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西海丸乗組員訊問調書

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No. 138.

In the District Court for the Territory of Alaska, 3d Division.
(Pacific Court District.)

The United States,
Plaintiff,
vs.
Y. Sagamura et al,
Defendants.

Testimony.

IN THE DISTRICT COURT FOR THE TERRITORY OF ALASKA.
THIRD DIVISION.

UNITED STATES,
Plaintiff.

Case No. 138.

vs.

TRANSCRIPT.

Y. SAGAMURA, et al.
Defendants.

APPEARANCES:

Messrs. Crossley & Ray for the Government.

E. K. Ritchie, Esq., for the Defendants.

E. P. BERTHAULT, called as a witness on the part of the Government, after being duly sworn, testified as follows: --

By Mr. Ray:

Q What is your name, Captain?

A E. P. Berthault.

Q What is your rank in the service?

A Captain, United States Revenue Service, assigned at present to the Revenue Cutter Bear.

Q State whether or not during the past summer you have been detailed for any special service?

A Yes, a portion of the Bering Sea Patrol.

Q State what your duties were with reference to that patrol?

A The preventing of the unlawful killing of Seals.

Q In the performance of that duty, what does the patrol do?

A Cruise around St. George and St. Paul Islands a portion of the time and in the sixty mile limit.

Q Tell the Jury what you mean by the sixty mile limit?

A It is an agreement between the English Government and the American Government, for the protection of seals within a certain distance from the coast line in the North Pacific during the months of May, June and July. After July, beginning the first of August, they could seal in the Bering Sea, providing they went sixty miles from the Island.

Q In relation to your cruising around the Island of St. Paul, within the three mile limit, describe your duties?

A We prevented the schooners from hunting seals inside of the three mile limit; that is, would not permit the schooners to go within three marine leagues of the Island of St. Paul. Our business was to keep them outside of the three mile limit.

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Q In the performance of your duties, did you board schooners?

A Yes, we did.

Q How many schooners have you boarded this year?

A Well, I do not know. The first vessel we boarded was the Saikai Maru; after that, whether we boarded five or six or a dozen, I do not know.

Q How many cutters are there in this patrol?

A Four.

Q Are you familiar with the habits of the seals?

A Yes.

Q You are familiar with the seals that inhabit the island of St. Paul?

A Yes.

Q State whether or not there is a large seal rookery at Northeast Point?

A Yes, there is.

Q How many seals are there in that Rookery?

A A good many.

Q Will you explain to the jury what this rookery is?

A. A rookery is a place where the seals come to breed. First come the bulls, and then they get their females together. As soon as the females arrive they give birth to their pup --

Q About what time of the year do the seals arrive at St. Paul Island?

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A The latter part of May or June.
Q What time do they leave the Island?
A In the fall, October or September.
Q Is it definitely known where these seals go to?
A I do not think it is.
Q But eventually they re-appear?
A Every year they come back to the same place.
Q It is true is it not, that the female seals come back to the same place?
A The bull always comes back to the same place, and he gets as many females as he can. They all come back to this Island.
Q How long after the females arrive do they give birth to their young?
A Sometimes four or five days.
Q When does she become pregnant again?
A Right away.
Q In relation to the female seal, do you know whether or not the pup or the offspring of a particular female seal will be raised or nursed by another female?
A Yes, I do.
Q Will a female seal nurse any offspring other than her own?
A No sir.

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Q What happens to the offspring if it loses its mother?
A. Starves to death.
Q Do you know as to how the seals are killed in the water?
A Yes, by shooting and by spearing; the natives use spears.
Q Can you state how soon the body would sink after being shot or speared?
A I believe --
Mr. Ritchie - We object to witness stating what he believes.
The Court: Sustained.
By Mr. Ray:
Q In relation to the alleged illegal sealing by the Sch. Sakai Maru, please describe the equipment of that schooner?
A She has eight boats, small boats for sealing: the one we captured had three men in her, a couple of shot guns and a rifle and ammunition; I do not remember --
By Mr. Ritchie:
Q You do not know this of your own knowledge?
A The log book will show --
By Mr. Ray:

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Q In reference to the Schooner Sakai Maru, what was their method of hunting the seal?

A By shooting them.

Q From the small boats?

A Yes.

Q In the small boat which you captured, what was in that boat besides the three Japanese and shot guns?

A As near as I can remember a little box of grub, a compass and a seal not skinned.

Q How was the seal killed?

A By a shot.

Q Please examine this chart and state what it is?

A It is a Government chart issued to us for cruising in that vicinity, and of St. George and St. Paul Islands.

We offer in evidence chart #8995, U.S.Geog. Survey, and ask that it be marked Government's Exhibit "A". So marked.

Q Please take the chart and hold it so that the Jury can see it. (Witness complies). Now look at the Island of St. Paul and show to the Jury the position of Northeast point.

A Right up here (Witness points), this is Northeast Point.

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Q Will you describe the position of the "Bear" at about four o'clock on the morning of July 22th with reference to the Chart?

A She was anchored right about in there (Witness points).

Q Why was she anchored in there, Captain?

A We had come up that night to look into a supposed raid.

Q What record did you keep as to what transpired from day to day on your ship?

A The official Log Book of the ship.

Q I will ask you to examine this book and state what it is?

A It is the rough log of the Bear; the book of original entries.

Q Original entries?

A Yes, made by the officers who were on watch.

We offer the entire log in evidence, with particular reference to the date of July 22nd, and ask that it be marked Government's Exhibit "B". So marked.

Q By reference to this Official Log, Captain, can you give the position of the "BEAR" at about four o'clock on the morning of July 22nd?

