892?

Mr. TOWNSEND. No apparent decrease. Seals were very numerous at sea in 1890; fewer seals killed on islands by Governments.

Mr. KOMAROW remarked that Mr. Townsend had cited exceptional cases and not an average figure.

The ARBITRATOR asked Mr. Townsend for the average figures.

Mr. TOWNSEND said that it is necessary to make a difference between large and small schooners. He considers the *James Hamilton Lewis*, of 60 tons and more, a large vessel.

The ARBITRATOR asked why large vessels catch more seals.

Mr. TOWNSEND. Because they have more boats and more sealers.

The ARBITRATOR asked him the number of the crew.

Mr. TOWNSEND said 20 to 25 men—2 men to each boat.

The ARBITRATOR asked how many boats the *James Hamilton Lewis* had.

Mr. PEIRCE. May I read the crew list and ask Mr. Townsend how many boats she probably had?

The ARBITRATOR. Certainly.

Mr. PEIRCE read from page 121.

Mr. TOWNSEND. Six hunters. In fair weather all able-bodied men, even captain and mate, would be put to work and would go along. There are, say 9 or 10 boats. In addition to the regular hunting boats they have one or two other boats. The schooner *Swan* took over 1,084 seals in Bering Sea in twenty-three days in 1895 with spears alone. One can take three times as many seals with guns as with spears. There was a special inducement to hunting, because prices were higher in 1890 to 1892 than ever before or since. A white crew is better than an Indian one, because it takes more risks.

Mr. KOMAROW recalled the passage of the report wherein it is said that the average catch of seals per season was, in 1892, 460 head per vessel.

The ARBITRATOR asked what the Russian Government did with the *Lewis* and the *White*.

Mr. KOMAROW produced documents which relate to the sale of the schooners.

Mr. PEIRCE asked Mr. Townsend several questions.

There were a good many classes and kinds of vessels in Bering Sea, were there not?

Mr. TOWNSEND. Many kinds.

Mr. PEIRCE. Some were very small?

Mr. TOWNSEND. Yes; one was only 18 tons.

Mr. PEIRCE. Some were vessels not only small, but of little value?

Mr. TOWNSEND. Yes, all possible kinds; some worthless.

Mr. PEIRCE. Some not worth sailing away after seizure?

Mr. TOWNSEND. Yes; they were allowed to rot on the beach.

Mr. PEIRCE. The equipment varies, does it not?

Mr. TOWNSEND. Yes; some is good, some poor. At that time everybody wanted to go sealing. There were a hundred and fifty vessels in the fleet at that time. All old tubs were sailing.

Mr. PEIRCE. Is there not a great difference in the equipment?

Mr. TOWNSEND. Yes.

Mr. PEIRCE. The vessels of the same size have different equipments?

Mr. TOWNSEND. Yes; it depends on the owners.

Mr. PEIRCE. Was the *Lewis*, with 8 or 9 boats, an average vessel, or was she better equipped than the average?

Mr. TOWNSEND. She was quite up to the average of her size—75 or 80 tons; she was a good average sealing vessel.

Mr. PEIRCE read statement of what she had on board (p. 138).

Mr. TOWNSEND. She strikes me as being above the usual outfit. I fitted out a schooner myself once. She seems to have been well equipped to feed a white crew for a ten months' cruise.

Mr. PEIRCE. She was likely to get better than an average catch?

Mr. TOWNSEND. The equipment indicates the class of men she carried.

Mr. PEIRCE. With such a manifest she was likely to have people above the average?

Mr. TOWNSEND. Yes.

Mr. PEIRCE. Some ships were larger than the *Lewis*?

Mr. TOWNSEND. Yes.

Mr. PEIRCE. Would they necessarily have more boats?

Mr. TOWNSEND. Perhaps.

Mr. PEIRCE. Alexander MacLean had reputation of bringing in a good catch?

Mr. TOWNSEND. Yes.

Mr. PEIRCE. Is it equitable to estimate the possible catch of *Lewis* on basis of all ships engaged in Bering Sea that year?

Mr. TOWNSEND. No, for they include a number of small vessels not amounting to much.

Mr. PEIRCE. Can you give an average of the larger ships?

Mr. TOWNSEND. Yes; I have the log books or copies of them.

Mr. KOMAROW stated that the delegate of the United States questions the American experts. He asks what is the mode of procedure. He agreed that the questions to the American experts be asked in English, but requested that the answers be translated. He also reserves the right to question the Russian experts.

Mr. PEIRCE agreed.

Mr. KOMAROW took note of it.

The ARBITRATOR again stated that it is not question of furnishing evidence. The questions are asked to enlighten the arbitrator. It is he who first questions, then the delegates may question the experts of both parties. It is very difficult to determine whether there will be any difference from a juridical point of view between the answers given by the experts to the questions of the arbitrator and those of the delegates. The procedure in international arbitrations is not yet established.

Mr. KOMAROW. Would like to know with regard to the provisioning of the *James Hamilton Lewis*. If the amount of her provisions would warrant the supposition that the vessel could have continued sailing a long time.

The session adjourned until 3 o'clock p. m.

Session of Monday, June 30, afternoon.

The session opened at 3 o'clock p. m.

Mr. KOMAROW, apropos of the provisions of the *James Hamilton Lewis*, of which it was question in the preceding session, and which he thought ought to demonstrate the importance of the vessel, cited the following figures, according to page 228 of the Report, Volume III. The vessel *Emma and Louise* in 1893 had \$1,500 worth of provisions for the season from February. This vessel was of greater tonnage than the *James Hamilton Lewis*. The *Alton* had \$1,400 worth of provisions; the *Therese* \$1,281 worth. The *James Hamilton Lewis* went to sea on the 7th March; that is to say that five months' of her supplies had been consumed when she was seized; she should have had enough left for one month and a half or two months, which was not the case, because she had been insufficiently supplied.

Mr. PEIRCE said that that list was consulted merely to ask Mr. Townsend whether a schooner thus provisioned was a first-class vessel or a small schooner such as the Indians used.

Mr. KOMAROW contested that from the figures presented it was a first-class vessel.

The ARBITRATOR asked the experts if they have anything further to say with regard to the probable catch.^a

Mr. PEIRCE said that unfortunately Mr. Townsend is not provided for the moment, as he believed this morning he would be, with the data necessary to establish an average. He cites Volume VIII, page 846, Fur Seal Arbitration. The arbitrator may hereby see that Canadian vessels have taken large numbers of seals. These vessels are not as well equipped as American vessels, for they usually have Indian crews.

Mr. KOMAROW wished to cite page 228 of the American report. The report is not in the court room.

The ARBITRATOR said it is now a question of the value of the skins. In the memorandum they are valued at \$14.

Mr. KOMAROW produces the following documents, which relate to the sale of the confiscated skins:

1. Report of the Bureau of Agriculture; Report of the Department of Agriculture and of Rural Economy, section 1, bureau 3, August 21, 1892, Nos. 1115, 1159.
2. Report of the governor-general of the Amour; office, Bureau III, December 9, 1892, No. 135, city of Khabarowsk.
3. Report of the Ministry of Finances, special credit office, section 2, bureau 1, March 22, 1893, No. 3860.
4. Report of the Ministry of Finances, office of special credit, section 2, bureau 1, October 18, 1893, No. 13606.
5. Report of the Russian Sealing Company, St. Petersburg, January 13, 1897.

^a See morning session.

6. Copy of the telegraphic dispatch from Vladivostok, dated February 13, 1897, sub No. 1880.

Mr. PEIRCE called attention to the fact that the figures are not given in detail.

Mr. KOMAROW agreed.

Mr. PEIRCE asked if the company had been allowed a commission on the sale of the skins.

Mr. KOMAROW stated that the office of the Russian Seal Company on the 13th January simply says that the sale had been made on commission.

Mr. GRUNWALDT. The company had not received brokerage or commission on its profits, but naturally commission had to be paid to the public auction house at London (commission, storage, etc., Maison Laopson).

Mr. PEIRCE said that 690 skins had been thrown aside as being of small value. It is evident that there were 562 skins, but it is not shown that they were the skins from the *C. H. White*.

Mr. KOMAROW agreed.

Mr. PEIRCE said Document II does not give the price, and simply mentions the sale; Document III gives the price, but makes no mention of the number of the skins. It shows that according to the documents the price of one skin was \$10.

The ARBITRATOR asked Grunwaldt the average price.

Mr. GRUNWALDT, speaking in English, said: Seals have different prices. It depends on the question of how many people want to buy and how many skins are on the market and at different places at same time. I ask you to agree with me. In the seal business the whole world has London prices. Russians and Americans have seals, but they have agencies who are English people. They are very highly placed in whole world (named companies). If they say that market is so and so, I agree they don't lie. After thirty or forty years' connection with seal market, I can decide intelligently. We can't say prices; those people can who get paid from those people. They have not received skins now, and they have given money to Government; wish not in America nor in Russia to speak about this family thing of prices, but I must say that if price in London is £1 or 1 ruble, this price is not a price first stipulated as in form of law. Two different prices, regular and irregular. Regular price, that which Government gets from commercial agent party, who has the franchise; irregular price, that which people get when they get back to San Francisco in selling bundles of 200 skins. If this man can wait, he can get more money. Russia Seal Skin Company House, before it started there were more American than Russian in this business, more a form of politics. Russia gave to a party for twenty years a franchise from price of 75 k. or 1.50 for as many seals as they could catch. Aleut take seals in name of agency. After this thing which Alexander III by Russian people to give franchise to Russian society, all things were changed horrible, this (each will laugh) contract; people could not go to islands with schooners; had to arrange with somebody to get things from islands; now as I know family history, I say that name Morgan and his agent were at different times after Russian franchise was given in the islands to receive these things when they first came; the people had no idea that change had been made; they gave all they had in land to Morganites; received in name of late contract. They make arrangement with Lampson to help them

out; hold back skins; otherwise prices would be this year zero. This is truth, though we have seen such high prices as T. stated this morning. In these prices are different qualities, making average. Twelve per cent discount for expenses of Lampson. 1882 to 1891 prices were 42s. for first-class Commander Islands seals. 1892 to 1899, 60s. It is shown this is not price at all that they received, because this is a price of occasion.

MR. PEIRCE. So that they may have received more?

MR. GRUNWALDT. Never in life! Skins taken, some worse than others.

The ARBITRATOR stated that it has been said that the seal skins of these schooners could have been sold at London for \$14.

MR. GRUNWALDT said that the 416 skins had been sold at London for £786 14s. 3d., as it appears from the Russian official documents now presented. This price could not have been obtained by the ship owners, if the skins had been sold by them, whereas the cost of transport and of the sale at auction would have been considerable. The sealing grantees of the Commander Islands had a contract with the railroad and the navigation companies at reduced prices for the transportation of seal skins, and, by an arrangement with Lampson & Co., they paid a smaller tax (7 per cent) than the ordinary tax (11 per cent) for the rights of storage and sale of skins.

MR. PEIRCE said that Mr. Komarow has suggested that the owners of the schooners would not have received the same prices as the Russian seal companies, for the latter have agreements with the railroads. This is impossible, for it is forbidden to the railroad companies of the United States. He added that the price of freight could not exceed \$1 per skin.

MR. GRUNWALDT explained that nevertheless there are agreements with railroad companies and the agents. It is a commercial secret; the cost of transportation in such cases is diminished 50 per cent.

MR. PEIRCE protested and said that it is impossible; the interstate-commerce law prohibits railroads from making a special contract with individuals or societies; they must give the same prices to everybody for same class of goods. The sea freight is a small item. The price at London is established by documents of Russia at \$15—and it can't be more than \$1 for the transport and care of the furs. Not so much.

The ARBITRATOR explained how with us a reduction for the large transportations is possible. There are special tariffs which must be published.

MR. PEIRCE. The price of cars is the same to everybody.

The ARBITRATOR returned to the question of prices. He states that \$15 per seal skin was received at St. Petersburg. The price ought to be still higher in London.

MR. GRUNWALDT replied that that price was exceptional. The ordinary prices are less. Moreover a skin taken in pelagic sealing has an entirely different value from a skin taken by the companies who pay franchise rights to the Governments.

MR. KOMAROW said that the prices are entirely different for regular and irregular sales. It can be recognized whether a skin has been legally or illegally taken.

The ARBITRATOR asked if the seal-skin business is carried on by agents or brokers.

Mr. GRUNWALDT. The legally constituted enterprises, as well as individuals working independently, send the skins to the firm of Lampson at London, who puts upon them the necessary marks and assortments. He showed the key. The firm of Lampson makes advances to the customers who send them skins.

The ARBITRATOR asked if seal skins are quoted in the London Exchange.

Mr. GRUNWALDT. No; it is a private affair of the firm of Lampson, who moreover gives a report to its clients upon the auction returns.

Mr. KOMAROW read a report of the consul-general at New York of the year 1891. It reads:

I have been informed through confidential sources by persons well posted in the affairs of the new American exploitation company (North American Company), which has leased the Pribilof Islands, that one of the members of that company, Mr. Liebes, without the consent of the other partners, knowing that the number of skins to be taken in the eastern waters is limited to 5,500, sent marauding vessels into Russian waters.

The ARBITRATOR asked Mr. Townsend what was the price of skins in London in 1892.

Mr. TOWNSEND. Seal skins are roughly divided into three classes, Pribilof, Commander, and pelagic. Pelagic are those killed in the Pacific hunt or even near the islands, if taken by pelagic sealers. Skins taken on the islands are specially prepared and of high value. In 1890 to 1892 all kinds were high priced, both those taken on land and in water, higher than before or since. The Pribilof are the highest priced, Commanders next, pelagic lowest. Pribilofs, sold in London as Alaskas, were worth in 1891 125s. Skins killed on the islands are selected three-year old males. Pelagic are cheap skins. Skins from Russian islands were worth 84s. Pelagic that year sold for 62s. in London. The entire pelagic catch comes from the North Pacific. Those from Lobos, Cape Horn, have nothing to do with these.

The ARBITRATOR. Have you reports to show this?

Mr. TOWNSEND. Yes; I was member of the United States commission that drew up the report. The prices shown then were the prices secured from Lampson and shown by the British side.

The ARBITRATOR. Do you think there is a difference in price of skins sold by a large company or by private individuals?

Mr. TOWNSEND. So far as I know prices of skins in Pacific are not different from those in London. Returning sealers go to Seattle, Port Townsend, San Francisco, Tacoma, and find from various owners there what skins are worth. The prices on the coast are very similar to prices in London. In 1895 there was a difference of \$1 between San Francisco and London.

The ARBITRATOR asked if the prices varies according as the skins are sold by the captains or companies.

Mr. TOWNSEND. Skins are purchased in San Francisco or Victoria by a few dealers who take many of the skins as they come in. This business is carried on by three or four companies.

The ARBITRATOR. If the owners of the *Lewis* would have to sell the skins they caught for themselves, could they have obtained the same price in London—as say Lampson & Co.?

Mr. TOWNSEND. The Pacific coast prices were very little less at any time than in London. There is a market in San Francisco.

The ARBITRATOR. Are there papers that show that San Francisco is a market?

Mr. TOWNSEND. The statistical reports of the United States Fishery Department show the prices paid in San Francisco. [Mr. Townsend showed statistics for 1895. These statistics were placed at the disposition of the arbitrator.]

The ARBITRATOR. How are these obtained?

Mr. TOWNSEND. They were obtained from masters of vessels, and from owners.

The ARBITRATOR. It is estimation, not valuation?

Mr. TOWNSEND. They are Government statistics.

The ARBITRATOR. How was that valuation made?

Mr. TOWNSEND. The figures are taken from the books of owners, and the prices, too.

Mr. GRUNWALDT said that there is a seal-skin market at San Francisco, and another in Russia. He contested that there are but three sorts of seal skins, as Mr. Townsend said. The number of qualities and subdivisions is far greater.

Mr. KOMAROW stated that the skins taken at sea have less value than those which are taken on shore.

Mr. KROUPSKY said that the subdivision set forth by Mr. Townsend is purely scientific, and does not relate to the market classification.

Mr. PEIRCE. You stated that the prices on the London market vary as regards the Copper, Alaska, and Northwestern catches, were those average prices?

Mr. TOWNSEND. Yes; because the table shows the catch taken as a whole.

The ARBITRATOR. Where were they prepared?

Mr. TOWNSEND. They are British.

The ARBITRATOR. By whom made?

Mr. TOWNSEND. By Lampson for Mr. Thompson.

The ARBITRATOR. So they are prepared for the information of someone who follows out a careful line of investigation?

Mr. TOWNSEND. Yes.

Mr. PEIRCE. Is it not a common practice for pelagic sealers to go into the Pacific coast market with his seals?

Mr. TOWNSEND. It was.

Mr. PEIRCE. Would he send his skins to London himself on his own account, or sell them in San Francisco, Victoria, Seattle, Port Townsend to one of the dealers?

Mr. TOWNSEND. The whole catch is disposed of there to dealers.

Mr. PEIRCE. These prices were made from books of dealers?

Mr. TOWNSEND. Yes; these prices were given confidentially.

Mr. PEIRCE. Suppose they had been public, was there any influence to make the dealers put unusually high or exaggerated prices on the skins?

Mr. TOWNSEND. No; they are the natural prices of the articles.

Mr. PEIRCE. If he did, wouldn't it make the owners of vessels who had skins to sell demand same prices?

Mr. TOWNSEND. Doubtless.

Mr. PEIRCE. Whereas the dealers' skins are sent to London and sold there?

Mr. TOWNSEND. Yes.

Mr. PEIRCE. The party who gave these prices bought the skins to sell them again. If he had put too high prices on these skins it would have hurt him in London.

The ARBITRATOR. I thought you said the prices were got from the owners only?

Mr. TOWNSEND. The collectors of statistics consult all sources, books, dealers in all fishing commodities, also shipping companies.

Mr. GRUMWALDT wanted to know the names of the fur dealers who obtain their stock from the San Francisco market.

Mr. TOWNSEND, could not name any; he could only name the vessels that have sold their skins at San Francisco.

Mr. PEIRCE asked what were the proceeds of the skins confiscated by the Russian Government.

Mr. KOMAROW. The confiscation took place at sea, but that does not prejudice the value of the skins, which, according to him, must have been taken in Russian territorial waters.

Mr. GRUMWALDT insisted on the question whether there are seal-skin merchants in San Francisco, and asks Mr. Townsend to name those merchants.

Mr. TOWNSEND showed Mr. Grumwaldt the edition "Pelagic sealing," page 298, and adds that there are here in the list of schooners that engaged in pelagic sealing about 12 vessels, namely: *Bonanza, M. T. Dyer, Emma and Louise, Alton, E. E. Webster, Herman, J. Eppinger, Kate and Anna, Kattler, Therese, Bowhead, and Winchester.*

Mr. GRUMWALDT asked the arbitrator to ask Mr. Townsend, seeing that the list contains also the name of *Kate and Anna*, what were the names of the owners of some of these vessels.

Mr. TOWNSEND replied that the owners of one were Liebes & Ladd, of San Francisco; Morgan, of Victoria, of another.

Mr. GRUMWALDT. Now that the name of Mr. Liebes has been mentioned, it goes without saying what is the nature of that market, and I have no more to say. He however asked still further questions of Mr. Townsend.

Mr. KOMAROW submitted some documents

Mr. PEIRCE. You have seen seals killed on the islands?

Mr. TOWNSEND. Many years.

Mr. PEIRCE. How is it done?

Mr. TOWNSEND. With clubs.

Mr. PEIRCE. Is there a difference between a seal killed on the island who has been chased and one who has not been alarmed?

Mr. TOWNSEND. Yes, the male seals are driven from sealing grounds slowly so as not to heat them. Possibly one out of a thousand that wandered might be spoiled.

Mr. PEIRCE. Is it the same in the water?

Mr. TOWNSEND. Oh, no.

