

Quebec.]

[Feb. 20.

HARBOUR COMMISSIONERS OF MONTREAL *v.* GUARANTEE CO. OF NORTH AMERICA.*Insurance—Guarantee—Notice to insurer of defalcation—Diligence.*

By the conditions of a guarantee policy insuring the honesty of W., an employee, it was stipulated that the policies were granted upon the express conditions: (1) That the answers contained in the application contained a true statement of the manner in which the business was conducted and accounts kept, and that they would be so kept; and (2) that the employers should immediately, upon its becoming known to them, give notice to the guarantors that the employee had become guilty of any criminal offence entailing, or likely to entail, loss to the employers, and for which a claim was liable to be made under the policy. There was a defalcation in W.'s accounts, no supervision was exercised over W.'s books, as represented they would, and, when the guarantors were notified, over a week after employers had full knowledge of the defalcation, W. had left the country.

*Held*, affirming the judgment of the court below, that, as the employers had not exercised the stipulated supervision over W., and had not given immediate notice of the defalcation, they were not entitled to recover under the policy.

Appeal dismissed with costs.

*H. Abbott, Q.C.*, for appellants.

*Cross, Q.C.*, and *Geoffrion, Q.C.*, for the respondents.

British Columbia.]

[Feb. 20.

"OSCAR AND HATTIE" *v.* THE QUEEN.

54-55 Vict. (U.K.), c. 19, s. 1, s-s. 5—*Presence of a British ship equipped for sealing in Behring Sea—Onus probandi—Lawful intention.*

On August 30th, 1891, the ship "Oscar and Hattie," a fully-equipped sealer, was seized in Gotzleb Harbour, in Behring Sea, while taking in a supply of water.

*Held*, affirming the judgment of the court below, that, when a British ship is found in the prohibited waters of Behring Sea, the burthen of proof is upon the owner or master to rebut by positive evidence that the vessel is not there used or employed in contravention of the seal fishery. Behring Sea Act, 1891, 54-55 Vict., c. 19, s. 1, s-s. 5.

*Held*, also, reversing the judgment of the court below, that there was positive and clear evidence that the "Oscar and Hattie" had entered the prohibited waters at Gotzleb Harbour for the sole purpose of getting a supply of water on her return trip from Copper Island to Vancouver Island, and that she was not used or employed at the time of her seizure in contravention to 54-55 Vict., c. 19, s. 1, s-s. 5.

Appeal allowed with costs.

*McCarthy, Q.C.*, and *Eberts, Q.C.*, for appellants.

*Hogg, Q.C.*, for respondent.