A We anchored there (witness points) and were about

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3.4 of a mile from the Beach and close to the Salt House.

Q For what purpose did you anchor there, Captain?

A To investigate a reported raid, by sending an officer out.

Q A raid on the rookery at Northeast point?

A I suppose so, yes.

Q After the officer returned to the ship, did you then stand off shore and get under way?

A Yes.

Q Commencing at the entry of five o'clock in the Log Book, read to the Jury the entry following?

A (Reads from Log Book, Government's Exhibit "B".)

Q At the time you sighted that Schooner, who took the bearings?

A. Lieut. Alexander.

Q Can you state to the Jury the position where the Schooner was situated?

A Yes, here (witness points out on chart.) On the dotted line here.

Q Please mark on the dotted line the position of the schooner when she was first sighted?

Q Witness marks.

Q What does this figure three represent? (points)

A That is where we seized another schooner.

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Q Now, please describe your course?

A Instead of starting straight for this Schooner, as we could not, we kept right on going around and headed her off.

Q Show to the Jury the position of the "Bear" when first sighted?

A The black line here (points) represents our course. Having gotten to the red mark (points) we sighted a Schooner off in that direction (points), when we got to this position here (points).

Q What is that position?

A (Reads from Log, Exhibit "B".)

Q State whether or not you plotted the three mile limit?

A Yes sir.

Q You plotted this yourself?

A Yes sir.

Q Where figure 1 appears on that chart, what does that show?

A Figure 1 is where we seized the small boat.

Q Well, at Figure 1, referring to the Log, state what you found, if anything, in the small boat?

A Found one seal skin, one not skinned female seal, two or three guns and the usual boat equipment.

Q This small boat had the usual sealing equipment?

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A Yes.

Q Aside from the seal skin and the unskinned female seal, were there any other evidence of sealing?

A I did not examine the boat closely.

Q Then what direction did you take?

A We stood right by for the Schooner.

Q In what direction, if any, had the Schooner been moving?

A Moving due eastward, further from the shore.

Q From what shore?

A St. Paul Island.

Q Moving to the eastward from St. Paul Island?

A In a general way to the eastward.

Q How long a time elapsed from the time you first sighted the Schooner up to the time of the capture of the small boat?

A 5:20 we saw the schooner - 5:37 -- 17 minutes.

Q Who took the bearings?

A Lieut. Alexander.

Q Verified by any other man?

A By Mr. Hinkley.

Q Anybody else?

A I plotted them on the chart. Mr. Hinkley checked my plotting.

Q Then what was done?

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A 5:43 (Reads from Exhibit "B").

Q What was the condition of the weather that morning?

A It was foggy that morning - foggy in patches: We saw this schooner through a rift in the fog.

Q Go on and state what you did after you captured the small boat?

A We saw two other schooners in that vicinity; we heard shooting at intervals and saw several small boats inside and not far from the schooner; the nearest land point to the schooner was Northeast point, 2.6 miles distant --

Q What schooner was that Captain?

A The Sakai Maru.

Q Have you any mark upon the chart which shows the position of the Sakai Maru at this time?

A Yes, No. 2 position.

Q That position is how far from the Island of St. Paul?

A 2.6 miles from the nearest land.

Q How far had the schooner sailed from the time she was first sighted to the place of capture?

A A mile or a mile and a half.

Q She was sailing seaward?

A To the seaward.

Q When you came alongside the Sakai Maru, did you

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verify your position before sending the officer aboard?

A Mr. Alexander went aft to take the bearings, which Mr. Hinkley checked and put on the chart, and when it was found she was inside the limit, we seized her.

Q Were you present at the time the inventory of the Saikai Maru was taken.

A No sir.

Q Was any report ever made to you in reference to the number of seal skins she had aboard?

A Yes sir, Mr. Alexander had to make a report to me of what was on board in his official letter to me.

Q Do you remember the number?

A Well, I think I made an entry in the log telling about it. I have forgotten; it tells how many seal skins they caught that morning.

Q How many was it?

A Lieut. Alexander returned and reported that he went on board of the schooner, and that six small boats returned to her; the first coming from a north-east direction contained two unskinned seals, but he could not say whether or not she was inside the limit. The other five boats came from inshore of the schooner, one contained four seal skins,

and there was considerable blood in the boats - one skin still warm. Of the two remaining boats, one failed to return, and the other was seized by the "Bear".

Q I will ask you to examine this figure, and state whether or not it is a fair representation of the Saikai Maru?

A Yes.

Introduced in evidence and marked Plaintiff's Exhibit "C".

Q From the bearings taken as to the position of the Bear at the time of the capture of the Schooner Sakai Maru, you are positive that the schooner was inside the three mile limit?

A There is no doubt about it.

Q Was she within the three mile limit?

A Yes, she was.

Q Coming away from St. Paul Island?

A Yes.

Q How far away from St. Paul Island was the schooner when you first saw her?

A A mile or a mile and a half.

Q How long have you been in the service, Captain?

A Since 1885.

Q Do you know where the Pribiloff Islands are?

A Yes.

Q Do you know whether or not they are in the waters of the Territory of Alaska?

A Yes.

Q In the Third Division, Territory of Alaska?

A I suppose they are.

The Court: Did I understand you to mean that the Schooner Sakai Maru had boats sent out?

A Yes.

Q Small boats?

A Yes.

Q From your experience in the service, these boats are part of the equipment of the Sakai Maru?

A Yes.

Q Acting under the direction of whom?

A The Captain.

Q Of the Sakai Maru?

A Yes. The Captain makes an entry in the Sakai Maru's log telling what time they are sent out each morning.

That is all.

CROSS EXAMINATION.

