

AWARD OF THE ARBITRAL TRIBUNAL ESTABLISHED UNDER THE TREATY SIGNED IN WASHINGTON, ON THE 29TH OF FEBRUARY 1892, BETWEEN UNITED STATES AND HER MAJESTY THE QUEEN OF UNITED KINGDOM OF GREAT-BRITAIN AND IRELAND (RELATING TO THE RIGHTS OF JURISDICTION OF UNITED STATES IN THE BERING'S SEA AND THE PRESERVATION OF FUR SEALS), DECISION OF 15 AUGUST 1893\*

SENTENCE DU TRIBUNAL D'ARBITRAGE CONSTITUÉ EN VERTU DU TRAITÉ CONCLU À WASHINGTON, LE 29 FÉVRIER 1892, ENTRE LES ÉTATS-UNIS D'AMÉRIQUE ET SA MAJESTÉ LA REINE DU ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE (AU SUJET DES DROITS DE JURIDICTION DES ÉTATS-UNIS DANS LES EAUX DE LA MER DE BEHRING ET RELATIVEMENT À LA PRÉSERVATION DES PHOQUES À FOURRURE), DÉCISION DU 15 AOÛT 1893 \*\*

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\* Reprinted from John Basset Moore, *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. I, Washington, 1898, Government Printing Office, p. 935.

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**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 7<sup>th</sup>, 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 of 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 30<sup>th</sup> 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 limits 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 30<sup>th</sup> March 1867, did pass unimpaired to the United 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 Mr. 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 Pribilov 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 1<sup>st</sup> of May to the 31<sup>st</sup> 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 35<sup>th</sup> degree of North latitude, and eastward of the 180<sup>th</sup> 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 authorised 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, fire arms and explosives shall be forbidden in the fur seal fishing. This restriction shall not apply to shot guns when such fishing takes place outside of Behring's sea, during the season when it may be lawfully earned 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 person.

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 Governments 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 PACT 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, 1896.*

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 fire-arms 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 4<sup>th</sup> 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 Honourable 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 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 1<sup>st</sup> 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 50<sup>th</sup> Congress, 2<sup>nd</sup> Session, Senate Executive Documents N<sup>o</sup> 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° 2, 1890.— pp. 80-82. See Appendix, vol. III).\*

Name of vessel.	Date of seizure.	Aproximate distance from land when seized.	United States vessel making seizure.
Carolena .....	August 1 1886 ....	75 miles .....	Corwin.
Thornton .....	August 1 1886 ....	70 miles .....	Corwin.
Onward.....	August 2 1886 ....	115 miles .....	Corwin.
Favourite.....	August 2 1886 ...	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 .....	Rush.
Dolphin .....	July 12 1887 .....	40 miles .....	Rush.
Grace.....	July 17 1887 .....	96 miles .....	Rush.
Alfred Adams ...	August 10 1887 ...	62 miles .....	Rush.
Ada .....	August 25 1887 ...	15 miles .....	Bear.
Triumph .....	August 4 1887 ....	Warned by Rush not to enter Behring Sea .....	
Juanita .....	July 31 1889 .....	66 miles .....	Rush.
Pathfinder .....	July 29 1889 .....	50 miles .....	Rush.
Triumph.....	July 11 1889 .....	Ordered out of Behring Sea by Rush: (?) As to position when warned .....	
Black Diamond..	July 11 1889 .....	35 miles .....	Rush.
Lily .....	August 6 1889.....	66 miles .....	Rush.
Ariel .....	July 30 1889.....	Ordered out of Behring Sea by Rush .....	
Kate .....	August 13 1889....	Ditto .....	
Minnie .....	July 15 1889.....	65 miles .....	Rush.
Pathfinder .....	March 27 1890 ...	Seized in Neah Bay <sup>1</sup> .....	Corwin.

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.

\* Secretariat note: Not reproduced

<sup>1</sup> 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.

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.