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Henry A. Pelletier (Crease)
H. A. Pelletier

In the Supreme Court of Canada

On Appeal from the British Columbia Admiralty District of the
Exchequer Court of Canada.

BETWEEN

THE SHIP "MINNIE," HER EQUIPMENT AND EVERYTHING
ON BOARD OF HER AND THE PROCEEDS THEREOF,
(DEFENDANT) APPELLANT.

AND

OUR SOVEREIGN LADY THE QUEEN,
(PLAINTIFF) RESPONDENT.

ACTION FOR CONDEMNATION.

CASE ON APPEAL.

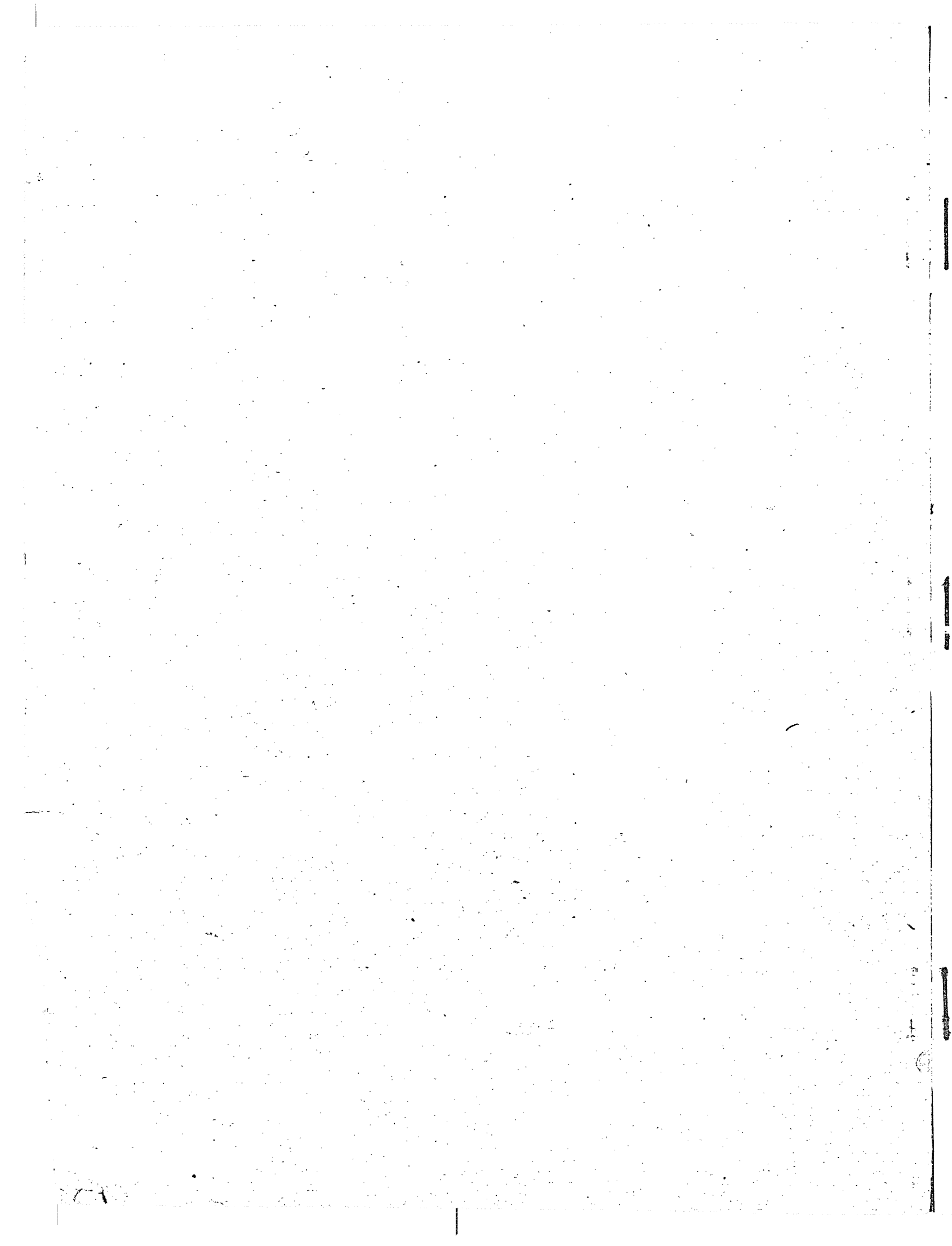
ARTHUR LOUIS BELYEA, VICTORIA, B. C.,
Solicitor for Appellant.

McINTYRE, CODE & ORDE, Ottawa, Ont.,
Agents.

CHAS. E. POOLEY, VICTORIA, B. C.,
Solicitor for Respondent.

O'CONNOR & HOGG, Ottawa, Ont.,
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VICTORIA, B. C.,
THE COLONIST PRINTING AND PUBLISHING COMPANY.
1894.



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IN THE SUPREME COURT OF CANADA.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA,

In the Admiralty District of British Columbia.

BETWEEN

THE SHIP "MINNIE," HER EQUIPMENT AND EVERYTHING
ON BOARD OF HER AND THE PROCEEDS THEREOF,

(Defendant), Appellant.

AND

OUR SOVEREIGN LADY THE QUEEN,

(Plaintiff), Respondent. 10

ACTION FOR CONDEMNATION.

SHORT STATEMENT OF CASE.

This is an appeal on behalf of the above named Appellant from an order pronounced by the Honourable Henry P. Pellew Crease, Deputy Local Judge in Admiralty of the Exchequer Court of Canada, British Columbia Admiralty District, on the 7th day of February, A. D. 1894, condemning the Ship "Minnie" and her equipment and everything on board of her and the proceeds thereof, as forfeited to Our Sovereign Lady the Queen, for contravention of the "Seal Fishery (North Pacific) Act, 1893."

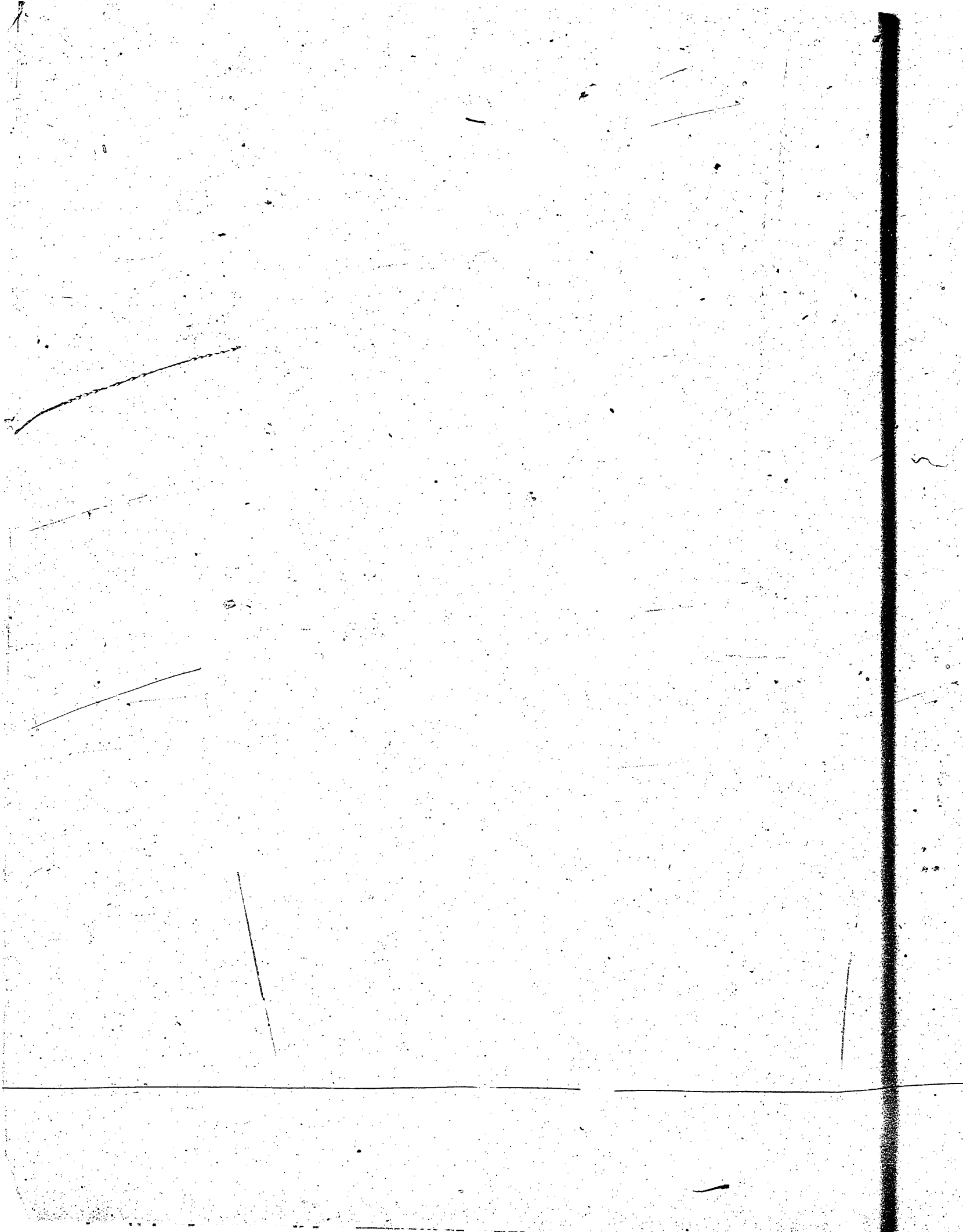
WRIT ISSUED NOVEMBER 3RD, 1893.

ENDORSEMENT ON WRIT.

20

Harry Francis Hughes Hallett as Captain of H. M. S. "Garnet" claims to have the British Ship "Minnie" and her equipment and everything on board of her and the proceeds thereof condemned as forfeited to Her Majesty for violation of the "Seal Fishery (North Pacific) Act, 1893."

This Writ was issued by Charles Edward Pooley, of 47 Langley Street, Victoria, Solicitor for the said Harry Francis Hughes Hallett.



ORDER FOR PLEADINGS.

Friday, the 1st day of December, 1893.

Upon hearing Mr. Luxton of Counsel for the Plaintiff, and Mr. Belyea of Counsel for the Defendant, I do order that Pleadings be delivered in this action—the costs of this application to be costs in the cause.

(Signed) HENRY P. PELLEW CREASE,
"D. L. J. A."

STATEMENT OF CLAIM.

1. The Ship "Minnie," Julius Mohrhouse, Master, was seized by an officer from His Imperial Majesty's transport ship "Yakout" on the 17th day of July, 1893, in Latitude 10 54° 21' North, and Longitude 168° 38' East, at a point twenty-two miles from the South point of Copper Island, being a point within the prohibited zone as defined by order in Council dated the 4th day of July, 1893, made by Her Majesty the Queen in pursuance of an act of the Imperial Parliament, intituled "The Seal Fishery (North Pacific) Act, 1893."

2. That the said Ship "Minnie" set sail from the port of Victoria, Province of British Columbia, on the 27th day of February, 1893, fully equipped and manned for a hunting and sealing voyage in the North Pacific Ocean, and Victor Jacobson, the owner, sailed in the said ship as the master thereof.

3. That the said Ship "Minnie" entered at the Port of Sand Point, United States of America, on the 19th day of June, 1893. 20

4. That the said vessel "Minnie" was cleared from Sand Point aforesaid for hunting and fishing, with the said Victor Jacobson as Master, on the 21st day of June, 1893.

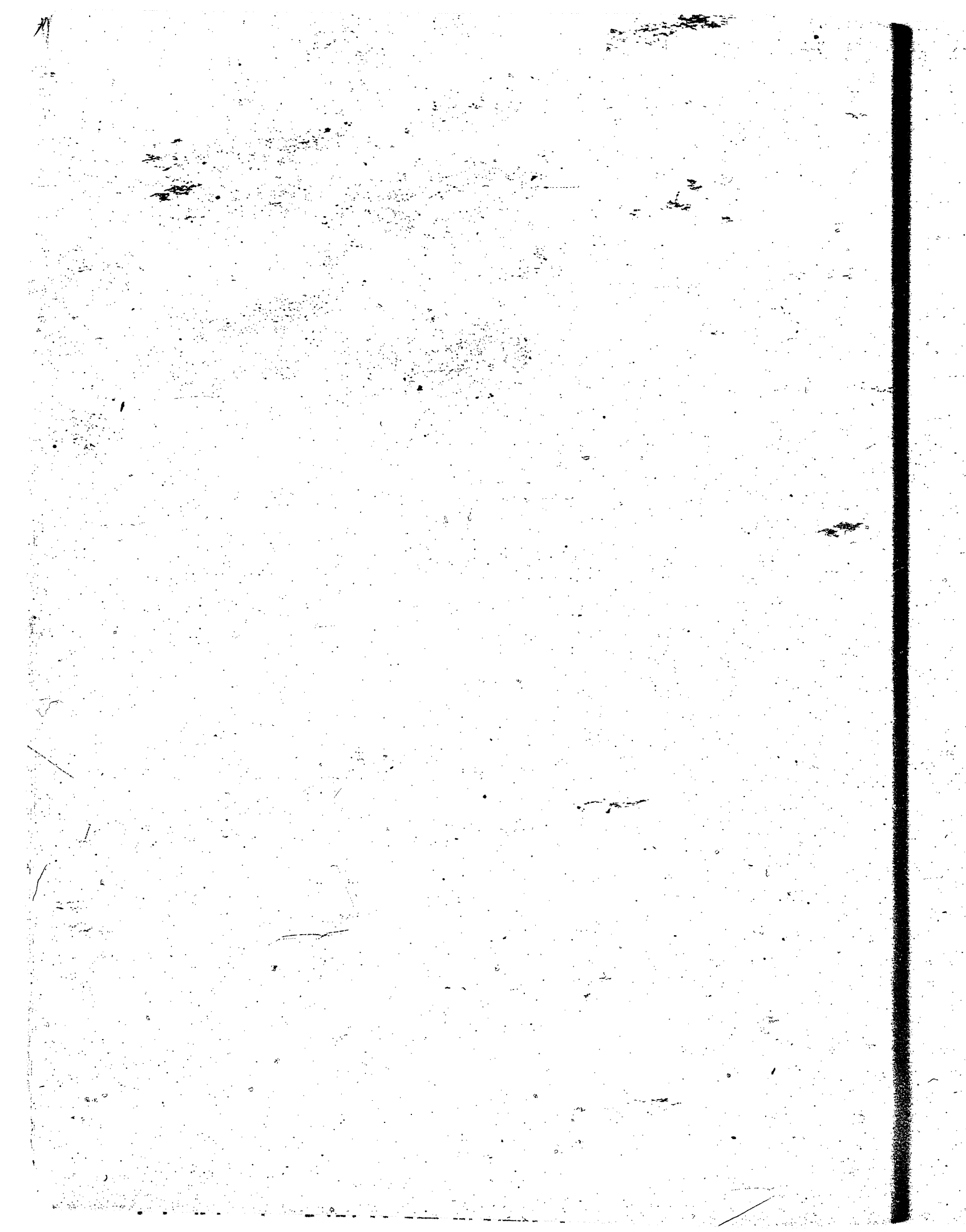
5. The said Victor Jacobson on the 22nd day of June, 1893, appointed the said Julius Mohrhouse in his place as Master of the said Ship "Minnie," and the said Julius Mohrhouse was Master of the said vessel "Minnie" when seized, as set forth in paragraph one hereof.

6. That the said Victor Jacobson and the said Julius Mohrhouse had due notice not to enter the prohibited waters of the North Pacific nor to proceed within a zone of thirty marine miles round the Kormandorski Islands.

7. The said Copper Island is one of the group of the Kormandorski Islands. 30

8. The said Ship "Minnie" at the time of the seizure as set forth in paragraph one hereof, was fully manned and equipped for the purpose of hunting, killing and taking seals, and had on board thereof shooting implements and seal skins.

9. That after the said seizure of the said ship, and upon examination thereof and of her papers by the official Commission of the said "Yakout," it was decided to seize the said papers, and the said Julius Mohrhouse, the master of the said ship, was directed to proceed with his said ship "Minnie" to Yokohama to appear before Her Majesty's Consul and a provisional certificate was given to the said Julius Mohrhouse.



10. The said Julius Mohrhouse did not proceed to the Port of Yokohama and report to Her British Majesty's Consul there but sailed for the Port of Victoria where he arrived on the 24th day of August, 1893.

Harry Francis Hughes Hallett, Captain of Her Majesty's ship "Garnet" claims:—

The condemnation of the said ship "Minnie" and her equipment and everything on board of her or the proceeds thereof on the ground that the said ship was at the time of the seizure thereof within the prohibited waters of Behring's Sea, or North Pacific Ocean, that is to say, within a zone thirty marine miles round the Komandorsky Islands as defined by Order in Council, dated the 4th day of July, 1893, made by Her Majesty the Queen in pursuance of "The Seal Fishery (North Pacific) Act, 1893," fully manned and equipped for killing, taking and hunting seals, and had on board shooting implements and seal skins, and that the said ship was used and employed in killing and taking and hunting or attempting to kill or take seals within the prohibited waters aforesaid:

Delivered this 8th day of December, 1893, by Charles E. Pooley, of 47 Langley Street Victoria, British Columbia, Solicitor for the Plaintiff.

STATEMENT OF DEFENCE.

1. The Defendant admits paragraphs 2, 3, 4, 5, 7 and 10 of the Statement of Claim and so much of paragraph one (1) as alleges that the said ship was seized by an officer from His Imperial Russian Majesty's transport ship "Yakout, on the 17th day of July, A. D. 1893, but denies that the said ship was when so seized in Latitude 54°, 21' North, and Longitude 168°, 30' East, at a point twenty-two miles from the South point of Copper Island, or at any other place or point within the prohibited zone, as defined by an Order in Council, dated the 4th day of July, A. D. 1893, made by Her Majesty the Queen in pursuance of an Act of the Imperial Parliament, intituled, "The Seal Fishery (North Pacific) Act, 1893"

2. The Defendant denies that either he or the said Julius Mohrhouse, had any notice whatever not to enter the prohibited waters of the North Pacific Ocean, nor to proceed within a zone of thirty miles round the Komandorsky Islands, as alleged in paragraph 6 of the said Statement of Claim.

3. The Defendant admits paragraph 8, except only that there was but one seal skin on board the said ship when the said seizure took place. 30

4. The Defendant denies that the master of the said ship was directed to proceed with his said ship to Yokohama, as alleged in paragraph 9, but says that the said officer of the "Yakout" proposed to him that he should leave the said waters and proceed to Yokohama.

5. The Defendant further alleges that if it be proved that the said ship was within the said prohibited zone (which the Defendant denies) when seized, as alleged in paragraph 1 of the said Statement of Claim, that the said ship was not used or employed or intended to be used or employed therein in killing, taking or hunting, or attempting to kill or take

SK

seals therein in contravention of the said Act or otherwise, but that the position of the said ship when seized was due wholly to stress of weather.

Delivered this 15th day of December, A.D. 1893, by Arthur L. Belyea, of the firm of Belyea & Gregory, Board of Trade Building, Bastion Square, Victoria, B. C., Solicitor for the Defendant.

JOINDER OF ISSUE.

The Plaintiff joins issue with the Defendant's Statement of Defence, except in so far as it contains admissions.

Delivered this 16th day of December, 1893, by Charles E. Pooley, of 47 Langley Street, Victoria, British Columbia, Solicitor for the Plaintiff. 10

ORDER TO EXAMINE WITNESSES.

UPON HEARING Mr. Belyea of Counsel for the Defendant, upon hearing Mr. Pooley, Q.C., of Counsel for the Plaintiff, and upon hearing read the affidavit of Arthur Louis Belyea, herein sworn the 19th day of December and filed:

IT IS ORDERED that James Willowby Anderson, Aubrey Krane and Larry O'Neill, witnesses for the Defendant, be examined before the Registrar, at the Law Courts, Bastion Square, at the City of Victoria, on Wednesday, the 27th day of December, A.D. 1893, at the hour of 10.30 o'clock in the forenoon, and that the official stenographer do attend and report such proceedings in shorthand, and that the costs of this application and consequent thereupon be costs in the cause. 20

Dated the 21st day of December, A.D. 1893.

(Signed) HENRY P. PELLEW CREASE,
D. L. J. A.

EXAMINATION OF CAPTAIN ANDERSON.

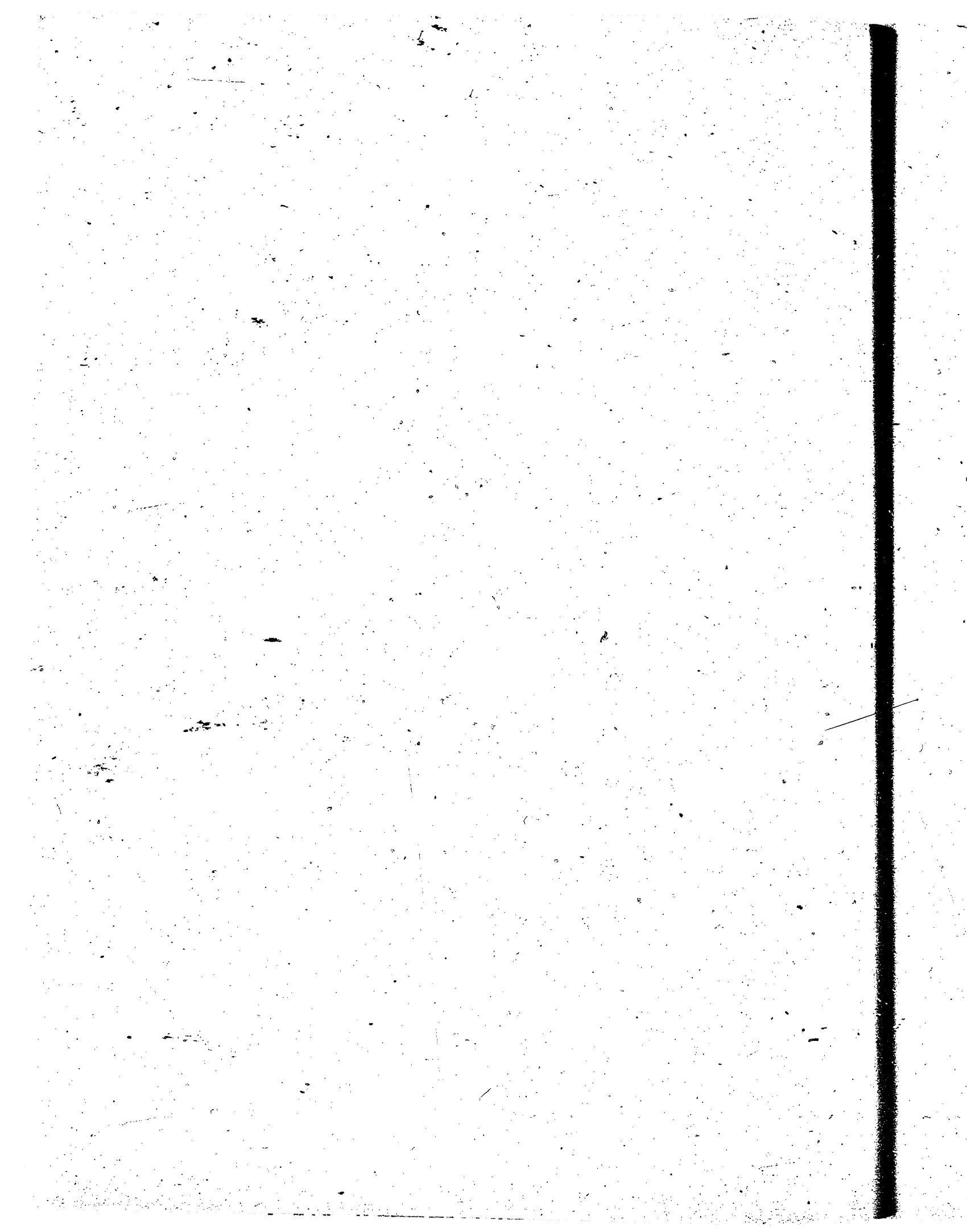
VICTORIA, B. C., Thursday, 4th January, 1894.