By Mr. Ritchie:

Q When did you go into the Bering Sea on the Cutter Bear?

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A I think it was the first or second of June.

Q Where did you sail from?

A San Francisco.

Q What position does Mr. Hinkley occupy on the Bear?

A The Executive Officer, 1st Lieutenant.

Q Mr. Alexander?

A Navigating Officer.

Q When did you arrive in the Bering Sea, in the vicinity of the Islands of St. Paul and St. George?

A That is a long time ago; I can tell by the Log Book; some time in June, I think.

Q A long time before the 22nd of July?

A Yes.

Q There are other Revenue Cutters there?

A Yes.

Q There are four altogether during the open season?

A Yes.

Q When does your actual patrolling begin, circling around the Island?

A As soon as we get there after the third of May.

Q Do you keep it up continually?

A Yes, until we get through - the 15th of October, I think.

Q How often does one cutter go around the Island?

A Well, this Summer we made fifteen day trips.

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Q Did you coal up at Unalaska?
A Yes.
Q In the actual patrol, circling around the Islands, how long would it take you to go around St. Paul Island?
A Six hours.
Q Did you go around every day?
A No sir.
Q Did you patrol St. George Island in the same way?
A Seldom, whenever necessary.
Q You confined your attention principally to St. Paul Island?
A I did .
Q Nearly all the seals are on St. Paul Island?
A Yes.
Q What kind of weather did you usually have there in the Summer, was it foggy during the month of July?
A Yes.
Q Heavy fog?
A Yes, quite heavy.
Q Thick fogs sometime settle on the Islands and remain there for several days?
A Yes.
Q Navigation would be difficult, even dangerous, in these thick, heavy fogs, would it not?

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A Yes.
Q On the night of the 21st of July, beginning in the evening of the 21st, state what were the weather conditions, Captain?
A Can I look in the log?
Q Yes, the Log is in evidence.
A (Reads from Government Exhibit "B".
Q How was the wind, Captain?
A North wind, practically no wind; just enough to call it a wind.
Q What hours were you up during the night of the 21st and morning of the 22nd?
A I did not go to bed at all that night.
Q You were on the bridge?
A A good deal of the time.
Q You are quite familiar with the condition of the weather at that time?
A Yes.
Q You are familiar with the tidal currents of this Island?
A Yes sir.
Q How are the currents there - strong?
A Sometimes, sometimes not, it mostly depends on the wind.
Q Which way does the tide run on that side of the

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Islands?

A The flood tide, the general flood tide current, goes to the East; the ebb current moves to the west; at this time on the morning of the 22nd, it was flood; the flood tide moves to the easterly; it was low water that morning about seven o'clock.

Q How was the fog after midnight?

A We could navigate.

Q How was the fog about three o'clock in the morning?

A Foggy.

Q Heavy?

A No, not so heavy that morning; we could steam along and not run into the land; at five o'clock that morning it was about the same as at three; I could see 2-1/2 miles down the beach --

Q At what time was it daylight at that time of the year?

A About four o'clock.

Q Are the Pribiloff Islands south of Valdez?

A The 54th or 55th parallel I should say.

Q Daylight would come later there than in Valdez, in the later part of July?

A I think they are further North than Valdez.

Q It was daylight about four o'clock that morning?

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A I think so.

Q You say you was on the bridge all the time that night from the time you started?

A From about midnight that night, I was on the bridge all the time.

Q You checked the bearings at the time you located this schooner?

A No, I did not check them.

Q Mr. Alexander checked them?

A Yes.

Q You saw this small boat before you saw the schooner?

A We saw the schooner first.

Q You picked up the small boat first?

A Yes.

Q You were present and personally saw the small boat when it was overhauled and captured?

A Yes.

Q You saw the seals in it?

A Yes.

Q You saw the seal on deck, can you tell how long a seal has been killed by glancing at it?

A No, not exactly, but if it is still warm, it has not been killed very long.

Q You do not remember how many skins were on board of the schooner that morning?

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A No sir.

Q Were you present when any of the seals were taken out of the small boats that morning?

A I do not think I was at the gang way, though I might have been.

Q Did you notice these six small boats, all of them, when they approached the schooner that morning?

A I do not know about that; I sent an officer to board her, I went off after the other schooner. Mr. Alexander was there.

Q What was the general appearance of the Sakai Maru when you first sighted her?

A She had her mainsail up.

Q Under way?

A No, hove to.

Q I believe you stated a while ago that there was about 27 sealing schooners there?

A More than that; I think our fleet boarded 27 or 29.

Q Did you see them often?

A Quite often, yes.

Q Where generally?

A One day we counted 27 to the Northward and westward of the Island, all around.

Q About how far away?

A Ten or fifteen miles; sometimes close in.

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Q Engaged in sealing?

A Yes.

Q Did you see the small boats engaged in sealing?

A Always outside the three mile limit.

Q Then this is the only time you found a schooner inside the line?

A Yes, that is the only time; we always got there too late.

Q Is sealing outside the three mile limit a profitable business?

A It seems to be; they seem to like it.

That is all.

That is all.

H. D. HINCKLEY, a witness in behalf of the Government, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Ray:

Q What is your name?

A H. D. Hinckley.

Q What is your position or occupation?

A First Lieutenant, U. S. Revenue Service.

Q On what ship?

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A U. S. S.S. Bear.

Q How long have you been in the service?

A About 11-1/2 years.

Q How long have you been in the service around the
Pribiloff Islands - St. Paul and St. George?

A Two years.

Q Have you ever been on the Island of St. Paul?

A Yes.

Q Can you describe to the Jury where the seal rook-
eries are located there?