Mr. PEIRCE. The temperature of the water would prevent overheating.

Mr. TOWNSEND. I suppose so.

The ARBITRATOR asked if anyone has anything further to say with regard to the price of skins. He addressed a letter to Mr. Peirce, delegate of the United States, relating to the price of the vessels *James Hamilton Lewis* and *C. H. White*.

Mr. PEIRCE said that he can give an answer right away.

The ARBITRATOR said he would nevertheless send the letter this evening and the reply can be given to-morrow morning.

The session ended at 5 o'clock, adjourning till to-morrow morning at 10 o'clock.

Session of Tuesday morning, July 1, 1902.

The session opened at 10 o'clock.

The ARBITRATOR read the letter which he addressed yesterday evening to delegate of the United States with regard to the value of the *James Hamilton Lewis* and of the *C. H. White*.

Mr. PEIRCE wished to answer at once verbally, and if the delegate from Russia desired to answer, the defendant party may do so in the course of a month.

Mr. KOMAROW said that he would also reply verbally, and admits the verbal reply of the party claimant.

Mr. PEIRCE said that he would not produce documents, but only a book. He was satisfied to leave the valuation to the arbitrator. He stated that in the memorandum the estimate was not made on the basis of the commercial value of vessels, but that the place, the business, and the price of the cargo were taken into account. After the arbitration of 1893 the United States paid for several English vessels. He submitted that valuation to the arbitrator. (Fur Seal Arbitration, vol. 8, pp. 845-849.) This citation is made solely for the purpose of aiding the arbitrator to fix the amount. In Moore's International Arbitrations History, Volume I, page 960, we find how much was paid.

He repeated that the valuation of the American Government is not based on the commercial value; the business in which these vessels were engaged was taken into account. The *C. H. White* was constructed in 1887. The date of the construction of the *James Hamilton Lewis* is not known.

Mr. KOMAROW would not enter into the examination of an English claim with regard to the seizure by Americans of Canadian vessels. He stated, moreover, that the settlement of those claims was the subject of a different sort of transactions between the American and British Governments. He is satisfied to cite for the *White* the price of the vessels which more nearly serve as precedents (*C. H. White*, price of the newly constructed vessels.) The price of the *James Hamilton Lewis* and of her equipment is stated as being \$25,000. On page 228 of the Report, Volume III, are indicated the prices of the sealing vessels and their equipments, according to the depositions of the ship owners; from this data it appears that of vessels of 1 ton more tonnage than the *James Hamilton Lewis*—namely, *Emma and Louise*, of 84.70 tons, cost \$3,000; *Alton*, of 84.39 tons, had cost \$4,000. Among the vessels analogous as to tonnage, *Theresa*, of 70.76 tons, cost \$3,500. The entire equipment of these schooners, counting the boats, arms, etc., cost in 1893, *Emma and Louise*, \$3,460 and \$1,500 for provisions for the whole season from February. Equipment, *Alton*, \$3,000; *Theresa*, \$2,551. For the *C. H. White* they ask \$35,000, \$280, \$160, \$260, value of the vessel and her equipment, mackerel, and codfish. According to the statement showing the American vessels engaged in pelagic sealing, the capital invested and the record of their catch in 1895 (Report, Part III, p. 228), the maximum values of newly constructed vessels of greater tonnage than the *C. H. White* do not exceed \$9,000.

The schooners approaching more nearly in point of tonnage the *C. H. White* are the following:

	Worth.
Allie J. Alger	\$3,000
Emma and Louise	3,000
Alton	3,000
Theresa	3,500

(See the annexes of the session of Monday morning.)

The value of the barrels of mackerel and codfish is doubled and tripled (the highest price for codfish is \$4,124 per ton, only for the best quality).

Mr. PEIRCE said that he did not know the schooners named, but that to the value of the vessel must be added the value of the equipment.

The ARBITRATOR asked Townsend if he can give any supplementary information on the value of vessels.

Mr. TOWNSEND. Whaling and sealing had declined by 1895.

The ARBITRATOR. Yes, I understand so.

Mr. PEIRCE. Did value include equipment?

Mr. TOWNSEND. I don't remember.

The ARBITRATOR. How are the statistics obtained?

Mr. TOWNSEND. Of the owners, and sometimes of the masters.

The ARBITRATOR. Is there always a fixed relation between tonnage and value?

Mr. TOWNSEND. Contracts for building new vessels are made according to tonnage. The value of sealing vessels was set forth more fully in the Canadian reports. Canadians are more extensively engaged in pelagic sealing than anyone else.

The ARBITRATOR. What was the number of boats on the *James Hamilton Lewis* and the *White*?

Mr. TOWNSEND. I do not know.

Mr. PEIRCE. But you know the number of hunters?

Mr. TOWNSEND. Yes; vessels carrying white crews carry a certain number of sealing boats and a couple of dingies, which are used in good weather.

The ARBITRATOR. You don't know the age of the *Lewis*?

Mr. TOWNSEND. No.

The ARBITRATOR asked the price of the barrels of mackerel and codfish.

Mr. TOWNSEND produces a report wherein the prices are shown.

Mr. PEIRCE said that as there is no data for making the valuations he accepts for the mackerel and codfish the valuation of the defendant party.

The ARBITRATOR asked the delegates if they have anything more to say.

Mr. PEIRCE said that on Friday he will give information on one of the first questions of law asked by the arbitrator.

Mr. KOMAROW regretted that this information can not be given to-day.

Mr. PEIRCE said that it was impossible; he awaited an answer from his Government.

Mr. ROELL moves to stop here.

The ARBITRATOR said that for the experts the affair can be con-

sidered as ended. For the question of law, it must be treated with somewhat wider latitude.

Mr. KOMAROW consented with the reservation, after it had been agreed, that if he wished to ask information from his Government, when Mr. Peirce has communicated the information received from his Government, a delay of twenty-four hours will be accorded.

The session is adjourned to Friday morning 10 o'clock.

Session of Friday morning, July 4.

The session opened at 10 o'clock a. m.

Mr. PEIRCE, the delegate of the United States, recalled that he had expressed during Tuesday morning's session a desire to give further information to the arbitrator, but that he had to await a communication from his Government. He said:

"In the first session the arbitrator asked me, 'What is the extent of jurisdiction which the United States claim to-day in Bering Sea?' and I replied that the American Government now claims an extent of 3 miles. I wished that this reply might be sustained by the Secretary of State, Mr. John Hay. I am now in receipt of a dispatch, and in accordance with the authority which I have received from the Secretary of State of the United States, dated July 3, 1902, I repeat that the Government of the United States claims, neither in Bering Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, but bases its claims to jurisdiction upon the following principle: The Government of the United States claims and admits the jurisdiction of any State over its territorial waters only to the extent of a marine league, unless a different rule is fixed by treaty between two States; even then the treaty States alone are affected by the agreement."

He made this declaration of his Government in the capacity of agent and counsel accredited to this court and especially instructed to make this declaration.

Mr. Peirce said that he would hand a copy of this declaration to the arbitrator.

Mr. KOMAROW, the delegate of Russia, asked if this declaration was a universal application, and if there is no exception made in favor of certain industries.

Mr. PEIRCE said that this declaration applies to all cases. He said he would give a copy of it to the delegate of Russia.

The ARBITRATOR, Mr. ASSER, expressed his thanks to the two powers who have been pleased to have done him the honor to confer upon him the office of arbitrator. He complimented the two delegates upon the preparation of the memorandum and the rejoinders, and assured them of his appreciation of the supplementary information. He thanked the experts also. The task of the Russian experts, who were obliged to express themselves in another language, was particularly difficult. They, nevertheless, made clear more than one point. He particularly thanked Mr. Charles Townsend, who, by his works and his scientific knowledge, greatly facilitated the task of the arbitrator. He thanked the secretaries also.

He said by the terms of the convention he would have to render his decision within six months from to-day. He had, however, no intention of delaying his decision for six months. After having reread

all of the documents he would proceed at once to the preparation of the award.

In concluding he expressed the hope that the result of the labor in which they have here been engaged might consolidate the good relations between the United States of America and Russia.

Mr. PEIRCE delivered the following speech:

"The object of our reunion in this hall being fulfilled, it is my very agreeable duty to address a few words of thanks to the distinguished arbitrator who kindly consented to judge between my country and its friend, the great power of the north, whose illustrious sovereign has added imperishable laurels to his crown by his initiative, the result of which is the existence of this Permanent Court of Arbitration, whose hall our sessions here have inaugurated in the use to which it is destined. And I congratulate those who are assembled in this hall for that end, as well as the two great powers, the parties in this litigation, on having assisted at the baptism of this child of a great destiny. I thank the Permanent Court of Arbitration for myself, as well as for my Government for the privilege which has been accorded us.

"In thanking the honorable arbitrator, I pay homage to his perfect impartiality, his indefatigable patience, and his remarkable perspicacity. While I have greatly admired his qualities, of which each day he has given us new proof, I can not say that they have surprised me. When my Government proposed to the Russian Government to submit the differences that existed between them to him it was because it recognized in him these same qualities, together with a profound knowledge of the principles of law and justice. And the Government of the United States, as well as the individual claimants in this affair, have intrusted their interests into his hands with perfect confidence.

"To my colleague of Russia I wish to express my sincere thanks for his unvarying courtesy toward me as well as toward the United States experts. I congratulate the defendant party on the learning, tact, and intelligence of the delegate it has selected.

"As for the affair, it rests in the hands of a just, reasonable, and learned arbitrator, and, although no one knows what his decision will be, I for my part know that it will be just and will do honor to his great reputation.

"It is quite true, as my colleague has well said, that at the end of this affair there will be neither conqueror nor conquered, but I wish to add that the Goddess of Peace, mother of Arbitration, confer upon both the contracting parties laurels more illustrious than those with which Victory crowns the conqueror.

Mr. KOMAROW said that he shared in the expressions and sentiments to which Mr. Peirce had given expression.

Mr. ASSER announced that the labors were ended.

The session adjourned at 11 o'clock.

I, Nickolas A. Grebnitsky, Russian military chief of the Commander Islands district, with the rank of colonel, make the following statement:

I have been residing on the Commander Islands, and have directed all sealing operations there for the last fifteen years, and during this whole period have been absent from the islands but very little.

I have carefully observed seal life, the condition of the rookeries, and the method of taking seals at all seasons and under all conditions, with the object of keeping the Russian Government thoroughly informed as to its sealing interests, and the proper management of same.

While I have never had an opportunity to examine the Pribilof Islands seals, yet I do not hesitate to express the opinion that that herd and the Commander Islands herd are distinct and do not mingle at all. There are some natives on the islands who are familiar with both, and who state that there is a marked difference in the animals. Besides, my studies as a naturalist enable me to state that it would be contrary to all reason to suppose that they mingle with one another. The Commander herd probably approaches very closely to the Robben herd in winter, and yet it does not mingle with it. Of this I am sure, for I have charge of Robben Island as well as of the Commander Islands, and know the skins of the two herds to be different. The skin of the Commander seal is thicker, has *coarser* hair, is of a lighter color, and weighs about 20 per cent more than a Robben skin of the same size. It is wholly improbable that the seals of the Commander herd visit any land other than the Commander Islands. I believe they regard these as their home, these islands being peculiarly adapted to their needs at the period of bringing forth their young, and of breeding.

The fact that the Robben Island herd still frequents Robben Island, to the exclusion of any other land, notwithstanding it has been subjected there to the utmost persecution, shows to my mind conclusively that the presence of man will not prevent a seal herd from returning to the same land year after year. Even if isolated instances have occurred (I know of none) in which, for various causes, a few of the Commander Island seals reached other shores, such exceptions would not disprove the general rule above stated.

I can readily understand that a female which had been wounded in the water might be obliged to seek the nearest land and there give birth to her pup. Annually at almost stated periods they arrive at the islands, and immediately proceed to occupy the same grounds which have been occupied during past years, in a way which makes it impossible to doubt that they are familiar with the locality. I believe that at some time during the year every seal comes ashore.

There is no reason to believe that a certain number of any class remain swimming about in the neighborhood of the islands all summer without landing, although there is considerable difference in the time at which different classes arrive.

Soon after landing at the Commander Islands those cows which were fertilized the year previous give birth to their young. A cow does not, except in very rare instances, give birth to more than one pup in a season. The birth of pups can only take place on shore. Cows never arrive at the islands with new-born pups. But the impossibility of birth in the water is best proved by the fact that the pup when first born is purely a land animal in all its habits. It does not voluntarily approach the water till it is several weeks old, and then it is obliged to learn to swim.

A surf will sometimes wash the young pups off the rocks, when they are sure to be drowned. The pups can not swim at birth, but must be taught by their mothers. A pup would drown if thrown into the sea before learning to swim. Copulation in the water I believe to be

impossible, for the act is violent, of long duration, and in general character similar to that performed by land animals. I believe that the seals leave the vicinity of the islands mainly on account of the severity of the winter.

Of course I do not mean to say that they would remain on shore all the year round, as many of them do throughout most of the summer, for they would be obliged to take to the water to obtain food. What I mean is that they would not go so far away as they now do, but would remain around the islands, and thus give additional proof of the unquestionable fact that they regard them as their home. I base this statement upon the fact that during mild winters I have myself seen them in large numbers off the Commander Islands and the Kamchatka coast. This would be in accord with the habits of the seals of the Southern Hemisphere, which, I am informed, are found in the same locality more or less at all seasons.

The seals generally leave the Commander Islands by the middle of November, by which time it has become cold and stormy; but in mild winters they have been on the islands as late as December. I do not think that fur seals should be classed with wild animals any more than sheep or cattle, when out on large pasturing grounds. Seals, unless needlessly frightened, become more or less accustomed to the sight of man among them on the rookeries, and while on land are at all times under his complete control. A few men can drive a large number of them without difficulty. They are intelligent to very high degree, and can be made to become in a short time pets.

The breeding males or bulls are alone aggressive. Seals are polygamous, and the powers of fertilization of the male are very great.

Since the births are about equally distributed between males and females, it follows that under natural conditions there would be a great excess of male life over that actually needed for the propagation of the species; and it is, as in the case of so many other animals, for the positive benefit of the herd as a whole that a portion of this excess of male life be killed off before it is of sufficient age to go on the rookeries. If not killed off the competition by the bulls upon the rookeries for females would be destructive of much life. This competition is already fierce enough.

During some of the years prior to the time of my arrival on the islands there had been considerable indiscriminate killing of seals, without regard to age or sex. But during the fifteen years of my management of the Commander Islands rookeries all seals which have been killed constituted a portion of the excess of males above referred to, and known as "bachelors" or "hollus-chiechie." This is why the rookeries are to-day in a much better condition than when I first went to the Commander Islands, notwithstanding that until the year 1891 a gradually increasing number of large skins had been taken.

From 1886 to 1890 the average annual catch was about 50,000, the skins all being large ones. The last two years I have reduced the catches, because I now think 50,000 skins somewhat in excess of what the rookeries can yield, and for other causes which I will mention later. I feel very sure that the great cause of this diminution is pelagic sealing. This year I have counted over 3,500 skins seized in poaching vessels, and have found 96 per cent to be skins of females. These were skins taken from Commander Island seals.

As to skins taken near the Pribilof Islands, I counted the skins-

seized in the *Rosa Olsen* and found two-thirds of them were skins of females. These were taken, as the log book of the *Rosa Olsen* shows, over 80 miles from shore. I consider it a false argument to say that the killing of a proper number of the excess of male life is bad, merely because it is an interference with the order of nature.

If not interfered with, nature will produce an overpopulation of the rookeries, which would of course be a bad thing. By the present mode of killing a certain number of young males, population is regulated. No facts can be brought forward to show that this method is not the right one. Past experience shows that it is right. The method is not proved to be bad by showing that during some years too many males may have been killed and the rookeries have thereby suffered. When such mistakes have been made they can be corrected by reducing the number of males to be killed for a few years, for the most absolute control can be exercised over the herd while it is on land.

I claim that the method now pursued, when executed under proper regulation, is in theory and in practice the only one by which sealing can be carried on commercially without injuring the vitality of the herd and its ability to maintain its numbers at the proper limit. It does not cause the seals to change their habits in any way, and I do not believe that even an excessive killing would have the effect of altering the habits of the female seals with regard to landing and cause them to remain about the islands instead of coming ashore.

Cows, except perhaps rare cases of accident or for scientific purposes, are never allowed to be killed on the islands, and the reason for this is that all cows are needed for breeding purposes. To kill, therefore, any cow except a barren one (and there are few barren ones except among the very old cows) inflicts a much greater injury on the herd than the loss of a single life.

It is not true that because it is proper to kill a certain number of males, it is also proper to kill a certain number of females. But, assuming that it might at some time become desirable to kill some females, it would still be wholly improper to kill them without regard to size or condition, as is the case when they are killed in the water.

There is at the present time upon the Commander Islands an abundance of female life for breeding purposes, and there is no fear that any female will not be served through a lack of virile males. On the other hand, it is undoubtedly true that there were in 1892 relatively fewer females than in former years, and I attribute this to two causes: First, to killing of seals in the water; and second, to raids upon the islands.

The first of these causes is by far the most important. These raids upon the islands have, owing to the great amount of foggy weather, taken place to a certain extent, notwithstanding the greatest precautions to guard against them. The raiders kill males, females, and pups without discrimination. But however injuriously the raids have affected the rookeries, still they are of much less importance than the killing of Commander Island seals in the water.

During the past two summers, and especially during the last one, this killing in the water has become so great that if allowed to continue in future years the herd will be in danger of ultimate extinction. I do not know exactly how wasteful this method may be, from the fact that all the animals wounded or killed are not captured, though I am told

that much loss occurs in that way, and I know that under certain conditions a seal shot dead will sink at once. I can state positively, however, from actual experience and personal examination, that a vast proportion—fully 96 per cent—of the skins taken by this method during the present year are those of female animals. In addition a certain number of the skins are those of very young seals, probably of both sexes, such as are never killed on land.

Very few of the females killed are barren, no matter when or where they are killed. Femalés taken early in the season are generally heavy with young, in which condition they travel slowly as compared with the other seals. The killing of such a female involves, of course, the immediate loss of two lives. But even when the female is taken after she has been on shore and given birth to her young, this same result follows eventually. For a seal will suckle only her own pup, and the pups are for the first three to five months dependent altogether on their mothers for food. Consequently when the mothers, who after the birth of their pups leave the rookeries in search of food (traveling sometimes considerable distances, I do not know exactly how far), fail to return their pups must necessarily die.

There are always a few dead pups to be found on the rookeries whose death is not due to that of their mothers; but during the last year or two a greater number of dead pups have been actually noticed than heretofore and have attracted the attention of all persons on the islands who are at all familiar with seal life. It can not be successfully contended that they all died of natural causes. There is no disease among the Commander Is'and seals, and while a certain number of young pups are always exposed to the danger of being crushed to death (but not as a result of the drives which are made to collect the seals for killing) or of being drowned by the surf, yet these causes of death will not account for the greater mortality of pups which took place during the past summer. Besides, the bodies of the dead pups I refer to are those of starved animals, being greatly emaciated.

It is chiefly during the next few years that the effects of the recent killing of females will become most noticeable, because many of the pups which in those years would have become bachelors or "holluschiekie" have never been born, or died soon after birth.

With regard to the driving of the seals from the beaches to the places of slaughter, while it does not benefit them, yet I believe that there are very few cases in which it does them any harm, even if they are redriven. I am sure it does not render them impotent. It should be remembered that, unlike the hair seal, they are fairly well adapted to movements on land, as is proved by the fact that they are in some cases actually driven considerable distances over ground that is both rough and steep. Since the killing of seals in the water is wasteful and in every sense contrary to the laws of nature (which require that special protection be afforded to the females and young of all animals), I am of the opinion that it should be entirely forbidden.