Examination of Captain James Willowby Anderson, under order of the Honourable Henry P. Pellew Crease, D.L.J.A., dated 21st day of December, 1893.

CHAS. E. POOLEY, Q.C., appearing on behalf of the Petitioner.

A. L. BELYEA, Esq., appearing on behalf of the Respondent.

JUSTIN GILBERT, of Victoria, B. C., was duly sworn as stenographer to report the 30 proceedings.



JAMES WILLOWBY ANDERSON,

being duly sworn, was examined on behalf of the Respondent, by Mr. Belyea, and testified as follows:

Q. What is your name, Captain? A. James Willowby Anderson.

Q. What is your occupation? A. Master mariner.

Q. How many years have you been such? A. Been going to sea?

Q. Yes. A. About 16 years.

MR. POOLEY—Q. Master mariner 16 years? A. No, going to sea 16 years.

Q. How long have you been master mariner? A. Let us see, I just forget the date of my certificate; I think about four years. 10

Q. How long have you been on this coast sealing? A. This last year was my first year.

Q. What was your occupation immediately before last year, and previous years?
A. Well, I have been an officer of the ship for the last ten years; I have been sighting navigating officer of the Pacific Steam Navigation Company, west coast of South America; also acting chief officer. The second officer aboard there is considered navigating officer.

Q. You say you were four years with them? A. Two years.

Q. What vessel were you on last year—sealer? A. Viva.

Q. Master of the Viva? A. Yes.

Q. Through what waters did you have the Viva last year? A. Well, we went away 20 and made the straight passage for Japan, entered Yokohama for water and stores, and I sealed on that coast. And then when the sealing season was finished on that coast, I proceeded to Agattu; I did not go to the Island of Agattu, off Agattu.

Q. Now, can you give us the time when you were off Agattu? A. Yes, I arrived there on the 14th of July.

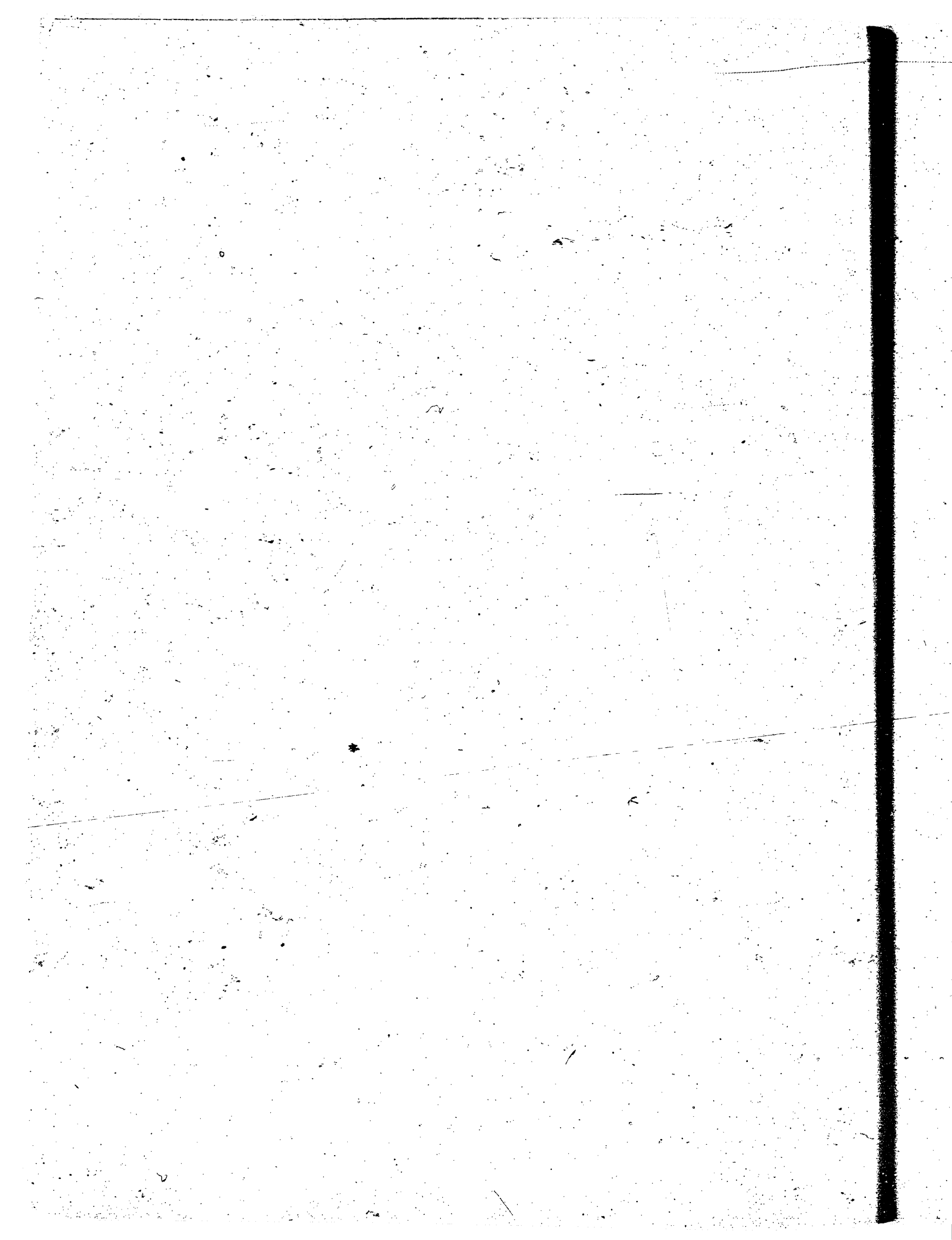
Q. Where did you go and when? A. Well, I met the May Belle there, and transferred my skins aboard of her.

Q. What date? A. On the 15th. And she—the captain of the May Belle told me—

Q. Never mind what he told you. Anything that he told you is not evidence. A. No, 30

Q. Now, when did you leave the May Belle? A. On the evening of the 15th; I think it was about three or four o'clock—three o'clock probably.

Q. Which way did you sail then? A. I kept away first about west; westward.



MR. POOLEY—Q. You bore away west? A. Yes, sir.

Q. Where were you on the 16th? A. On the 16th—well, I have not got the latitude and longitude in my memory, but I have put it down on the chart; you can see there the latitude and longitude; you can see it in the log book.

Q. You entered it in the log? A. Yes, sir.

Q. Is this your log book? (Book produced.) A. Yes, sir.

Q. Did you enter it that day? A. Yes, sir; as soon as I worked it out I entered it.

Q. As soon as you worked it out you entered it? A. Yes.

Q. That was on—? A. That is the 16th of July.

Q. What is the latitude on the 16th of July? A. $52^{\circ}, 46''$; that is my latitude. 10

Q. Longitude? A. Longitude, $170^{\circ}, 41''$.

Q. That means degrees and minutes? A. Yes, sir.

Q. That was your position at noon of the 16th? A. That was my position at noon of the 16th.

Q. Is that civil or nautical time? A. It is civil time.

Q. Now, which way did you go from that point? A. From that point I steered I think about north-west by north.

Q. Steered north-west by north; for how long? A. I am not going to swear just to the exact course, you know, because I cannot remember that, but I think it was about north-west by north; the course is in the log book too. 20

Q. You better look at your log book and see whether that corresponds with what you say. (Witness looks at log.)

MR. POOLEY—Q. Were those entries made at the time? A. Yes, sir; all made at the time; I will swear to that. 16th, north-west by north until midnight, you see.

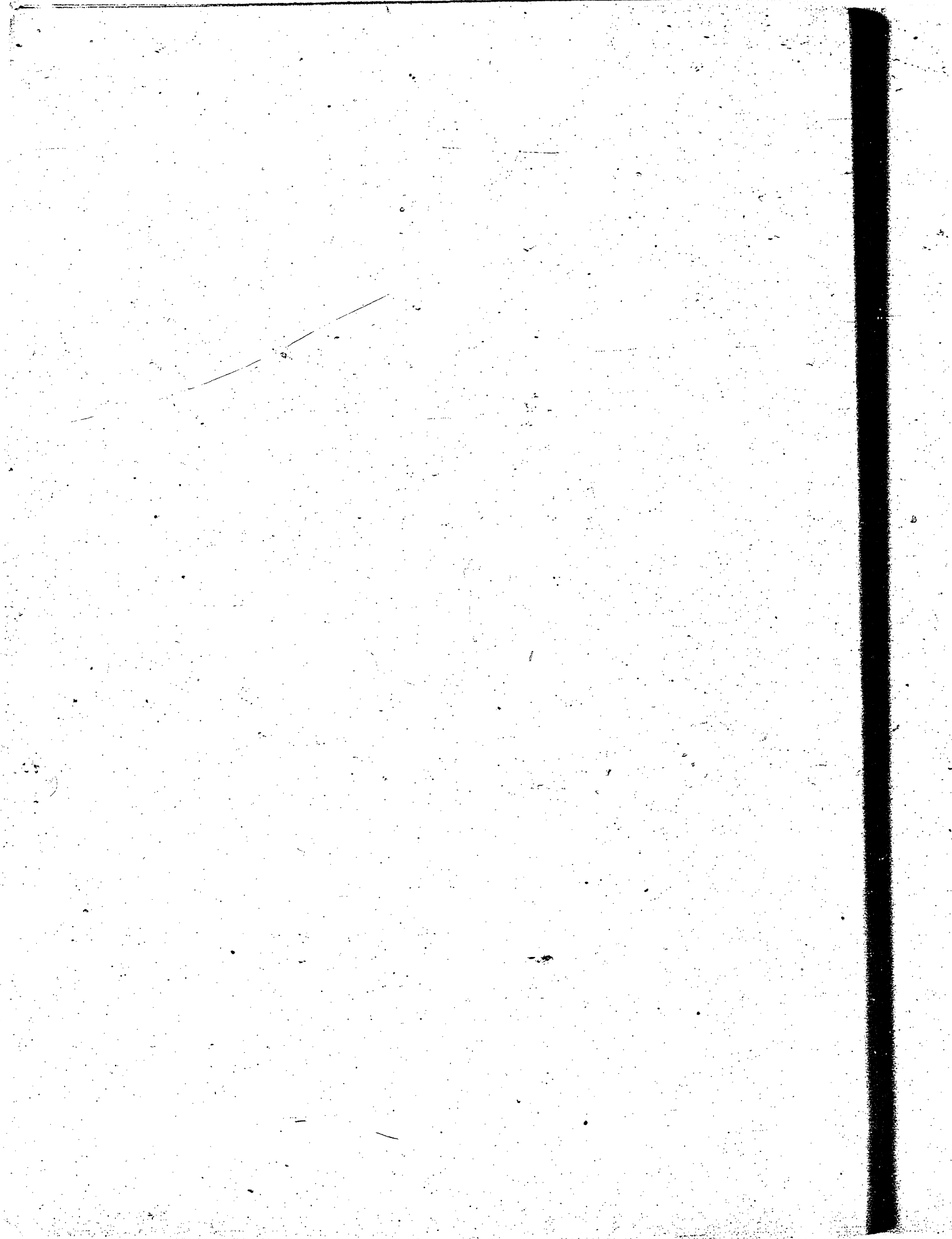
Q. You steered north-west by north until midnight; and then you laid to? A. Yes.

Q. What distance in that twelve hours did you make? A. I think it was near about 90 miles; it is on the chart there.

Q. How do you measure the distance? A. You will require a pair of dividers to measure the distance.

Q. I want to know how you calculated the distance? A. On that run? 30

Q. Yes. By a patent log which I had verified, and had known it by trailing it over my stern for months, that it had scarcely ever slipped worth noticing.



Q. And by that patent log you had travelled 90 miles? A. Yes, sir, thereabouts. You will see the positions on the chart.

Q. Did you locate the positions on the chart? A. Yes, sir, I did.

Q. Is that the chart you marked them off on? (indicating.) A. That is the chart. You take a piece of paper and lay it there and mark it with a lead pencil, and carry it to here (indicating) and you will see the exact distance.

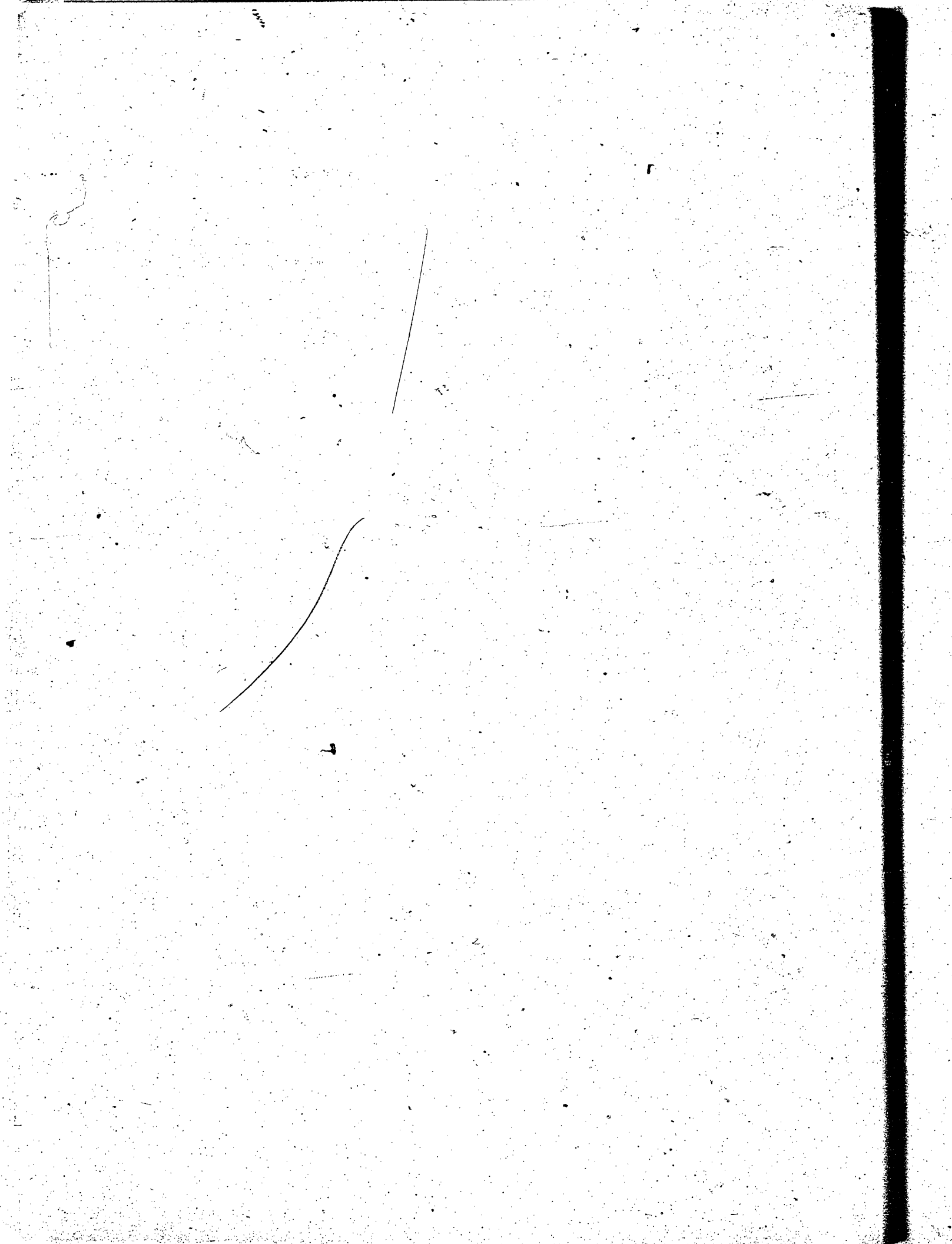
MR. BELYEA—I mark this point A, this B, and this C, (marking chart.) A. The point I have as my position at noon of the 16th is by an observation by the sun; then I kept away northwest by north until midnight; then I hove to at midnight there (indicating) that is only a supposed point, I know that by dead reckoning, of course, by my log. 10

MR. BELYEA—That is the point marked B? A. Then the next morning about eight o'clock, I thought I was not close enough in, and I thought I would run in a little further; and I run in about ten miles.

Q. In what direction? A. About west by north—pretty near west, about west.

Q. To the point marked C? A. Marked C. And then I hove to. Now, during this time the weather was not fit to lower; it was not lowering weather. But about three o'clock in the afternoon it became calm and I lowered. Then about six, my boats were all aboard, it was a dead calm and a heavy swell; and after the boats got aboard—it was a long evening, you know—and about nine o'clock we saw a steamship, and we knew it was a man-of-war, you could tell by her rigging that it was. We saw the steamship away to 20 the westward of that; we could make her out quite distinctly, she was perhaps five or six miles away. Then, of course, naturally, I didn't want that fellow around me, and I made sail; not because I thought I was inside the limit, for I didn't think so; but I was not going to trust a Russian anyway, and I was going to get away if I could. And I made sail; there was no wind, but I hoisted my sails up, so that if there was any wind come up I would be ready; and during the whole night the sails slammed over my head, there was no wind, dead calm; and about two o'clock in the morning the man on watch came down and told me that there was a steamer coming down; so I went up on deck and stood there; it came closer and closer, we made the outline of the vessel which went close past our stern; I could hear the throb of his engines, so that he was pretty close, I would say perhaps as far as 30 from here to that building, well, a thousand yards, so close we could hear the throb of his engines.

Q. That would not be more than two hundred yards (referring to the building). A. Well, that close—you cannot judge distances exactly; but you could hear the movements on board, you could hear the throb of the engines. It was two o'clock in the morning he went past me, and stood on the southward. While I was lying there becalmed, and about—some time that morning about seven o'clock, there was a little breeze sprung up from the westward, but that breeze did not immediately clear up the fog, but as soon as I got the chance I made sail and stood off to the eastward; or I had the sail on—I simply stood off to the eastward. And shortly after that the wind freshened up quite fresh and strong from 40 the northwest, and that, of course, cleared the fog off, and it came out then just as clear as a bell.



Q. On the 18th? A. Yes, sir.

Q. Did the wind come off the land? A. From the direction the wind blew, from the westward, it blows off of the land; and cleared it off just as clear as a bell.

MR. POOLEY—Q. What time was that? A. O, about eight o'clock.

Q. Well, when the fog cleared up what did you do? A. As soon as the fog cleared up I saw a schooner quite close to me; so, of course, I was wanting to know just what this Russian was doing around there, and what he had said, and see if this fellow had met him; so I run down on him.

Q. In what direction were they from you? A. The schooner bore about west from me, about three miles. 10

Q. Bore west, about three miles? A. And to show that I never dreamed that I was inside the limit, knowing the man-of-war was cruising around there, I put my vessel's head around, and run down on this schooner; so that that shows that I was not in much fear of being inside the limit, if so, of course I would have made great haste to get out.

Q. Was there any land in sight? A. No land at all in sight.

Q. What took place when you went down to this schooner? A. I boarded the schooner, and I asked Captain Mohrhouse—

Q. What schooner was it? A. The Minnie.

Q. The Minnie, Captain Mohrhouse? A. Captain Mohrhouse.

Q. What took place? A. I asked Captain Moorehouse, did he see the Russian man-of-war last night.

Q. You need not state what Captain Mohrhouse told you at all. It was the schooner Minnie? A. Schooner Minnie.

Q. How long were you with the schooner Minnie that morning? A. Well, I didn't stay long; I don't think I stayed more than ten minutes.

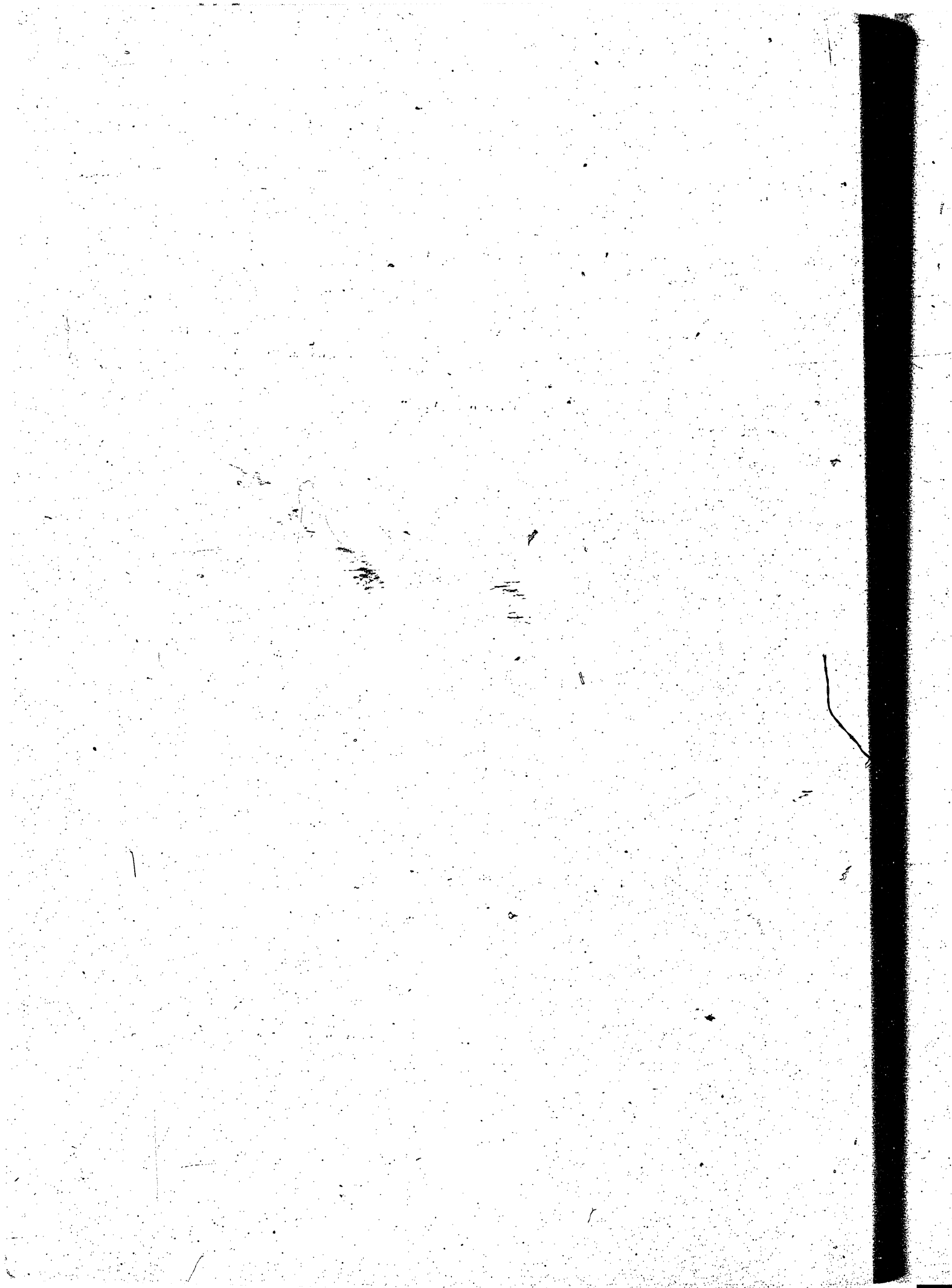
Q. Where did you go next? A. I kept away about east then.