A The largest rookery is at Northeast point; just
north of Salt Neck, on the east side of Northeast
point; there is also a small rookery one-half
way, where the village is, and one at the village --

Q Take the chart and show the jury Northeast point?

A This point here (points); there is a rookery here
(points) and one here (points).

Q Those are the rookeries on St. Paul Island?

A Yes.

Q Are you acquainted with the habits of the seals?

A Yes sir. The bulls arrive first and the females
later; the females pull up on the land for the
purpose of breeding on these rookeries; the
batchelor seals pull by themselves a little back
of the females --

Q What is the harem?

A The harem consists of the bull and anywhere from
five to 120 females, who, a few days after their
arrival give birth to the pup, and immediately
become pregnant again; they leave the islands
after the pup is born for the purpose of feeding
them; the bull seals do not leave the islands,
the batchelor seals play along the beach or shore,
but never far from the shore, unless disturbed --

Q Do these females go very far from shore?

A Yes, a long way. The feeding grounds are as far
as 120 miles out to sea.

Q What happened at about four o'clock on the morning
of July 22?

A I was sent ashore, in charge of a crew, to investi-
gate a supposed raid.

Q Tell the Jury what you noticed going or returning
from your trip to Northeast point?

A On that morning, on the way in, we heard numerous
shots fired close to land; on returning to the
boat, I saw two small boats, as near as I could
judge, about one-half mile from shore; they were
shooting at frequent intervals, and upon my return
to the ship, I reported it to the commanding offi-
cer.

Q Shooting at Seals, were they?
A Yes, I did not see the seals they were shooting.
Q There was nothing else to shoot at in that neighborhood, was there?
A No sir, nothing but seals; there were a great many seals in the water.
Q Now state to the Jury and the Court what happened after you returned to the Revenue Cutter Bear?
A Upon my return to the Bear we got under way, and started to make a trip around Northeast point, and got under way at 5:10 in the morning, and stood off shore. (Here witness reads from Log, Plaintiff's Exhibit B,) at 5:20 we sighted a schooner --
Q This schooner you sighted, was it headed to the shore or from it?
A Headed towards the shore with mainsail set; we then stopped and took cross-bearings to determine our position accurately. At 5:28 and eight minutes after we established our position, we sighted a small boat on the starboard bow, and we had heard repeated shots from that direction, and we headed southeast by south for this small boat, the tide pulling in a northeast direction.
Q Was that Northeast direction from the shore or towards it?

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A That was from the shore. At 5:45 we had this boat on our port bow; it contained three Japanese, the usual sealing outfit, and the body of a fur seal, which, just as the boat came alongside of us, lifted its head and gasped several times, still alive.
Q Had it been shot?
A It had been shot. In addition there was one fur seal skin in the boat.
Q What was the condition of that fur seal skin?
A It was a female skin, freshly killed.
Q How did you know it was freshly killed?
A It was still warm.
Q How far was this small boat away when you stopped the Bear and called her in to you?
A She was approximately from 25 to 50 yards; not over that.
Q Did you take bearings as to where your ship was at that time?
A No sir, we determined our position from our log run from the last position.
Q How far from the shore of St. Paul Island was this boat with the three Japanese in, and this one seal and seal skin, at the time you captured it?
A Two and one-half miles.

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Q What next happened, if anything?

A After seizing the boat and making her fast astern, we stood for this schooner.

Q Had you sighted the schooner previous to this?

A Yes, we sighted her at 5:20, the time we determined our position by the cross bearings. After making the small boat fast, we put on full speed and stood for this schooner. She had made sail in the meantime (from the time we first sighted her) and was standing to the eastward.

Q What direction is that from St. Paul Island?

A Away from the land; directly off shore; we heard numerous shots fired at the time we seized the boat, and also saw two other schooners. At six o'clock we came alongside of the Sakai Maru; we took careful cross bearings and lowered a boat, and sent Lieutenant Alexander, with a prize crew, to seize her. Our position, by cross bearings, placed the schooner two and six-tenths miles from shore and from land.

Q She was within the three mile limit?

A Yes.

Q Who was put in charge of the Schooner Sakai Maru?

A Lieut. Alexander, with three men.

Q Who were these men?

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A I do not recollect them by name.

Q Who took the cross bearings you have just spoken of?

A Lieut. Alexander; I checked them.

Q Did you remain on board the Sakai Maru any time?

A I did not go aboard of her.

Q Did you see anything come to the schooner?

A After Lieut. Alexander had gone aboard and seized her, we saw three small boats return to her from an inshore direction; from the land.

Q From the direction you heard those shots fired?

A The same general direction.

Q Now, state if you will, Lieut. Hinckley, the exact distance from the shore to where you captured this small boat, as shown by your records?

A Two and one-half miles.

Q And the position you captured the Sakai Maru in?

A Two and six-tenths miles.

That is all.

CROSS EXAMINATION.

By Mr. Ritchie:

Q As I understand you, you did not board the schooner?

A No sir, I did not.

Q From which direction did the small boat come when you first saw her?

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A From inshore of the schooner.
Q What time was it exactly when you sighted the small boat?
A 5:28 A.M.
Q You sighted the small boat before you did the schooner?
A No sir, we sighted the schooner first.
Q What hour and minutes was it that you captured the small boat?
A 5:37 A.M.
Q This log you call the rough log?
A Yes.
Q Did you keep any other log on the ship?
A Yes.
Q How does it happen, Lieutenant, that most of the handwriting in this book is in pencil, while the events in connection with this particular transaction are in ink? Were they written at the time?
A Yes. Heretofore we had been writing them in pencil, but Capt. Bertholf ordered us to written them in ink.
Q On that particular morning?
A Yes.
Q What kind of a night was the 21st day of July, 21-22nd?