If it is only partly suppressed or prohibited within a certain distance from the islands the evil would not be cured, although its effects might be less noticeable, for the killing of females, many of them heavy with young, would necessarily continue, since all experience shows that female animals always constitute the chief catch of the open-sea seals.

APPENDIX C.

VERBAL. MENTIONED AT THE SESSION OF SATURDAY EVENING BY MR. KOMAROW.

[Extracts.]

NEW DATA ON THE LIFE AND HUNTING OF FUR SEALS, 1902—FOOD OF THE SEALS.

[Pages 7-9 of the Russian edition.]

The seals of the Commander Islands differ noticeably in their habits and the condition of their food from those of the Pribilof Islands (because of the difference in the waters surrounding the islands).

The seals of the Commander herds need not, and do not, go any comparatively great distance from the coast in search of food, as do the seals of the Pribilof herds. This observation, formerly made by Mr. Grebnitsky, has been fully confirmed by later researches, and finally by the recent investigations of American and English scientists, who have also certified to the fact that seals can not feed except in great depths.

One of the principal points attested to on the basis of investigated facts is that the seal not only seeks its food in the very profound depths, but it feeds upon cephalopodes and swimming fish near the surface of the water. In Bering Sea their principal food in the months of August and September consists of the "gadus chalcogrammus" (Teregra), then the "gonatus amoenus" of the cephalopode class, salmon, and some sorts of little fish. Outside the Bering Sea the food is different; the gadus chalcogrammus does not go far to the south (on the American coast), but salmonides, herrings, chiriðæ are to be found instead. On the Pribilof Islands one sees but little excrement, quite the contrary from what one sees on the seal dwelling places on Commander Islands, according to the very just statement of the American naturalist, Mr. Frederick A. Lucas (curator of the department of comparative anatomy of the United States National Museum).

The recent researches are by Fred. Lucas; Robert Snodgras; Pierre A. Fisch, of New York; Ch. Wardell Stiles; C. H. Townsend; W. Hour Wilson Thoburn, professor of the Stanford University, and member of the Biological Society of Washington; Chart Merria; Clark; A. B. Alexander; Dr. J. A. Allen.

Everybody remembers also David Star Jordan, Barret-Hamilton, Dr. Arcy Thompson Elliot, Charles Henry Gilbert Steineger. It depends directly on this fact that the feeding grounds of the seals of the Commander Islands are near the islands, and the seals return to the coast before the food taken has time to pass through the intestines and be evacuated. Young seals are nourished exclusively by their mother's milk until their departure from the islands at the close of November.

The investigations concerning the sort of food eaten by seals show that they are choice enough in their food; and that, for instance, they do not eat codfish (gadus morrhua), which is found in great abundance and very near the coast; that the seal takes a great deal of food at one time, is really voracious, which explains the necessity of the excursions in search of food.

The observations demonstrate that female seals eat more and need food oftener than the males. Under these circumstances the depths of 200 meters (100 Russian sagesen) are of great importance to seals, because in these depths and near them, the greater part of the seal's food is found—the cephalopodes gonatus and a quantity of fish of medium level.

Most of the pelagic sealing is done just near these limits, and the farther away these depths are from the dwelling places of the seals, during the period of propagation and nursing, so much farther must the animals go out to sea to seek their food.

For the Pribilof Islands that limit is at a distance of 75 to 150 miles; for the Commander, where the depths are quite near the coast, the seals have not far to go for their food (p. 16). As for the food of seals at the time of migration along the coast, we have at present but little definite data.

APPENDIX D.

VERBAL.

[Extracts.]

II. Pelagic sealing (or sealing on the high seas.)

[Page 5.]

At the present time the conditions of life on the shore have entirely changed, on account of the unfortunate effect of pelagic sealing. Among all the works published by those organized commissions of scientists, on the part of the United States and England, Volume IV, treating of the Asiatic seals, is in some respects the most original, and of greater value than the other reports of the commissions. With regard to the Commander Islands, the value of that work is especially due to the circumstance that the author, the learned naturalist Steineger, resided upon the islands at the time of the greatest prosperity of the shore herds (the summer colonies), and he was able to compare the then state of things with that of his two visits in the years 1895-1897. In concluding, he pronounced most authoritatively upon the ravages wrought to the sealing grounds and to all reasonable sealing by free pelagic hunting—and solely by that, not by any other cause whatsoever.

“I have been unable to resist the force of the logic which places the blame for the decrease of the Commander Islands’ seals upon pelagic sealing, and upon pelagic sealing alone.”

[Page 12.]

It is well known that marine hunting near the Commander Islands was not so common until the year 1892, although attempted much earlier than that year. On account of the agreement on the *modus vivendi* concluded between the United States and England, all the operations of sealing schooners was transferred to the Asiatic herds. Russia profited from the year 1893, according to the terms of the agreement signed with England, by a zone of 30 miles around the Commander Islands. The purpose was the timely prevention of the raids by schooners and of their commanders upon the seashore, and thereby to insure the safety of seals and particularly of females, always specially predominant among the pelagic catches.

The work of the Canadian, Japanese, and American schooners which sealed in the neighboring waters of the Commander Islands, and in all the other parts of the sea, is set forth in the following figures:

In 1895, 162 schooners operated, and took 92,437 seals.

In 1896 there were 94 schooners, which took 69,536 seals.

In 1897 there were 71 schooners, which took 39,511 seals.

These schooners were from 20 to 150 tons tonnage; medium size, 69 to 70 tons. Schooners of less than 20 tons were not employed for sealing purposes except near Washington Territory and British Columbia; the owners and crew of these small schooners were natives. But the majority of these schooners came from Victoria, British Columbia; their crews were picked up among the native Indians, sealing in boats. The greatest number of boats attached to schooners is 18 for the large ones; the least number 8 for small schooners. If the crew consists of Europeans, the number of fishing boats is 6 to 10, and not more than 12. Three men were employed in each boat, while 2 men were employed in each canoe.

The number of Canadian schooners was always greater than the American. Thus, in the year 1897 there were 41 Canadian schooners, having a total of 2,708 tons, and 17 American schooners at a tonnage of 898.

In the winter months the schooners do their sealing along the American coast. In the spring they are already near the coast of Japan. In the month of June the schooners pass into Bering Sea, and, finally, toward September, after having finished sealing, the schooners return to British Columbia. From 1889 to 1898 there were 35 schooners damaged, of which 13 sank with all their crews, and but very few vessels that did not lose some men and boats.

III. The sealing grounds in mid seas (pelagic sealing.)

The hunting grounds on the open sea around the Pribilofs are situated toward the west and south of the islands, outside the protective zone (of 60 miles for America). The northwest portion of these grounds, about 75 miles wide, extends farther to the southeast, and reaches the Aleutian Islands.

The grounds^a about Commander, which are the Copper Island grounds, according to the terminology of the schooners, are to be found about two of the Commander Islands. The greater part lies to the south and southeast, and extends away from zone limit of 30 miles more to a distance of about 60 miles. The grounds to the north and northwest are of comparatively small value; their northern limit extends to the Bay of Ouka (Oukinsska) to a distance of 200 miles from Bering Island.

DECLARATION MADE TO THE HONORABLE ARBITRATOR, MR. J. M. C. ASSER, JULY 4, 1902, BY THE PARTY CLAIMANT IN THE ARBITRATION BETWEEN THE UNITED STATES AND RUSSIA IN REPLY TO THE QUESTION ASKED BY THE ARBITRATOR RELATIVE TO THE EXTENT OF JURISDICTION CLAIMED BY THE UNITED STATES OVER THE BORDERING WATERS OF THE BERING SEA.

[Friday morning, July 4.]

The delegate of the United States makes this declaration under the specific authority received by him from the Secretary of State of the United States on July 3, 1902, to wit:

The Government of the United States claims, neither in Bering Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, but bases its claim to such jurisdiction upon the following principle: The Government of the United States claims and admits the jurisdiction of a State over its territorial waters only to the extent of a marine league, unless a different rule is fixed by treaty between two States; even then the treaty States are alone affected by the agreement.

(w. s.)

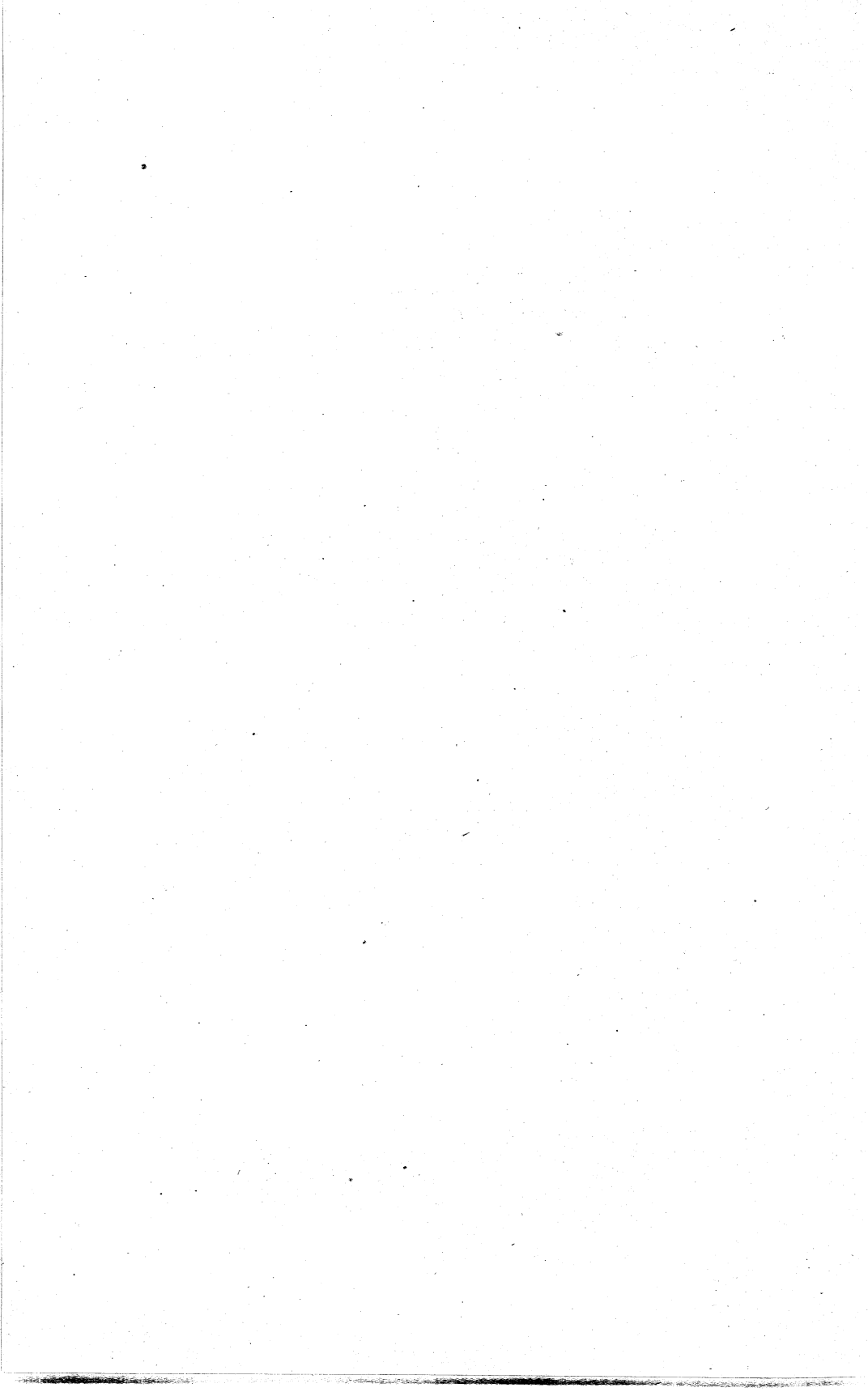
HERBERT H. D. PEIRCE,
Third Assistant Secretary of State,
Delegate of the Government of the United States of America.

^aThe English word generally used, "sealing grounds" (or sometimes "sealing-ground seals"), can be differently translated, because by that expression is meant those parts or places of sea which are frequented by the seals leaving the coast in search of food during the time of their sojourn on the islands, being the places where the herds generally feed, independently of their arrival from the seashore in winter when they are not staying on the coast.

DECISION

OF THE

ARBITRATOR, MR. T. M. C. ASSER, MEMBER OF THE STATE COUNCIL OF THE NETHERLANDS,
RENDERED AT THE HAGUE, NOVEMBER 29, 1902, IN THE INTERNATIONAL ARBI-
TRATION BETWEEN THE UNITED STATES OF AMERICA, PARTY CLAIMANT,
AND RUSSIA, PARTY DEFENDANT, RELATIVE TO THE VESSELS
"CAPE HORN PIGEON," "JAMES HAMILTON LEWIS,"
"C. H. WHITE," AND "KATE AND ANNA."



DECISION OF THE ARBITRATOR.

THE CASE OF THE "CAPE HORN PIGEON."

The undersigned, Tobie Michel Charles Asser, member of the council of state of the Netherlands, exercising the functions of arbitrator, which he has had the honor to have conferred upon him by the Government of the United States of America, and the Imperial Government of Russia, to decide as to the differences relating to the affair of the bark *Cape Horn Pigeon*:

Whereas by virtue of the declarations exchanged at St. Petersburg the 26th August (September 8) 1900, between the aforesaid two Governments, the arbitrator shall take cognizance of the claims for indemnity for the seizure and detention of certain American vessels by Russian cruisers, brought against the Imperial Russian Government by the Government of the United States in the name of the parties in interest;

That according to these declarations the arbitrator, following in his award the general principles of international law and the spirit of international agreements applicable to the subject, shall determine with regard to each claim filed against the Imperial Russian Government, whether it is well founded, and if so, whether the facts upon which it is based are proved;

That, furthermore, it is recognized that this stipulation shall have no retroactive force, and that the arbitrator will apply to the cases in litigation the principles of international law and the international treaties which were in force and binding upon the parties engaged in this litigation at the time the seizure of the vessels took place;

Finally, that the arbitrator shall fix the amount of the indemnity which may be due from the Russian Government on account of the claims presented by the parties in interest;

Whereas, after a minute examination of the memoranda and counter memoranda exchanged between the high-contracting parties, as well as of all the exhibits of each side, the arbitrator, availing himself of the right accorded him by the said declarations of St. Petersburg, invited the two Governments to name commercial experts to aid him in fixing the amount of the indemnity which would eventually be due, and in addressing himself to that effect to the two high-contracting parties the arbitrator at the same time prayed them to furnish supplementary information regarding the points of law, indicated by him;

Whereas, in the sittings held by the arbitrator at The Hague in the hall of Permanent Court of Arbitration, from the 27th June to the 4th July, 1902, he heard the depositions of experts in the presence of the agents of the two high-contracting parties, who on that occasion furnished the supplementary information asked for by the arbitrator;

Whereas, in support of the claim relative to the seizure and detention of the American whaler *Cape Horn Pigeon* by an armed cruiser of the Imperial Russian Government, the party claimant alleged the following facts:

The bark *Cape Horn Pigeon*, constructed for whaling, having set sail from San Francisco on the 7th December, 1891, with a crew of thirty men besides the captain (named Scullun or Scullan) for a voyage in the seas of Japan and Okhotsk was, on the 10th September, 1892, in the Sea of Othotsk, on the high seas, engaged in whaling, when it was seized and detained by the commander of a vessel of the Russian navy (cruiser) and conducted to Vladivostok, where it was detained by the Russian authorities until the 1st October, 1892. -After the seizure of the bark, her crew was placed aboard the Russian schooner *Maria* (which according to the declaration of the defendant party had been seized by the Russian cruiser for illegal sealing), and was forced to conduct her into the port of Vladivostok. In that town, after they had been told that they would be lodged in the guard house, this shelter from cold and hunger was refused them, and the captain found himself obliged to secure lodgings for them in a shed. They were detained from day to day without being told the reason, and finally, on the 1st October, 1892, they were sent back to their vessel.

Whereas the defendant party recognizes that in this case a regrettable error occurred, since the naval officer (Lieutenant Von Cube) was mistaken in suspecting the *Cape Horn Pigeon* of being engaged in illegitimate hunting, and consequently the Imperial Government, recognizing its responsibility, offered to pay a pecuniary indemnity for the actual losses caused to the aliens by the acts of its governmental agents;

Whereas the task of the arbitrator in this affair consists in fixing the amount of indemnity to be paid by the defendant party;

Whereas the claim of the party claimant amounts to a total of \$80,700, with interest at 6 per cent per annum from the 10th of September, 1892, and that the defendant party has offered to pay \$2,500 also with interest at 6 per cent per annum;

Whereas the defendant party thinks that the first item of the claim amounting to \$3,040 for the expenses of the owner of the *Cape Horn Pigeon* on account of the seizure should be reduced to \$1,040, and in fact, the amount claimed not being sufficiently justified, it might be reduced in conformity with the conclusions of the defendant party;

Whereas, for the services of the crew of the *Cape Horn Pigeon* for conducting the Russian schooner to Vladivostok, the sum of \$1,000, offered by the defendant party in lieu of the sum of \$1,200 claimed by the party claimant, seems sufficient;

Whereas the defendant party admits as justified the claims for provisions consumed, \$200; for lodgings for the crew, \$210; for personal expenses of Captain Scullun, \$50; total, \$460;

Whereas the party claimant claims \$45,000 for loss of the catch during the time which transpired between the seizure of the whaler and the day on which he was able to resume whaling; and the defendant party contests the underlying principle of that part of the claim, alleging that it is question of the profit of an enterprise liable to risks and which may readily terminate in loss, and applying in support of the assertion the award of the court of arbitration of 1872 in the case of the "Alabama claims," by which the claims for indemnity for indirect damages were set aside;

Considering that the general principle of civil law, according to which the damages should include an indemnity, not only for the loss suffered, but also for the profit of which one has been deprived, is equally applicable to international litigation, and that in order to apply it, it is not necessary that the amount of the profit of which one is deprived should be exactly determined, but that it suffices to show that in the natural order of things one would be able to realize a profit of which one is deprived by the act which gives rise to the claim;

Considering that in this case it is not a question of indirect damage, but of direct damage, the amount of which should be estimated;

Considering the amount of that part of the claim which the party claimant takes for starting point, the average number of whales taken in one season, which he estimates at 8, and from which he deducts 2, which Captain Scullun had already taken, leaving 6 as probable number of whales still to be caught by him, if the vessel had not been arrested and seized;

Considering, however, that according to Captain Scullun's own declaration he had taken 28 whales in four seasons, which make 7 per season, and whereas 7 indicate more justly the average catch for the whaler *Cape Horn Pigeon* during one season, which, after deducting the 2 whales already caught, gives 5 for the remaining probable catch;

Considering that with regard to the approximate value of a whale at the period when the product of the catch of the *Cape Horn Pigeon* in 1892 could have been sold, the result of the inquiry which took place in this arbitration, and the information furnished to the arbitrator, show that the average weight of the bone to be obtained from 1 whale may be estimated at 1,200 pounds and the average price at \$4 per pound, the average quantity of oil at 100 barrels and the average price at \$12 per barrel, which makes a total of \$6,000 per whale and \$30,000 for 5 whales, or after the deduction of \$1,500, instead of \$1,800 deducted by Captain Scullun, \$28,500;

Considering, with regard to the indemnity claimed for the members of the crew at \$1,000 per man to be \$31,000, that it is not proved that the members of the crew were subjected to the bad treatment of which they complain, but that, on the other hand, the very fact that they were detained against their will at Vladivostok for about three weeks in consequence of the illegal seizure of their vessel, entitles them to indemnity independently of that which is due them for having been forced to conduct a Russian vessel to Vladivostok, and the amount of this indemnity should be fixed at \$7,750, or an average of \$250 per capita;

That, consequently, the total of damage due from the defendant party to the party claimant as a result of the detention and seizure of the *Cape Horn Pigeon* amounts to the sum of \$38,750;

Considering that the defendant party recognized as perfectly regular the addition of interest at 6 per cent per annum;

Therefore, the arbitrator decides and pronounces the following:

The defendant party shall pay to the party claimant on account of the claims presented by the parties in interest in the case of the *Cape Horn Pigeon* the sum of \$38,750 in United States money, with interest on that sum at 6 per cent per annum from the 9th of September, 1892, until the day of the payment in full.