Q. Now do you remember when you got your next observation from the sun? A. Well, I had run quite a distance before I got another observation.

Q. What is it? A. I had run quite a distance before I got an observation of the sun.

Q. Now, what direction is the general current in here about where your position was 30 at that time (indicating on plan)? A. Well, all that I could say about the current, the book of directions says the current sets northeast; and every man that ever I spoke to about it says that it sets northeast.

Q. In the position you were in at the points C and B would that current take you from the land or toward the land? A. That would take me from the land; during that calm I should



have drifted at least ten or twelve miles further east. I was laying becalmed here, from midnight till—no, from about noon of one day till seven o'clock the next morning. Well, with a northeasterly current I should drift out this way quite a little distance (indicating on chart).

Q. Now, this other schooner was only three miles from you? A. Only about three miles from me, not more than that, it could not be more than that; close.

Q. That was the schooner Minnie? A. That was the schooner Minnie.

Q. Now, when the fog cleared up at eight o'clock that morning, there was no land in sight you say? A. No, sir; not the sign of land.

Q. Now, how far off on a fine morning like that ought you to see the land at Copper 10 Island? A. From everybody that ever I heard speak about it—

MR. POOLEY—Just your own knowledge. A. My own knowledge; well, thirty miles; if you was inside of thirty mile in a clear day, you are sure to see Behring Island.

Q. Sure to see Behring Island? A. Yes.

Q. And how far off—you mean Behring or Copper Island? A. Copper Island, excuse me, Copper Island; of course Behring Island could not be seen from where I was.

Q. How far off could Behring Island be seen? A. Behring Island, over sixty miles any way on a fair day.

Q. Now, Captain, had you any means of knowing the condition of your chronometer at the time you took your observation on the 16th? A. Yes; I had been continually rating my chronometer every time I got the chance.

Q. Where did you last rate it? My last rating was at Skotan, Japan coast; the Island of Skotan.

Q. Did you compare it with any chronometers after that? A. Yes; at Agattu, I compared it with the May Belle's chronometer.

Q. How did you find it? A. Well, it was a little out, my chronometer then, a little difference.

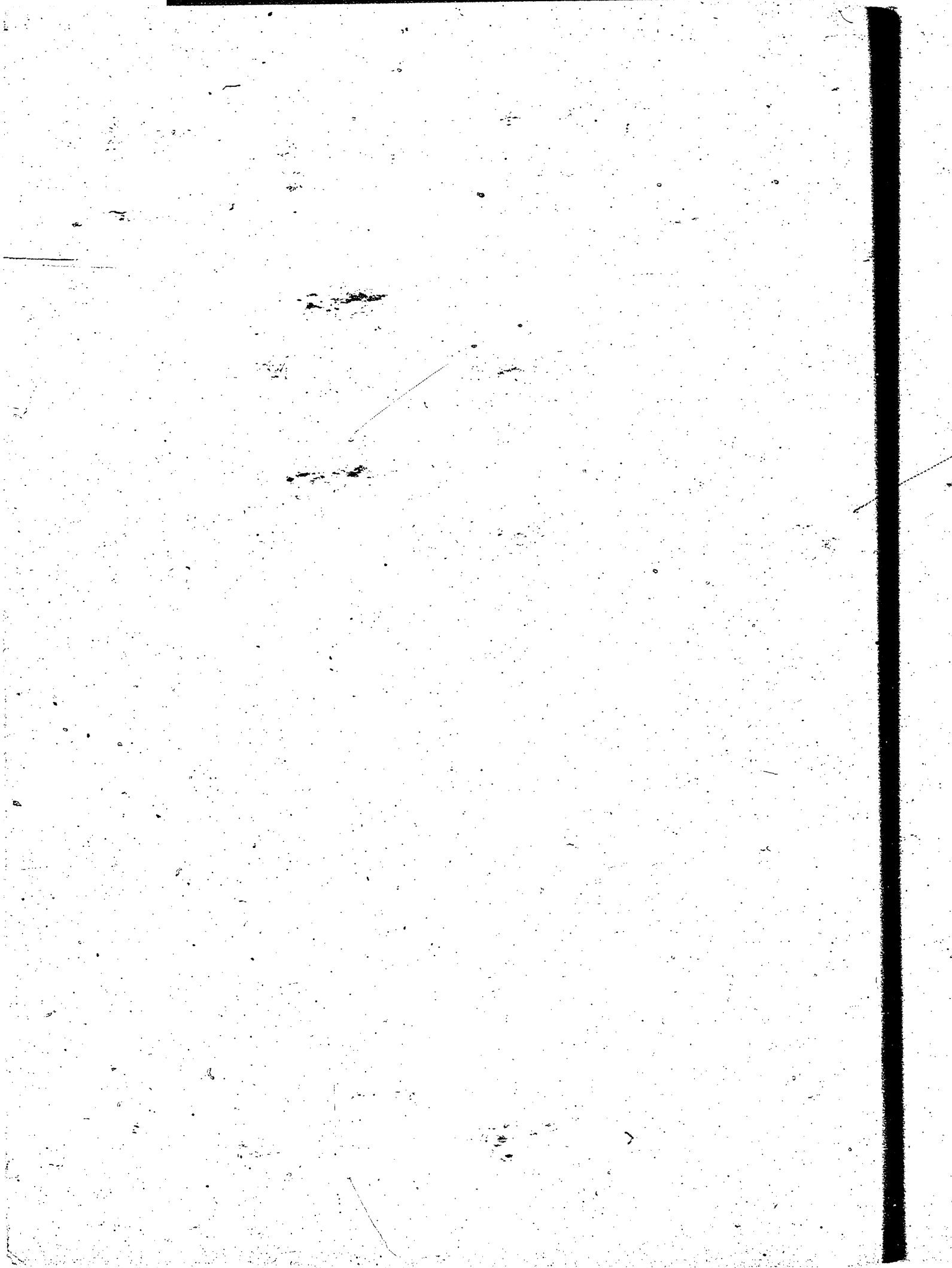
Q. You rated it with the May Belle's? A. I took his rating because I thought it was more correct than mine.

Q. That was on the 15th? A. That was on the 15th.

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Q. It was the next day you made the observation? A. The next day I made the observation; his chronometer you know was rated also with—his chronometer was surer right than mine.

Q. Where had the May Belle come from then, at that time? A. The May Belle had come from the Japan coast too.



MR. POOLEY—Q. How do you know that? A. Because I was sealing there with him; we both belonged to the same employer, and we had made arrangements to meet at Agattu to transfer skins. My chronometer was likely to be rated the same as the May Belle's because we were together before.

Q. Now you say that on the morning of the 17th you sailed westward about ten miles. A. Yes, sir, about 10 miles.

Q. Now, according to your reckoning, how far off the extreme end of Copper Island were you when you were at the point B on this chart here? A. I think 50 miles.

Q. Fifty miles, on the morning of the 17th. You hove to about what time on the morning of the 17th? A. I don't know, I think it was pretty nearly noon. 10

Q. And from that until three o'clock there was no wind, you say, or, was there a little wind? A. There was a little wind from that till two o'clock, I was lying hove to.

MR. POOLEY—Q. And from that to three o'clock—? A. There was a little wind.

Q. And then from three o'clock until eight the next morning there was no wind? A. There was no wind at all; heavy swell; heavy south-east swell; the wind had been blowing from the south-east previously.

Q. From three o'clock of the 17th, till eight o'clock on the morning of the 18th, civil time, there was absolutely no wind? A. No wind.

Q. And during all that time you were drifting in what direction by the current? A. Well, drifting to the north-east. 20

MR. POOLEY—Q. Hove to at noon, and from that until three o'clock a little wind; from three o'clock of the 17th, until eight o'clock of the 18th, there was no wind? A. No wind.

Q. And all that time you were drifting up with the current? A. And all that time I was drifting up with the current.

Q. Now, by dead reckoning, give us the approximate distance you were off land on the morning of the 18th at eight o'clock, when you sighted the Minnie? A. About fifty miles I should think.

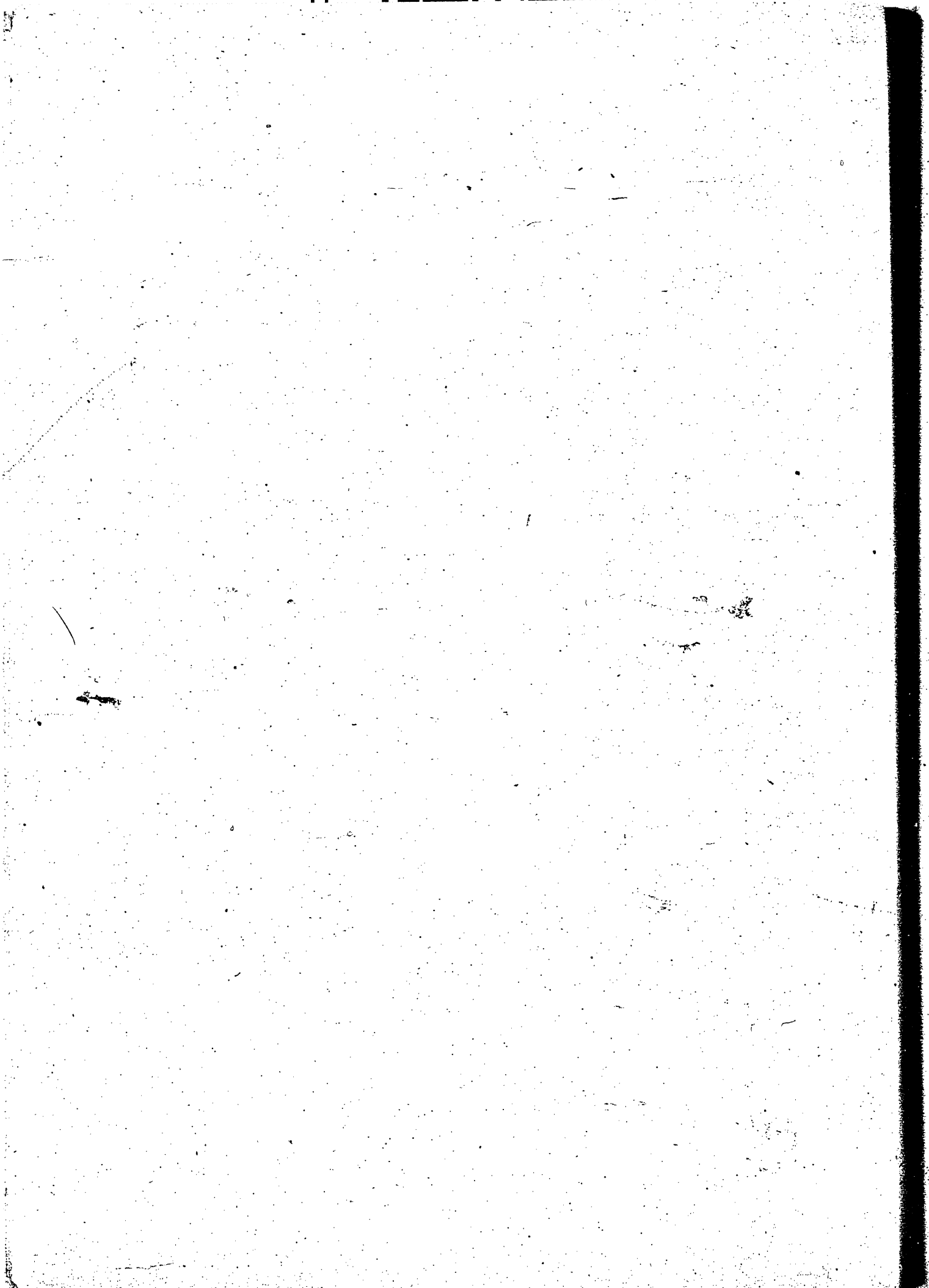
Q. About 50 miles dead reckoning; and that dead reckoning would only be from noon the day before? A. Noon the day before until— 30

Q. Eight the next morning? A. Yes; until eight the next morning.

Q. From the afternoon about three o'clock after you hove to the next morning, there was no wind? A. No wind.

Q. And you were constantly drifting away from the land by the current? A. Yes.

Q. Now taking the position of the day before when you hove to, and by dead reckon-



ing, how far were you off the island when you sighted the Minnie the next morning? A. About fifty miles.

Q. And how far inland from you was the Minnie? A. About three miles. I did not take into consideration the currents in my positions; I didn't consider the current.

Q. If you had considered the current? A. It would put me further eastward.

Q. It would put you still further to the eastward? A. Yes, sir.

Q. That is the point B, that you show on the chart here is reckoned without reckoning the current? A. Is reckoned without reckoning the current.

Q. And if you reckoned the current, that point would be further to the eastward?
A. Yes; that point would be further to the eastward. 10

CROSS-EXAMINATION BY MR. POOLEY.

Q. On the morning of the 18th is the morning you saw the Minnie you say. I want to see if the time is the same? A. My time and the Russian times agree.

Q. She was seized on the day before? A. The 17th, by civil time.

Q. The Minnie was seized about nine o'clock of the 17th? A. I don't know when she was seized.

Q. Your time and the Russian time was the same time. A. Yes, sir; the same time.

Q. Now you say that you were lying off this Attu Island 50 miles. A. No, not 50 miles off Attu.

Q. I mean Copper Island, north-east of Copper Island? A. No; south-east. 20

Q. South-east of Copper Island? A. Yes.

Q. Fifty miles, at 12 o'clock on the night of the 16th? A. No, sir; not on the night of the 16th; on the night of the 17th.

Q. On the night of the 17th? A. Yes, sir.

Q. I thought you said on the 16th? A. The 16th was the day I got my observation by the sun.

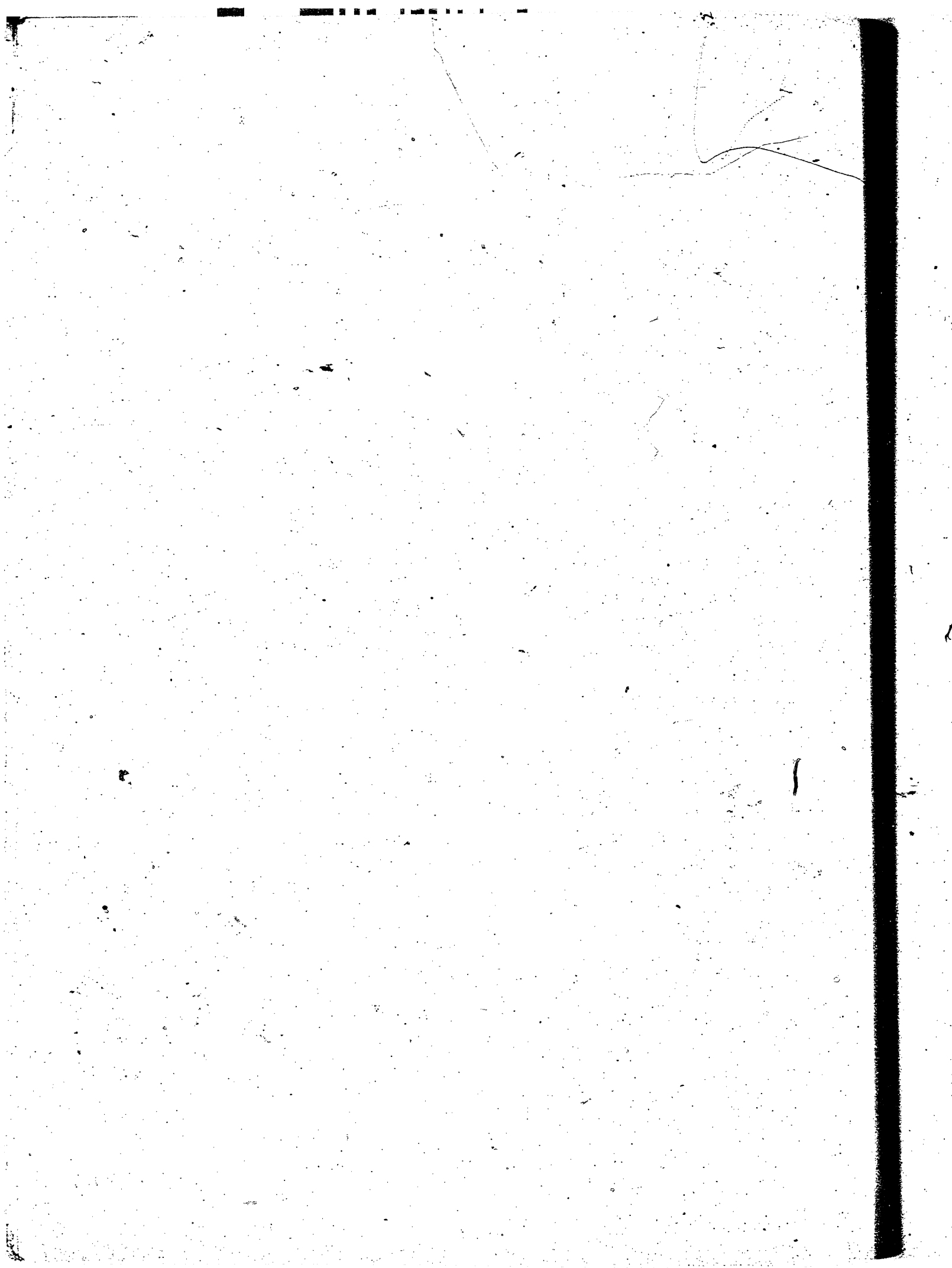
Q. That is off Attu? A. Well, I had left Attu the day before on the 15th.

Q. On the 16th you got your observation from the sun? A. Yes, sir.

Q. And on the 17th you sailed north-east? A. On the 16th I continued sailing from noon of the 16th; I continued sailing until midnight. 30

Q. North-east? A. North-west by north.

Q. North-west by north? A. Yes, sir.



Q. And then at 12 o'clock you laid to? A. Yes, sir.

Q. And between twelve and three there was little wind? A. The night of the 17th.

Q. Yes. A. No, there was no wind.

Q. You just stated there was a little wind? A. No, that was the day before; from noon to three o'clock there was a little wind.

Q. On the 17th? A. On the 17th; yes, sir.

Q. From noon to three o'clock of the 17th there was a little wind? A. Yes, sir.

Q. In what direction was that wind? A. Well, that wind was south-east, but stilling some, though strong breeze dying out.

Q. The wind was still from the south-east? A. Yes. 10

Q. That was between twelve and three of the 17th? A. Yes, sir; in the daytime.

Q. After three o'clock you say the wind died out? A. Died out, a complete calm.

Q. And you were just drifting about? A. Just drifting about.

Q. What time did the breeze spring up again? A. The breeze did not spring up until the next morning; that would be the 18th you see.

Q. What time? A. O, about seven o'clock; light at first.

Q. Seven o'clock it sprang up light? A. Yes; about eight o'clock it was quite fresh then and cleared up.

Q. The next morning the wind was you say springing up in the morning; in what direction was it springing up? A. First it commenced about west at seven, and when it 20 freshened up it was about northwest.

Q. What direction was it blowing when you saw the Minnie? A. When I saw the Minnie, northwest, right fresh.

Q. In what direction was she sailing? Away from the island? A. Yes, she was sailing away from the island.

Q. Where does the schooner Viva hail from? A. Victoria.

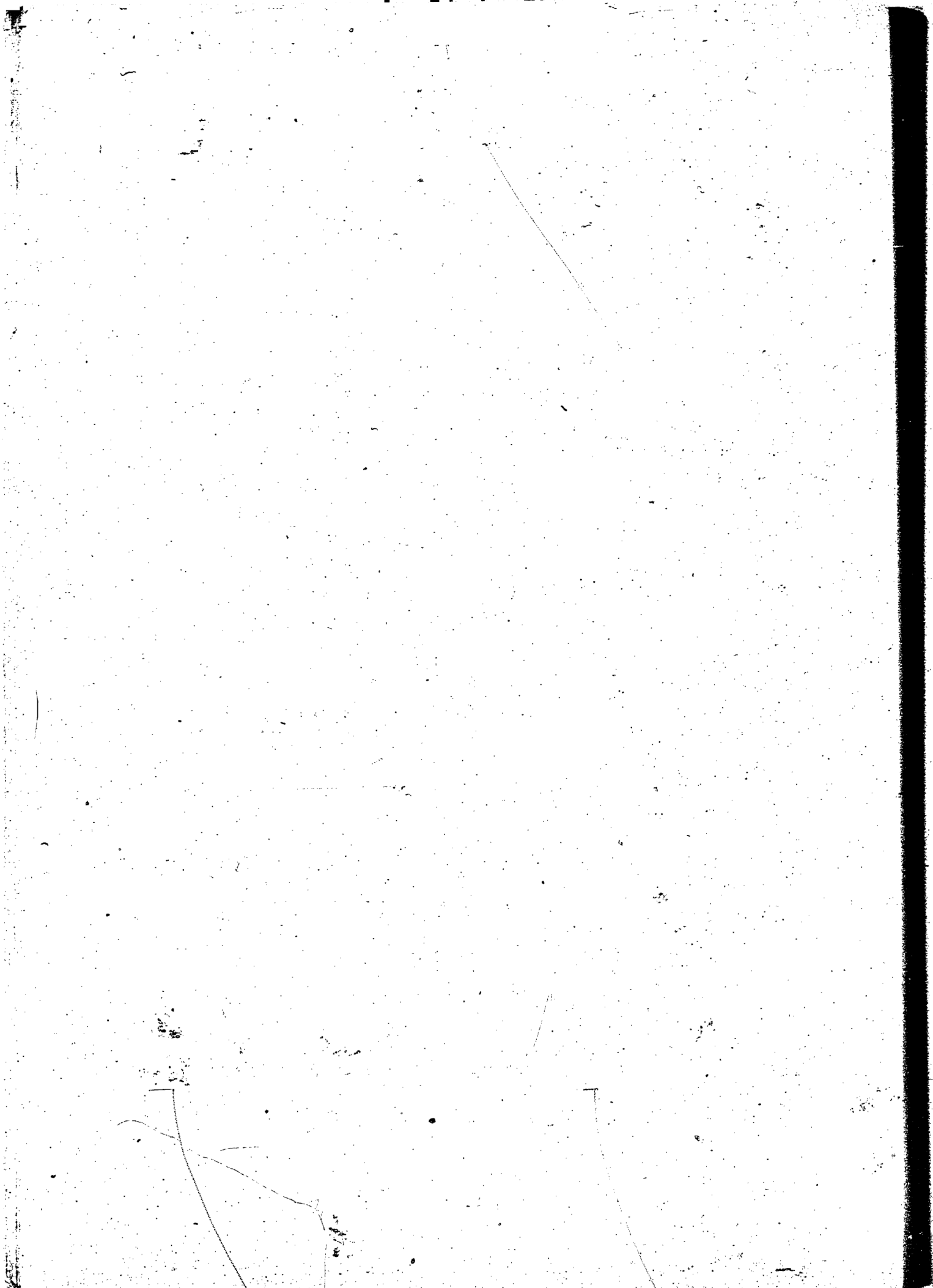
Q. She is registered here? A. Yes, sir.