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A Foggy at intervals.
Q How was it at midnight?
A Thick at intervals; at times we could see a long ways, and at other times only a short distance.
Q Were you on the bridge on watch?
A All the time after midnight, I was, yes.
Q Was the fog thick at 3 o'clock?
A I cannot state at any given time.
Q What time did it get day-light at that season of the year?
A Daylight about three, or shortly after.
Q After daylight, could you see a long distance?
A At intervals, yes.
Q How was the fog at the time you first sighted the small boat?
A We sighted the small boat through a rift in the fog.
Q Can you see as plain or distinct towards the sea as you can towards the land?
A Usually you can see farther towards the land.
Q Can you discern objects as distinctly towards the sea as towards the land or shore; can you figure out what they are as clearly; for instance - if you can see two miles to the shore, can you see distinctly one mile out towards the sea?

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A Yes.

Q You did not board the schooner?

A I saw three boats return to her from an inshore direction after we had left her.

Q You are familiar, of course, as a navigating officer, with the tidal currents around St. Paul Island?

A Yes.

Q How was the wind the night of the 21-22 of July?

A Light, variable airs; part of the time S.W. and part of the time N. N.W. and W.

Q How do the tides run along St. Paul Island on the East shore?

A The Ebb tide sets in a general Southerly direction, and the Flood tide in a general Northerly direction.

Q How was the tide running during the time from midnight to six o'clock?

A It was the rise of the tide.

Q When is the slack time?

A Between six and seven.

Q The tide then runs in a southerly direction, or towards the Island most of the time after midnight?

A North of the Island, but it splits at Northeast point and sweeps down each side of the point.

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Q What is a peculiar condition of that tide?

A At times it is very strong.

Q Would a boat naturally drift with the tide, without the sails being set?

A Yes, to a certain extent.
That is all.

Re-Direct Examination.

By Mr. Crossley:

Q Will you state the direction the ebb tide was flowing the morning of July 22nd, with reference to St. Paul Island?

A In a general southerly direction, running along the shore at Northeast point.

Q From a general southerly direction?

A Yes.

Q From or towards the shore?

A It was along the shore; the tide does not set right on the shore.

Q At the point where the schooner was that morning, would it set her towards the shore at that particular point?

A No sir.

Q In what direction was the wind blowing, to or from the shore?

A About along the shore, from a northerly direction.

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That is all.

Re-Cross Examination.

By Mr. Ritchie:

Q In what direction does the tide set approaching St. Paul Island?

A To the North of Northeast point it set North of the Island, but where the Northeast point interferes, it splits and sweeps down on either side of the Island.

Q It runs in a northeast direction towards the Island?

A No sir, the tide splits here at Northeast point, and runs along the Island on this side and on this side (points).

That is all.

That is all.

G. A. ALEXANDER, being called as a witness on the part of the Government, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Ray:

Q What is your name?

A George A. Alexander.

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Q What is your rank in the service?

A Second Lieutenant, U.S.R.C. Service.

Q You were on the Revenue Cutter Bear last season?

A Yes.

Q In what position?

A Navigating Officer.

Q On July 22nd, 1908, you were on the Bear?

A Yes sir.

Q What was the position of the Bear on that morning - the morning of July 22nd, was she in Bering Sea?

A Yes.

Q Whereabouts?

A Near St. Paul Island.

Q Can you state, with reference to St. Paul Island, the position of the Bear?

A At four o'clock in the morning she was anchor to the Southeast of Northeast point.

Q Were you watch officer at that time, Mr. Alexander?

A After four o'clock, yes.

Q State whether or not you and Mr. Hinckley went to Northeast point on the morning of July 22nd?

A We went very near Northeast point.

Q I will ask you to look at this log of the Revenue Cutter "Bear", the period four to six A.M., and state if it is in your handwriting?

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A. Yes.

Q State also if that is your signature?

A Yes.

(He reads from log book of the Bear, Government's Exhibit "B", the period from four A.M. to Six A.M.)

Q This was signed by yourself, Mr. Alexander?

A Yes sir.

Q When the Schooner Sakai Maru was first sighted, how near was it to the Island of St. Paul, if you know?

A I can tell by the chart. Not over one and one-half miles.

Q Mr. Alexander, you took the cross bearings which you have read from the log, where did you take them from, from the bridge or quarter deck, if you remember?

A I believe that the first bearing, at the time we first sighted the schooner, was taken from the bridge; the other from the quarter deck.

Q How far was the small boat from the Island of St. Paul when you came alongside of her with the Bear?

A Two and one-half miles, sir.

Q How far was the Sakai Maru from shore when captured?

A 2.6. Miles.

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Q About how much time had elapsed from the time you first sighted the schooner until the time of her capture?

A At 5:20 we sighted the schooner; at 6:00 we went aboard.

Q That would be forty minutes?

A Yes sir.

Q When you and Mr. Hinckley were returning from the Island of St. Paul what did you notice with reference to repeated gun shots?

A We heard gun shots that seemed to be very close.

Q How near was the Bear to the island of St. Paul when you went over to the Island and came back to her in a small boat; you and Mr. Hinckley?

A About one-half mile, sir.

Q You were the officer who boarded the Sakai Maru?

A Yes sir.

Q What crew did you take with you?

A I took eight men; three for the purpose of boarding and eight manning the boat.

Q But three of the boat crew went aboard of the Saikai Maru with you?

A Yes.

Q What were their names?

A Cox, Eckstein and Namens.

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Q What time did you return to the Bear?
A Nine o'clock that night. I returned to the Bear after she went over and seized the Kensei Maru. I am not certain about the time; about eight o'clock I believe.