Done at the Hague, November 29, 1902.

T. M. C. ASSER.

CASE OF THE "JAMES HAMILTON LEWIS."

The undersigned, Tobie Michel Charles Asser, member of the council of state of the Netherlands, exercising the functions of arbitrator, which he has had the honor to have conferred upon him by the Government of the United States and the Imperial Government of Russia, to decide as to the differences relating to the affair of the schooner *James Hamilton Lewis*;

Whereas, by virtue of the declarations exchanged at St. Petersburg the 26th August (September 8), 1900, between the aforesaid two Governments, the arbitrator shall take cognizance of the claims for indemnity for the seizure and detention of certain American vessels by Russian cruisers, brought against the Imperial Russian Government by the Government of the United States of America, in the name of the parties in interest;

That according to those declarations the arbitrator, being governed in his award by the general principles of international law and the spirit of international agreements applicable to the subject, shall determine with regard to each claim filed against the Imperial Russian Government whether it is well founded, and if so, whether the facts upon which it is based are proved;

That furthermore it is recognized that this stipulation shall have no retroactive force, and that the arbitrator will apply to the cases in litigation the principles of international law and the international treaties which were in force and binding upon the parties engaged in this litigation at the time the seizure of the vessels took place;

Finally, that the arbitrator shall fix the amount of the indemnity which may be due from the Russian Government on account of the claims presented by the parties in interest;

Whereas, after a minute examination of the memoranda and counter-memoranda exchanged between the high contracting parties, as well as of all the exhibits of each side, the arbitrator, availing himself of the right accorded him by the said declarations of St. Petersburg, invited the two Governments to name commercial experts to aid him in fixing the amount of indemnity which may eventually be due, and in addressing himself to that effect to the two high contracting parties, the arbitrator at the same time requested them to furnish supplementary information regarding the points of law indicated by him;

Whereas, in the sittings held by the arbitrator at The Hague, in the hall of the permanent court of arbitration, from the 27th June to the 4th July, 1902, he heard the depositions of experts in the presence of the agents of the two high contracting parties, who on that occasion furnished the supplementary information asked for by the arbitrator;

Whereas, in support of the claim relative to the seizure and confiscation of the schooner *James Hamilton Lewis*, the party claimant alleged the following facts:

The said schooner having set sail from San Francisco on the 7th

May, 1891, bound on a voyage in the North Pacific Ocean on a fishing and hunting expedition, with Alexander McLean as captain, was, on the 2d August, 1891, about 20 miles east of Copper Island (latitude 55° 35' north, longitude 167° 21' east), when she was seized early in the morning by the Russian cruiser *Aleouté*. The captain of the schooner thinking it necessary to make land for the purpose of verifying his chronometer, directed his course toward Copper Island. At that place his vessel was compelled to lay to by a cannon shot from said cruiser, and a longboat approaching the schooner, a Russian naval officer ascended from the boat to the deck of the schooner and demanded the official log book, which was given him by the captain, and which he took with him, returning to his vessel. Presently he returned with several armed men and ordered Captain McLean to leave his vessel and to come as a prisoner on board the *Aleout* with all of his crew, except seven men. Captain McLean refused to obey this order, and resumed his eastward course; then the commander of the cruiser began a pursuit, and, circling the *James Hamilton Lewis*, captured her by force of arms; the captain and members of the crew were conducted to Vladivostok; the vessel, with her cargo, her equipment, and the personal property of the captain, was confiscated; her captain, his officers, and crew were detained prisoners, and subjected to harsh and unjust treatment, and on being released, were left to find their way home as best they could;

Whereas the damage claimed by the party claimant on account of the parties in interest, for the seizure and confiscation of the vessel and the imprisonment of the captain and crew, reaches a total of \$101,336 with interest at 6 per cent per annum;

Whereas the party defendant, replying to the allegations of the party claimant, maintains that when the *James Hamilton Lewis* was sighted by the cruiser she was only 5 miles at most from Medny Island (or Copper Island) and that the seizure took place at a distance of 12 (or 11) miles from the coast; that furthermore it is shown from a series of facts set forth by the defendant party that the *James Hamilton Lewis* must be presumed to have been guilty of illegal sealing in Russian territorial waters; that consequently the agents of the Imperial Government were justified in pursuing her even outside of such waters and in seizing and confiscating her with her cargo; that the imprisonment of the crew was caused by their resistance to arrest and the seizure of the vessel;

Whereas the defendant party, relying upon these allegations and subsidiarily contesting the amount of the demand, has requested that the claims of the party claimant be rejected;

Whereas the honorable delegate of the party claimant, Mr. Herbert H. D. Peirce, in the sitting of July 4, 1902, in the name of the Government of the United States of America made the following declaration:

DECLARATION MADE TO THE HONORABLE ARBITRATOR, MR. T. M. C. ASSER, JULY 4, 1902, BY THE PARTY CLAIMANT IN THE ARBITRATION BETWEEN THE UNITED STATES AND RUSSIA, IN REPLY TO THE QUESTION ASKED BY THE ARBITRATOR RELATIVE TO THE EXTENT OF JURISDICTION CLAIMED BY THE UNITED STATES OVER THE BORDERING WATERS OF THE BERING SEA.

The delegate of the United States makes this declaration under the specific authority received by him from the Secretary of State of the United States on July 3, 1902, to wit:

The Government of the United States claims neither in Bering Sea nor in its other

bordering waters an extent of jurisdiction greater than a maritime league from its shores, but bases its claims to such jurisdiction on the following principle:

The Government of the United States claims and admits the jurisdiction of any State over its jurisdictional waters only to the extent of a maritime league, unless a different rule is fixed by treaty between two States; even then the treaty States are alone affected by the agreement.

Considering that the arbitrator must decide:

I. Whether the seizure and confiscation of the schooner *James Hamilton Lewis* and her cargo, as well as the imprisonment of the crew, should be considered as illegal acts.

II. If in the affirmative, what amount of indemnity is due from the defendant party.

I. (a) Considering this question must be decided according to the general principles of international law and the spirit of international agreements in force and binding upon the two high parties at the time of the seizure of the vessel;

That at the time no agreement existed between the two parties containing in the special matter of sealing any derogation of the general principles of international law with regard to the extent of territorial waters;

That the defendant party sets forth that in the litigation between the United States of America and Great Britain before the Tribunal of Arbitration established by virtue of the treaty concluded at Washington the 29th February, 1892, the United States Government set up with regard to the right of jurisdiction in Bering Sea, against Great Britain, claims to an extent of far greater limits than those which are admitted by the general principles of international law, that these claims were prompted by the interest in the preservation of the seals and the suppression of illegal sealing, and that while the Government of the United States of America loyally submitted to the decision of the arbitrary court of 1893, which did not adopt its view, that view may nevertheless be employed to combat the claim filed by this Government in the present litigation;

Considering that whatever may be the desirability of the policy in question as basis of an agreement between the States interested, it could not be obligatory without such an understanding even in the case of a government which at another time had pleaded it, but unsuccessfully, before a tribunal of arbitration;

Considering that the agreement which was entered into between the parties after the seizure and confiscation of the *James Hamilton Lewis* could not modify the effect of the principles of law generally accepted at the time of these acts;

Considering that the seizure of the schooner took place according to the party claimant at a distance of about 20, and according to the defendant party at a distance of 11 or 12, miles from Russian territory, and that even if the latter version be the true one, the act was accomplished outside Russian territorial waters, which is, moreover, admitted by both parties;

Considering that the policy of the defendant party according to which it was permitted to a war ship of a State to pursue beyond territorial waters a vessel whose crew had rendered themselves guilty of an illegal act in territorial waters or on the territory of that State could not be regarded as conforming to international law, since the jurisdiction of a State does not extend beyond the limits of the territorial sea, unless this rule has been derogated by a special convention;

Considering that it is not necessary to examine whether the presumptions alleged by the defendant party are serious enough to cause the admission that the crew of the *James Hamilton Lewis* had been guilty of sealing in territorial waters or on Russian territory;

Considering that the seizure and confiscation of the *James Hamilton Lewis* and her cargo, as well as the imprisonment of her crew, should in consequence be regarded as illegal acts, there remains but to fix the amount of indemnity due from the defendant party in this respect.

II. (b) Considering that the party claimant claims, in the first place, \$25,000 for the confiscation of the vessel, but that that claim is exaggerated; that basing its claim on the figures to be found in the American publications sent to the arbitrator by the party claimant (Report of fur-seal investigations, 1899, Part III, p. 228), and more particularly on the value specified of the vessels having about the same or greater tonnage than the *James Hamilton Lewis*, and noting on the one hand that the schooner was in excellent condition, and on the other hand the fact that having gone to sea on the 7th March, 1891, nearly five months of her provisions had been consumed at the time of the seizure (August 2, 1892), there could not be attributed to this vessel, with her boats and equipment and her provisions, a value exceeding the sum of \$9,000;

Considering that the party claimant claims for the 424 seal skins confiscated with the vessel \$14 per skin, being a total of \$5,936, but that upon minute examination of the several documents produced, as well as the depositions of experts, it appears that the price per skin would not exceed \$12, which makes a total of \$5,088 for the 424 skins;

Considering that the party claimant claims \$36,400 for the loss of the probable catch of 2,600 skins, at \$14 per skin, but that, while admitting that the principal loss of catch during the portion of the season still remaining after the seizure of the vessel may be claimed as an item of the damage, the number 2,600 skins is in no way justified, and seems exaggerated; that from statistics produced in litigation, while noting the number of seals already taken, and of the time which must elapse before the close of the season, it may be admitted that the product of sealing would not have exceeded 500 seals, which, at the rate of \$12 per skin, gives a total of \$6,000;

Finally, considering that the party claimant claims for the benefit of the crew of the *James Hamilton Lewis* for their imprisonment, their sufferings, mental and physical, etc., \$2,000 for each of the 17 men, being \$34,000; that the defendant party energetically denies that the complaints made by the crew on the subject of acts of violence and bad treatment to which they were subjected are founded, and that evidence in support of these allegations has not been submitted; that, however, the very fact of the illegal imprisonment give to the parties in interest a right to claim an indemnity, the amount of which, according to an equitable estimate, may be fixed at \$8,500, or an average of \$500 per person;

That consequently the total of indemnity due from the defendant party to the party claimant on account of the seizure and confiscation of the *James Hamilton Lewis* amounts to the sum of \$28,588.

Considering that the defendant party consents to the adjunction of interest at 6 per cent per annum to the sum to be paid; that as an

indemnity is granted for the loss of catch during the remainder of the season of 1891, it is just that the interest should only begin to accrue from the 1st January, 1892;

Therefore the arbitrator decides and pronounces the following:

The defendant party will pay to the party claimant on account of the claims presented by the parties in interest in the case of the *James Hamilton Lewis* the sum of \$28,588 in United States money, with interest on that sum at 6 per cent per annum from the 1st January, 1892, until the day of full payment.

Done at The Hague November 29, 1902.

T. M. C. ASSER.

AFFAIR OF THE "C. H. WHITE."

The undersigned, Tobie Michel Charles Asser, member of the council of state of the Netherlands, exercising the functions of arbitrator, which he has had the honor to have conferred upon him by the Government of the United States of America and the Imperial Government of Russia, to decide as to the differences relating to the affair of the schooner *C. H. White*;

Whereas, by virtue of the declarations exchanged at St. Petersburg, August 26 (September 8), 1900, between the aforesaid two Governments, the arbitrator must take cognizance of the claims for indemnity for the seizure and detention of certain American vessels by Russian cruisers, brought against the Imperial Russian Government by the Government of the United States of America, in the name of the parties in interest;

That according to these declarations the arbitrator, following in his award the general principles of international law and the spirit of international agreements applicable to the subject, shall decide with regard to each claim filed against the Imperial Russian Government whether it is well founded; and if in the affirmative, whether the facts upon which it is based are proved;

That furthermore it is recognized that this stipulation shall have no retroactive force, and that the arbitrator shall apply to the cases in litigation the principles of international law and of international treaties which were in force and binding upon the parties engaged in this litigation at the time the seizure of the vessels took place;

That finally the arbitrator shall fix the sum of the indemnity which may eventually be due from the Russian Government on account of the claims presented by the parties in interest;

Whereas, after a minute examination of the memoranda and counter memoranda exchanged between the high contracting parties, as well as of all the exhibits of each side, the arbitrator, availing himself of the right accorded him by said declarations of St. Petersburg, invited the two Governments to name commercial experts to aid him in fixing the amount of indemnity which would eventually be due, and in addressing himself to that effect to the high contracting parties the arbitrator at the same time requested them to furnish supplementary information regarding the points of law indicated by him;

Whereas, in the sittings held by the arbitrator at The Hague, in the hall of Permanent Court of Arbitration, from the 27th June to the 4th July, 1902, he heard the depositions of experts in the presence of the agents of the two high contracting parties, who on that occasion furnished the supplementary information asked for by the arbitrator;

Whereas, in support of the claim relative to the seizure and confiscation of the schooner *C. H. White*, the party claimant alleged the following facts:

The said schooner having set sail from San Francisco on May 7, 1892, on a hunting and fishing expedition in the North Pacific Ocean or elsewhere, with Lawrence M. Furman as captain, was, on the 12th July, 1892, about 40 miles south of the Agatha Island, one of the Aleutian Islands, and about the same day the captain set sail for the Kuriles Islands with the intention of fishing some distance off the coast. The captain deviated from his course toward the Kuriles Islands in the direction of Copper Island or Bering Island, to regulate his chronometer. The 15th July, 1892, the vessel having reached latitude $54^{\circ} 18'$ north and longitude $167^{\circ} 19'$ east (it is evidently by mistake that in certain places in the memorandum of the party claimant longitude $167^{\circ} 19'$ west is given) was overhauled by the Russian man-of-war *Zabiaka*, and the captain of the *C. H. White* was ordered to come aboard the Russian cruiser with all of his ship's papers; the commander of the cruiser having examined his papers, arrested the captain of the schooner and transferred him with all of his crew, except the first mate, aboard the cruiser as prisoners; the captain was put under surveillance. The schooner (with her cargo consisting of 20 seal skins, 8 casks of mackerel, and 1 ton of codfish) was seized and towed as far as the bay of Nicolsky (Bering Island), whence it was taken to Petropavlovsk; later it was confiscated and appropriated to the use of the Imperial Russian Government. The captain and crew of the schooner were transported as prisoners to Petropavlovsk, where they arrived on July 20, 1892. On the 8th August, of the same year, the crew was conducted aboard the American ship *Majestic* to be returned to their country. The captain and members of the crew claimed to have suffered greatly from ill treatment inflicted upon them during their imprisonment; besides the captain, the first mate, Andrew Ronning, and the fisherman, Neils Wolfgang, claimed to have lost personal belongings which were not restored to them.

Whereas the damage claimed by the party claimant in the name of the parties in interest, on the counts mentioned, amount to the sum of \$150,720 with interest at 6 per cent per annum;

Whereas the defendant party, replying to the allegations of the party claimant, maintains that the seizure of the *C. H. White* took place not in $54^{\circ} 18'$ but in $54^{\circ} 10'$ latitude north, or at a distance of only about 23 miles from the nearest Russian coast; that moreover from a series of circumstances set forth by the defendant party there resulted the presumption that the *C. H. White* might have been guilty of illegal sealing in Russian territorial waters;

That therefore the agents of the Imperial Government were justified in pursuing the schooner even beyond those waters, and in seizing and confiscating her with her cargo;

That the defendant party sets up against the complaint of the crew regarding the ill treatment they were subjected to an energetic denial, by setting forth that the harsh treatment of which they complain was but the unavoidable consequence of local conditions of the place to which the crew were transported, and that finally the fact that property belonging to the captain and two other persons was not returned to them is not sufficiently proved:

Whereas the defendant party, basing its case upon these allegations and incidentally contesting the amount of the claim, requested that the claims of the party claimant be rejected;

Whereas the honorable agent of the party claimant, Mr. Herbert H. D. Peirce, made at the sitting of July 4, 1902, in the name of the Government of the United States of America, the following declarations:

DECLARATION MADE TO THE HONORABLE ARBITRATOR, MR. T. M. C. ASSER, JULY 4, 1902, BY THE PARTY CLAIMANT IN THE ARBITRATION BETWEEN THE UNITED STATES AND RUSSIA IN REPLY TO THE QUESTION ASKED BY THE ARBITRATOR RELATIVE TO THE EXTENT OF JURISDICTION CLAIMED BY THE UNITED STATES OVER THE BORDERING WATERS OF THE BERING SEA.

The delegate of the United States makes this declaration under the specific authority received by him from the Secretary of State of the United States on July 3, 1902, to wit:

The Government of the United States claims neither in Bering Sea nor in the other bordering waters an extent of jurisdiction greater than a marine league from its shores, but bases its claims to such jurisdiction upon the following principle:

The Government of the United States claims and admits the jurisdiction of any State over its territorial waters only to the extent of a marine league unless a different rule is fixed by treaty between two States; even then the treaty States are alone affected by the agreement.

Considering that the arbitrator must decide:

I. Whether the seizure and confiscation of the schooner *C. H. White*, and of her cargo, as well as the imprisonment of the crew, shall be considered as illegal acts;

II. If in the affirmative, what amount of indemnity is due from the defendant party?

I. (a) Considering that this question must be decided according to the general principles of international law and of the spirit of international agreements in force and binding upon the high contracting parties at the time of the seizure of the vessel;

That at that time there did not exist any agreement between the two parties, containing in the special matter of sealing any derogation of the general principles of international law with regard to the extent of territorial seas;

That the defendant party sets up that in the litigation between the United States of America and Great Britain before the tribunal of arbitration, established by virtue of the treaty concluded at Washington, February 29, 1892, the Government of the United States recognized with regard to the right of jurisdiction in Bering Sea in connection with the British Government, claims which extended to limits far exceeding those which are admitted by the general principles of international law; that these claims were prompted by the interest in the preservation of the seals, and the suppression of illegal sealing, and that while the Government of the United States of America submitted loyally to the decision of the Arbitration Tribunal of 1893, which did not adopt its system, that system nevertheless may be used to oppose the claim of that Government in the present litigation.

Considering that whatever be the value of the system in question as basis of an agreement between the interested States, it could not be compulsory without such an agreement, even for a Government which had on another occasion pleaded it, though unsuccessfully, before a tribunal of arbitration;

Considering that the agreement which was entered into between the parties after the date of the seizure and confiscation of the *C. H. White* could not modify the consequences resulting from the general principles of law recognized at the time of these acts;

Considering that the seizure of the schooner took place, according to the party claimant at about 20, and according to the defendant party about 11 or 12, miles from Russian territory, and that even if the latter version be the true one, it results that the act was perpetrated outside the Russian territorial waters, which is moreover admitted by both parties;

Considering that the system of the defendant party, according to which a war ship of a State would be permitted to pursue even beyond the territorial sea any vessel whose crew was guilty of an illegal act in territorial waters or on territory of that State, could not be recognized as conforming to the principles of international law, since the jurisdiction of a State does not extend beyond the limits of the territorial sea, unless that rule has been derogated by a special convention;

Considering that it is not necessary to examine if the presumptions alleged by the defendant party be sufficiently grave to cause the admission that the crew of the *C. H. White* were guilty of illegal sealing in Russian territorial waters;

Considering that the seizure and confiscation of the *C. H. White* and her cargo, as well as the imprisonment of her crew, should therefore be considered as illegal acts, it remains but to fix the amount of indemnity due by the defendant party on account of these acts.