Q. Who are owners? A. Carne & Munsie.

Q. Did you get into the prohibited limits? A. No, sir, I was not.

Q. You are the only seaman that was not? A. No, it is a mistake. 30

Q. You were able to take a good observation on the 16th? A. Yes, sir.



Q. The weather was all fine and clear? A. Fine and clear.

Q. Could you see Agattu Island that day? A. No, sir.

Q. On the 16th? A. No, sir.

Q. How far is Agattu from the southeast corner of Copper Island? A. I couldn't tell you; you can see it there.

Q. You cannot say, was it 120 miles? A. I don't know exactly.

Q. You don't know.

MR. BELYEA—Look at the chart. (Witness does so.)

A. Here is Agattu; you will have to measure it this way; that is about three degrees and a half—210 miles about; about 200 miles say; that is what I think. 10

Q. About 200 miles? A. About 200 miles.

Q. Your schooner then is a pretty good sailer? A. Yes, sir, pretty fast.

Q. Pretty fast vessel. Did you get any observation on the 17th? A. No, sir.

Q. Why not? A. Too thick.

Q. It was thick on the 17th? A. Yes, sir.

Q. On the 15th, 16th and 17th that you were there, was there any breeze blowing off of Agattu Island? A. Blowing a strong south-east wind.

Q. Blowing a strong south-east wind, from the morning you left Agattu Island? A. No; the wind was light when I left, light south-east, and it freshened up.

Q. Yes? A. And on the 16th it was fresh and strong, blowing strong from the 20 south-east, not an actual gale, you know, but a strong south east breeze.

Q. So that you were able to make good time up there? A. O, yes; I was making over eight knots; nine knots, and sometimes going ten knots.

Q. How many hours were you going ten knots? A. I don't know exactly; I just mentioned that to tell you the rate of speed.

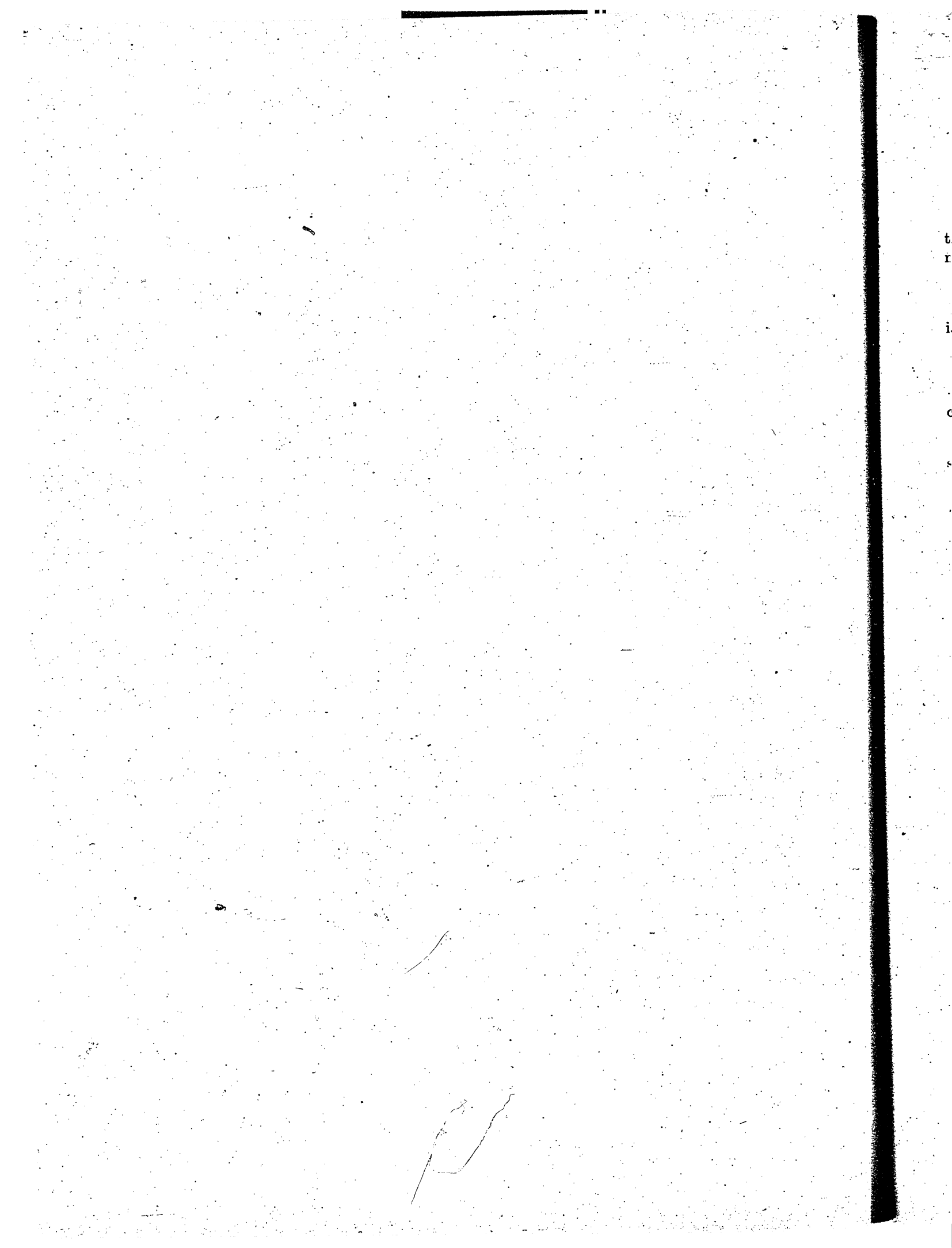
Q. How many hours were you going eight and ten knots? A. I can't tell you that; I can tell you what time I went eight knots; never went under eight knots.

Q. Until the night of the 17th? A. No, sir; never.

Q. Never under eight knots? A. Much under eight knots.

Q. And on the night of the 17th you hove to? A. Yes, sir. 30

Q. And then the wind died out? A. No, not then.



Q. The wind did not die out then? A. No, sir; not then.

Q. I thought you told us between twelve and three of the 17th there was no wind, that it died out? A. That is the day, but I hove to at midnight; you are speaking about noon. At midnight of the 16th I hove to, you see.

Q. At midnight of the 16th it was? A. Yes; I made the run from noon of the 16th to midnight of the 16th; about ninety miles in twelve hours; 12 times 8 are 96. That is from my observation.

Q. You made that observation on the 16th, at noon? A. Yes, sir.

Q. How far were you from Agattu Island when you made the observation? A. I cannot remember that; you will have to measure that. 10

Q. When did you put these marks on the map? A. I put them on for the sake of showing to you, a few days ago.

Q. You did not put them on at the time you made the observation? A. No, sir; that is not my chart at all. I can get you my chart.

Q. You are not in the habit of rubbing the marks off of the chart? A. No, sir; my marks are on the chart yet.

(The witness here sent for his chart at the request of Mr. Pooley.)

THE WITNESS—You see I don't have to tell any crooked thing; I am telling the truth; you see I don't have to hide my chart to hide anything; you can look at my chart, but it is needless, I can tell you that. 20

Q. When you are making dead reckoning, can you get it pretty accurate? A. With a straight run ahead and a strong breeze, aint like I was beating around and making tack for tack; then it is pretty hard to make accurate reckoning; but when you are making a straight course with a strong breeze, it is as accurate as if you were measuring with a tape line; that is without taking into consideration the current.

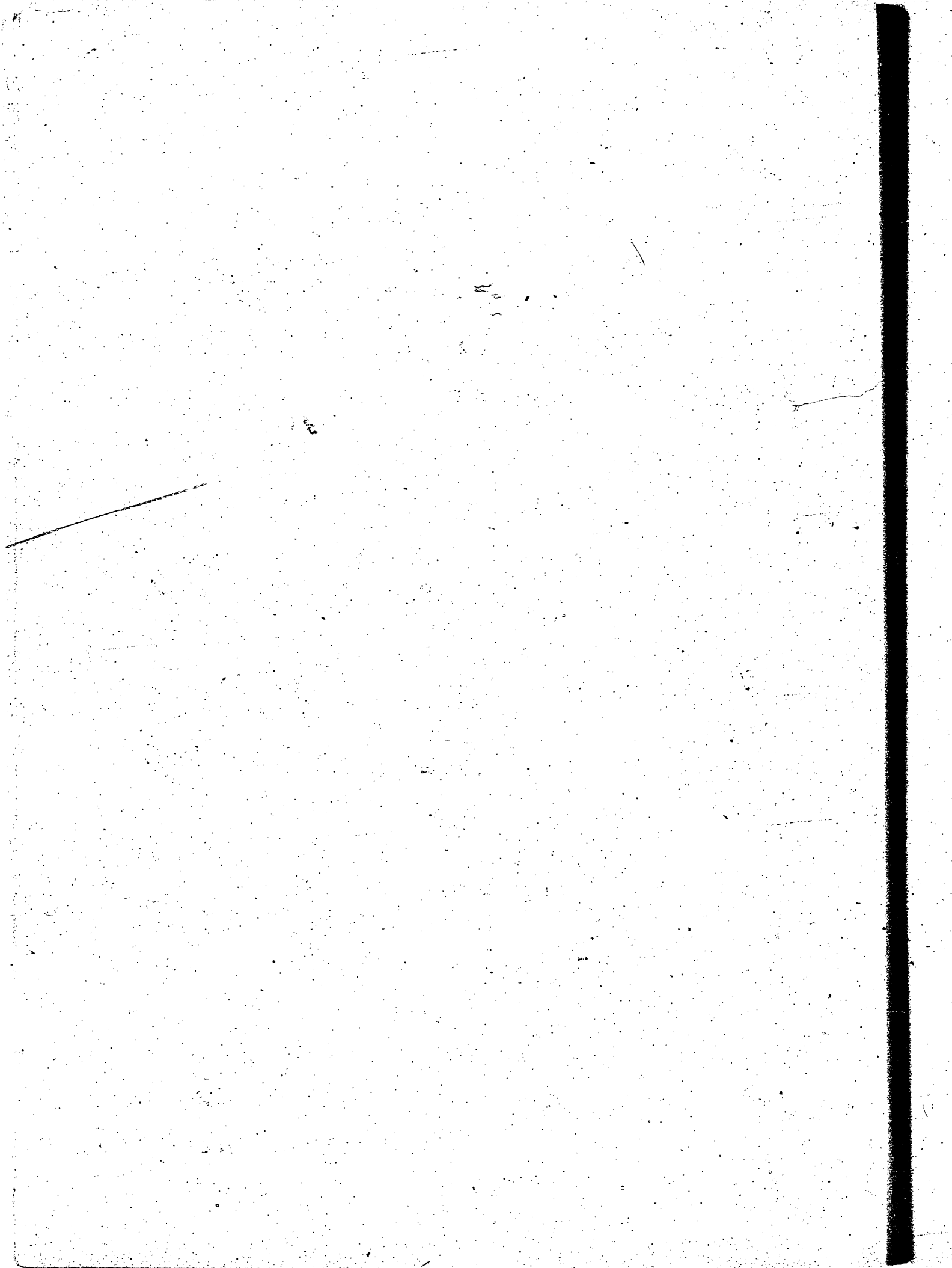
Q. You don't know anything about the current of your own knowledge? A. No, sir; only what I heard. But the book of directions tell me, and men-of-war have surveyed that island, and tell us that; that is all I know about it; better evidence than me.

Q. Well, I understand you to say, these positions placed by you on the map are not the true positions of your ship? A. Yes, they are the true positions of my ship; I am 30 swearing to my position.

Q. You swear the positions on that chart are correct? A. I will swear they are correct, so far as my knowledge of navigation goes.

BY MR. BELYEA.

Q. When you put these marks on here you reckoned them out from your observations?
A. Yes, sir.



- Q. That day? A. My log book there will confirm those positions.
- Q. They are not merely copied from the other chart? A. No, they are copied from the log book, in fact that is where they are copied from.
- Q. You took your position from your log and found these points? A. And put it there; yes. The log book really is the evidence.

BY MR. POOLEY.

- Q. Did you put your position in the log every day? A. Yes sir, every day.
- Q. And didn't you put it on the map every day? A. No, sometimes I would not put my position down there; if I am sailing I would put a mark on the points that is desired. 10
- Q. Why is it you marked these days particularly? A. You can see my chart when it comes.
- Q. That is not the question. Why did you mark these days particularly when you did not put them down as a rule. A. It was altogether by intention; I was very careful of my positions off Copper Island.
- Q. You did it because you were very careful of the positions off of Copper Island? A. Yes, sir.
- Q. Couldn't you be equally clear in your position without putting it down on the chart? A. Yes, sir, quite sure.
- Q. And that was not the only reason of your putting it down on the chart? A. 20 That is the only reason. While you can be perfectly careful about where you are, if you did not put it on the chart you would have to go to the log book to hunt it up, but if it was there you could see it.

Q. You did not put these positions on your chart because you were asked to do so by the captain of the Minnie? A. No, sir, I will swear to that ten thousand oaths. If I could bring my crew up here to swear, if they were here—

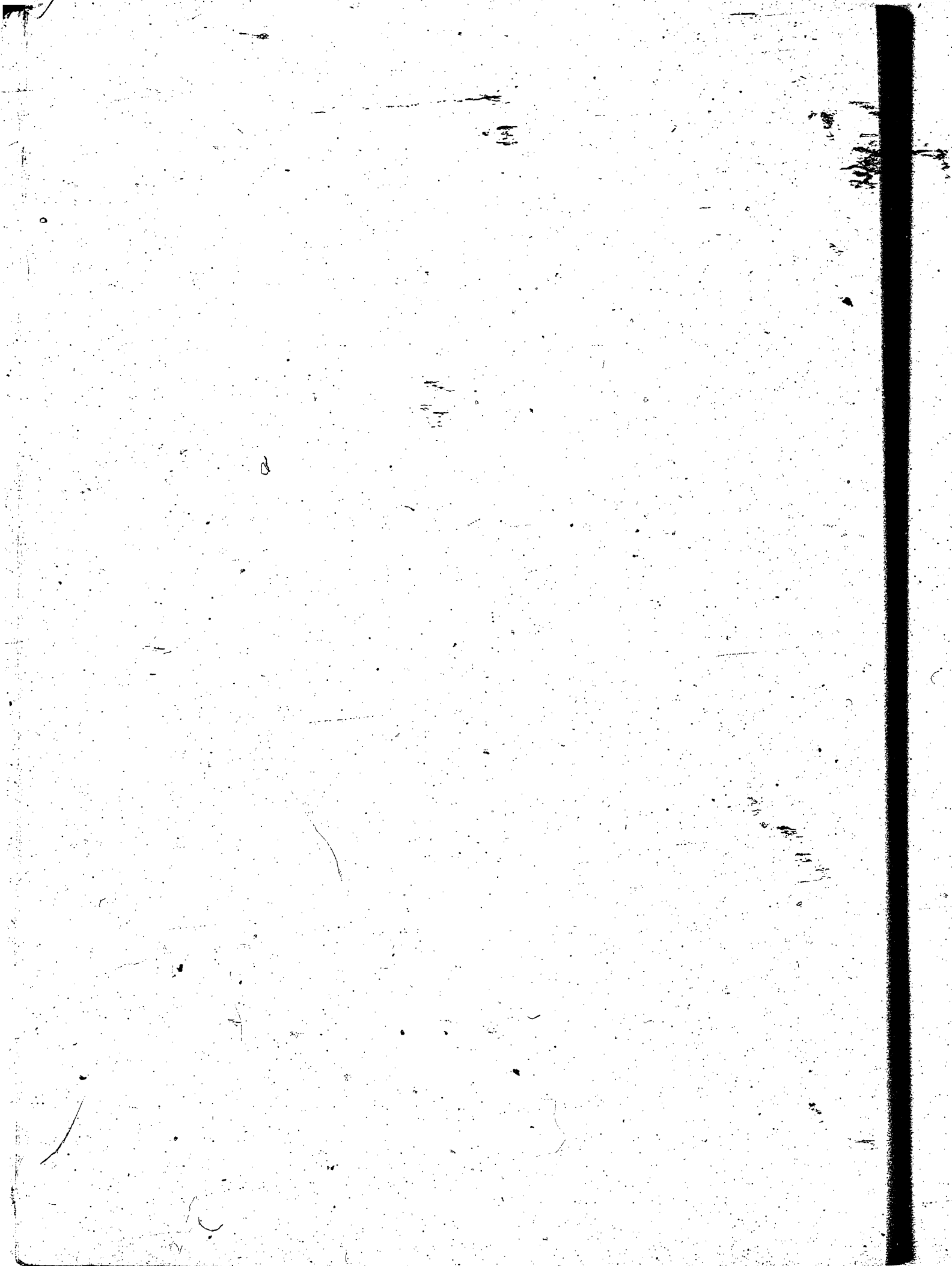
Q. They don't know? A. Yes, for after the seizing I read it to them; I knew there was to be some question about it; and I said "Here, boys, you can look at this log book and see it is correct, because they might say I doctored it"; and they read it.

BY MR. BELYEA.

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Q. Now, between the time that the man-of-war crossed your stern, two o'clock, and eight o'clock in the morning, was there much difference in the position of your schooner—between two and eight of that morning? A. Very little; the wind was very light; I might have moved a mile; that I actually know of, you see, I was heading to the eastward, you understand.

Q. You may have moved a mile? A. Yes, before the fog lifted, before I saw her; as soon as the breeze breezed up a little, the fog lifted.



Q. Had you the official warning to keep off thirty miles? A. Yes, I had that at Yokohama—no I did not have an official warning; I had a warning telling me that there was negotiations between Russia and the British Governments for a 30 mile zone, and to try to find out whether it was concluded or not; but there was no warning of the limit.

BY MR. POOLEY:

Q. Why were you trying to keep off 30 miles? A. Because the British Consul or the officers of the Embassy; I was talking to them, and they said they had advices that they thought it was a sure thing, although it was not officially given out; they received private cables, but not official; and they gave us no official warning.

Q. You had notice? A. Yes, that is sufficient for me; it was not official notice; at 10 least I did not understand it so.

The chart sent for was here produced.

Q. Is this the chart you had in use at that time? A. This is the chart.

Said chart was inspected by counsel.

The chart marked and referred to in this examination was here put in evidence, marked Exhibit "A" of this date, and initialed by the stenographer.

The examination here concluded.

EVIDENCE TAKEN AT TRIAL, FROM JUDGE'S NOTES OF SAME.

CLIVE PHILLIPS WOOLLEY, OF VICTORIA. SWORN.

Am acquainted with the Russian language.

20

Yes; I have the military certificate of having passed in Russian language (produced.) That is it. This is a certificate of having passed the military examination in Russian language in the college from the Civil Service Commissioners in Military Education Division.

May, 1889. Signed, Alexander de la Voÿe, for Director-General of Military Education.

Have you seen this document before? (Protocol produced and translation.)

I have, and translated it. That is a correct translation in English of the Protocol (Russian) on examination of the seizure of the "Minnie."

MR. BELYEA—Is this a correct translation of the Russian, "I confirm (this document?)" Yes; in every case in the translation where the sense requires it in English, I put the explanatory words in brackets, thus: "oop-versh-doo," is "I confirm," meaning this document,

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so I added the words, (this document) in brackets. "Berdjain," is the past participle (confirmed.)

Another instance: In one place I have added the words in brackets, ("in pelagic sealing.")

This is the meaning of the word in the Protocol, "do roboo" "by the way," for which I have put "in pelagic sealing."

THE JUDGE—Is there another equivalent word for it? Yes; "*po-poo-te*," "by the way," which means "*in pelagic sealing*."

That word ("oop-versh-doo,) is in the first person, and reads, "I confirm," and he then adds his title as "Captain." after which follows a contraction of some sort (2 rapa,) which 10 beats me, followed by Captain Schmelevsky.

WITNESS—I compared this copy with the *original*, and I find it right.

I have translated "*pred-pologite*," "proposed." It would be used in the sense of "directed him to walk out of the door, if I wanted to turn a man out." Small paper shewn and cross-examined upon. Unless I were told that "8L" (sic.) (Russian writing,) was 8 o'clock in the evening, I should not have known it.

MR. BELYEA—What is the Russian word for "territorial" in the original? Answer. It is almost the same word in Russian, "*territorealnea*." I can't say what all the various readings of the word, which in Russian is capable of several readings—may mean; but that is the absolute meaning. 20

Can you express in Russian "the prohibited zone," as distinguished from the ordinary three mile limit? Yes; but "*territorialnea*" is not the word to express it.

THE JUDGE—Is this word principle or principal, in ss. 9 (in Protocol?) Answer. I think "principle."

MR. POOLEY then puts the Protocol in evidence subject to Mr. Belyea's objection.

THE JUDGE—What is your objection, Mr. Belyea?

MR. BELYEA—I object to its going in, as it does not purport to be signed by the proper officer; nothing here to shew that it has been signed by the captain of the Yakout.

Mr. Woolley's evidence continued.

THE COURT—What does "Capitan 2 rapa," mean before the captain's signature? I 30 cannot interpret 2 rapa, or be sure it is not 2 *rascha*, but I think from the conformation of the letters it is "2 rapa."

Could Capitan 2 rapa, or 2 *rascha*, mean Captain of the 2nd rank, that is, Commander? Answer. I cannot say.

THE COURT—I admit the document subject to Mr. Belyea's objection.

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MR. BELYEA moved that the words ("in pelagic sealing") interpolated by Captain Woolley, be struck out of the translation.

Refused.

ALEXANDER R. MILNE. SWORN.

I am Collector of Customs, Port of Victoria. I keep a register of the shipping at this port.

(Produces copy register of the Minnie, duly certified.)

MR. BELYEA objects to its reception as not being the original.

MR. POOLEY—It is a copy under the hand of the proper officer and that is the legal way to prove it. 10

WITNESS—Yes, this is a true copy of the original register, I have already examined it all. The original register is given to the master and that is his authority on the high seas. The register does not necessarily contain every change of ownership.

Who is the owner, name, residence and description?

Victor Jacobson, of Victoria.

Yes, I know Victor Jacobson. I remember very well the schooner Minnie returning to Victoria.