Q When you went aboard of the Sakai Maru, what did you notice with reference to her boats? How many boats has the Sakai Maru?
A Eight.

Q What did you notice with reference to these small boats?
A None were on board.

Q Afterwards did you notice any return to the ship?
A Yes, six.

Q Describe the boats as they returned?
A One came from a Northeast direction, and was hoisted forward on the port side and had two dead unskinned seals in it. The other five came from North by West and westward direction; none of them to the North by North of West.

Q When you speak of North by North, you mean towards the direction of the Island or away from it?
A They were from a direction that would make the small boats nearer the land than the schooner, but not directly between the schooner and the land.

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Q Did these five boats have any seal skins?
A Yes.

Q How many, if you remember?
A I saw one with four or five.

Q Do you remember anything with reference to fresh blood in any of the boats?
A One boat was hoisted aboard the ship on the port side that was smeared with fresh blood.

Q Did you notice anything further with reference to the small boats?
A After they came back and were hoisted aboard, the seal skins were checked and piled up on the deck.

Q Did you do anything further with reference to the Seal Skins on board the Sakai Maru?
A Two of the men with me lifted up a seal skin from the boat in which I counted four and it was still warm.

Q Did you take possession of the papers of the Schooner Sakai Maru?
A They were delivered to me by the officer that relieved me.

Q Who was the officer?
A Mr. Ward.

Q Examine this package and state whether or not your signature appears on the wrapper?

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A Yes sir.

Q Your handwriting?

A Yes sir.

(Witness reads from wrapper, Government's Exhibit "C").

Q Sealed in your presence was it?

A Yes.

We ask that this package be introduced in evidence and marked Government's Exhibit C. So ordered.

Q When the first small boat belonging to the Sakai Maru was captured at a point two and one-half miles from the Island of St. Paul, what do you know with reference to the unskinned seal and the seal in the boat?

A I saw the unskinned seal and the seal but did not examine them. I was taking the bearings and locating the position of the Bear at that time.

Q You did not go to the gangway?

A I was at the compass right abreast of the gangway.

Q Did you pay any particular attention to the small boat?

A No sir.

Q How did you take and make an inventory of the Schooner Sakai Maru, if you did?

A I counted the seal skins.

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Q How many were there?

A I believe 244.

Q What else did you do with reference to the inventory?

A Counted the rifles and guns on board and brought them back to the Bear.

Q Do you recall the amount of ammunition on board the Sakai Maru?

A No sir.

Q Was that inventory taken in conjunction with the Deputy Marshal at Unga?

A No sir.

Q Separate inventory taken under the orders of Captain Munger,

A Taken by order of Captain Berthoff the same day we seized her.

That is all.

Cross Examination.

By Mr. Ritchie:

Q. I believe you stated it was about 5:28 A.M. when you sighted the small boat?

A Yes sir.

Q And 5:37 when you captured the small boat?

A Yes.

Q Six o'clock when you boarded the Saikai Maru?

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A Yes.

Q Were you running in nearly the same course all the time?

A No sir.

Q You were running slowly most of the time, were you?

A No sir, I think we were running at ordinary cruising speed.

Q How far out were you when you first sighted the schooner?

A About a mile out from her.

Q How far was the Schooner from the Island?

A Not over one and one-half miles.

Q You did not board her until about forty minutes later?

A No sir.

Q How far out was she when you boarded her?

A 2.6 miles.

Q So she moved all that time?

A She had a light air and was headed away from shore with all sails set.

Q Did she move much, if you noticed?

A I do not think she moved very fast.

Q According to your figuring, in this forty minutes she moved about a mile?

A Yes.

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Q Not very fast running?

A No sir.

Q How was the wind for a few hours before that?

A. North North west; light airs.

Q How was the wind mostly during the night?

A North Northwest from seven o'clock the night before until 11 o'clock; then southwest for two hours, westerly at two o'clock.

Q How far were you from the schooner when you first sighted her?

A. A little over two miles sir.

Q What was the condition of the weather during the latter part of the night?

A Foggy?

Q Heavy?

A Yes.

Q Was the fog continuous during the early morning hours after midnight?

A I do not know; I did not come up until four o'clock.

Q How was it then, foggy?

A Yes, we could see the shore one-half mile off; there seemed to be open spots in the fog at times.

Q Thick fog except for occasional rifts in it?

A Yes.

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Q Are you familiar with the tidal currents around St. Paul Islands?

A Yes sir:

Q You take frequent observations of the tide, don't you?

A Yes.

Q How do the tides run there?

A They seem to vary quite a bit: Northeast point seems to be the dividing line between the direction of the currents: The ebb current runs south of the east side, and to the west of the west side of the Island --

Q How was the tide, rising or ebbing between four and six A.M.?

A I believe at six thirty it was low water.

Q In what direction does the tide come from Northeast point, where it splits; how does it flow?

A It runs around the Island both ways.

Q There were 244 seals on the Sakai Maru when you boarded her?

A Yes.

Q If a seal had been killed for several hours, do you think you could tell how long it had been dead?

A I think I could if not salted.

Q Do you think you could tell whether or not a seal

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had been killed one or two days, if not salted?

A Why, I am not familiar enough with seal skins to know.

Q You are the navigating officer of the Bear?

A Yes.

Q I suppose you can tell the exact longitude and latitude of St. Paul Island, can you not?

A About 57.10 I believe is the latitude of Village Cove, and the longitude is something like 170, close to it.

Q These shots you speak of hearing, Mr. Alexander, could you tell what small boats they were?

A No, I could not see them.

That is all.