II. Considering that the party claimant claims in the first place \$35,000 for the confiscation of the vessel, but that that claim is exaggerated; that based upon the figures which are found in the American publications, such as the reports of the fur-seal investigation, sent to the arbitrator by the party claimant (Part III, p. 228), and more particularly on the value specified for vessels having the same or greater tonnage than the *C. H. White*, there could not be attributed to this schooner, with her boats, her equipment, and her provisions, a value exceeding \$10,000;

Considering that the party claimant claims for the cargo confiscated with the vessel the following: (a) for the 20 seal skins, a sum of \$14 each, being a total of \$280; but that from a minute examination of the several documents produced, as well as the depositions of experts, it appears that the price per skin is not more than \$12, which gives a total of \$240 for the 20 skins; (b) for 8 casks of mackerel, \$160, and for a hogshead of codfish, \$260; but that the defendant party, having maintained that the value of the 8 casks of mackerel could not exceed the sum of \$80, and that of the hogshead of codfish the sum of \$124, the party claimant reduced the claim for that part of the cargo to a sum of \$204, which, with the \$240 for the 20 seal skins, makes a total of \$444;

Considering that the party claimant claims (a) \$34,720 for loss of probable catch of 2,480 seals at \$14, and (b) \$10,300 for loss of probable catch of fish;

Considering that while admitting the principle that the loss of catch for the portion of the season still remaining after the seizure of the vessel can be claimed as an element of damages, the amounts claimed are not justified and appear very much exaggerated;

Considering (a) that from the statistics produced in the litigation it may be admitted that the product of the sealing after the day of seizure of the vessel would certainly not have exceeded the number of 1,000 seals, which, at the rate of \$12 per skin, gives a total of \$12,000;

(b) That for the loss of probable catch of fish, a sum of \$1,000 seems a sufficient indemnity;

Considering with regard to the personal claims of Captain Furman (\$25,000), of Andrew Ronning (\$15,000), and of Neils Wolfgang (\$10,000), for the loss of their property, for their imprisonment, outrages, and privations, that the loss of personal property is not proved—the declarations of the interested parties alone can not be admitted as sufficient evidence; that the defendant party energetically denies that it had any intention of inflicting inhuman treatment upon the captain or crew of the schooner, adding that if their lodgings and their food were insufficient this may be explained by the insufficiency of local resources;

Considering that this explanation does not suffice to excuse the defendant party from the responsibility, since, being responsible for the imprisonment, it is also responsible for the consequences of that illegal act;

That although the amount of indemnity claimed on that head is exaggerated and should be reduced, for Captain Furman to \$3,000, for Andrew Ronning to \$2,000, for Neils Wolfgang to \$1,000;

Considering that the claim of the crew for their imprisonment may be admitted as amounting to \$300 per person, being \$3,000 for the ten members of the crew;

That, consequently, the total of indemnity due from the defendant party to the party claimant on account of the seizure and confiscation of the *C. H. White*, reaches \$32,444;

Considering that the defendant party agrees to add interest at 6 per cent per annum to the sums which it must pay; since indemnity is granted for the loss of the catch during the remainder of the season of 1892, it is just that the interest should not begin to accrue until the 1st January, 1893;

Therefore, the arbitrator decides and pronounces the following:

The defendant party will pay to the party claimant on account of the claims presented by the parties in interest in the affair of the *C. H. White* the sum of \$32,444 in United States money, with interest on that sum at 6 per cent per annum, from the 1st of January, 1893, to the time of full payment.

Done at The Hague, November 29, 1902.

T. M. C. ASSER.

AFFAIR OF THE "KATE AND ANNA."

The undersigned, Tobie Michel Charles Asser, member of the council of state of the Netherlands, exercising the functions of arbitrator, which he has had the honor to have conferred upon him by the Government of the United States of America and the Imperial Government of Russia, to decide as to the differences relating to the affair of the vessel *Kate and Anna*;

Whereas by virtue of the declarations exchanged at St. Petersburg, August 26 (September 8), 1900, between the aforesaid two Governments, the arbitrator must take cognizance of the claims for indemnity for the seizure and detention of certain American vessels by Russian cruisers, brought against the Imperial Russian Government by the United States of America in the name of the parties in interest;

That according to those declarations the arbitrator, following in his award the general principles of international law and the spirit of international agreements applicable to the subject, shall determine with regard to each claim filed against the Imperial Russian Government whether it is well founded, and if in the affirmative, whether the fact upon which it is based are proved;

That, furthermore, it is recognized that this stipulation shall have no retroactive force, and that the arbitrator will apply to the cases in litigation the principles of international law and international treaties which were in force and binding upon the parties engaged in this litigation at the time the seizure of the vessels took place;

Finally, that the arbitrator shall fix the amount of the indemnity which may eventually be due from the Russian Government on account of the claims presented by the parties in interest;

Whereas after a minute examination of the memoranda and counter memoranda exchanged between the high contracting parties, as well as of all of the exhibits of each side, the arbitrator, availing himself of the right accorded him by the said declarations of St. Petersburg, invited the two Governments to name commercial experts to aid him in fixing the amount of indemnity which would eventually be due, and that when addressing himself to that effect to the two high contracting parties the arbitrator at the same time requested them to furnish supplementary information with regard to the points of law indicated by him;

Whereas in the sittings held by the arbitrator at The Hague, in the hall of permanent court of arbitration, from the 27th June to the 4th July, 1902, he heard the depositions of experts in the presence of agents of the high contracting parties, who on that occasion furnished the supplementary information asked by the arbitrator;

Whereas in support of the claim relative to the schooner *Kate and Anna* and the confiscation of the seal skins found aboard that vessel, the party claimant alleged the following facts:

On August 12, 1902, while the said schooner, whose captain was Claus Lutjens, was on the high sea beyond the jurisdiction of territorial waters of all nations, and at a distance of more than 30 miles from the nearest Russian land, and while no member of the crew was either hunting or fishing, the said schooner having been compelled to lay to, was overhauled by the Russian naval cruiser *Zabiaka*, whose commander ordered Captain Lutjens to come aboard the cruiser and to bring with him all of his ship's papers, which was done, and the captain delivered all of his documents to the commander of the Russian cruiser. The latter then ordered that the 124 seal skins which were aboard the schooner be delivered to him, and he declared them confiscated, the captain of the schooner having presumably engaged in sealing in Russian territorial waters. Captain Lutjens, being sent back to his vessel and permitted to continue his course, resolved to quit sealing and return immediately to San Francisco. The commander of the Russian cruiser, before permitting the captain to depart, gave him warning, by which, according to Captain Lutjens, he was ordered to quit sealing and go home, while, according to the defendant party, the warning consisted only in the prohibition to seal in Russian territorial waters.

Whereas the defendant party recognized that under the conditions of the encounter with the *Kate and Anna*, and from the verification of her log book, that the commander of the Russian cruiser had serious reason to consider the American vessel with suspicion, and even to conclude that a portion, at least, of the product of her sealing had been obtained in an illegitimate manner in Russian territorial waters; however, the setting at liberty of the vessel itself, after seizing the cargo which rendered her suspicious, shows a great lack of decision on the part of the cruiser, partly explained by the absence of positive proofs of Captain Lutjens's guilt; and, therefore, the defendant party, conformedly with the desire to maintain at all times the friendly relations with the American Government, declared its readiness to acknowledge the obligation to pay an indemnity for the actual losses which were caused by the lamentable fact concerning the schooner *Kate and Anna*.

Whereas, however, the defendant party insists that the amount of damage justly claimed from it reaches only the sum of \$1,240 for the 124 seal skins at \$10 each, with interest at 6 per cent per annum from the 12 August 1892;

Considering that the claimant party claims it is right to demand not only the amount of the price of the 124 seal skins illegally confiscated, but also the loss of the probable catch of 625 seals, basing on this fact that after the schooner *Kate and Anna* was stopped the captain resolved not to continue sealing, but to return immediately to San Francisco, and that this resolution was taken in consequence of the warning given him by the commander of the Russian cruiser;

Considering that whatever may have been the tenor of this warning, it could not have the effect of preventing the captain of the *Kate and Anna* from continuing sealing, and that consequently if the said captain nevertheless resolved to return at once to San Francisco, the defendant party is not responsible for the loss or profit which might have accrued to the schooner;

Considering with regard to the indemnity due for the confiscation of the 124 seal skins, for which the claimant party demands \$14 per skin, that the defendant party offers \$10 per skin, being a total of \$1,488 for the 124 skins;

Therefore, the arbitrator decides and pronounces the following:

The defendant party will pay to the claimant party on account of the claims presented by the parties in interest in the affair of the *Kate and Anna* the sum of \$1,488 in United States money, with interest on that sum at 6 per cent per annum from the 12th August, 1892, until the day of full payment.

Done at The Hague, November 29, 1902.

T. M. C. ASSER.

ARBITRAGE INTERNATIONAL

ENTRE

LES ETATS-UNIS D'AMÉRIQUE,

PARTIE DEMANDERESSE,

ET

LA RUSSIE,

PARTIE DÉFENDERESSE,

RELATIF AUX NAVIRES

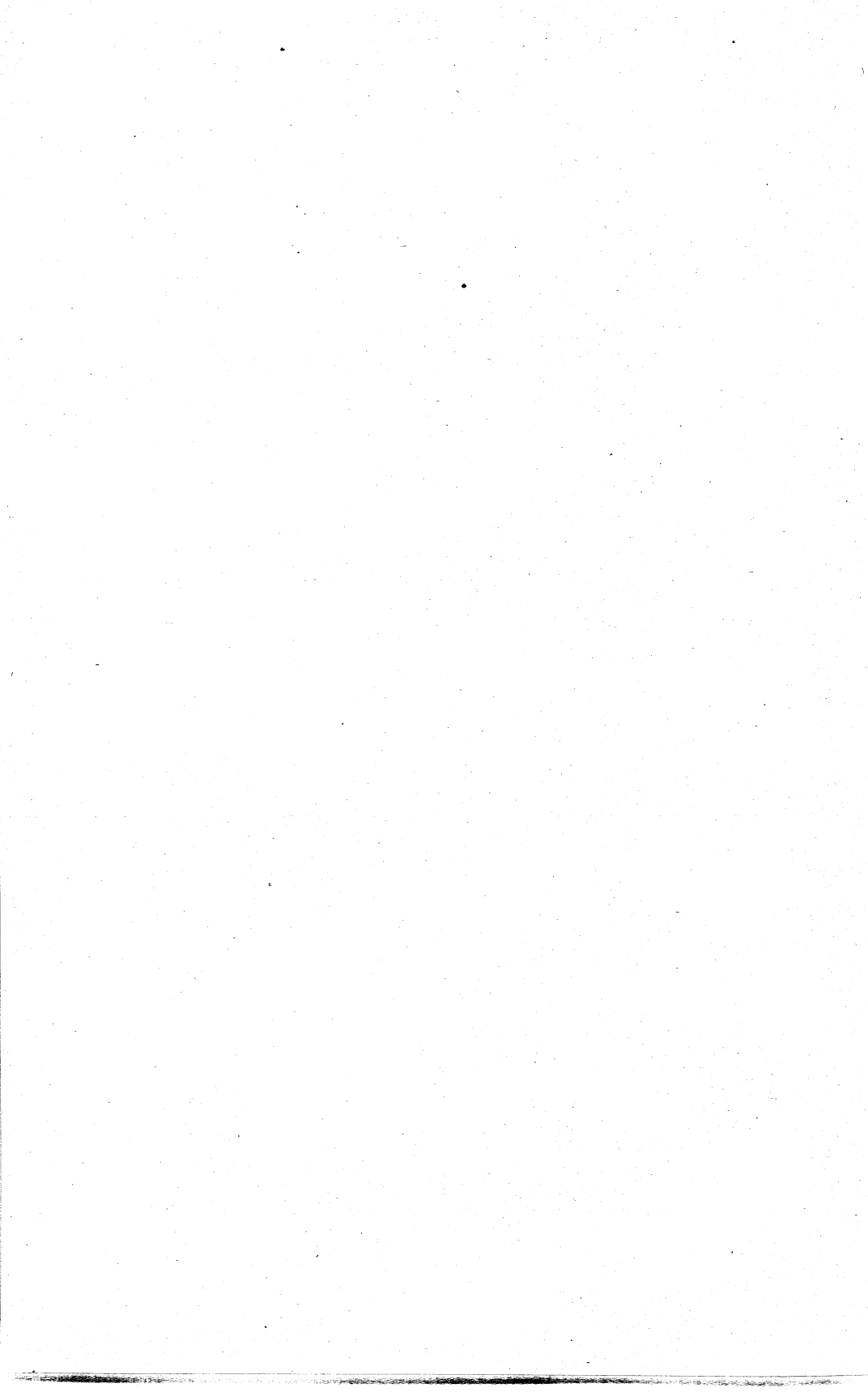
Cape Horn Pigeon, James Hamilton Lewis, C. H. White,
et Kate and Anna.

JUGEMENTS

de l'Arbitre: M. T. M. C. ASSER,

Membre du Conseil d'Etat des Pays-Bas,

prononcés à la Haye le 29 Novembre 1902.



AFFAIRE DU CAPE HORN PIGEON.

Le soussigné, Tobie Michel Charles Asser, Membre du Conseil d'Etat des Pays-Bas, exerçant les fonctions d'Arbitre, qu'il a eu l'honneur de se voir conférer par le Gouvernement des Etats-Unis d'Amérique et par le Gouvernement Impérial de Russie, pour juger le différend relatif à l'affaire du navire Cape Horn Pigeon;

Attendu qu'en vertu des déclarations échangées entre les deux Gouvernements précités à Saint-Pétersbourg le 26 août/8 septembre 1900, l'Arbitre doit prendre connaissance des réclamations d'indemnité pour l'arrêt ou la saisie de certains navires américains par des croiseurs russes, présentées au Gouvernement Impérial de Russie par le Gouvernement des Etats-Unis d'Amérique, au nom des ayants-droit;

que d'après ces déclarations l'Arbitre, en se réglant dans sa sentence sur les principes généraux du droit des gens et sur l'esprit des accords internationaux applicables à la matière, doit décider à l'égard de chaque réclamation formulée à la charge du Gouvernement Impérial de Russie, si elle est bien fondée et, dans l'affirmative, si les faits, sur lesquels elle est basée, sont prouvés;

qu'ensuite il a été reconnu que cette stipulation n'aura aucune force rétroactive et que l'Arbitre appliquera aux cas en litige les principes du droit des gens et les traités internationaux qui étaient en vigueur et obligatoires pour les parties impliquées dans ce litige, au moment où la saisie des navires a eu lieu;

qu'enfin l'Arbitre doit éventuellement fixer la somme de l'indemnité qui serait due par le Gouvernement Russe pour le compte des réclamations présentées par les ayants-droit;

Attendu qu'après un examen minutieux des mémorandums et contre-mémorandums échangés entre les Hautes Parties, ainsi que de toutes les pièces produites de part et d'autre, l'Arbitre, profitant de la faculté qui lui avait été accordée par lesdites déclarations de Saint-Pétersbourg, a invité les deux Gouvernements à désigner les experts commerciaux pour l'aider à fixer le montant de l'indemnité qui serait éventuellement due et, qu'en s'adressant à cet effet aux deux Hautes Parties, l'Arbitre les a en même temps priées de lui fournir des renseignements supplémentaires à l'égard des points de droit, indiqués par lui;

Attendu que dans les séances tenues par l'Arbitre à la Haye dans l'Hôtel de la Cour Permanente d'Arbitrage, depuis le 27 juin jusqu'au 4 juillet 1902, il a entendu les dépositions des experts en présence des Agents des deux Hautes Parties, qui à cette occasion ont fourni les renseignements supplémentaires demandés par l'Arbitre;

Attendu qu'à l'appui de la réclamation relative à l'arrêt et la saisie de la barque baleinière américaine Cape Horn Pigeon par un vaisseau armé du Gouvernement Impérial de Russie, la Partie demanderesse a allégué les faits suivants:

La Barque Cape Horn Pigeon, construite pour la pêche de la baleine, ayant fait voile de San Francisco le 7 décembre 1891, avec un équipage de trente personnes hors le capitaine (nommé Scullun ou

Scullan) pour un voyage dans les mers du Japon et d'Ochotsk, se trouvait le 10 septembre 1892 dans la mer d'Ochotsk, sur la haute mer, occupée de la pêche de la baleine, lorsqu'elle fut arrêtée et saisie par le commandant d'un navire de la marine russe (croiseur) et conduite à Vladivostok, où elle fut détenue par les autorités russes jusqu'au 1 octobre 1892. Après la saisie de la barque, son équipage fut placé à bord du schooner russe Maria (qui, d'après la déclaration de la Partie défenderesse, avait été saisi par le croiseur russe pour chasse illicite aux phoques) et forcé de le conduire dans le port de Vladivostok. Dans cette ville, après qu'on leur eut dit qu'ils seraient logés dans la maison de garde, cet abri contre le froid et la faim leur fut refusé et le capitaine se vit forcé de leur trouver un logement dans un hangar. Ils furent retenus de jour en jour sans qu'on leur en dit la raison et enfin le 1 octobre 1892 ils furent renvoyés à leur navire;

Attendu que la Partie défenderesse a reconnu que dans ce cas il s'est produit une erreur regrettable, puisque c'est à tort que l'officier de marine (le lieutenant von Cube) avait soupçonné le Cape Horn Pigeon de s'être livré à une chasse illicite et que par conséquent le Gouvernement Impérial, reconnaissant sa responsabilité, a offert de payer une indemnité pécuniaire pour les pertes réelles causées aux ressortissants étrangers par les actes de ses organes gouvernementaux;

Attendu que la tâche de l'Arbitre dans cette affaire consiste donc à fixer le montant de l'indemnité à payer par la Partie défenderesse;

Attendu que la réclamation de la Partie demanderesse s'élève à un montant de \$80,700, avec les intérêts à 6 pour cent par an depuis le 10 septembre 1892 et que la Partie défenderesse a offert de payer \$2,500, également avec les intérêts à 6 pour cent par an;

Attendu que la Partie défenderesse estime que le premier article de la réclamation, s'élevant à \$3,040 pour dépenses du propriétaire du Cape Horn Pigeon en conséquence de la saisie, devrait être réduit à \$1,040 et qu'en effet, le montant réclamé n'étant pas suffisamment justifié, il y a lieu de le réduire conformément aux conclusions de la Partie défenderesse;

Attendu que pour les services de l'équipage du Cape Horn Pigeon pour avoir conduit le schooner russe à Vladivostok, la somme de \$1,000 offerte par la Partie défenderesse, au lieu de la somme de \$1,200 réclamée par la Partie demanderesse, semble suffisante;

Attendu que la Partie défenderesse admet comme justifiées les réclamations pour provisions consommées \$200, pour logement de l'équipage \$210, pour dépenses du capitaine Scullan \$50, ensemble \$460;

Attendu que la Partie demanderesse réclame \$45,000 pour perte de prises de pêche pendant le temps qui s'est écoulé entre la saisie du navire et le jour où il a pu reprendre la pêche de la baleine;

que la Partie défenderesse conteste en principe le bien fondé de cette partie de la demande, en alléguant qu'il s'agit ici du gain d'une entreprise soumise à des risques et qui peut toujours se terminer par des pertes, et en invoquant, à l'appui de son assertion, la sentence du tribunal d'Arbitrage de 1872 dans l'affaire de l'Alabama, par laquelle les demandes d'indemnisation pour dommages indirects ont été écartées;