Jacobson came to my office in the morning.

I had a conversation with him as to the seizure of the ship.

State to the Court what it was? 20

I had several conversations before and after the "Minnie" returned. One about Julius Mohrhouse; I asked why he employed Julius Mohrhouse he was always getting his vessel into trouble.

Jacobson said he had had bad luck.

That Julius Mohrhouse was a good navigator and he would be good for it and he would keep him outside the limits.

That on two occasions I had to examine him as to his voyages, in fact I had not much confidence in his veracity.

This was in reference to the seizure that the Government should be put in possession of the truth with respect to it. 30

MR. BELYEA—Did you send out warning of this arrangement between England and Russia, and continuation of the *Modus Vivendi*? I did, several.

Produces the notice of Wm. Smith, Deputy Minister of Marine, of 13th April, 1893 and Captain Hallett R.N's notice of the 22nd May, 1893.

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This was the document, (both produced.)

One was addressed to the "Minnie." Some were returned to me—some not.

Those to the "Minnie" were not. They were put on board H. M. S. Garnet. (They were received by the Court subject to Mr. Belyea's objection.) Also, copies were sent to each of the owners resident here. One of May 15th. One of May 13th.

Copy Collector's notice sent addressed to the "Minnie."

Copy Captain Hallett's notice similarly addressed, of 22nd May, 1893—including telegram of Wm. Smith, Deputy Minister of Marine.

The Minnie's notice was addressed to "*The Master of the Schooner Minnie; no name; no port.*" This was delivered on board the Garnet. I don't know the date of such 10 delivery. I have a record of the time in the office. It was sent on board the day before the departure of the Garnet.

HARRY FRANCIS HUGHES-HALLET. SWORN.

What were you on 24th May? Captain R. N. of H. M. S. Garnet.

I received on board letters from Collector of Customs addressed to the different masters, a great number of bags of letters, and also other letters, all addressed to the different vessels engaged in sealing.

Most of them bore the actual name, I think as far as memory serves me, on the envelope.

Q. When you proceeded north did you distribute the letters? Acting upon letters I received from a great many owners and agents concerned in sealing, I did my best to 20 deliver their letters. I called on them to give me the places of rendezvous.

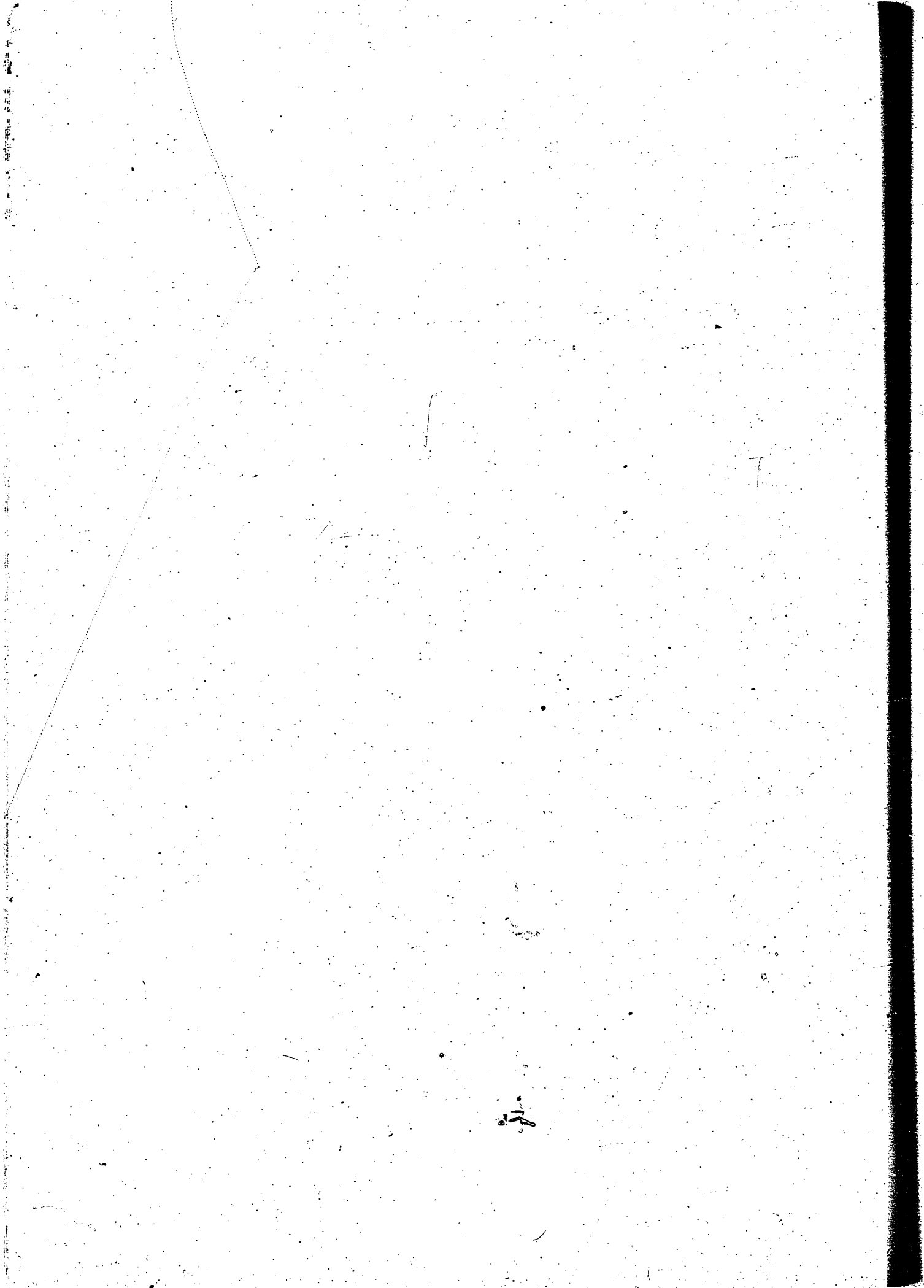
When I proceeded north I met the "Triumph," Captain Clarence Cox, master.

I met her on the 12th June at the rendezvous, twenty miles off Yajak Island. I saw Captain Cox on board in my cabin. I gave him his own schooner's bags of letters; a good, large number, and I also gave him certainly one, if not more, copies of the notices of the 13th May (before mentioned) and directed him to make it known amongst the sealing fleet. So if any got ahead of me they should know the regulations, and this in consequence of the letters I received, that I would afford every information that I had.

I retained the mails of the other schooners when I did not know where they were. I gave the letters addressed to the Master of the Annie E Paint, Captain Bissett, on the 30 morning (I think) of the 24th as he was coming out of Sand Point, bound for the Russian side.

[Small chart produced shewing position of the Minnie when seized.]

I know that chart. This shews the position of the "Minnie" this red X shews the position in which she is said to have been seized. Signed by myself as Captain of H. M. S. Garnet.



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TO THE JUDGE—It is not usual for me to sign myself "Captain Hallett H.M.S. Garnet"
(In the foreign services they do put their titles before their names very frequently.)

CROSS-EXAMINED BY MR. BELYEA.

Were any of the mails you gave to Captain Bissett returned to you? No, not to me.

When were they returned? Did not Captain Bissett bring a number of letters to the Post Office of Victoria?

I did not get them back. He did not tell me he had delivered one to the "Minnie"
The "Minnie's" was one returned to the Post Office.

Have you visited those Islands? No, I have never been there to Komandorski Island.

[Referring to his small chart.]

10

That X is the position marked on this map as the position given by the Russian documents as the place where the "Minnie" was seized.

No; I do not know the kind of weather usual thereabouts.

Yes; I know from reputation that fogs and varying winds and currents are prevalent in that region.

I don't know from personal observation, I only know from report from sealers.

Q. Would there be anything strange not being able to take observations for several days—that they should be 40 to 50 miles out of their course—going out and in with varying winds and currents? A. With a dead reckoning, and a knowledge of currents, keeping a close log, a register of the speed of the vessel all through, the speed of the vessel going 20 in and out, he would not be far out. If he neglects that, his dead reckoning would be mere guess work.

If he was 8 miles within the belt, might that not readily be? We have no *official directions* to guide us as to those waters. Currents are very much affected by the winds. I get my information by conversations with the sealers.

I looked for *official directions*, but found none.

Q. Then it must be the same for sealers? A. There is nothing open to sealers, except their experience.

Q. Then it would require 2 or 3 year's experience to learn it? A. A sealing schooner would not require 2 or 3 year's experience for knowledge of the currents. Oh, no; I should think not. He'd get his position by sights, at some points or other and work his dead reckoning out. It would give him his currents in a short time.

MR. POOLEY puts in documents seized by Yakoute, from the "Minnie," as under :

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Agreement with Crew.
 Certain payments of Tonnage Dues at Sand Point, U. S. A.
 Receipt for Entries and Fees at Sand Point, U. S. A.
 Ship's Register.
 Clearance for a Foreign Port from Sand Point.
 Coasting License, Dominion of Canada.
 Bill of Health, Sand Point.
 Proclamation as to Behring's Sea, by President U. S. A.
 Communication from Washington Navy Department.
 Outward Manifest, foreign.
 Receipt for Sick Mariner's Fund.
 Victoria Harbour Dues.
 Certificate of Documents seized by Paymaster of Yakout.

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THE COURT—It is not necessary, Mr. Pooley, to put in evidence, as you now offer, The British Sealing North Pacific Act, 1893, and the Order in Council thereunder, of July 4th, 1893. The Court takes cognizance of them already, and sits now under these enactments.

The Court adjourned to Monday next, the 22nd, at 10 a.m.

MONDAY, 22nd JANUARY, 1894.

MR. BELYEA now moves that the action be dismissed on the following grounds:

1st.—That the statement in writing (Exhibit A) does not purport to be signed by an 20 officer having power in pursuance of "The Seal Fishery (North Pacific) Act, 1893," to stop and examine a ship.

2nd.—No evidence that Schmelevsky was captain or other officer in command of the "Yakout."

3rd.—No evidence that the "Yakout" was a war vessel of His Imperial Majesty the Emperor of Russia.

MR. POOLEY was not called on to reply.

THE COURT—There is evidence to support the Plaintiff's claim, and the motion is refused.

JULIUS MOHRHOUSE. SWORN.

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Occupation, sealer.

At sea last year. On the Schooner Minnie.

Took charge at Sand Point, 22nd June, 1893.

Captain Victor Jacobson, the owner had been master previous to that.

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Q. On taking command of the vessel, had she any seal skins on board? A. She had transferred all to the "Borealis." I sailed from Sand Point in her to Copper Island.

Q. Anything happen on the way over? A. Nothing particular happened.

Q. When were you off Agattu Island? Is it in your log? How was it kept? A. I kept the log of the vessel myself. I entered merely the position of the vessel and the state of the weather. The entries in my own handwriting, made every day at noon. This is the ship's or mate's log; I call it the log. Tuesday, 11th, arrived off Agattu Island.

Q. Did you make observations then? A. No; only my bearing from the land. It was foggy, but I could see it.

Q. How far was the land from you? A. About two (2) miles. I took my position 10 from the south-east point of Agattu Island; that was clear enough.

Q. When did you get your next observations by the sun.

I did not get my position until after the seizure. It was mostly foggy and cloudy. The winds were variable, generally west to south-west, varying.

Q. Were they strong winds, or light winds? Q. Light winds. Sometimes the wind was east—not steady.

Q. When did you rate the chronometer? At Sand Point? A. At Agattu. I compared the chronometer at Agattu Island with the "May Belle." I am not sure whether same day or next day, but my chronometer was within 2 seconds of that of the "May Belle."

Q. How did you get the observations when you could not get observations by the 20 sun? A. By dead reckoning.

Q. Tell the Court how you got your position by dead reckoning? A. I use patent log and book of navigation. When it is reckoned up by the patent log and book of navigation, I conclude the position.

Q. Did you have a record of your sailing each day? A. Yes.

Q. What about your course sailed by day? A. We used, or I used compass, book of navigation, patent log, and figured on the slate. I kept the different courses every day on the slate.

Q. Did you recollect your position by reckoning on each day? A. I may.

Q. What was it? A. Tuesday, 11th. Lat. $52^{\circ}, 18'$; Long. $173^{\circ}, 23'$, off Agattu 30 Island. The subsequent day, the 12th, we were at Latitude $52^{\circ}, 54'$, N.; Longitude $173^{\circ}, 05'$, E. Thursday, 13th—Spoke the "May Belle," Latitude $52^{\circ}, 08'$; Longitude $161^{\circ}, 51'$. 14th—Lat. $52^{\circ}, 55'$; Long. $169^{\circ}, 28'$; strong breeze increasing towards noon; dead south of Copper Island. Latitude $53^{\circ}, 26'$; Long. $168^{\circ}, 75'$. Sunday, 16th—Lat. $53^{\circ}, 30'$; Long. $168^{\circ}, 33'$. Monday—Lat. $53^{\circ}, 40'$; Long. $168^{\circ}, 45'$. Evening at 9 p.m. Tuesday—Lat. $53^{\circ}, 49'$; Long. $168^{\circ}, 41'$.

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Q. Tuesday at noon? A. I did not mark it at 12 a.m. that day. It, the Minnie, was in the same position I think as the day before. It did not make any headway.

I marked the position each day with a dot on the chart (chart produced in three parts.) That's the chart in use in the ship; most are marked; some are rubbed out. Some were marked going home. I rubbed some arriving.

I used on the 11th of July the chart in 3 parts; that chart is done by me. The dots were made by me to show our position at the time.

The seizure was on Monday, the 17th, at 9 p.m. She was detained till 1 o'clock a.m. on Tuesday, and then set free.

This chart (indicating) is the only one used by me. The small dots with the ring 10 round them were my daily position taken at noon. Every day at noon, dead reckoning, after leaving Agattu.

I did not make the straight lines connecting the dots until I came to Victoria, on my return.

By dead reckoning at noon on Monday, 17th, day of seizure, I was about 50 miles off the Islands, I should judge.

I had noticed no sign of land to believe I was close to land. I did not see any land that afternoon, nor any vessel.

I did at time I was seized or after it. She was the schooner Viva, Captain Anderson. The other the schooner Libby; I don't know his name. 20

Q. How had the weather been all the day the "Minnie" was seized? A. In the morning variable light wind, at noon a dead calm. After that the fog would lift a little, and enable us to see around somewhat. The Minnie headed mostly east, south-east, to east, north-east on that day.

Q. What is that mark on your map around the Island? A. Oh! a line around Komandorski Island, put two days after leaving Sand Point. Intended to represent a 30 mile limit.

Q. Why did you put that? A. It was to guide me so as not to get inside of the limits.

Q. Did you receive any notice, British or Russian, or any from any official source, of 30 this agreement. A. I had heard some talk of 30 mile limit, 10 mile limit, and 3 mile limit, so I put it at 30 miles round, so as to keep out of it.

Q. Were there these lines round the island? A. They were put on by the owner, Captain Jacobson; they were imperfect some part, some part of it 10, some part 30, some 20 miles off the Island.

Q. Did Captain Jacobson give you instructions? A. When I went from Sand Point he told me to keep without the limits, 30 miles, and drew rough lines round. Therefore, I made it perfect, that is the line now on the map round the island.

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Q. Now tell us as to the actual seizure? A. The Russian ship sighted us a little before 9. The men reported a steamer in sight. I ordered the men to see if the side lights were bright, they were all right. She steamed up and quickly. Then I hauled down the jib; she took no notice, so I hoisted it again. Then he sailed round us the second time, then on the second time he hailed, and asked, "What flag do you fly?" I told him "the British." I hove to.

He hailed, and ordered me to send a boat on board. Hauled jib down; lowered a boat and sent two men on board. The boat did not return.

Ten minutes after, another officer came on board; I know it was an officer as he had 10 or 12 men, and I asked him to come down in the cabin. 10

He asked to see ship papers; I got and handed him all my papers. Then he asked if I knew I was inside the limits? I told him I did not know exactly what limit there was.

He asked me if I had an official warning on board? I told him no, I had not received any.

He told me then, that I was 22 miles from south-east point of Copper Island. I told him then it was 45 or 50 miles by my reckoning, off the island.

He then took the papers. I took this chart (D) and went on board the man-of-war with the papers.

The officer came down from the bridge, and told me to go inside the chart-room to the Navigating Lieutenant, and he would shew me the position of the vessel. He shewed me 20 22 miles off from Copper Island.

I asked him to give me position on a piece of paper.

He gave me a position on a small slip. He gave me a strip of paper, he shewing me the position of his ship at 8 o'clock at a point 22 miles south of Copper Island. Lat 54° 21' N.; Long. 168° 38' E.

Q. Are you sure of this, that he wrote that on the slip? Witness (in German)— "Kein Zweifel-ganz sicher das es so wart." I have no doubt, I am quite sure that it was so.

When he came at 9 o'clock, the man-of-war was exactly in the position and had had one hour more steaming than he at first mentioned to me. He told me he left the shore 30 at 6 p.m.

He then went away and left me in the chart-room. I was sitting there till one a.m. He advised me to go to Yokohama, and report myself to the British Consul there.

Q. Do you remember the exact words? A. He asked me if I was going to sign the Protocol? I said no; I would enter a protest against the seizure afterwards, because I thought I was outside the limits. I had no official warning. "You had better go to Yokohama and report yourself to the Consul there." He said he would send the papers to the British Consul at Yokohama.

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Q. What was then in the log? A. While on board the schooner, the weather was a dead calm, and heavy southerly swell from 3 o'clock in the afternoon, when I went on board.

Q. How was the weather from one to daylight next morning? A. The same till 7 o'clock. I sent a man to masthead to see land. He reported he could not see any land in sight.

There was one schooner 3 or 4 miles to east. I spoke to her. She hoisted her flag up and lowered the jib and let him come to; the wind a little fresher; clear then.

She reached me about 9 o'clock in the morning.

Q. Which way did you sail? A. I had sail up all the previous day, except when overhauled by the man-of-war, heading south, south-east except when heading on to 10 the heavy swell. There was not wind enough to steer by.

We caught one seal about half-way between Sand Point and Copper Island.

I put the boats over on the day of the seizure, for the purpose of cleaning deck. They had not been cleaned for 22 days. I had six white men and twenty Indians, and the Indians make much dirt. There were no seals in sight.

Q. What kind of weather subsequently? A. Mostly south-west and southern gales. We had carried away the jib-boom stay before that, and had the flying jib-boom broke on the 23rd July, 1893, and only temporarily repaired.

Q. Had you any guns in the canoes? A. I had no guns in the canoes.

We had a heavy gale from south-west, and were getting short of water and meat and 20 provisions; fell short of provisions, and could not get to Yokohama. Besides the Indians found it out that we were going to Yokohama on the morning after the seizure.

How was that? A. When the captain of the Viva came on board the Indians heard the talk between us.

Q. How many seasons have you been over Copper Island. A. Three seasons.

On a clear day you can see Copper Island 30 miles off from deck—about 40 from mast-head. Been 31 years at sea. Yes; there is a difference in the water when land is near; when near, a change takes place from dark blue to a greenish colour and muddy.

There was no change in the colour of the water when we were arrested. The colour depends on the depth of the bottom of the sea.

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Q. Can you tell us about the currents? A. It is very hard to get the currents—to tell the strength of the current. Depends on the wind and the sea. They were generally in a north-east direction. I did not rate the currents at all.

Q. How was your chronometer? A. The chronometer was about right. I made the land directly here on my return to Victoria.

Q. What about water? A. I watered up on Agattu Island.

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Q. Did you compare your chronometer then? A. It was thick rain and fog and no sun, then so I could not.

Official log produced.

Q. Do you know this book? A. This is the official log of the ship. (Identifies it.) The entries in it were made at the respective times and days at which the entries purport to have been made. Each entry has to be attested each day by one of the crew.

Q. How, in entering anything in this log? A. One of the crew must be a witness to it, generally the mate, although after Captain Jacobson left, I was acting mate and master.

Q. How did you make the last entry? Was it Russian or your own? A. I think 10 I put it in by my own reckoning.

I was detained from 9 p.m. to 1 a.m. on the Yakout.

Q. As to currents, please inform me, did you make any allowance for the current? A. Sometimes a quarter of a point, sometimes half a point; if before the wind, no allowance.

Q. How were your lights? A. The lights were burning bright at the time of the arrest. I sent one of the men to look after the side lights to see if they were right. They were all right.

TO THE JUDGE—Q. How did you know what o'clock it was? A. By my clock; my clock corresponded with the man-of-war's time.

Looking at the chart D of the waters in the immediate vicinity of the islands, shew- 20 ing the position of the "Minnie" from the 14th to the time of seizure.

Q. How many miles was the ship then by your calculation?

[Measures on the map.]

A. On the 14th I was 107 miles from the south-east point of Copper Island; about S. S. E. by $\frac{1}{2}$ E.

Here put in map G, same as I.

JAMES W. ANDERSON'S EVIDENCE BEFORE THE REGISTRAR.

The examination of Captain James Willowby Anderson, before the Registrar, was here put in.

JUSTIN GILBERT. SWORN.

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I am the official stenographer.

This is correct transcript of the evidence in this case of the "Minnie," and that is my signature to Captain Anderson's evidence.

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MOHRHOUSE. EVIDENCE CONTINUED.

I is map put in, shewing the sea and coast from Agattu Island, northward, in the Anderson evidence, marked by the stenographer (A.)

Q. What do you consider were your positions and distances off land on the 15th, 16th and 17th? A. On the 15th—Lat. 53°, 26' N.; Long. 168°, 35' E. I was 67 miles S. by $\frac{1}{4}$ E. from Copper Island. On the 16th—Lat. 53°, 30' N.; Long. 168°, 33' E. I was 64 miles off Copper Island; 2 minutes difference in Longitude. On 17th, your position at noon? S. E. $\frac{1}{4}$ E., 52 miles off Copper Island.

Q. What did you make the distance to be between the point where you say you were seized, and the south point of the Island? A. 48 miles; our direction was the same as at 10 noon.

From noon to 9 p.m., the wind? The wind light air till 3 p.m. from S. After that a dead calm. Heavy southerly swell on to the island; no breakers, only a big swell.

CROSS-EXAMINED BY MR. POOLEY.

Q. When did you make the entries in your log? A. At noon every day; I made them myself.

Q. Is your log kept by Victoria time or Russian time? A. I don't keep Russian time.

Q. What day did you pass the 180° of Longitude (to make the change of one day)? A. Thursday, 6th and 7th July; I changed the day and took a day on; after that kept 20 the same time as the Russian time. All those marks on the chart of which I have spoken were made on the days on which they occurred.

You were told you were seized on the 17th July, and described your position on the plan D.

[Points it out on the chart.]

Q. At 9 on the evening of the 17th, where were you? [Points out on map.]

The entries in the log book I swear are all correct to the best of my ability.

Q. Look at your log book and tell the day on which the seizure is entered? A. It is entered from noon 18th of July.

Q. So that here in this log book you say you were seized at 9 o'clock on the 18th? 30
A. That is the sea day. To day at noon I put down the 18th, at noon of the 18th, I put down 19th.