Judson Thurbur, being called as a witness on the part of the Government, after being duly sworn, testified as follows:

By Mr. Ray:

Q What is your name?

A Judson Thurbur?

Q What is your occupation?

A Mariner.

Q On what boat are you?

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A U.S. S.S. Bear.

Q Were you on that boat on the 22nd day of July, 1908?

A Yes.

Q Who is the commanding officer?

A Capt. Berthault.

Q Were you on board the Bear the morning of July 22nd, when the small sailing boat, with three Japanese in it, was captured?

A Yes.

Q Tell the jury and the Court what you saw this boat contained?

A Two seal skins.

Q Two seal skins?

A One skinned and one unskinned.

Q What was the condition of the seal that was unskinned?

A Warm.

Q It was warm?

A Yes.

Q How had it been killed?

A It had been shot.

Q Did you notice where it had been shot?

A One shot was in the side below the flipper and one in the head.

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Q Was it entirely dead when you saw it in the boat?

A It was dead when I handled it.

Q You saw it in the boat?

A Yes.

Q What was the condition of the seal skin?

A It was a fresh skin.

Q Did you know what the sex of these skins were?

A Both females.

Q Did you have anything to do with this skin after it was taken on board?

A I salted the skin.

Q Did you see any other things in the small boat besides this seal and seal skin?

A Shot guns and ammunition.

Q How many seasons have you been sailing around St. Paul Islands?

A I have been going up there since '96.

Q 1896 or 1906?

A 1896.

Q Every year?

A Every year except one, 1906.

That is all.

Cross Examination.

By Mr. Ritchie:

Q Where were you when these seals were taken on the

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ship?

A On deck aboard the Bear.

That is all.

J. Olson, being called as a witness on the part of the Government, after being duly sworn, testified as follows:

By Mr. Ray:

Q What is your name?

A J. Olson.

Q What is your occupation?

A Ordinary seaman.

Q On what ship are you employed?

A U.S.R.C. Bear.

Q Where were you on July 22nd, 1908?

A Off St. Paul Island, on the Bear, in Bering Sea.

Q Do you remember of anything happening on that date?

A Yes, we caught a Japanese sealing schooner early in the morning.

Q What was the name of the boat you captured?

A The Saikai Maru.

Q Who was the officer sent with the prize crew to take charge of the Saikai Maru?

A Lieut. Alexander.

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Q How many were there in that crew?

A There were three men went on board the Schooner and five men remained in the boat.

Q When you went over there to that boat, under command of Lieut. Alexander, to take over this prize crew, will you state to the jury what you noticed about the small boats belonging to the Saikai Maru coming in, if anything, and what their condition was?

A I noticed one boat with five skins.

Q Were there any other boats came in?

A Seven boats came in.

Q Do you know what was done with the skins in these boats?

A They were counted.

Q Who counted them?

A I counted them?

Q How many were there?

A Fifteen.

Q You say one boat had five skins in it?

A Yes.

Q Was there any boat had two skins in it or not?

A I do not remember.

Q Was there or was there not any blood in these boats?

A Yes there was blood in the boats.

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Q Can you tell the Jury whether there had been any attempt made to wash out these boats?
A No sir, they washed them out on board.
Q Did all of the boats have blood in them, or only part?
A All of the boats I looked in had blood in them.
Q Did you look into all these boats or not?
A I was not on board all of the time; I was just on board for about half an hour.
Q On what ship.
A The schooner.
Q The Saikai Maru?
A Yes.
Q You were on board for half an hour?
A Yes; all the boats I looked into had blood in.
Q You were on the Bear the morning of the 22nd of July, 1908, when the Bear captured a small sealing boat with three Japanese in it?
A Yes.
Q Did you see the boat?
A I did.
Q Tell the Jury what you saw in the boat when it was captured there?
A I do not remember exactly what I saw.
Q Did you or did you not see any seal skins or seals

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in that boat?
A Yes, seals or seal skins, I cannot tell which it was.

That is all.

Cross Examination.

By Mr. Ritchie:

No Cross Examination.

W. Namens, being duly sworn as a witness on the part of the Government, testified as follows:

Direct Examination.

By Mr. Ray:

Q What is your name?

A W. Namens.

Q What is your occupation?

A Seaman.

Q On what ship?

A U.S.R.C. Bear.

Q How long have you been in the service?

A Since the 20th of April, 1908.

Q Where were you on board the Bear the morning of July 22nd, 1908?

A Why we came on watch at four o'clock in the morning,

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and that morning we boarded the Schooner Saikai Mary.

Q About what time was that?

A About 4:30.

Q Who were the members of the prize crew under Lieut. Alexander that boarded the schooner Saikai Maru?

A There were three prize crew, the names of the whole boat crew I do not remember - Olson and Eekstein, I do not remember any more.

Q Tell the Jury what you know with reference to the small boats of the Saikai Maru returning to her after you boarded her?

A I noticed the boats come up to her - three of them, not less than three, four probably, they stopped about 200 yards away from the schooner for a minute, and then went alongside, and three of them were hoisted. One that came in to the schooner came off from the port bow, and one that came into the schooner came away from the starboard side of the ship, from a direction of the sea.

Q You say one came from out to sea?

A Yes.

Q All the others came from what direction?

A From in towards the shore.

Q All except one came in from shore?

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A Yes.

Q How many boats did the schooner have?

A There were seven - all I saw - one did not come back at all.

Q One did not come back, one came from out at sea, and had any been captured that you know of?

A One was captured before we ever went out to the schooner.

Q Will you state to the jury what you noticed was in the boats that came from towards the shore?

A There were seal skins; that is all I could see; one boat did not contain any; all of the others had seal skins in.