Considérant que le principe général du droit civil, d'après lequel les dommages-intérêts doivent contenir une indemnité non-seulement pour le dommage qu'on a souffert, mais aussi pour le gain dont on a été privé, est également applicable aux litiges internationaux et que, pour pouvoir l'appliquer, il n'est pas nécessaire que le montant du

gain dont on se voit privé puisse être fixé avec certitude, mais qu'il suffit de démontrer que dans l'ordre naturel des choses on aurait pu faire un gain dont on se voit privé par le fait qui donne lieu à la réclamation;

Considérant qu'il n'est pas question en ce cas d'un dommage *indirect*, mais d'un dommage *direct*, dont le montant doit faire l'objet d'une évaluation;

Considérant quant au montant de cette partie de la réclamation, que la partie demanderesse prend pour point de départ la moyenne du nombre des baleines prises dans une saison, qu'elle évalue à huit et dont elle déduit le nombre de deux que le capitaine Scullun avait déjà prises, ce qui donne six comme le nombre probable des baleines qui auraient encore été prises par lui, si le navire n'avait pas été arrêté et saisi;

Considérant, toutefois, que d'après la déclaration du capitaine Scullun lui-même, il avait pris vingt-huit baleines dans quatre saisons, ce qui fait sept par saison et qu'il est donc plus sûr de prendre le chiffre sept comme indiquant pour le baleinier Cape Horn Pigeon la moyenne de la prise par saison, ce qui, après déduction des deux baleines prises, donne un nombre de cinq pour le restant probable de la prise;

Considérant en ce qui concerne la valeur approximative d'une baleine à l'époque où le produit de la pêche du Cape Horn Pigeon en 1892 aurait pu être vendu, qu'il résulte de l'enquête qui a eu lieu dans ce litige et des renseignements fournis à l'Arbitre, qu'on peut évaluer le poid moyen des os à obtenir d'une baleine à 1,200 livres, et le prix moyen d'une livre à \$4; la quantité moyenne de l'huile à 100 barriques et le prix moyen d'une barrique à \$12, ce qui fait un total de \$6,000 par baleine et de \$30,000 pour cinq baleines, ou, après déduction de \$1,500, au lieu des \$1,800 déduits par le capitaine Scullun, \$28,500;

Considérant par rapport à l'indemnité réclamée pour l'enrôlement à \$1,000 par homme, soit \$31,000, qu'il n'est pas prouvé qu'on ait fait subir aux membres de l'équipage les mauvais traitements dont ils se plaignent; mais que, d'un autre côté, le fait même qu'ils ont été retenus contre leur gré à Vladivostok pendant environ trois semaines, comme conséquence de la saisie illégale de leur navire, leur donne droit à une indemnité, indépendamment de ce qui leur est dû pour avoir été forcés de conduire un navire russe à Vladivostok, et que le montant de cette indemnité doit être fixé à \$7,750 ou en moyenne \$250 par personne;

Que, par conséquent, le total des dommages-intérêts dus par la Partie défenderesse à la Partie demanderesse comme suite de l'arrêt et de la saisie du Cape Horn Pigeon, s'élève à \$38,750;

Considérant que la Partie défenderesse reconnaît comme parfaitement régulière l'adjonction des intérêts à 6 pour cent par an;

Par ces motifs,

L'Arbitre décide et prononce ce qui suit:

La Partie Défenderesse paiera à la Partie Demanderesse pour le compte des réclamations présentées par les ayants-droit dans l'affaire du Cape Horn Pigeon, la somme de \$38,750 des Etats-Unis d'Amérique, avec les intérêts de cette somme à 6 pour cent par an depuis le 9 septembre 1892 jusqu'au jour du paiement intégral.

Fait à la Haye le 29 novembre 1902.

T. M. C. ASSER.

AFFAIRE DU JAMES HAMILTON LEWIS.

Le soussigné Tobie Michel Charles Asser, Membre du Conseil d'Etat des Pays-Bas, exerçant les fonctions d'Arbitre, qu'il a eu l'honneur de se voir conférer par le Gouvernement des Etats-Unis d'Amérique et par le Gouvernement Impérial de Russie, pour juger le différend relatif à l'affaire du schooner James Hamilton Lewis;

Attendu qu'en vertu des déclarations échangées entre les deux Gouvernements précités, à Saint-Pétersbourg le 26 août/8 septembre 1900, l'Arbitre doit prendre connaissance des réclamations d'indemnité pour l'arrêt ou la saisie de certains navires américains par des croiseurs russes, présentées au Gouvernement Impérial de Russie par le Gouvernement des Etats-Unis d'Amérique, au nom des ayants-droit;

Que d'après ces déclarations l'Arbitre, en se réglant dans sa sentence sur les principes généraux du droit des gens et sur l'esprit des accords internationaux applicables à la matière, doit décider à l'égard de chaque réclamation formulée à la charge du Gouvernement Impérial de Russie, si elle est fondée et, dans l'affirmative, si les faits sur lesquels elle est basée sont prouvés;

Qu'ensuite il a été reconnu que cette stipulation n'aura aucune force rétroactive et que l'Arbitre appliquera aux cas en litige les principes du droit des gens et les traités internationaux qui étaient en vigueur et obligatoires pour les parties impliquées dans ce litige, au moment où la saisie des navires a eu lieu;

Qu'enfin l'Arbitre doit éventuellement fixer la somme de l'indemnité qui serait due par le Gouvernement russe pour le compte des réclamations présentées par les ayants-droit;

Attendu qu'après un examen minutieux des mémorandums et contre-mémorandums échangés entre les Hautes Parties, ainsi que de toutes les pièces produites de part et d'autre, l'Arbitre, profitant de la faculté qui lui avait été accordée par lesdites déclarations de Saint-Pétersbourg, a invité les deux Gouvernements à désigner des experts commerciaux pour l'aider à fixer le montant de l'indemnité, qui serait éventuellement due et, qu'en s'adressant à cet effet aux deux Hautes Parties, l'Arbitre les a en même temps priées de lui fournir des renseignements supplémentaires à l'égard des points de droit indiqués par lui;

Attendu que dans les séances tenues par l'Arbitre à la Haye, dans l'Hôtel de la Cour Permanente d'Arbitrage, depuis le 27 juin jusqu'au 4 juillet 1902, il a entendu les dépositions des experts, en présence des Agents des deux Hautes Parties, qui à cette occasion ont fourni les renseignements supplémentaires demandés par l'Arbitre;

Attendu qu'à l'appui de la réclamation relative à la saisie et la confiscation du schooner James Hamilton Lewis, la partie demanderesse a allégué les faits suivants:

Ledit schooner ayant fait voile de San Francisco le 7 mai 1891, destiné à un voyage dans l'Océan Pacifique du Nord, pour une expédition de pêche et de chasse, avec Alexandre McLean comme capitaine,

se trouva le 2 août 1891 à environ 20 milles de distance à l'est de l'île de Cuivre (latitude 55° 35' Nord, longitude 169° 21' Est), quand il fut saisi de très-bonne heure par le croiseur russe Aléoute. Le capitaine du schooner avait jugé nécessaire d'atterrir afin de vérifier son chronomètre et pour cette raison il s'était dirigé sur l'île de Cuivre. A l'endroit mentionné son navire fut obligé de mettre en panne par un coup de canon tiré dudit croiseur et une chaloupe de ce croiseur s'étant approchée du schooner, un officier de la marine russe monta de la chaloupe à bord du schooner, requit le livre de bord officiel, qui lui fut présenté par le capitaine et l'emporta avec lui en retournant à son navire. Bientôt il revint avec quelques hommes armés et ordonna au capitaine McLean de quitter son navire et de se constituer prisonnier à bord de l'Aléoute, avec tout son équipage excepté sept hommes. Le capitaine McLean ayant refusé d'obéir à cet ordre, fit reprendre au schooner son cours Est: alors le commandant du croiseur commença une poursuite et, tournant le James Hamilton Lewis, le captura par la force des armes: le capitaine et les membres de l'équipage furent faits prisonniers. Le 3 août 1891 le schooner et son équipage furent conduits à Vladivostok; le navire, avec sa cargaison, son armement et la propriété personnelle du capitaine fut confisqué; son capitaine, ses officiers et son équipage furent retenus prisonniers et soumis à un traitement indigne et rigoureux: après avoir été relâchés ils ont été abandonnés à leur sort pour rentrer chez eux comme ils le pourraient;

Attendu que les dommages-intérêts réclamés par la Partie demanderesse pour le compte des ayants-droit, pour la saisie et la confiscation du navire et l'emprisonnement du capitaine et de l'équipage, s'élèvent à un montant de \$101,336, avec les intérêts à 6 pour cent par an;

Attendu que la Partie défenderesse, répondant aux allégations de la Partie demanderesse, a soutenu que lorsque le James Hamilton Lewis fut remarqué par le croiseur, il ne se trouvait qu'à une distance de 5 milles au plus de l'île Medny (ou île de Cuivre) et que l'arrêt a eu lieu à une distance de 12 (ou 11) milles de la côte; qu'en outre il résulterait d'une série de faits relevés par la Partie défenderesse, que le James Hamilton Lewis doit être présumé s'être rendu coupable d'une chasse illicite aux phoques dans les eaux territoriales russes; que par conséquent les organes du Gouvernement Impérial étaient en droit de poursuivre le schooner même en dehors de ces eaux, de le saisir et de le confisquer avec sa cargaison; que l'emprisonnement de l'équipage a eu lieu à cause de leur résistance à l'arrêt et à la saisie du navire;

Attendu que la Partie défenderesse, s'appuyant sur ces allégations, et en contestant subsidiairement les chiffres de la demande, a requis que les réclamations de la Partie demanderesse fussent rejetées;

Attendu que l'honorable Agent de la Partie demanderesse, M. Herbert H. D. Peirce, a fait, dans la séance du 4 juillet 1902, au nom du Gouvernement des Etats-Unis d'Amérique, la déclaration suivante:

DECLARATION MADE TO THE HONORABLE ARBITRATOR MR. T. M. C. ASSER, JULY 4, 1902, BY THE PARTY CLAIMANT IN THE ARBITRATION BETWEEN THE UNITED STATES AND RUSSIA, IN REPLY TO THE QUESTION ASKED BY THE ARBITRATOR RELATIVE TO THE EXTENT OF JURISDICTION CLAIMED BY THE UNITED STATES OVER THE BORDERING WATERS OF THE BEHRING SEA.

The Delegate of the United States makes this declaration under the specific authority received by him from the Secretary of State of the United States on July 3, 1902, to wit:

The Government of the United States claims, neither in Behring Sea nor in its

other bordering waters, an extent of jurisdiction greater than a marine league from its shores, but bases its claims to such jurisdiction upon the following principle:

The Government of the United States claims and admits the jurisdiction of any State over its territorial waters only to the extent of a marine league unless a different rule is fixed by treaty between two States; even then the treaty States are alone affected by the agreement;

Considérant que l'Arbitre doit décider:

I. si la saisie et la confiscation du schooner James Hamilton Lewis et de sa cargaison, ainsi que l'emprisonnement de l'équipage, doivent être considérés comme des actes illégaux;

II. dans l'affirmative, quel est le montant de l'indemnité due par la Partie défenderesse?

Ad I. Considérant que cette question doit être résolue d'après les principes généraux du droit des gens et l'esprit des accords internationaux en vigueur et obligatoires pour les deux Hautes Parties au moment de la saisie du navire;

qu'à ce moment il n'existait point de convention entre les deux Parties, contentant pour la matière spéciale de la chasse aux phoques une dérogation aux principes généraux du droit des gens par rapport à l'étendue de la mer territoriale;

que la Partie défenderesse a fait ressortir que dans le litige entre les Etats-Unis d'Amérique et la Grande Bretagne devant le Tribunal d'Arbitrage, constitué en vertu du Traité conclu à Washington le 29 février 1892, le Gouvernement des Etats-Unis a fait valoir par rapport au droit de jurisdiction dans la mer de Behring vis-à-vis du Gouvernement Britannique, des revendications qui s'étendaient à des limites bien autrement considérables que celles qui sont admises d'après les principes généraux du droit des gens; que ces revendications étaient motivées par l'intérêt de la race des phoques et de la répression de la chasse illicite, et que, bien que le Gouvernement des Etats-Unis d'Amérique se soit loyalement soumis à la décision du Tribunal Arbitral de 1893, qui n'a pas adopté son système, ce système peut néanmoins lui être opposé pour combattre la demande formulée par ce Gouvernement dans le litige actuel;

Considérant que, quelle que soit la valeur du système dont il s'agit comme base d'une entente entre les états intéressés, il ne saurait être obligatoire sans une telle entente, même pour un Gouvernement qui à une autre occasion l'aurait défendu, mais sans succès, devant un Tribunal Arbitral;

Considérant que les accords qui seraient intervenus entre les Parties après la date de la saisie et de la confiscation du James Hamilton Lewis, ne sauraient modifier les conséquences résultant des principes de droit généralement reconnue à l'époque de ces actes;

Considérant que la saisie du schooner a eu lieu, d'après la Partie demanderesse à une distance d'environ 20, d'après la Partie défenderesse à une distance d'environ 11 à 12 milles du territoire russe et que, même si la dernière version est la vraie, il en résulte que l'acte s'est accompli en dehors des eaux territoriales de la Russie, ce qui du reste est admis par les deux Parties;

Considérant que le système de la Partie défenderesse d'après lequel il serait permis aux navires de guerre d'un état de poursuivre même en dehors de la mer territoriale un navire dont l'équipage se serait rendu coupable d'un acte illicite dans les eaux territoriales ou sur le territoire de cet état, ne saurait être reconnu comme conforme au droit des gens,

puisque la juridiction d'un état ne s'étend pas au-delà des limites de la mer territoriale, à moins qu'il n'ait été dérogé à cette règle par une convention expresse;

Considérant qu'il n'est donc pas nécessaire d'examiner si les présomptions alléguées par la Partie défenderesse sont assez graves pour faire admettre que l'équipage du James Hamilton Lewis se soit rendu coupable de la chasse illicite aux phoques dans les eaux territoriales ou sur le territoire de la Russie;

Considérant que la saisie et la confiscation du James Hamilton Lewis et de sa cargaison, ainsi que l'emprisonnement de l'équipage, devant par conséquent être considérés comme des actes illégaux, il ne reste qu'à fixer le montant de l'indemnité due du chef de ces actes par la Partie défenderesse;

Ad II. Considérant que la Partie demanderesse réclame en premier lieu \$25,000 pour la confiscation du navire, mais que cette réclamation est exagérée; qu'en se basant sur les chiffres qu'on trouve dans des publications américaines communiquées à l'Arbitre par la Partie demanderesse (Report of fur-seal investigations, 1899, Part III, p. 228), et plus spécialement sur la valeur indiquée pour les navires ayant environ le même ou un plus grand tonnage que le James Hamilton Lewis et en tenant compte d'une part du fait que ce schooner se trouvait dans un excellent état, d'autre part de la circonstance qu'ayant pris la mer le 7 mars 1891, il avait déjà consommé presque cinq mois de ses provisions le jour où il a été arrêté (2 août 1892), on ne saurait attribuer à ce navire avec ses chaloupes, son armement et ses provisions, une valeur dépassant le chiffre de \$9,000;

Considérant que la Partie demanderesse réclame pour les 424 peaux de phoques, confisquées avec le navire, \$14 par peau, soit un total de \$5,936, mais qu'il résulte d'un examen minutieux des différents documents produits ainsi que des dépositions d'experts, que le prix d'une peau ne saurait être estimé à plus de \$12, ce qui fait un total de \$5,088 pour les 426 peaux;

Considérant que la Partie demanderesse réclame \$36,400 pour perte de prise probable de 2,600 peaux, soit \$14 par peau, mais que, tout en admettant qu'en principe la perte de prise pendant la partie de la saison qui devait encore s'écouler après la saisie du navire, peut être réclmée comme un élément des dommages-intérêts, le chiffre de 2,600 peaux n'est nullement justifié et paraît très-exagéré; qu'il résulte des statistiques produites au litige, qu'en tenant compte du nombre des phoques déjà pris et du temps qui devait encore s'écouler jusqu'à la fin de la saison, on peut admettre que le produit de la chasse n'aurait pas excédé le nombre de 500 phoques; ce qui, à raison de \$12 par peau, donne un total de \$6,000;

Considérant qu'en dernier lieu la Partie demanderesse réclame, au profit de l'équipage du James Hamilton Lewis, pour son emprisonnement, ses souffrances physiques et morales, etc., \$2,000 pour chacun des 17 hommes, soit \$34,000; que la partie défenderesse nie énergiquement que les plaintes formulées par l'équipage au sujet d'actes de violence et de mauvais traitements qu'ils auraient subis soient fondées et qu'en effet la preuve de ces allégations n'est pas fournie; que toutefois le fait même de l'emprisonnement illégal donne aux intéressés le droit de réclamer une indemnité dont le montant peut, d'après une évaluation équitable, être fixé à \$8,500, ou en moyenne \$500 par personne;

Que, par conséquent, le total des dommages-intérêts dus par la Partie défenderesse à la Partie demanderesse comme suite de la saisie et la confiscation du James Hamilton Lewis, s'élève à \$28,588;

Considérant que la Partie défenderesse accepte d'ajouter les intérêts à 6 pour cent par an aux sommes qu'elle aurait à payer; que, puisqu'une indemnité est accordée pour la perte de prise pendant le reste de la saison de 1891, il est juste que les intérêts ne commencent à courir que le 1 janvier 1892;

Par ces motifs,

L'Arbitre décide et prononce ce qui suit:

La Partie Défenderesse paiera à la Partie Demanderesse pour le compte des réclamations présentées par les ayants-droit dans l'affaire du James Hamilton Lewis, la somme de \$28,588 des Etats-Unis d'Amérique avec les intérêts de sette somme à 6 pour cent par an depuis le 1 janvier 1892 jusqu'au jour du paiement intégral.

Fait à la Haye le 29 novembre 1902.

T. M. C. ASSER.

AFFAIRE DU C. H. WHITE.