Q. There is a day wrong in your log, I want you to explain it? A. That's the sea day.

Q. Why is it entered on the 18th, thus: "Thursday, 18th—Light, variable winds. "heavy swell. At 9 p.m, boarded by the Yakout, and our vessel confiscated for, etc., in

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"the Russian way. No observation for six days, I was told the vessel was in Lat. 54°, 21' N.; Long. 168°, 38' E., being 32 miles out of my reckoning. Vessels heading E. S. E. in company with the "Viva," and another vessel three (3) miles off. The captain of the schooner advised me to apply to the nearest authority, being the British Consul at Yokohama.

Q. What explanation do you give of entering it so here? When at 12 on the 17th begins the 18th—at 12 o'clock noon, that begins the 19th.

AGAIN READING.

Q. "Light, variable winds and calm, and southerly swell," was that on the 17th?
A. Half on the 17th and half on the 18th. 10

Q. "On the 19th, bore down on schooner Viva?" A. No; on the 18th I spoke the Viva.

Q. Well, is that entry here right? or wrong? A. It was the 18th, in the morning, we spoke the Viva. I might have forgotten it that day and put it down the next.

MR. POOLEY—Then you did not put it down on the day?

WITNESS—That entry of meeting the "Viva" was wrote in after the Russian Lieutenant, Rawlowsfer, came on board.

Q. Were these places on your chart on the 18th, from 12 o'clock on a separate day? July 18th. 9 p.m. There's your mark—how do you explain it? A. I can explain it no better. The afternoon of the 17th is the afternoon of the 18th. I don't know if other 20 captains keep their logs differently; I so learnt at school. I expect Captain Anderson kept it so.

Q. If Captain Anderson said he saw you at 8 a.m. on the 18th, would that be wrong?
A. That would not be wrong. On 17th, at 9 p.m. on the chart. From 17th to 18th at noon, 24 hours, must be one afternoon and one forenoon; 9 p.m. on the 18th, will be on the 17th.

Q. Can you add the afternoon of a subsequent day to the previous day? A. In this way: From 22nd noon to 23rd at noon, would be entered as one day.

Yes; I saw the schooner "Viva," at 7 a.m. About 9 a.m. the Captain of the "Viva" called on board—clear then. 30

At 8 a.m. sent a man at the masthead to see if he could see land. Yes; it was clear enough to see 60 miles off. I thought fog must be coming down again, and sent him to see if he could see anything. He did not. The fog did come down after.

The "Minnie" flat-bottomed, not a good sailer. I had all sail set except the jib, when he came on-board, I hoisted the jib. Dead calm at 7 o'clock in the morning.

There must have been a current—a southerly swell on.

Q. Any wind at 8 o'clock? A. Yes; a light air. 8 to 9 it freshened; not very fresh all that day.

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The wind shifted from N.W. to S.W. The captain came on board from the "Viva." Fog came on.

Q. From 9 to 12, what wind? A. Lighter. From noon to 3 p.m. on the day I was seized, a light air. From 9 till 7 till the evening a dead calm—sails flapping—and my schooner is not a particularly good sailer.

Q. What distance had you got then? How many miles had you sailed in that time? A. It was a dead calm, and only a slight breeze between 12 and 3, and from 8 to 12 the day after. From 12 to 3 on the day of seizure, she went 5 or 6 miles, drifted 8 miles. I don't think we made any way at all.

Q. Between 18th and 19th? A. After leaving the "Viva," till 12 a.m. next day. 10

Q. How many miles? A. Nothing at all.

Q. Would you be surprised to hear you had made 50 miles? A. This was after the seizure. We had a fresh wind, took in jib and another sail.

Q. It is quite possible when seized by the Russian vessel Yakout, you were where they said? A. I don't think so.

IN ANSWER TO THE JUDGE—Yes; if the Yakout left at 6 p.m., in 3 hours she would have known pretty well where she was at that time.

The officer on the slip of paper said we were seized at 8 o'clock.

If he steamed direct another hour, he would at that rate, have been out of the limits of 30 miles. 20

MR. POOLEY—Q. Did you not in your previous voyages form an opinion of the rate of the current? A. It is hard to form an opinion of a current, it goes according to the rate of the wind.

Sometimes, if by the wind from the south, I would allow quarter of a point for it. If otherwise, I would make quarter of a point to make up leeway.

Q. Is not an allowance by dead reckoning of no value as to a current? A. If you do not allow for the current you can't make dead reckoning at all. If you know the current exactly, you can make an exact allowance. If in an ocean, can't make any. I have been as close to Copper Island as 45 miles before. The current is according to the weather.

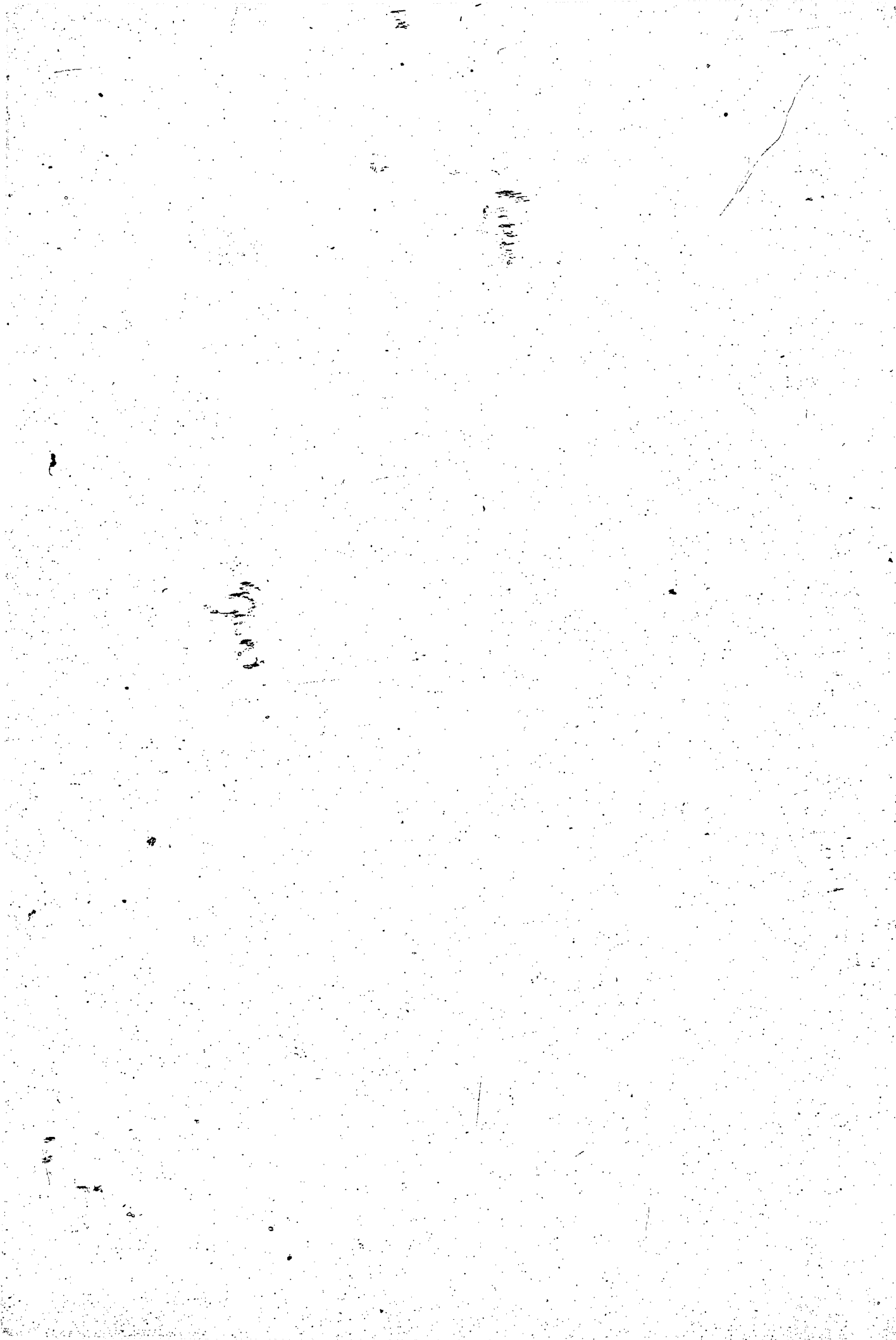
The current does not set out of Behring's Sea. 30

The whole dead reckoning is guess work—comes to that.

Before leaving Sand Point the owner told me not to go within 30 mile limit. That's why I was trying to avoid it.

Q. Why did you say you had no notice then? A. It would only be heresay.

Q. Why did you say some vessels said 30 miles, some 3 miles? A. There was nothing official.



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MR. POOLEY—No matter how you got it, you did get it, and from your owner.

Q. Two years ago you were on the Russian side? A. I was on this side of Behring's Sea. I was in the "Mountain Chief," Indian schooner, I tried to get to Alaska, but was seized by Americans.

Q. Why did you go there? A. I went there to seek for medical aid—I was ill—we were trying to get it at the Pribyloff Islands.

No; I was not caught sealing, I merely say I met the American man-of-war. I went to the Pribyloff Islands to get medical aid—I was ill. The doctor of the Daphne attended to me afterwards.

Q. Did you see the Russian officer write this? (little slip of paper.) A. I saw the 10 Russian officer write that at 9 o'clock in the evening.

Q. At 9 o'clock? A. Yes, sir.

Q. Why did you not call his attention to the fact that he had put 8, not 9? A. I did not look, I folded it up and put it in my pocket.

Q. In the paper he says, "we were in east Longitude." A. We had past the 180th degree.

Q. After you went on board the Russian ship, it was proposed to go to Yokohama? They said you had better go there. "You had better address yourself to the Consul at Yokohama; I am going to send the papers there."

TO THE JUDGE—The stay came down the bowsprit, carried away right in the middle. 20 Jib stay was carried away after the seizure.

I did not go to Yokohama. On the 1st August we had a heavy gale. Short of water and Indians came aft and said we had better go home.

Q. Did you have any fishing after your seizure? A. We went out a couple of times after, for food—we were short of food and caught a seal for food.

Q. Do you eat of the seals? Yes; the Indians eat them.

On 17th, I put the boats over the side, twenty (20) Indians could not get the dirt cleaned without doing so. Lowered the canoes at 9 o'clock, and by 11 all were ready on deck again; deck clean and ready to go out; calm when lowered for cleaning decks.

That's the first day the boats were lowered. I made up my mind not to go 30 sealing until I saw the sun, and made an observation.

There are two (2) men to the canoe. There were two men or women to each canoe. They were not far off from the vessel.

Q. Had they any guns? A. They had no guns with them, the guns were on board.

By civil time, I was seized on evening of the 17th, and the sea time (nautical time) it was on the 18th until noon of the day following.

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Then it became the 19th. I spoke the Viva on the morning of the 18th (civil time.)

Q. What is also morning of the 18th, nautical time? A. As I kept it.

Q. Your 19th began at noon of the 18th, civil time?

Yet you spoke the "Viva" in your log on the 19th, it should have been the 18th. The captain of the "Viva" was with you at 9 o'clock *a.m.* on the 18th, that by civil time as well as nautical time. If entry made of "Viva" before 12 o'clock, it would then have been entered on the 18th, if your log is correct. It came later in the day, and therefore was entered on the 19th.

[Marks in pencil.]

It was three (3) hours before the close of the 18th that I spoke the "Viva" as to the 10 seizure.

The Yakout sailed around me once. The second time partly round, at the half round came up and hailed me. She was under full speed. She went, I judge, 11 or 12 miles an hour; she was coming from the westward.

She came from the west; the weather thick and foggy; I could not see where she came from.

BY THE COURT—Q. In official log attested by the mate, you say the captain "ordered me to go to Yokohama?" A. It was put so by me, but he said, "You'd better go there, and report to the British Consul."

Q. How short a time after the seizure was it that you wrote the account of the seizure 20 down in your official log? A. I think it was the day after the seizure. It was written in my room quietly.

VICTOR JACOBSON. SWORN.

Am owner of "Minnie."

Left Victoria in the schooner, 1st of March. Back in Victoria and left again about the end of March.

Q. Up to the time you left Victoria did you receive any notice of the 30 mile zone? A. No; not any written orders. From Victoria to Pachina I picked up the crew along Nitinat, between there and Cape Beale.

I called in at Hesquot and Kayuquot—several vessels there. Arrived at Sand Point 30 on 17th June. Left Sand Point 22nd, and came home in the Borealis on the 23rd.

At Sand Point received no information, but a letter from my wife; my mail, on board the Garnet. I did not get my mail, but anxious, as I had \$6000 from the British Government, which I ought to have been attending to.

Left ship's papers to Captain Mohrhouse and put him in charge. No seal skins on board.

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Q. At Sand Point did you hear anything about agreement between England and Russia? A. Some captains said 30 miles from the south point of the islands, out to the Pacific side, and some said 30 miles *round* the islands.

My instructions were to keep 45 miles out off the island, so that a canoe should not be able to reach the limits on the finest day.

That's on the chart I made the mark on (Exhibit E.)

I got notice of the continuation of the *modus vivendi* with the U. S. A. on the 16th.

CROSS-EXAMINED BY MR. POOLEY.

At Sand Point on 17th June, saw Clarence Cox. Stopped on board. I slept one night—one day there. 10

Q. Did Clarence Cox speak to you of the 30 mile limit? A. I was in his cabin; I did not see the Proclamation on his table, or Captain Hallett's notice, and Captain Clarence Cox did not shew that notice to me.

Captain Clarence Cox told me of that limit.

TO THE COURT—Well, I do believe Captain Cox shewed me the notice. I always went to him for advice when there was anything like that.

I gave Captain Mohrhouse instructions not to go within 45 miles of the Island, so as the Indians could not go within the 30 mile limit.

Yes; we had been warned every year from hearing the statements of different schooners that it was more safe outside that limit than if within it. 20

I heard rumours that the 30 mile limit was arranged.

CHARLES FRANCIS DILLON. SWORN.

Am master of a sealing vessel.

Four (4) years mate, first in 88. Yes; I have kept a log—both civil time and nautical time.

Nautical time begins at p.m. afternoon one day, and ends at the forenoon of the following day.

I have heard the statement of Captain Mohrhouse how he kept his log. It was by nautical time; nautical time is old fashioned. If he has made the entry in the afternoon of the 17th, civil time, the p.m. would be the 18th, nautical time. 30

Q. If entry made by p.m. nautical time on 18th, what hour would it be in civil time? And he said that would be 9 p.m. on the 17th.

The civil time begins about 12 and ends at 12.

At 9 p.m. this day 18th, nautical time, that would be the 17th. (Reads.)

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Can't tell the date this man used. If the entry is 9 p.m. this day, entered on the 18th, if civil time, would be the 17th.

The nautical date is 12 hours ahead of the civil time. The same as in astronomical time it begins and ends at noon.

The morning of civil and nautical time is the same.

Q. If you were going to keep that log by nautical time, and you were keeping that log by nautical time, when would you enter it there?

(Cites) navigation book, published San Francisco, "Capt. McNorrey's Nautical Navigator." That entry is right, according to that log.

But that is wrong.

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To MR. POOLEY—The Russian date and our date are different calculations.

Before noon for observation I should give astronomical time by Greenwich; begins at 12 runs whole day, ends 12 next day.

We have to get Greenwich date in all cases for our observations.

Nautical time should be done away with. The official log (Exhibit F) is in that time.

Now tenders in evidence the ship's log (Exhibit J.)

COURT TO MR. POOLEY—Q. Have you the temporary certificate? A. This has not yet come, it is on the way.

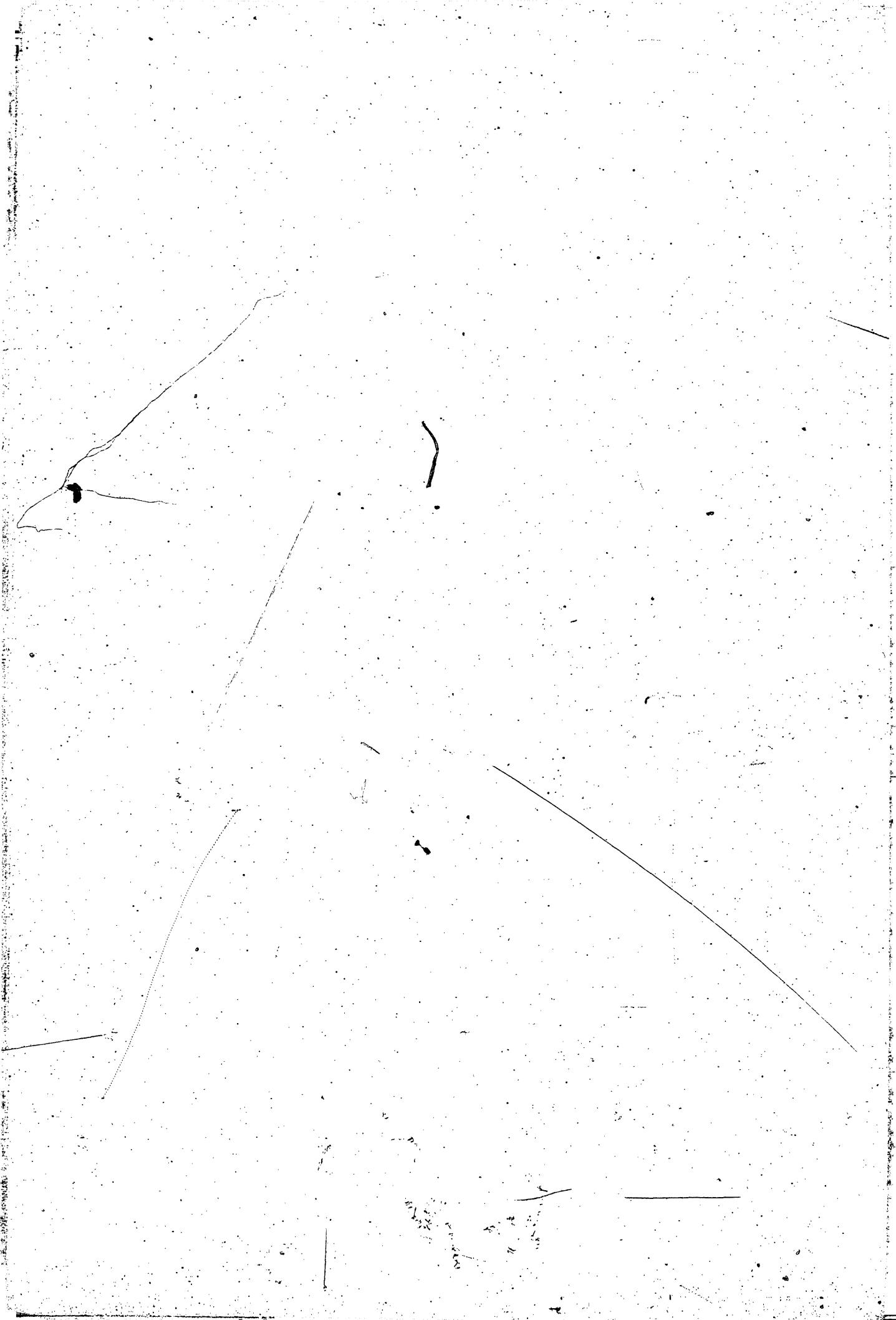
Defence closed.

Adjourned to 10 a.m. to-morrow.

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TUESDAY, 23rd JANUARY, 1894.

Counsel argued the case, after which it was taken under advisement by the Court.



JUDGMENT DATED FEBRUARY 7TH, 1894.

This was an action for condemnation under the Imperial British "Seal Fishery (North Pacific) Act, 1893," and the Order in Council thereunder, of July 4th, 1893, of the schooner "Minnie" (Victor Jacobson, owner, and Julius Mohrhouse, master) seized by the Imperial Russian Transport "Yacout" within the forbidden 30-mile zone around Kormandorski Islands, manned and armed, and having shooting implements and seal skins on board, and otherwise fully equipped for hunting, or attempting to hunt or take seals within the prohibited waters aforesaid, in contravention of the above mentioned enactments

The seizure took place in Lat. 54, 21° N., and Longitude 169, 38° E., about 22 miles from the southern extremity of Copper Island. 10

The Statement of Claim sets forth the above facts, and charges that Victor Jacobson and Julius Mohrhouse had due notice not to enter the prohibited waters of the North Pacific nor to proceed within a zone of thirty miles round the Kormandorski Islands; that Copper Island is one of the Kormandorski Islands, and that at the time of the seizure, the "Minnie" was fully manned and equipped for the purpose of hunting, killing and taking seals, and had on board thereof shooting implements and seal skins; that after the seizure and examination of the said ship and her papers by the official commission of the said "Yacout" it was decided to seize the said papers, and the said Julius Mohrhouse was directed to proceed with the "Minnie" to appear before Her Majesty's Consul at Yokohama, and a provisional certificate was given to the said Julius Mohrhouse; but that he did not proceed to the port of Yokohama, and report to H. B. M.'s Consul there, but sailed for the port of Victoria, where he arrived on the 24th August, 1893. 20

Whereon Captain Hughes-Hallett, R. N., Captain of H. M. S. Garnet, claimed her condemnation and that of her equipment and everything on board for such contravention, as laid, of the said Seal Fishery Act and Order-in-Council.

In the Statement of Defence, the defendant denies that the ship was seized in Lat. 54, 21° N., and Long. 169, 38° E., as claimed or at any other point within the prohibited zone; that neither he, nor the Captain, Mohrhouse, had any notice whatever not to enter the prohibited waters on the North Pacific Ocean, nor to proceed within the prohibited 30-mile zone; also while admitting (par. 8) that the "Minnie" at the time of the seizure was fully manned and equipped for the purposes mentioned in the Statement of Claim, that she had but one seal skin on board when seized. He also denied that the master of the "Minnie" was directed to proceed with her to Yokohama by the Captain of the "Yacout," but that officer merely "proposed" to him that he should leave the "said waters and proceed to Yokohama." In the alternative, defendant alleges, that if it be proved that the "Minnie" was within the 30 mile zone when seized, (which he denies), the schooner was not used or employed or intended to be used or employed therein in killing, hunting or attempting to kill, hunt or take seals therein, in contravention of the said Seal Fishery Act, Act, 1893, or otherwise, but that the position of the ship, when seized, was due wholly to stress of weather. 40

Upon which issue was joined, and the trial took place before me on the 20th and 22nd of January, 1894.

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The Hon. Mr. Pooley, Q.C., for the Crown then brought forward the evidence for the Plaintiff. The translation into English of the Russian protocol sent by the Captain of the "Yakout," under the Act for the purposes of the trial, was proved by Mr. Clive Phillips Woolley, a gentleman certified to have passed in the Russian language, by the Director-General of Military Education, in the College from the Civil Service Commissioners, in the Military Education Division.

He proved the substantial accuracy of the translation, and in reply to questions from Defendants' Counsel, Mr. Belyea, as to the correctness of the signature of Captain Shemeloosky, the officer in command of the "Yakout," that the words of confirmation of the protocol were "Oot-versh-doo," in the first person, "I confirm" (meaning this document) and he then adds his title as captain, following a contraction, "2 rapa," before Shemeloosky, which the interpreter conceived might mean, Captain of the second rank or Commander, but he was not certain.

On being asked what Russian word was used, which had been translated "proposed" in the Russian-English memo, of the seizure, endorsed by the Russian Officer in the "Minnie's" official log—he stated that it was "prei-pologite"—and was used in the same sense there as one would employ it in "turning a man out—directing him to walk out of the door," which I take it is equivalent to "ordering," which was the sense in which Captain Mohrhause acted upon it and showed he so understood it at the time. Also, that the Russian word used in expressing sailing for the purpose of sealing en route—which the interpreter had explained by—"is engaged in pelagic sealing" is "doroboo" "by the way." If the phrase had been left as "sealing on or by the way," it would, to my mind, have exactly expressed the sense intended, but I have left the interpolation there—that the translation of the protocol might go in entire, but be read with the interpreter's subsequent explanation, which I have just given.

Mr. Belyea objected on behalf of the ship to the admission of the protocol as evidence on the ground: That it does not purport to be signed by the proper officer; that there is nothing in it to show it has been signed by the Captain of the "Yakout,"—nothing in the document itself to show who the Captain of the "Yakout" is; and therefore the signature of the Captain is no proper evidence that it is signed by the Captain of that particular vessel, the "Yakout." True, (he argued) the inference may be that it is, but the fact is not proved; and the Act being highly penal, must be construed strictly. The learned Counsel moved for a non-suit on these grounds, citing 15 Cox. R. v. Lowe, as it was a penal statute, it should be construed strictly, and 17 I. C. L. R. 206, where "the copy of the Dublin Gazette purporting to be printed by the Queen's Printers," being admissible in evidence, "a copy of the Dublin Gazette printed at the Gazette office, and published by authority," was declared inadmissible. I noted and over-ruled the objection, and refused to order a non-suit on the following grounds: The power of seizing, etc., is under sub-sec. 5 of sec. 1, of the British "Seal Fishery (North Pacific Act, 1893," and sec. 2 of the Order-in-Council of 1893, which says: "The captain or any officer in command of any war-ship, may board, search and seize, etc.," and a "statement purporting to be signed by such officer," as to the circumstances, etc., "shall be admissible," etc.

The Russian officers carrying out the Act must be considered in the same light as British officers carrying out the same duty. It is not only a point of law, but a matter of

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international obligation, to treat them so, and then the principle, "Omnia presumuntur rite acta," applies, and throws the onus of disproving on the other side, and as that, so far, has not been done, the presumption in its favor not being as yet displaced—the Court admitted the protocol in evidence, and the trial proceeded.

The copy of the register of the ship was proved by Mr. Alexander R. Milne, the Collector of Customs, at Victoria. (The original was subsequently produced in Court.) Mr. Milne, who has been both judicious and active in carrying out his portion of the duty in sealing cases, and has been zealously aided by Captain Hughes-Hallett, R.N., in enclosing and transmitting through H.M.S. Garnet, letters containing warning of the present arrangement between England and Russia, and the continuation of the *modus vivendi* for distribu- 10 tion, warning the masters and owners of all sealers against proceeding within the prohibited waters of the North Pacific and the 30-mile Kormandorsky zone—addressing letters by that conveyance to the different masters, and including in each letter a copy of the notices of William Smith, Deputy Minister of Marine, of 13th of April, 1893, and Captain Hughes Hallett's R. N. notice of the 22nd May, 1893, among them, one such letter containing these notices, addressed to the master of the "Minnie," no name, no port. This, however, Captain Mohrhouse did not get as it was returned unopened to the post office. He however, got full notice in another way.

The chief dependence of the master of the "Minnie" in the defence, which was admirably conducted in every respect by his counsel, Mr. Belyea—was on his ship's log, 20 hereinafter called "the log," to distinguish it from the official log, which contained no entry beyond his appointment at Sand Point, on the 27th June, 1893, as master in the place of Victor Jacobsen, the owner, who had been previously acting as Master, and the Russian-English inemo. of the ships papers detained, and of the seizure by the Russians.

A little examination into the mode of making up this log; shows that very little dependence can be placed upon it.

Usually and properly the log is kept by the first mate, and dictated, checked, or countersigned, as the case may be, by the captain, or *vice versa*, and when there is no mate, then by some able seaman on board; but here, according to Captain Mohrhouse's evidence, whether by design or accident, the log was kept by him, as master and mate alone. His 30 evidence also is that he kept the log according to *nautical time*, in his handwriting alone and unchecked. He says, "I kept the log of the vessel myself and entered merely the position of the vessel and the state of the weather."

The time he has to account for is from the 11th July to the seizure off Copper Island on the 17th, six days, (during which the protocol says the captain had admitted, he had taken no observation.) According to this log, on Monday, the 10th of July, 1893, the "Minnie" was by observation in Lat. 51, 33, N.; Long. 175, 25, E. On Tuesday, 11th July sighted Aggattu Island, S. E. point bearing N. N. E., distant 2 miles, Lat. 52, 18, N.; Long. 173, 23, E.

That gave them their position accurately on 11th July, 1893, as a point of departure. 40

On the 12th of July, (by dead reckoning,) Lat. 51, 54, N.; Long. 173, 5, E.

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On the 13th, when he spoke the "May Belle" and compared chronometers with her, and found they tallied, the "Minnie" was in Lat. 52, 08; Long. 171, 51.

On the 14th, (by dead reckoning) in Lat. 52, 55, N.; Long. 169, 28.

On the 15th, she was in Lat. 53, 26, N.; according to this log, and Long. 168, 75, E.

Sunday, 16th—In Lat. 53, 30, N.; Long. 168, 33, E.

Monday, 17th—In Lat. 53, 40, N.; Long. 168, 45. (The seizure was on the evening of the 17th, at 9 o'clock.)

The position of the "Minnie" was not marked in the log by the captain on Tuesday at noon, but she was supposed by him to be in the same position as the day before, as he thought she had not made any headway.

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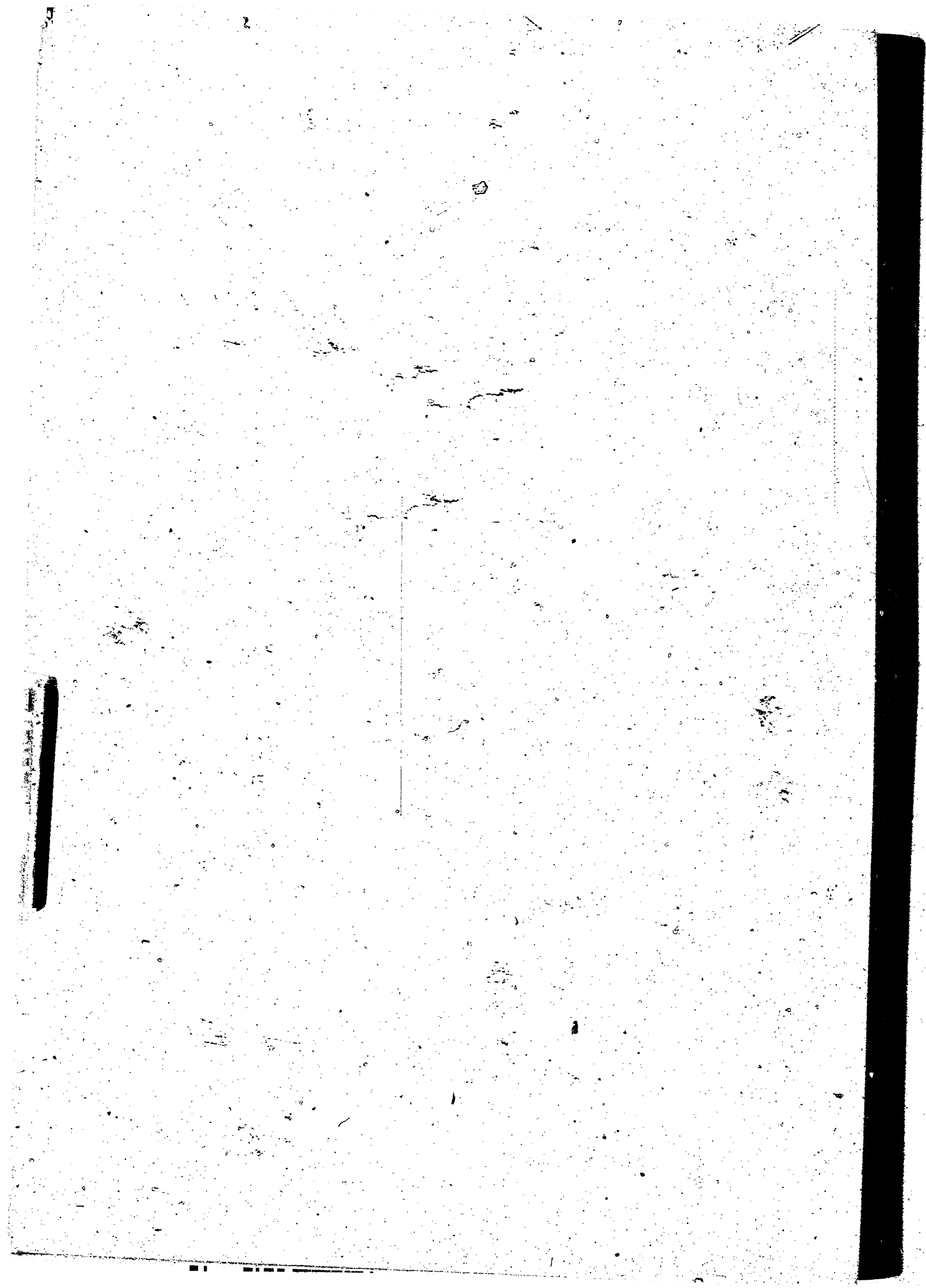
In the evening of Tuesday, at 9 p.m., he put her position at 53, 49 N., and Long. 168, 41 E.

On reference to the chart in use on the ship, which consisted of three parts, Captain Mohr says: "I marked the position each day with a dot; most are marked, some are rubbed out," (and some marks rubbed out, I would add, present the appearance of being entirely new, and being in a different place from some of the dots rubbed out, destroys its authority as a guide to positions marked on the chart at the time.) The seizure was at 9 p.m. (he says) on Monday, the 17th. He was detained until one o'clock a.m. on Tuesday, and then set free.

The weather during all that time that I have been speaking of, viz.: from the 11th of 20 July to the seizure, had been cloudy, overcast and foggy, with occasional strong winds, from S. and W., so that no observation could be taken, and no land had been seen since sighting Agattu Island and taking her departure thence. Little, indeed, no allowance was recorded in the calculation in this log, whatever deduction he may have made in sailing, for the current known to the captain by two years previous experience, which there, in strong S. W. winds goes very strongly to the Nor-East with proportionate drifting in that direction—an element in fixing the "Minnie's" position which deserved a special notice. Moreover, Captain Mohrhouse, who claims that he used *nautical (or sea) time*, in compiling his log, diverges all through the log occasionally into *civil time*. Now the difference between the two kinds of time is so great that short notice of it, becomes unavoidable. The nautical or 30 sea day, begins at noon, or twelve hours before the civil day. It is divided into two parts of twelve hours each, the former being marked p.m. and the latter a.m.

This mode of reckoning arises from the custom of seamen dating their log for the preceding twenty-four hours, the same as the civil day; so that occurrences, which happen, for instance, on Monday, 21st, afternoon, are entered in the log, marked Tuesday, the 22nd—in short the noon of the astronomical day and the end of the nautical day, take place at the same moment.

As some of Captain Mohrhouse's observations in his log, were made in harbour, (as in the port at Sand Point), it is necessary also to mention that in harbour work (i.e., remarks



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logged in harbour) the day is estimated according to the civil reckoning, as on shore; that is, from midnight to midnight, but at sea the day's work being made up at noon, is dated the same as the civil day, so that the day's work marked Monday, began on Sunday at noon, and ended on Monday at noon; hence the day by the ship's reckoning, which is called the nautical day, begins twelve hours before the civil day, the first twelve being p.m. and the other twelve hours a.m., or before noon. And this difference in calculating time, has introduced an additional element of uncertainty into his log, and consequently in even the approximate accuracy of his conclusions and position.

For instance, as a sample of this: On leaving Victoria at noon on the last day of February, the entry is made as on the first day of March. 10

The boarding of the *Corwin* at noon on the 16th of June, is recorded on the 16th.

Sailing from Yakoutat, a port on the way up North, on the 28th May, although at one p.m., is entered on the 28th.

The arrival at Sand Point on the 17th of June, at 5 p.m., is entered on the log on the 17th.

The meeting with the "*Viva*" on the morning of the 18th July, at eight o'clock, is entered on the log on the 19th, which according to the evidence, is incorrect.

The inference from all these considerations, and from the evidence, I find, is irresistible that no reliance is to be placed on Captain Mohrhouse's account that when seized, he was without the 30-mile zone. 20

Nor does Captain Anderson's clear and manly account of the mode in which he found himself in his schooner the "*Viva*" a few miles within the zone, and the speed with which he got out of it, and their sighting each other, and subsequent meeting, in the least strengthen Captain Mohrhouse's contention that he was outside when seized. And the inference is reasonable (though not certain, as he lowered his jib,) that when he (Captain Anderson) saw the Russian steamer, they also saw him, and if they did, considered him outside the zone, and so not seizable.

The protocol distinctly states the "*Minnie*" was 22 miles within the zone, in the latitude and longitude I have set out. The "*Yakout*" was only three hours out of port and being worked by steam, was independent of wind and tide, and its officers presumably, 30 intimately acquainted with the current there, and the inference is that they could not be mistaken in their position; and the hasty memo. of 8 o'clock given by the Russian captain to Mohrhouse, on a tiny slip of paper, was I think, clearly a mistake for 9 o'clock, and I therefore find that beyond a doubt, the "*Minnie*" was taken at that particular spot, 22 miles south of Copper Island, within the zone.

And what was she doing there? Captain Jacobson, the owner, whose evidence was delivered in an eminently untruthful manner, which I think must have surprised the learned counsel, who so steadily and earnestly advanced every possible argument for the defence—as it certainly did the Court—knew perfectly well of the 30-mile zone, and even though very roughly, pencilled out a zone of his own on the ship's chart, though not a 30-mile zone, 40



as a 30-mile zone. Moreover, he had been on board the "Triumph" the well known master of which, Captain Clarence Cox had been furnished by Captain Hughes-Hallétt with one or more copies of Mr. William Smith's and his own public warning to sealers for distribution, and had engaged to communicate the warning to all the sealers he encountered, and presumably must have done so to him, and it is a matter of common knowledge and has been before the court, that in several known cases, and on several occasions, during 1893 he had honourably discharged this obligation, it is in the highest degree unlikely that he would have omitted either Captain Jacobson or Captain Mohrhouse, when either came aboard his ship, from this friendly service.

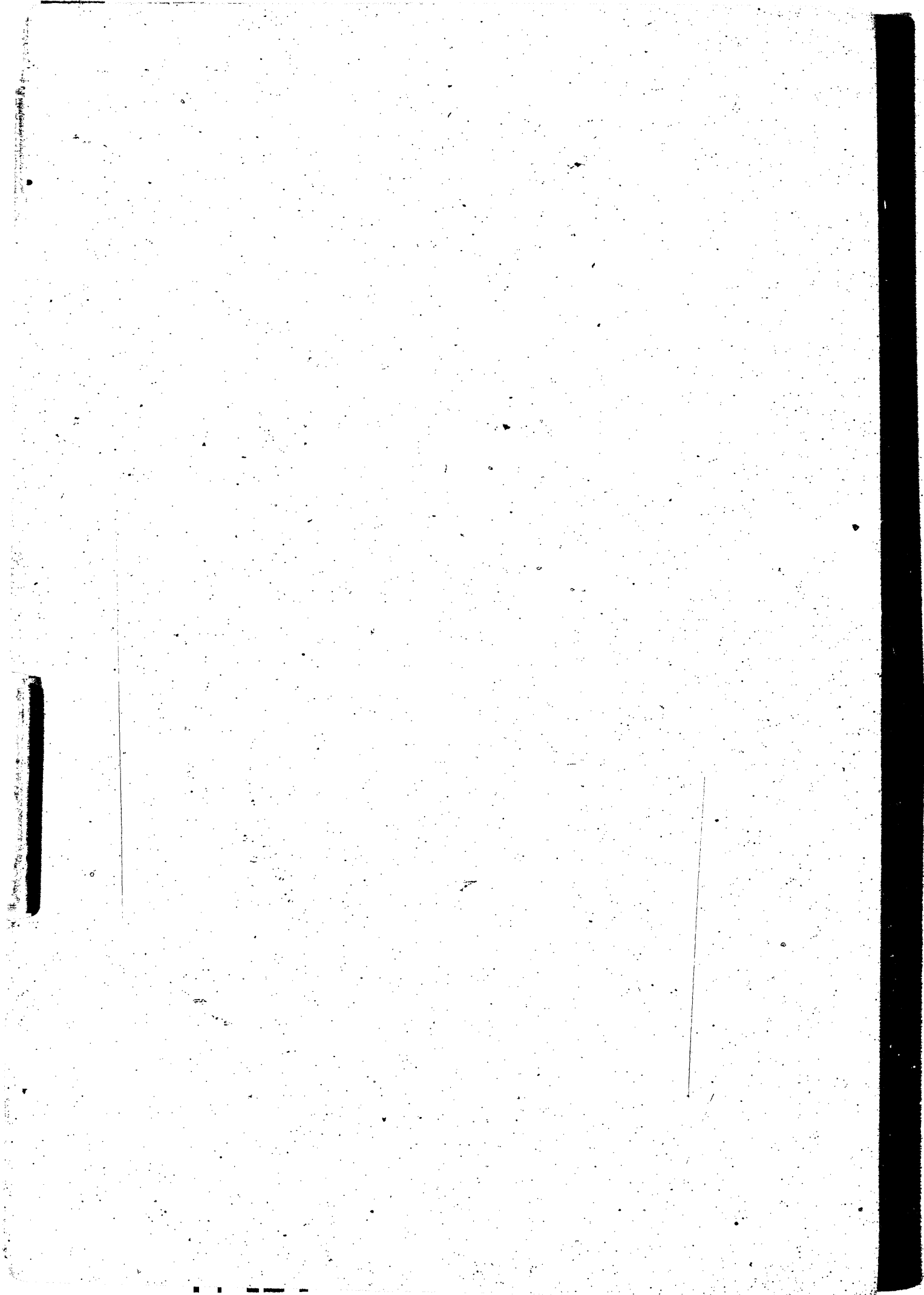
Moreover, Captain Mohrhouse, in his evidence, confesses to knowing the danger of 10 sealing near the 30-mile zone until he could get an observation, a practical admission which speaks for itself.

Yet on the very day of seizure, he puts down all his boats, each with two expert persons in it, for Indian women are as good, if not better canoeists than the men, under the pretence of washing decks, which to his shame, he it said, he avowed as a reason, had been dirty for some three weeks; and we have only his word for it, that they did not take guns with them, and not a single witness of the 23 or 24 who were there, was brought forward to corroborate him. It is sworn, that Mohrhouse was picked out by the owner to redeem his previous ill-luck in sealing. Capt. Jacobson, well knowing that he (Capt. Mohrhouse) had already brought other sealers into trouble in a similar manner. 20.

It is well known, and is so stated in the negotiations which preceded the passage of the Act, that recent events in Behring Sea had sent a cloud of fleet and daring schooners, some of them making even 11 and 12 knots an hour, admirably manned and commanded, hovering like hawks, and covered with a cloud of canvas, all around the 30-mile zone about the Kormandorski Islands. And it was necessary to guard against any of them, to whom the risk itself would be an attraction, slipping inside the 30 miles of feeding ground, set aside for the seals which might chance to frequent the Kormandorski Islands, running the risk of capture, in order to secure a rich but forbidden harvest of seal skins.

The Statement of Claim alleges, that in this instance, the "Minnie," at the time and place of seizure, was fully manned and equipped, for the purpose of hunting, killing and 30 taking seals, and it has been proved that after due notice, she was so found manned and equipped for that purpose, within the 30-mile zone.

And sec. 6 of the Seal Fishery Act of 1893, above cited enacts that, "if during the period," (that is between the 4th July, 1893, and 31st Dec., 1893—here it was the 17th July, 1893) "and within the sea specified by the Order-in-Council," viz.: the 30-mile zone, "a British ship is found, having on board thereof, fishing or shooting implements or seal skins, or bodies of seal, it shall lie on the master or owner of such ship to show that the ship was not used or employed in contravention of this Act." And that has certainly not been shown to me as a jury by the evidence adduced by the defence. If Captain Mohrhouse had been sincere in his desire to keep outside of the forbidden waters, his vessel's 40 head would have been put the other way, away from and not towards the island, until he had ascertained his position by observation. If such flimsy excuses as his, supported by



such equivocal testimony, were to be allowed to prevail, sealers would only have, in that foggy climate, especially so on the S. W. side of Copper Island, to allege stress of weather, to make the Act, framed to repel their intrusion within the zone, a dead letter, and thus render nugatory an honourable understanding between England and a friendly nation, whose officers as far as we have seen, in carrying out the provisions of this particular Act (and I am guided solely in my consideration and decision by this Act) have treated British subjects with every courtesy and consideration.

As a jury, I find that the presumption which the portion of the Act I have cited, raises of the liability of the Defendant, has not been displaced.

The lesson which this law teaches has yet to be learned, and the present is a case, 10 wherein from the total absence of *bona-fides* in the Defendant from first to last, it has become the duty of the Court to enforce the provisions of the law.

I do not take into consideration in forming the present judgment, the question of what may be considered the disobedience of what I consider, the order or direction of the Captain of the "Yakout," that the master of the "Minnie" should report himself to H. B. M. Consul at Yokohama, where there is good and competent Court to deal with the case, as no penalty therefor is sought to be enforced.

I pronounce therefore, in favor of the Crown, and decree the condemnation of the ship "Minnie" and her equipment and everything on board of her, and the proceeds thereof, on the ground that the said ship, was at the time of the seizure thereof, within the prohibited 20 waters of Behring Sea or North Pacific Ocean; that is to say within a zone of 30 marine miles around the Kormandorsky Islands, as defined by Order-in-Council, dated the 4th day of July, 1893, made by Her Majesty the Queen, in pursuance of "The Seal Fishery (North Pacific) Act, 1893," fully manned and equipped for killing, taking and hunting seals, and had on board shooting implements and one seal skin, and that the said ship was used and employed in taking, killing or hunting, or attempting to kill or take seals within the prohibited waters aforesaid. The proportion in which the proceeds are to be distributed, I reserve for further consideration. No costs on either side.

HENRY P. PELLEW CREASE,

D. L. J. A. 30

Judgment delivered February 7th, 1894.

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PROTOCOL OF THE EXAMINATION OF THE SCHOONER "MINNIE."

On this 5/17 day of July, in the year 1893, in latitude 54° 21' N., and longitude 168° 38' E., at a distance of twenty-two miles from the southern extremity of Copper Island, a schooner under sail was seen at 9 o'clock in the evening, by His Imperial Majesty's Transport, Yakout, cruising off the Commander Islands.

On nearing her, she was ordered by the transport to bring to, which was promptly done. A whale boat at once put off from the schooner to the transport with the mate, who explained that the schooner was English (that she was) from Victoria (that) her name was "Minnie." For six days she had taken no observations.