Le soussigné Tobie Michel Charles Asser, Membre du Conseil d'Etat des Pays-Bas, exerçant les fonctions d'Arbitre, qu'il a eu l'honneur de se voir conférer par le Gouvernement des Etats-Unis d'Amérique et par le Gouvernement Impérial de Russie, pour juger le différend relatif à l'affaire du schooner C. H. White;

Attendu qu'en vertu des déclarations échangées entre les deux Gouvernements précités, à Saint-Pétersbourg le 26 août/8 septembre 1900, l'Arbitre doit prendre connaissance des réclamations d'indemnité pour l'arrêt ou la saisie de certains navires américains par des croiseurs russes, présentées au Gouvernement Impérial de Russie par le Gouvernement des Etats-Unis d'Amérique, au nom des ayants-droit;

Que d'après ces déclarations l'Arbitre, en se réglant dans sa sentence sur les principes généraux du droit des gens et sur l'esprit des accords internationaux applicables à la matière, doit décider à l'égard de chaque réclamation formulée à la charge du Gouvernement Impérial de Russie, si elle est fondée et, dans l'affirmative, si les faits sur lesquels elle est basée sont prouvés;

Qu'ensuite il a été reconnu que cette stipulation n'aura aucune force rétroactive et que l'Arbitre appliquera aux cas en litige les principes du droit des gens et les traités internationaux qui étaient en vigueur et obligatoires pour les parties impliquées dans ce litige, au moment où la saisie des navires a eu lieu;

Qu'enfin l'Arbitre doit éventuellement fixer la somme de l'indemnité qui serait due par le Gouvernement russe pour le compte des réclamations présentées par les ayants-droit;

Attendu qu'après un examen minutieux des mémorandums et contre-mémorandums échangés entre les Hautes Parties, ainsi que de toutes les pièces produites de part et d'autre, l'Arbitre, profitant de la faculté qui lui avait été accordée par lesdites déclarations de Saint-Pétersbourg, a invité les deux Gouvernements à désigner des experts commerciaux pour l'aider à fixer le montant de l'indemnité, qui serait éventuellement due et, qu'en s'adressant à cet effet aux deux Hautes Parties, l'Arbitre les a en même temps priées de lui fournir des renseignements supplémentaires à l'égard des points de droit indiqués par lui;

Attendu que dans les séances tenues par l'Arbitre à la Haye, dans l'Hôtel de la Cour Permanente d'Arbitrage, depuis le 27 juin jusqu'au 4 juillet 1902, il a entendu les dépositions des experts, en présence des Agents des deux Hautes Parties, qui à cette occasion ont fourni les renseignements supplémentaires demandés par l'Arbitre;

Attendu qu'à l'appui de la réclamation relative à la saisie et la confiscation du schooner C. H. White la partie demanderesse a allégué les faits suivants:

Ledit schooner ayant fait voile de San Francisco le 7 mai 1892 pour un voyage de pêche et de chasse dans l'Océan Pacifique du Nord ou

ailleurs, avec Lawrence M. Furman comme capitaine, se trouvait le 12 juillet 1892 à une distance d'environ 40 miles au sud de l'île Agattou, une des îles Aléontiennes, et environ le même jour le capitaine mit à la voile pour les îles Kuriles, ayant l'intention d'y pêcher à une distance de la côte. Le capitaine dévia de sa course vers les îles Kuriles dans la direction de l'île de Cuivre ou l'île de Behring, pour y régler son chronomètre. Le 15 juillet 1892, le navire ayant atteint la latitude de 54° 18' Nord par longitude 167° 19' Est (c'est évidemment par erreur qu'à quelques endroits du mémorandum de la partie demanderesse on trouve indiqué comme longitude 167° 19' Ouest) a été abordé par le croiseur de guerre russe le *Zabiaca* et il fut ordonné au capitaine du C. H. White de venir à bord de ce croiseur avec tous ses papiers de bord; le commandant du croiseur ayant examiné ces papiers, fit arrêter le capitaine du schooner et transporter tout son équipage, excepté le lieutenant en premier, à bord du croiseur, comme prisonniers: le capitaine fut gardé à vue. Le schooner (avec la cargaison composée de 20 peaux de phoques, 8 barriques de maquereaux et 1 tonneau de morue) fut saisi et remorqué jusqu'à la baie de Nikolsky (île de Behring), d'où il fut conduit à Petropavlovsk; plus tard il fut confisqué et approprié à l'usage du Gouvernement Impérial de Russie. Le capitaine et l'équipage du schooner furent emmenés comme prisonniers jusqu'à Petropavlovsk, où ils arrivèrent le 20 juillet 1892. Le 8 août de la même année l'équipage fut conduit à bord du navire américain *Majestic* pour être rapatrié. Le capitaine et les autres membres de l'équipage prétendent avoir beaucoup souffert des mauvais traitements qui leur auraient été infligés pendant leur emprisonnement. En outre le capitaine, le lieutenant en premier Andrew Ronning et le chasseur Neils Wolfgang prétendent avoir perdu des objets qui leur appartenaient et qu'on ne leur a pas restitués;

Attendu que les dommages-intérêts réclamés par la Partie demanderesse pour le compte des ayants-droit, du chef des faits mentionnés, s'élèvent à un montant de \$150,720 avec les intérêts à 6 pour cent par an;

Attendu que la Partie défenderesse, répondant aux allégations de la Partie demanderesse, soutient que la saisie du C. H. White, a eu lieu non pas sous 54° 18', mais sous 54° 10' de latitude Nord, soit à une distance d'environ 23 miles seulement de la côte russe la plus voisine; qu'en outre d'une série de circonstances relevées par la Partie défenderesse résultait la présomption que le C. H. White se serait rendu coupable de chasse illicite aux phoques dans les eaux territoriales russes;

que par suite les organes du Gouvernement Impérial étaient en droit de poursuivre le schooner, même en dehors de ces eaux, de le saisir et de le confisquer avec sa cargaison;

que la Partie défenderesse oppose aux plaintes de l'équipage concernant de mauvais traitements qu'il aurait subis, une dénégation énergique, en faisant observer que ce dont on se plaint n'était que la conséquence inévitable des circonstances locales de l'endroit où l'équipage a été conduit et qu'enfin le fait que des objets appartenant au capitaine et à deux autres personnes ne leur auraient pas été rendus, n'est pas suffisamment prouvé;

Attendu que la partie défenderesse, s'appuyant sur ces allégations, et en contestant subsidiairement les chiffres de la demande, a requis que les réclamations de la Partie demanderesse fussent rejetées;

Attendu que l'honorable Agent de la Partie demanderesse, M. Herbert H. D. Peirce, a fait, dans la séance du 4 juillet 1902, au nom du Gouvernement des Etats-Unis d'Amérique, la déclaration suivante:

DECLARATION MADE TO THE HONORABLE ARBITRATOR MR. T. M. C. ASSER, JULY 4, 1902, BY THE PARTY CLAIMANT IN THE ARBITRATION BETWEEN THE UNITED STATES AND RUSSIA, IN REPLY TO THE QUESTION ASKED BY THE ARBITRATOR RELATIVE TO THE EXTENT OF JURISDICTION CLAIMED BY THE UNITED STATES OVER THE BORDERING WATERS OF THE BEHRING SEA.

The Delegate of the United States makes this declaration under the specific authority received by him from the Secretary of State of the United States on July 3, 1902, to wit:

The Government of the United States claims, neither in Behring Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, but bases its claims to such jurisdiction upon the following principle:

The Government of the United States claims and admits the jurisdiction of any State over its territorial waters only to the extent of a marine league unless a different rule is fixed by treaty between two States; even then the treaty States are alone affected by the agreement;

Considérant que l'Arbitre doit décider:

I. si la saisie et la confiscation du schooner C. H. White et de sa cargaison, ainsi que l'emprisonnement de l'équipage, doivent être considérés comme des actes illégaux;

II. dans l'affirmative, quel est le montant de l'indemnité due par la partie défenderesse?

Ad I. Considérant que cette question doit être résolue d'après les principes généraux du droit des gens et l'esprit des accords internationaux en vigueur et obligatoires pour les deux Hautes Parties au moment de la saisie du navire;

qu'à ce moment il n'existait point de convention entre les deux Parties contenant pour la matière spéciale de la chasse aux phoques une dérogation aux principes généraux du droit des gens par rapport à l'étendue de la mer territoriale;

que la Partie défenderesse a fait ressortir que dans le litige entre les Etats-Unis d'Amérique et la Grande Bretagne devant le Tribunal d'Arbitrage, constitué en vertu du Traité conclu à Washington le 29 février 1892, le Gouvernement des Etats-Unis a fait valoir par rapport au droit de juridiction dans la mer de Behring, vis-à-vis du Gouvernement Britannique, des revendications qui s'étendaient à des limites bien autrement considérables que celles qui sont admises d'après les principes généraux du droit des gens; que ces revendications étaient motivées par l'intérêt de la préservation de la race des phoques et de la répression de la chasse illicite, et que, bien que le Gouvernement des Etats-Unis d'Amérique se soit loyalement soumis à la décision du Tribunal Arbitral de 1893, qui n'a pas adopté son système, ce système peut néanmoins lui être opposé pour combattre la demande formulée par ce Gouvernement dans le litige actuel;

Considérant que, quelle que soit la valeur du système dont il s'agit comme base d'une entente entre les états intéressés, il ne saurait être obligatoire sans une telle entente, même pour un Gouvernement qui à une autre occasion l'aurait défendu, mais sans succès, devant un Tribunal Arbitral;

Considérant que les accords qui seraient intervenus entre les Parties après la date de la saisie et de la confiscation du C. H. White, ne

sauraient modifier les conséquences résultant des principes de droit généralement reconnus à l'époque de ces actes;

Considérant que la saisie du schooner a eu lieu, d'après la Partie demanderesse à une distance d'environ 20, d'après la Partie défenderesse à une distance d'environ 11 à 12 milles du territoire russe et que, même si la dernière version est la vraie, il en résulte que l'acte s'est accompli en dehors des eaux territoriales de la Russie, ce qui du reste est admis par les deux Parties;

Considérant que le système de la Partie défenderesse d'après lequel il serait permis aux navires de guerre d'un état de poursuivre même en dehors de la mer territoriale un navire dont l'équipage se serait rendu coupable d'un acte illicite dans les eaux territoriales ou sur le territoire de cet état, ne saurait être reconnu comme conforme au droit des gens, puisque la juridiction d'un état ne s'étend pas au-delà des limites de la mer territoriale, à moins qu'il n'ait été dérogé à cette règle par une convention expresse;

Considérant qu'il n'est donc pas nécessaire d'examiner si les présumptions alléguées par la Partie défenderesse sont assez graves pour faire admettre que l'équipage du C. H. White se serait rendu coupable de la chasse illicite aux phoques dans les eaux territoriales ou sur le territoire de la Russie;

Considérant que la saisie et la confiscation du C. H. White et de sa cargaison, ainsi que l'emprisonnement de l'équipage, devant par conséquent être considérés comme des actes illégaux, il ne reste qu'à fixer le montant de l'indemnité due du chef de ces actes par la partie défenderesse:

Ad II. Considérant que la Partie demanderesse réclame en premier lieu \$35,000 pour la confiscation du navire, mais que cette réclamation est exagérée; qu'en se basant sur les chiffres qu'on trouve dans des publications américaines, comme les rapports des enquêtes concernant les phoques à fourrure (Report of fur-seal investigation) communiqués à l'Arbitre par la Partie demanderesse (Part III, p. 228) et plus spécialement sur la valeur indiquée pour des navires ayant environ le même ou un plus grand tonnage que le C. H. White, on ne saurait attribuer à ce schooner, avec ses chaloupes, son armement et ses provisions, une valeur plus grande que \$10,000;

Considérant que la Partie demanderesse réclame pour la cargaison, confisquée avec le navire, ce qui suit: (a) pour les 20 peaux de phoque une somme de \$14 par peau, soit en total \$280; mais qu'il résulte d'un examen minutieux des différents documents produits ainsi que des dépositions des experts, que le prix d'une peau ne saurait être estimé à plus de \$12, ce qui fait un total de \$240 pour les 20 peaux; (b) pour 8 barriques de maquereaux \$160 et pour un tonneau de morue \$260; mais que la Partie défenderesse ayant soutenu que la valeur des 8 barriques de maquereaux ne peut avoir excédé la somme de \$80 et celle du tonneau de morue la somme de \$124, la Partie demanderesse a réduit sa réclamation pour cette partie de la cargaison à une somme de \$204, ce qui avec les \$240 pour les 20 peaux de phoques, fait un total de \$444;

Considérant que la Partie demanderesse réclame, (a) \$34,720 pour perte de prise probable de 2,480 peaux de phoques à \$14 et (b) \$10,300 pour perte de prise probable de poissons;

Considérant que tout en admettant en principe que la perte de prise pour la partie de la saison qui devait encore s'écouler après la saisie

du navire peut être réclamée comme un élément des dommages-intérêts, les sommes réclamées ne sont nullement justifiées et paraissent très-exagérées;

Considérant ad (a) qu'il résulte des statistiques produites au litige qu'on peut admettre que le produit de la chasse aux phoques après le jour de la saisie du navire, n'aurait certainement pas excédé le nombre de 1,000 phoques, ce qui, à raison de \$12 par peau, donne un total de \$12,000;

ad (b) que pour la perte de prise probable de poissons une somme de \$1,000 semble une indemnité suffisante;

Considérant à l'égard des réclamations personnelles du capitaine Furman (\$25,000), d'Andrew Ronning (\$15,000) et de Neils Wolfgang (\$10,000) pour perte d'objets qui leur appartenaient, pour emprisonnement, outrages et privations, — que la perte des objets n'est pas prouvée, les déclarations des intéressés seuls ne pouvant être admises comme une preuve suffisante; que la Partie défenderesse nie énergiquement qu'on ait eu l'intention d'infliger au capitaine et à l'équipage du schooner un traitement inhumain, en ajoutant que si leur logement et leur nourriture laissaient à désirer, ceci s'explique par l'insuffisance des ressources locales;

Considérant que cette explication ne suffit pas pour dégager la responsabilité de la Partie défenderesse, puisqu'étant responsable de l'emprisonnement, elle l'est aussi des conséquences de cet acte illégal; que toutefois le montant de l'indemnité réclamée de ce chef est exagéré et doit être réduit pour le capitaine Furman à \$3,000, pour Andrew Ronning à \$2,000, pour Neils Wolfgang à \$1,000;

Considérant que la réclamation de l'équipage pour son emprisonnement peut être admise pour un montant de \$300 par personne, soit \$3,000 pour les dix membres de l'équipage;

Que, par conséquent, le total des dommages-intérêts dus par la Partie défenderesse à la Partie demanderesse commé suite de la saisie et la confiscation du C. H. White, s'élève à \$32,444;

Considérant que la Partie défenderesse accepte d'ajouter les intérêts à 6 pour cent par an aux sommes qu'elle aurait à payer; que puisqu'une indemnité est accordée pour la perte de prise pendant le reste de la saison de 1892, il est juste que les intérêts ne commencent à courir que le 1 janvier 1893;

Par ces motifs

L'Arbitre décide et prononce ce qui suit:

La Partie Défenderesse paiera à la Partie Demanderesse pour le compte des réclamations présentées par les ayants-droit dans l'affaire du C. H. White la somme de \$32,444 des Etats-Unis d'Amérique avec les intérêts de cette somme à 6 pour cent par an depuis le 1 janvier 1893 jusqu'au jour du paiement intégral.

Fait à la Haye le 29 novembre 1902.

T. M. C. ASSER.

AFFAIRE DU KATE AND ANNA.

Le soussigné, Tobie Michel Charles Asser, Membre du Conseil d'Etat des Pays-Bas, exerçant les fonctions d'Arbitre, qu'il a eu l'honneur de se voir conférer par le Gouvernement des Etats-Unis d'Amérique et par le Gouvernement Impérial de Russie, pour juger le différend relatif à l'affaire du navire Kate and Anna;

Attendu qu'en vertu des déclarations échangées entre les deux Gouvernements précités à Saint-Pétersbourg le 26 août/8 septembre 1900, l'Arbitre doit prendre connaissance de réclamations d'indemnité pour l'arrêt ou la saisie de certains navires américains par des croiseurs russes, présentées au Gouvernement Impérial de Russie par le Gouvernement des Etats-Unis d'Amérique, au nom des ayants-droit;

que d'après ces déclarations l'Arbitre, en se réglant dans sa sentence sur les principes généraux du droit des gens et sur l'esprit des accords internationaux applicables à la matière, doit décider à l'égard de chaque réclamation formulée à la charge du Gouvernement Impérial de Russie, si elle est bien fondée et, dans l'affirmative, si les faits, sur lesquels elle est basée, sont prouvés;

qu'ensuite il a été reconnu que cette stipulation n'aura aucune force rétroactive et que l'Arbitre appliquera aux cas en litige les principes du droit des gens et les traités internationaux qui étaient en vigueur et obligatoires pour les parties impliquées dans ce litige, au moment où la saisie des navires a eu lieu;

qu'enfin l'Arbitre doit éventuellement fixer la somme de l'indemnité qui serait due par le Gouvernement russe pour le compte des réclamations présentées par les ayants-droit;

Attendu qu'après un examen minutieux des mémorandums et contre-mémorandums échangés entre les Hautes Parties, ainsi que de toutes les pièces produites de part et d'autre, l'Arbitre, profitant de la faculté qui lui avait été accordée par lesdites déclarations de Saint-Pétersbourg, a invité les deux Gouvernements à désigner des experts commerciaux pour l'aider à fixer le montant de l'indemnité qui serait éventuellement due et, qu'en s'adressant à cet effet aux deux Hautes Parties, l'Arbitre les a en même temps priées de lui fournir des renseignements supplémentaires à l'égard des points de droit, indiqués par lui;

Attendu que dans les séances tenues par l'Arbitre à la Haye dans l'Hôtel de la Cour Permanente d'Arbitrage, depuis le 27 juin jusqu'au 4 juillet 1902, il a entendu les dépositions des experts en présence des Agents des deux Hautes Parties, qui à cette occasion ont fourni les renseignements supplémentaires demandés par l'Arbitre;

Attendu qu'à l'appui de la réclamation relative au schooner Kate and Anna et la confiscation des peaux de phoques, trouvées à bord de ce navire, la partie demanderesse a allégué les faits suivants:

Le 12 août 1902, lorsque ledit schooner, qui avait pour capitaine Claus Lutjens, se trouvait sur la haute mer en dehors de la juridiction et des eaux territoriales de toutes nations et à une distance de plus de

30 milles de la terre russe la plus proche, et tandis qu'aucun membre de l'équipage ne chassait ou ne pêchait, ledit schooner ayant été contraint par un croiseur de la marine russe le *Zabiaca* de mettre en panne, fut abordé par le *Zabiaca* dont le commandant ordonna au capitaine Lutjens de venir à bord du croiseur et d'apporter avec lui tous les documents du schooner, ce qui fut fait par le capitaine Lutjens, qui délivra tous ses documents au commandant du croiseur russe. Celui-ci ordonna ensuite que les 124 peaux de phoque qui se trouvaient à bord du schooner lui fussent délivrées et il les déclara confisquées, le capitaine du schooner étant présumé s'être livré à la chasse aux phoques dans les eaux territoriales russes. Le capitaine Lutjens, renvoyé à son navire, qu'on laissa libre de continuer sa marche, résolut de cesser la chasse aux phoques et de se rendre immédiatement à San Francisco. Le commandant du croiseur russe, avant de laisser partir le capitaine du schooner, lui avait donné un avertissement, par lequel, d'après le capitaine Lutjens, on lui ordonna de cesser la chasse aux phoques et de rentrer chez lui, tandis que, d'après la Partie défenderesse, l'avertissement ne contenait que la défense de chasser dans les eaux territoriales russes;

Attendu que la Partie défenderesse a reconnu que, bien que dans les conditions où a été rencontré le schooner *Kate and Anna* et après la vérification de ses papiers de bord, le commandant du croiseur russe ait eu des raisons sérieuses de considérer le bâtiment américain comme très-suspect et même de conclure qu'une partie au moins du produit de sa chasse avait été obtenue d'une manière illicite dans les eaux territoriales de la Russie, cependant la mise en liberté du bâtiment lui-même, après la saisie du chargement qui le rendit suspect, témoigne d'un manque de conséquence dans les décisions du croiseur, à expliquer en partie par l'absence de preuves positives de la culpabilité du capitaine Lutjens; et par conséquent la Partie défenderesse, conformément à son désir de maintenir en toute occasion ses relations amicales avec le Gouvernement américain, s'est déclarée prête à se reconnaître obligée de donner une indemnité pour les pertes réelles qui ont été causées par le fait regrettable relatif au schooner *Kate and Anna*;

Attendu toutefois que la Partie défenderesse soutient que le montant des dommages-intérêts qu'on est en droit de réclamer d'elle ne s'élève qu'au montant de \$1,240 (pour les 124 peaux de phoques à \$10), avec les intérêts à 6 pour cent par an depuis le 12 août 1892;

Considérant que la Partie demanderesse prétend qu'elle est en droit de réclamer non-seulement le montant du prix des 124 peaux de phoques illégalement confisquées, mais également la perte de prise probable de 625 peaux, en se basant sur ce fait qu'après que le schooner *Kate and Anna* avait été arrêté, le capitaine a résolu de ne pas continuer la chasse, mais de retourner immédiatement à San Francisco et que cette résolution aurait été la conséquence de l'avertissement que le commandant du croiseur russe lui avait donné;

Considérant que, quelle qu'ait été la teneur de cet avertissement, il ne pouvait avoir pour effet d'empêcher le capitaine du schooner *Kate and Anna* de continuer la chasse aux phoques et que, par conséquent, si ledit capitaine a néanmoins résolu de retourner directement à San Francisco, la Partie défenderesse n'est pas responsable de la perte de gain qui en est résulté pour le schooner;

Considérant par rapport à l'indemnité due pour la confiscation des

124 peaux de phoques, que la Partie demanderesse réclame \$14 par peau, que la partie défenderesse offre \$10 per peau, mais qu'il est juste de fixer l'indemnité à \$12 par peau, soit \$1,488 pour les 124 peaux;

Par ces motifs,

L'Arbitre décide et prononce ce qui suit:

La Partie défenderesse paiera à la Partie demanderesse pour le compte des réclamations présentées par les ayants-droit dans l'affaire du Kate and Anna, la somme de \$1,488 des Etats-Unis d'Amérique, avec les intérêts de cette somme à 6 pour cent par an, depuis le 12 août 1892 jusqu'au jour du paiement intégral.

Fait à la Haye, le 29 novembre 1902.

T. M. C. ASSER.

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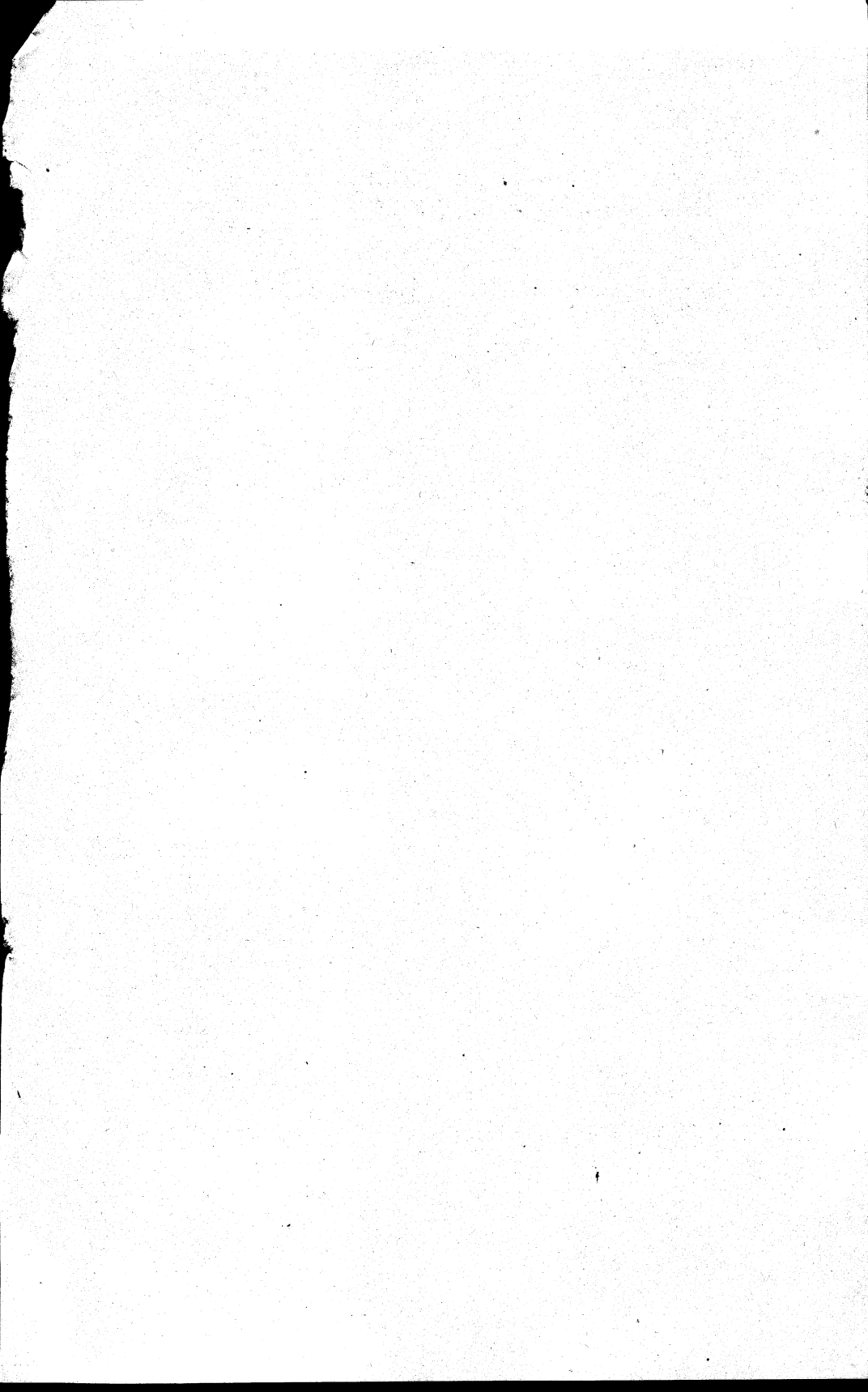
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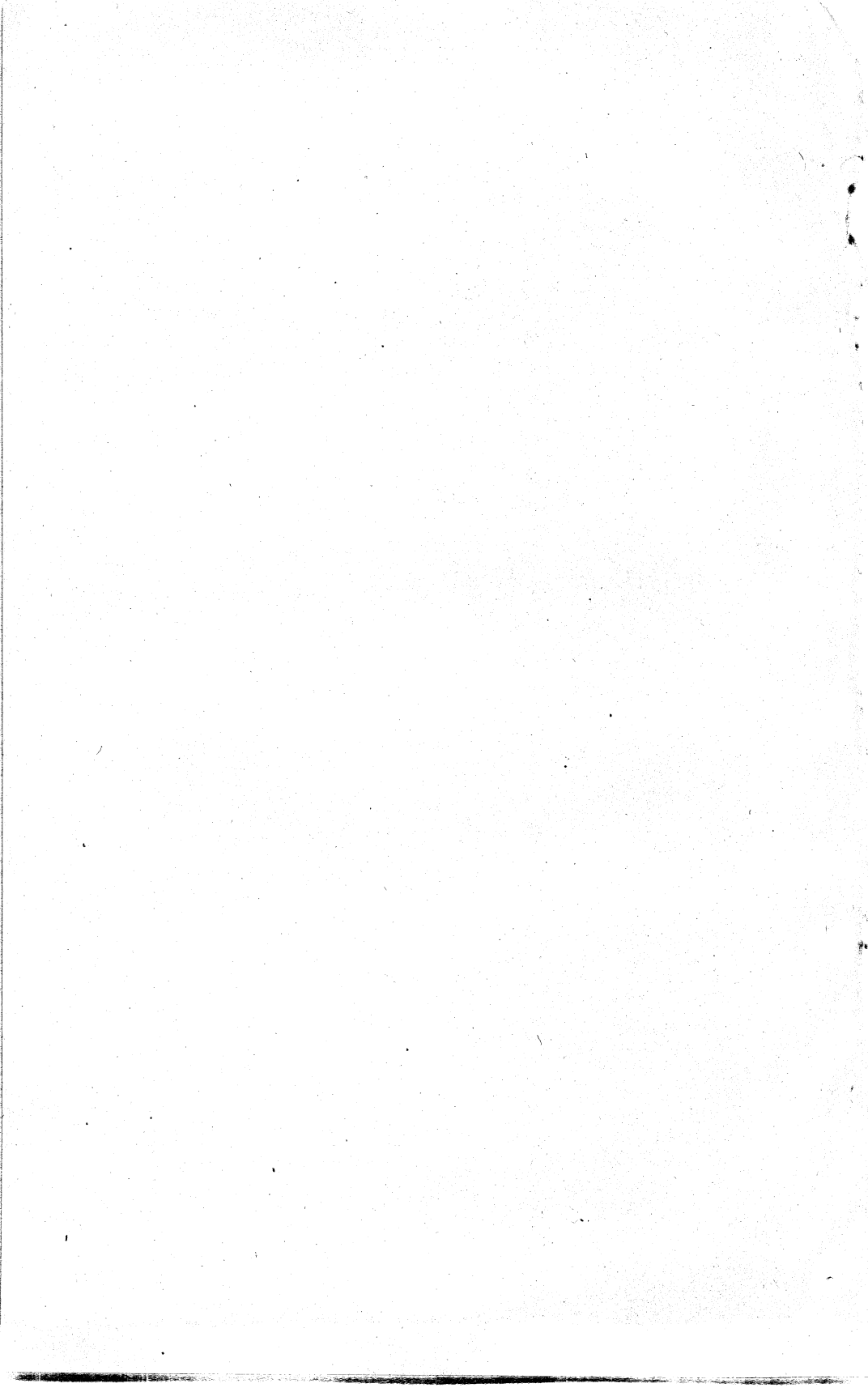
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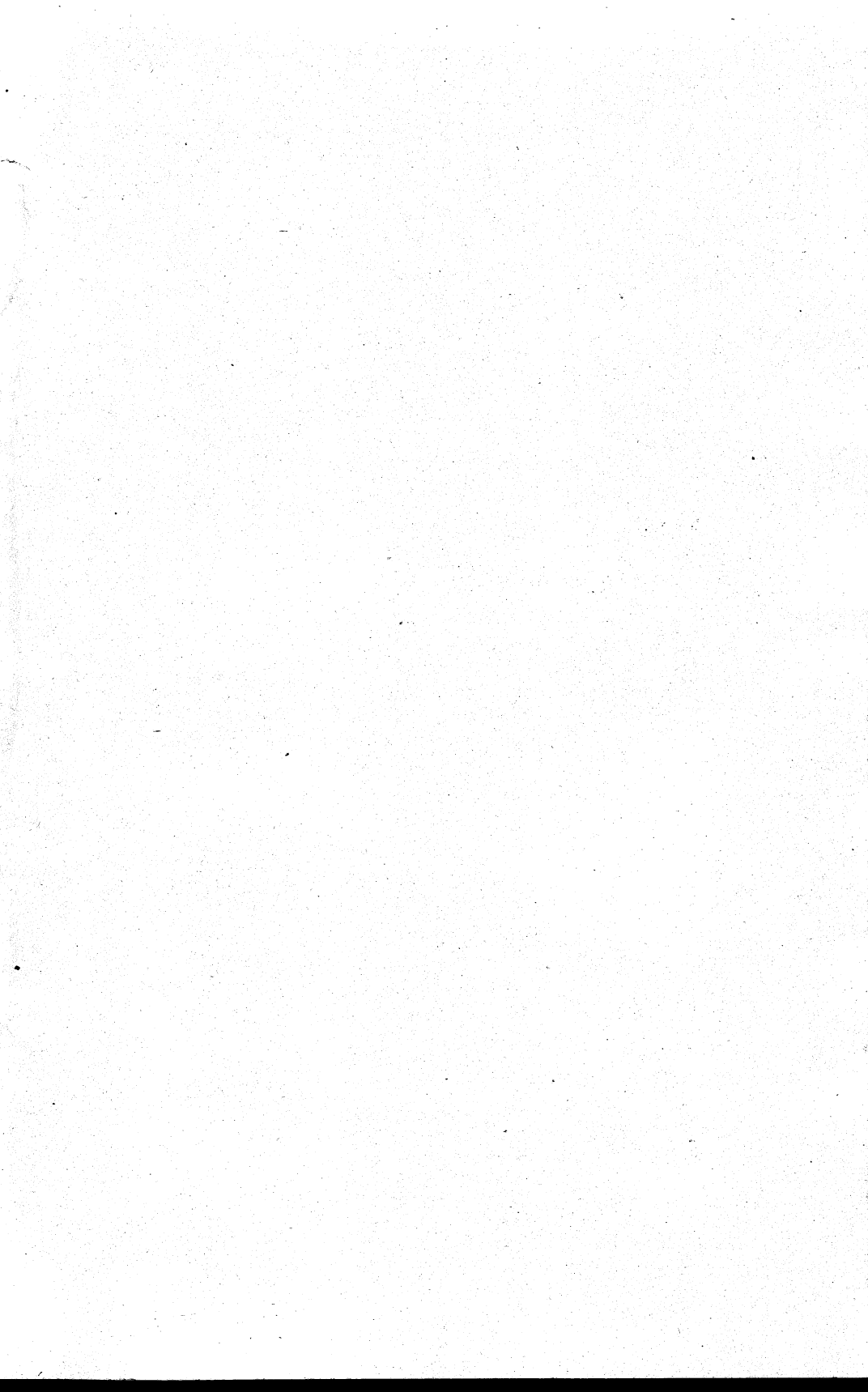
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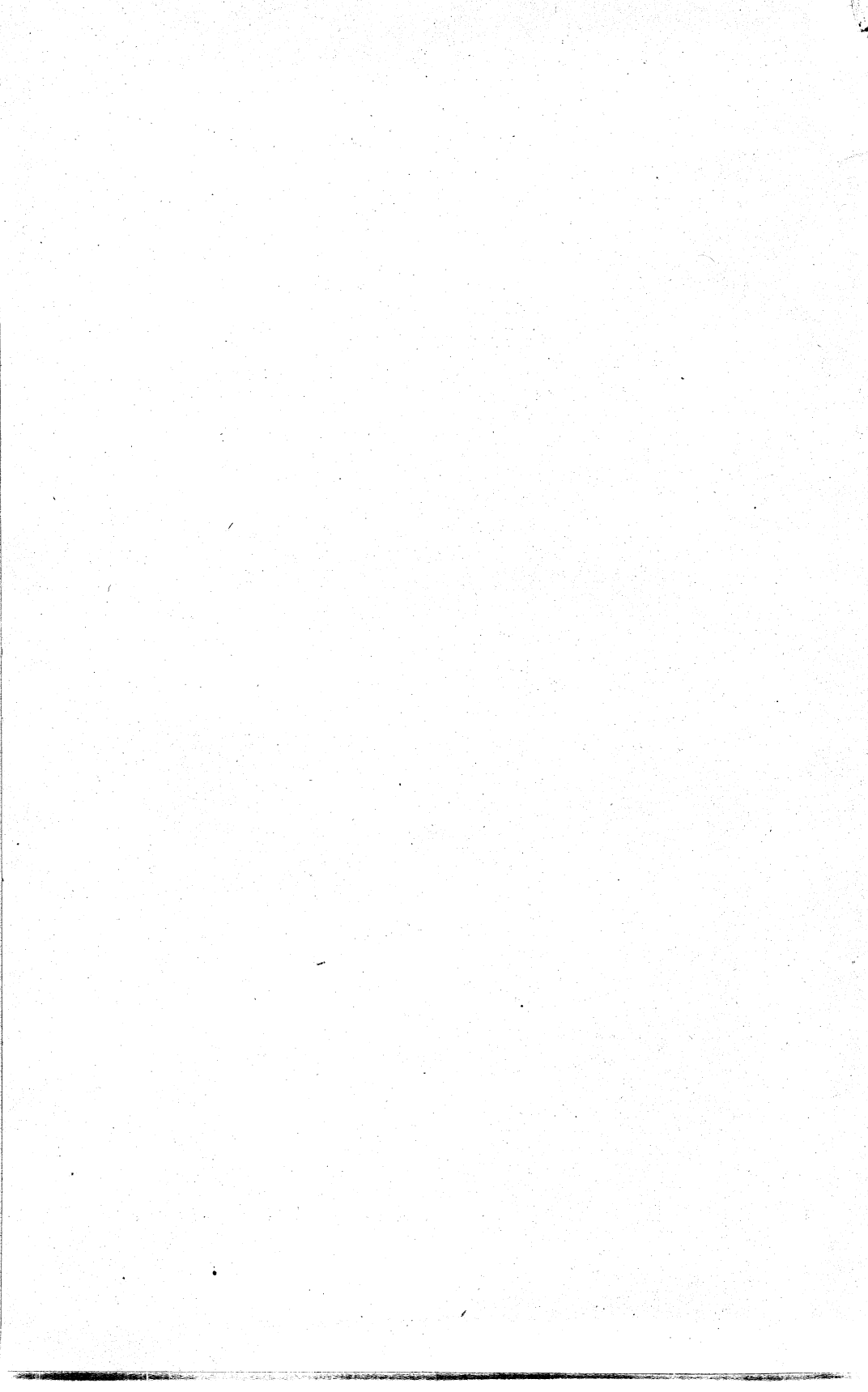
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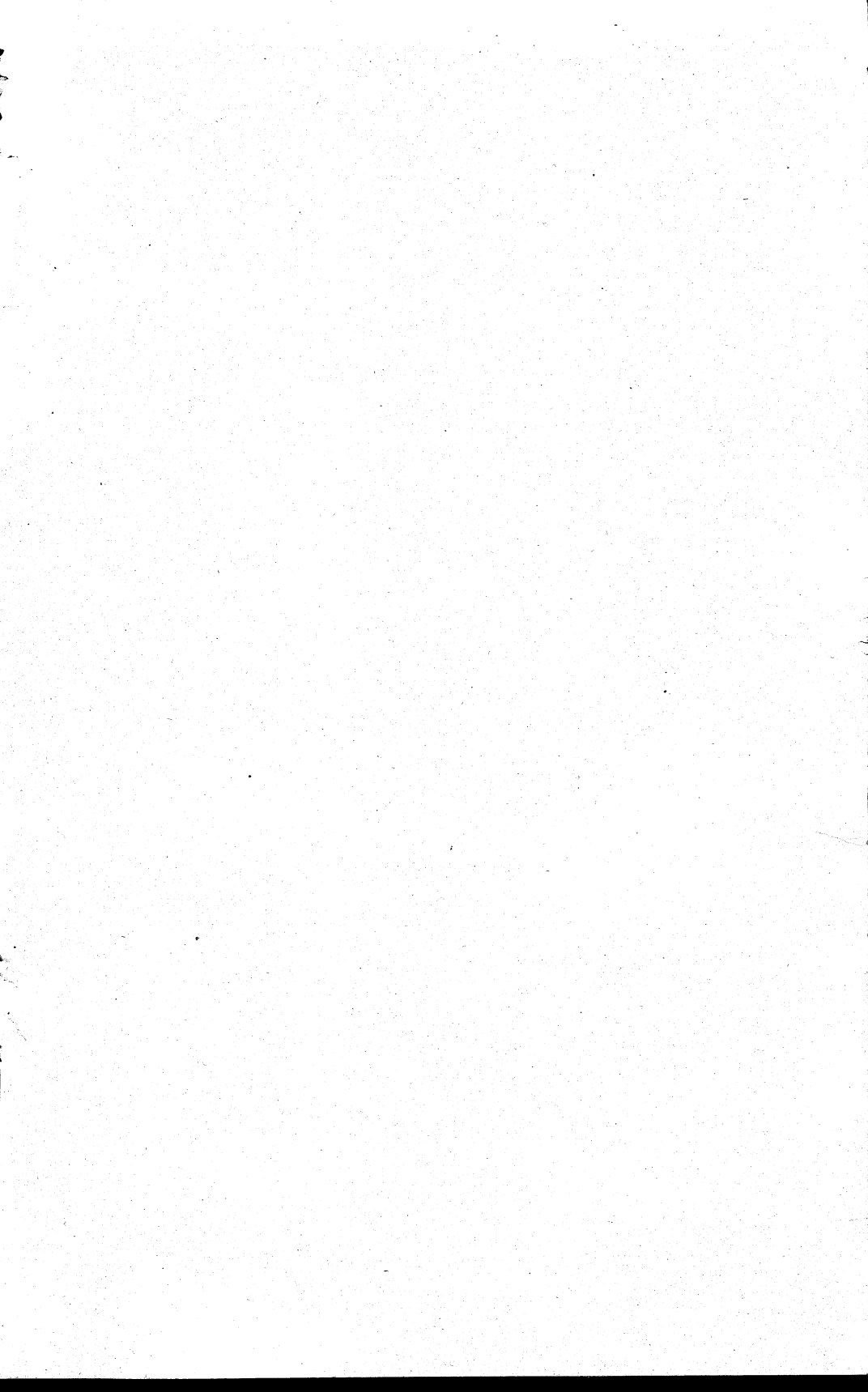
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