The Midshipman, Michaelof Raslovlef, was sent for the examination of the aforesaid schooner, who on his return to the Transport with the schooner's skipper, Julius Mohrhouse, brought with him the log book and ship's papers, and reported (that) they had on the schooner 12 whale boats, 23 shotguns and one rifle, and in the hold only a few seal skins and salt.

After an inspection of the aforesaid log book and papers, the ship's commission, appointed by order of the commander of the Transport, on the 5th of July, in accordance with N. 42 consisting of the President Lieutenant Ginter, and of the members Lieutenant Dedenef and Midshipman Michaelof Roslavlef, found that the schooner "Minnie" (sailing) under the flag of Great Britain, belonging to Victor Jacobson, (and) and under the command of Julius Mohrhouse, from Victoria, is sailing for the purpose of sealing by the way 20 (i. e. is engaged in pelagic sealing) and called before her arrest by the Transport, at San Juan, Yakoutat and Sand Point, from which last port she sent the seal skins she had procured to Victoria.

The crew on the schooner consisted of 25 men. In accordance with the finding of the whole of the aforesaid commission in compliance with the principle ss 9 of the instruction to a war cruiser in the year 1893, for the protection of the Russian maritime industries in the Behring Sea, it was decided that after having seized the ship's documents, a temporary certificate be given to skipper Julius Mohrhouse, with an inscription upon it of the number and description of the documents seized, and that he be ordered to leave the territorial waters at once and go to Yokohama and there present himself to H. B. M's Consul and 30 inform him that the documents of the schooner Minnie would be forwarded to the authorities of Great Britain.

Members, (MIDSHIPMAN MICHAELOF RASLOVLEF.
) LIEUTENANT DEDENEF.

PRESIDENT LIEUTENANT GINTER.

I confirm this document.

CAPTAIN (2 Rapa) SCHMELEVSKY.



EXTRACTS FROM SHIP'S LOG, SCHOONER, "MINNIE," SEALING VOYAGE,
NORTH PACIFIC OCEAN.

Tuesday, 11—Moderate S. W. gale and thick weather. 12m. sighted Agattu Island S. E. point, bearing N. N. E. dist. 2 miles; heavy puffs of wind over the land sometimes. Ltl. $52^{\circ}, 18'$; Long. $173^{\circ}, 23'$.

Wed'y, 12—Wind moderating towards midnight, latter light southerly breeze and foggy. No observ. Ltl. $51^{\circ}, 54'$; Long. $173^{\circ}, 5'$.

Thur'y, 13—First part thick and light S. W. breeze, middle part wind S. E. with rain, thunder and lighting, latter light southerly breeze and fog. At 7 p.m. spoke schr. May Belle, one of the Fapany fleet, with 1,800 skins. No observation. Ltl. D. R. $32^{\circ}, 8'$; Long. $171^{\circ}, 50'$. Pumps and lights properly attended to throughout.

Friday, 14—Fresh southerly breeze and thick foggy weather throughout, wind increasing towards noon, furled flying jib and double reefed mainsail. No observ. Ltl. D. R. $52^{\circ}, 55'$; Long. $169^{\circ}, 28'$.

Saturday, 15—Wind decreasing, set all sails, latter light S. E. breeze with an ugly cross sea. a. m. sighted a schooner standing towards the islands, thick fog throughout this 24 hours. No observ. Ltl. D. R. $53^{\circ}, 26'$; Long. $168^{\circ}, 35'$.

Sunday, 16—First part light S. E. breeze and fog, latter light easterly airs and calm with drizzly rain. No observ. Ltl. D. R. $53^{\circ}, 30'$; Long. $168^{\circ}, 33'$.

Monday, 17—Light southerly breeze and fog, latter calm and clear at times. 9 a.m. 20 lowered the canoes. No observ. Ltl. D. R. $53^{\circ}, 40'$; Long. $168^{\circ}, 45'$.

Tuesday, 18—Light variable airs and calm, with a heavy southerly swell and fog throughout this day. At 9 p.m. we were boarded by an officer from the Russian cruiser, Yacoute, and our papers confiscated for sealing in Russian waters, the vessel being at the time in Lat. $53^{\circ}, 49'$; Long. $168^{\circ}, 41'$, by D. R. having had no observation since leaving the Island of Agattu, 6 days and 9 hours. I was told that the vessel was in Lat. $54^{\circ}, 21'$; Long. $168^{\circ}, 38'$, been therefore 32 miles out of reckoning; the vessel at the time was heading E. N. E. (comp.) with all sail set. In company with schr. Viva about 3 m. off and another schooner. The captain of the cruiser advised me to apply to the nearest British authority been the British Consul at Yokohama.

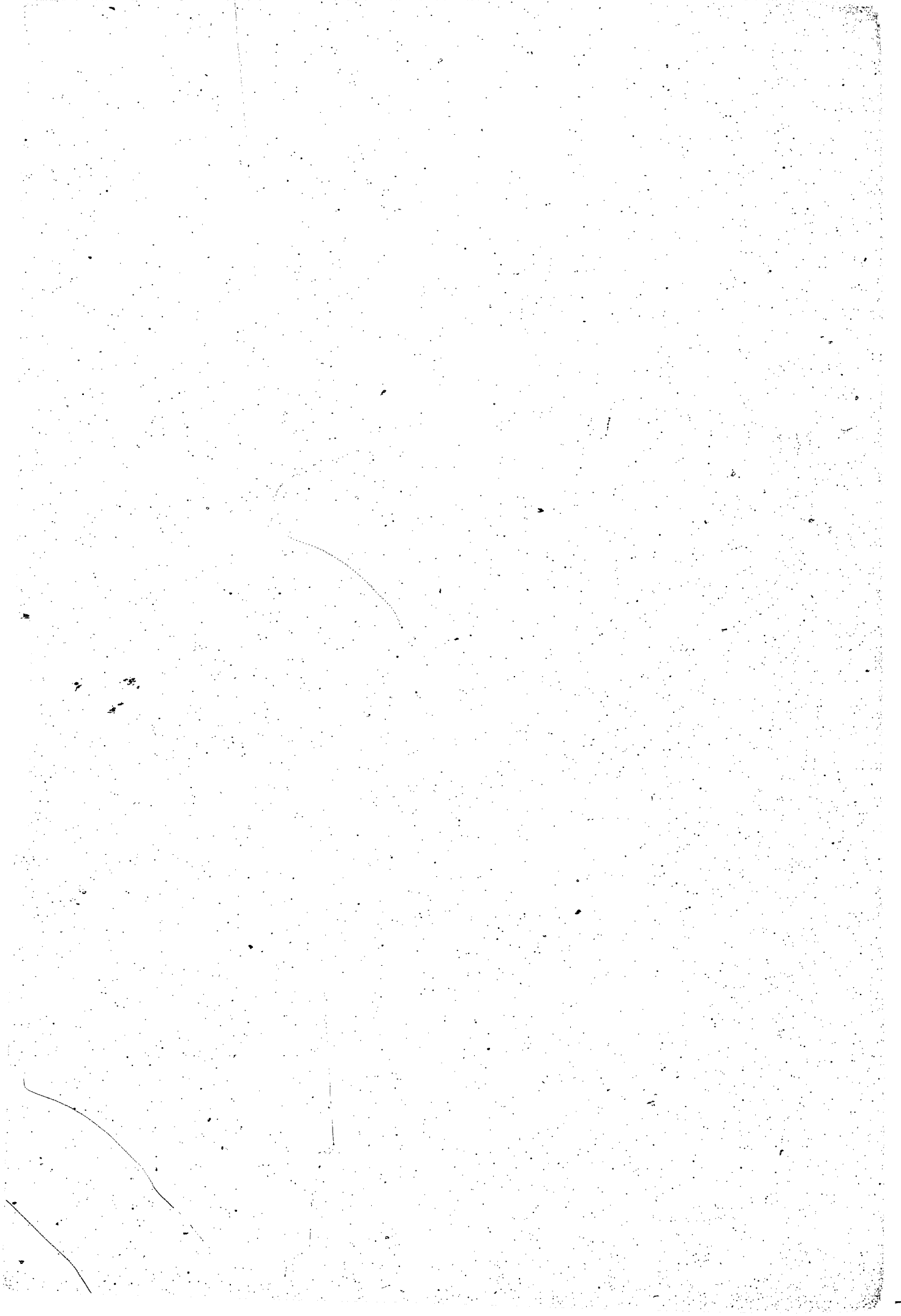
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EXTRACTS FROM OFFICIAL LOG.

Entries required by Act of Parliament:

June 22, 1893, at Sand Point, Alaska, Victor Jacobson, master and owner of this vessel left for Victoria, and I. Julius Mohrhouse was put by him in charge as master to continue the voyage, and the following documents were handed to me by Captain Victor Jacobson:

1. Official Log Book.
2. Certificate of British Registry.



3. Agreement and Account of Crew.
4. Coasting Licence.
5. Bill of Health.
6. Clearance of Vessel.
7. Outward Foreign Manifest.
8. Proclamation of the President of the U. S. relating to the Modus Vivendi.
9. Custom House Receipts.

(Signed) JULIUS MOHRHOUSE.

(Signed) GEORGE MOBERLY.

July 17, 9h p.m., civil time, we were boarded by an officer of the Russian cruiser, 10 Jacoute, and our papers confiscated, the vessel been in Russian waters, the vessel was at the time in Latitude 53°, 49' North; Longitude 168°, 41' East. By account having no observation for the past 6 days, the vessel was ordered to proceed to Yokohama.

August 1st, 1 p.m., blowing a heavy gale from the S. W. and west and having had nothing but south and S. W. winds, the vessel not making any progress towards her destination, and having a broken jibboom and broken jibstay on which no sail could be carried in strong winds; the vessel's bottom foul, and getting short of water, fuel and sundry provisions, I decided to keep the vessel before the wind, and go to Victoria, B. C.

(Signed) JULIUS MOHRHOUSE.

(Signed) C. G. BERGSTEDT.

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ORDER FOR JUDGMENT.

WEDNESDAY, THE 7th DAY OF FEBRUARY, 1894.

The Judge having heard Mr. C. E. Pooley, Q. C., of Counsel for the Crown, and Mr. A. L. Belyea, of Counsel for the ship "Minnie" and the owners thereof, and upon reading the pleadings herein, and upon hearing the evidence of C. P. Wolley, A. R. Milne, Capt. H. H. Hallett, Julius Mohrhouse, Victor Jacobson and Charles F. Dillon, and upon reading the evidence of J. W. Anderson, taken before the Registrar of the Court, under and by virtue of an order of this Court made in this action, and the exhibits marked A, B, C, D, E, F, G, H, I and J, produced at the trial, viz.: "A," The Russian Protocol; "B," The Certified Copy of the Certificate of Registration of the "Minnie"; "C," Ship's Documents seized by the 30 Captain of the "Yakout"; "D," Chart; "E," Memo. of position at 8 o'clock of "Yakout"; "F," Official Log; "G," Chart; "H," Evidence of Captain Anderson; "I," Chart; and "J," Ship's Log; pronounced that the said ship "Minnie," had been at the time of her seizure guilty of a contravention of the "Seal Fishery (North Pacific) Act, 1893," and he condemned the said ship "Minnie," her equipment and everything on board of her, and the proceeds thereof as forfeited to Her Majesty; And further pronounced, that no costs of this action be paid by either party to the other.

HENRY P. PELLEW CREASE,
D. L. J. A.



ORDER EXTENDING TIME TO APPEAL

MONDAY, THE 5th DAY OF MARCH, 1894.

Upon hearing Mr. Belyea, of Counsel for the Defendant, and Mr. Luxton, of Counsel for the Plaintiff, not opposing, and upon hearing read the affidavit of Alexander Stewart Potts, sworn herein, on the 3rd day of March, and filed.

I do order that the said Defendant do have fifteen days further time within which to appeal from the judgment pronounced herein, on the 7th day of February, 1894.

MATT. B. BEGBIE,
Local Judge in Admiralty.

NOTICE OF APPEAL

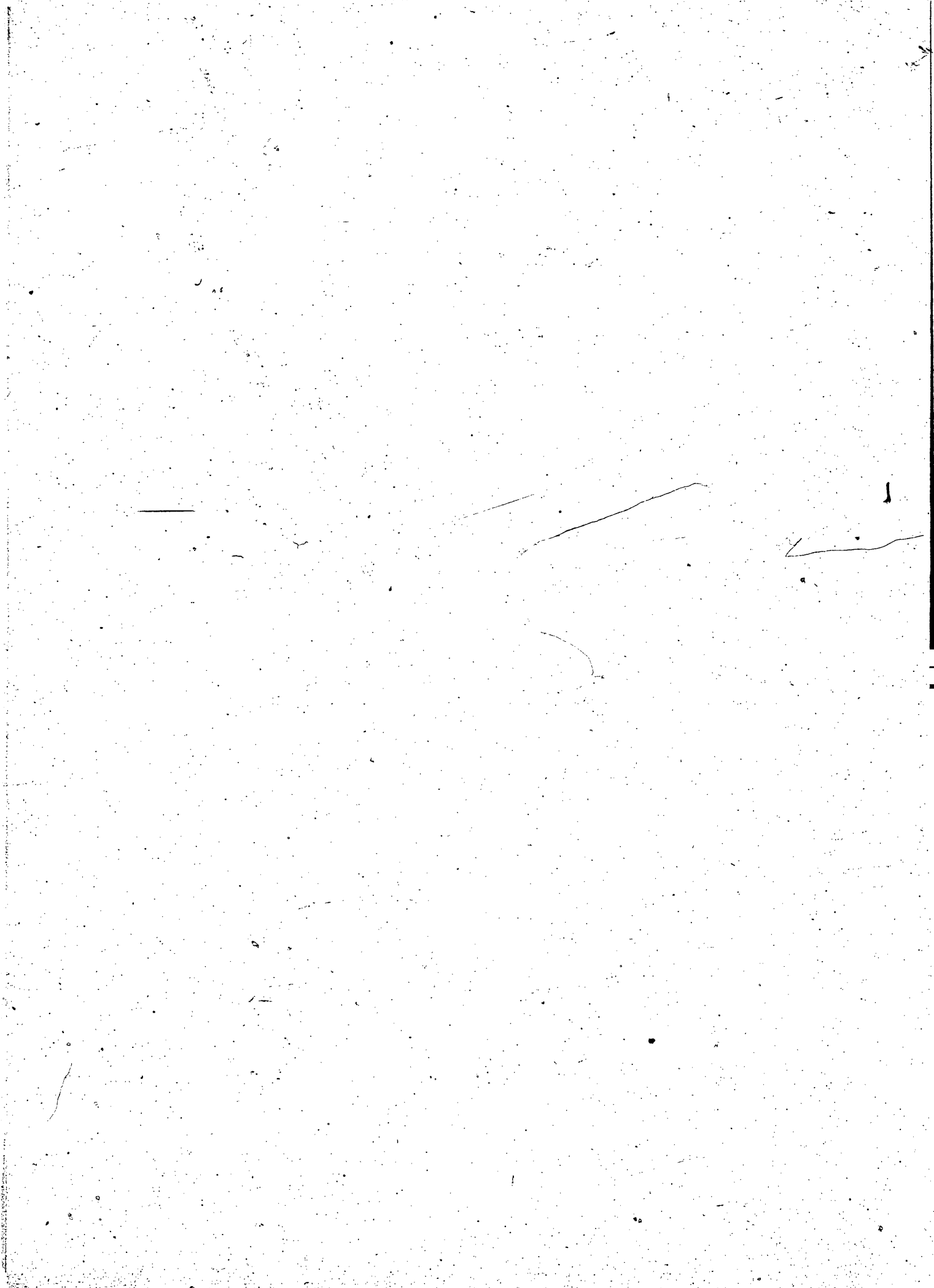
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TAKE NOTICE that the above named Defendant is dissatisfied with the judgment herein, delivered on the 7th day of February, 1894, by His Lordship Mr. Justice Crease, and that an appeal will be had to the Supreme Court of Canada, at its next sittings, to be held on Tuesday, the 1st day of May, 1894.

Dated this 24th day of February, A. D. 1894.

A. L. BELYEA,
Solicitor for the Defendant.

To C. E. POOLEY, Esq., Q.C.,
Solicitor for the Plaintiff.



IN THE SUPREME COURT OF CANADA.

BETWEEN

THE SHIP "MINNIE," HER EQUIPMENT AND EVERYTHING
ON BOARD OF HER AND THE PROCEEDS THEREOF,

(Defendant) Appellant,

AND

OUR SOVEREIGN LADY THE QUEEN,

(Plaintiff) Respondent.

I acknowledge to having received from Messrs. McIntyre, Code & Orde, the sum of Fifty Dollars, security for the costs of this appeal from the Exchequer Court of Canada, as 10 provided by the statute and rules in that behalf.

Dated the 12th day of March, A. D. 1894.

ROBERT CASSELLS,
Registrar.

STAMPS, \$1.25.

NOTICE OF SETTING DOWN APPEAL.

TAKE NOTICE that we have this day set down this appeal to the Supreme Court of Canada, from the judgment of the Honourable Mr. Justice Crease, rendered in the British Columbia Admiralty District of the Exchequer Court of Canada, on the 7th day of February, A.D. 1894, for hearing at the next session of the said Supreme Court, to be held at 20 the City of Ottawa, on Tuesday, the 1st of May, A.D. 1894, and have given the security required by the statute in that behalf.

Dated the 12th day of March, A.D. 1894.

McINTYRE, CODE & ORDE,

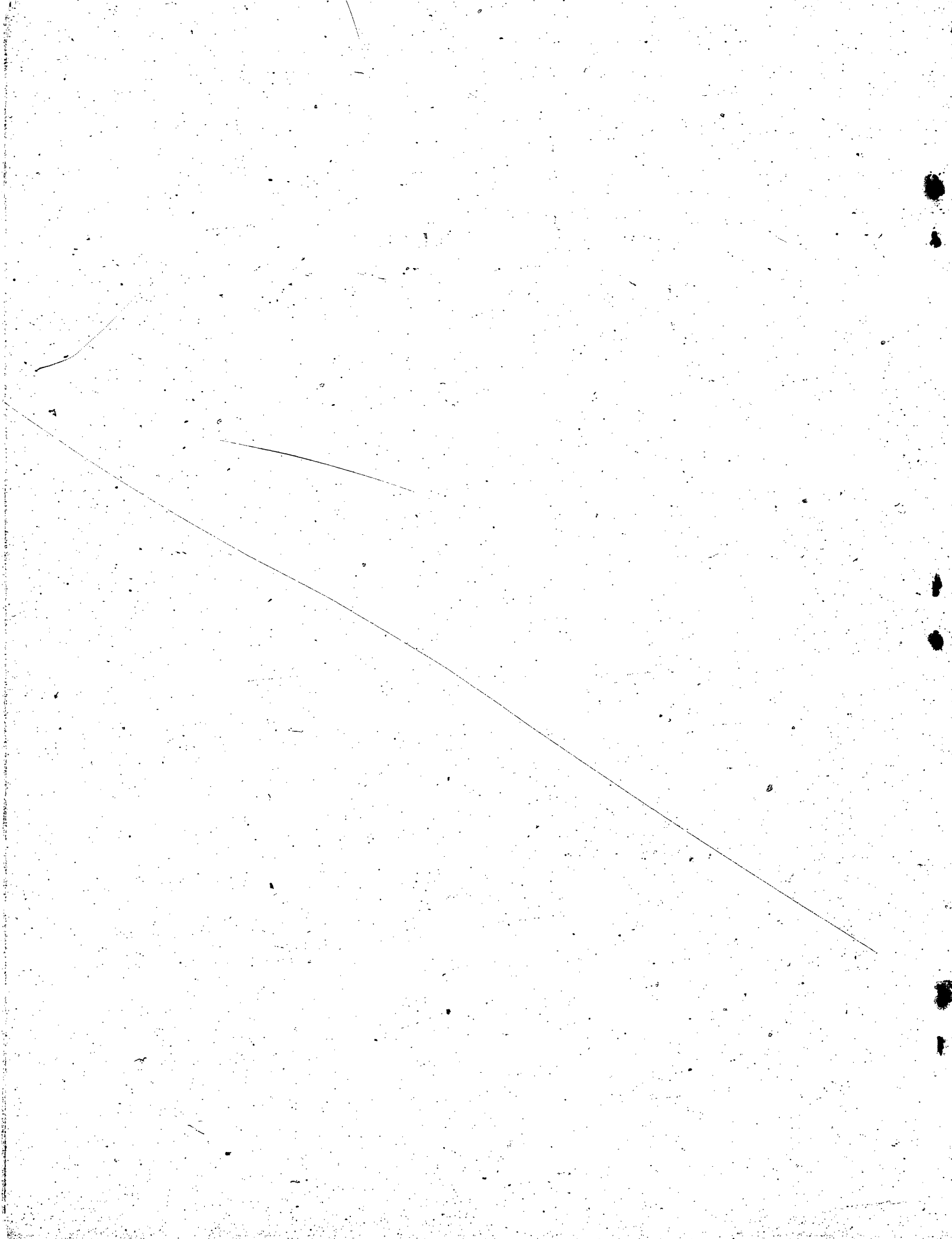
AGENTS FOR

BELYEA & GREGORY,
Appellant's Solicitors.

To MESSRS. O'CONNOR & HOGG,

Agents for

CHARLES E. POOLEY, Q.C.,
Respondent's Solicitor



ORDER SETTLING CASE.

(STYLE OF CAUSE.)

(Before the Honourable Henry P. Pellew Crease, Deputy Local Judge in Admiralty.)

UPON MOTION of the Defendants (Appellants,) and upon hearing Mr. Belyea, of Counsel for the Defendants (Appellants,) and Mr. Luxton, of Counsel for the Plaintiff (Respondent,) and upon hearing what was alleged by Counsel aforesaid :

I DO ORDER that the log books, charts, and all other exhibits in this case, which were put in upon the trial of this action, be forwarded to the Registrar of the Supreme Court of Canada, at Ottawa, and that the same do form part of the Case on Appeal herein ;

AND I DO FURTHER ORDER that the printed Case on Appeal herein do consist 10 of the following :

Short Statement of Case.
 Endorsement on Writ.
 Order for Pleadings.
 Pleadings—Statements of Claim and Defence, and Joinder of Issue.
 Order for Examination of Witnesses before Trial.
 Transcript of Evidence of James Willowby Anderson.
 Judges Notes of Evidence taken at Trial.
 Reasons for Judgment of Crease, D. L. J. A.
 Formal Order for Judgment. 20
 Order for further time to Appeal.
 Notice of Appeal to Supreme Court of Canada.
 Certificate for Payment in of Security for Costs.
 Notice of Setting down Case on Appeal.
 Translation of Russian Protocol.
 Copy Entries in Ship's Log from 11th July to 17th July, 1893, both inclusive.
 Extracts from Official Log.
 Order Settling Case on Appeal.

Dated this 2nd day of April, A.D. 1894.

(Signed) HENRY P. PELLEW CREASE, 30
 Deputy Local Judge in Admiralty.