Q What was the condition of the skins, did they seem to be fresh or were they old?

A Fresh, one I noticed was still warm; they looked fresh. We went over to one boat and one skin was still warm.

Q What direction did that boat come from?

A From inshore.

Q Did you notice how many seal skins that were in the boat that came from inshore?

A I did not count them.

That is all.

Cross Examination.

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By Mr. Ritchie:

Q You say it was about 4:30 when you boarded the Schooner?

A About that.

Q How do you fix the time?

A Four o'clock was our time to go on watch.

Q Who was in command of the Revenue Cutter Bear at that time?

A E. P. Berthault.

That is all.

E. P. BERTHAULT - RECALLED.

By Mr. Crossley:

Q I will ask you, Captain, if at any time you have compared the names of the members of the crew of the Saikai Maru as shown by the Log, with the names in this indictment (hands witness indictment)?

A Yes sir.

Q As a result what have you found?

A That the names in this indictment are the same.

Q The names in that indictment are the names of the members of the crew of the Saikai Maru?

A Yes, to the best of my knowledge and belief.

Q As far as you know, the defendants in court represent the crew and officers of the Saikai Maru captured by you?

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A Yes, if they are the men we delivered to the marshal.

That is all.

Deputy U. S. Marshall Vawter, being called as a witness on the part of the Government, after being duly sworn, testified as follows:

By Mr. Ray:

Q You were the Deputy Marshal at Unga, were you?

A I was.

Q When you were Deputy Marshal at Unga, did Captain E. P. Berthault, Commanding Officer of the Bear turn over to you some Japanese prisoners, and will you state to the jury whether those men sitting over there (points) the defendants in this case, are those parties?

A They are.

That is all.

Cross Examination.

By Mr. Ritchie:

Q You are pretty sure of that are you Mr. Vawter?

A Yes.

Q Are you absolutely sure.

A The crew of the Saikai Maru and the Captain, yes.

Q The crew of the Saikai Maru and the Kensai Maru

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mixed up a good deal didn't they, if they were in the same quarters?

A They all mixed up; I counted them every day while they were with me.

Q Can you positively say that these 27 men here are the men delivered to you at Unga by Captain Berthault as the crew of the Saikai Maru, are you sure some of the Kensai Maru are not now here and some of the Saikai Maru over in the old church right now?

A I am perfectly sure,; I can go and look at them.

Q How long were they in your charge?

A About 45 days.

Q Did you see them every day?

A Every day.

That is all.

That is all.

Government rests.

Y. Sagamura, being called as a witness on the part of the defendants (one of the defendants), after being duly sworn, testified as follows:

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Direct Examination.

By Mr. Ritchie:

Q What is your name?

A Y. Sagamura.

Q What position do you hold, if any, on board the Saikai Maru?

A Captain.

Q What is the sailing port of the Saikai Maru?

A Hadakiota.

Q When did you leave there this year?

A 23rd of March.

Q Where did you sail for?

A Fairweather grounds.

Q Where is the Fairweather grounds?

A Near Sitka.

Q What direction is it from Vancouver Island?

A N.W. by N.W.

Q How long did you stay there?

A From the 20th of April to the 25th of May.

Q Where did you sail then?

A Bering Sea.

Q What were you doing while at the Fairweather grounds?

A Seal Fishing.

Q Did you get any before you left the Fairweather grounds?

A Yes.

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A Yes.

Q How many?

A 172.

Q Did you catch any seals between the Fairweather grounds and Bering Sea?

A No.

Q When you reached Bering Sea what part of the place did you go?

A To the East of St. Paul and St. George Island; to the east.

Q When did you arrive in the vicinity of St. Paul Island?

A The 19th of June.

Q Between the 19th of June and the 22nd of July did you go very far from the St. Paul Island?

A From about 13 to 20 miles.

Q What were you doing and what were your men doing between the 19th of June and the 22nd of July, 1908?

A Seal fishing.

Q Did you understand that, under the American law, you were not permitted to hunt or kill seal within a marine league of St. Paul Island?

A Yes sir.

Q Did you instruct your men employed in sealing there

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as to where they were to work?

A I gave strict orders to the master of each boat that they were not to go within the prohibited limit.

Q Do you know, of your own knowledge, whether or not any of your men did go within the limit of three miles?

A They did not.

Q How many seals did you or your men kill after getting in the Bering Sea?

A 72.

Q How many seals did you have on your boat on the morning of the 22nd of July, 1908?

A 244.

Q Where were you on the evening of the 21st of July, 1908?

A About 12 miles south by east from the high mountain on St. Paul Island.

Q At what time that evening, if any, did you take bearings?

A Six P.M.

Q At what time did it get dark that night?

A The sun sets about six o'clock: it got dark between 8 and 9 o'clock.

Q What kind of weather was it that night?

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A There was a great deal of fog, no wind; very foggy all night.

Q Was the fog heavy?

A Yes.

Q Were you on the deck of the Sakai Maru all that night?

A Yes, I did not sleep at all that night.

Q Were you able to take any bearings in the morning, or did you try to do it?

A It was so thick that we did not take bearings.

Q Did you send any small boats out that morning, the morning of July 22nd, 1908?

A I sent out boats at three o'clock in the morning.

Q Did you know your location at that time?

A It being very dark and foggy, and no wind, I thought we were probably in the same place that we were when we took our bearings the evening before.

Q When you sent out the small boats what instructions did you give, if any?

A I ordered them to proceed to the Northeast, and if they should see mountains within three miles distant, not to go any farther in that direction.

Q Did you see land at any time that morning?

A I saw land at five o'clock.

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Q How were you able to see land then?

A The fog lifted for a little while.

Q Did you take any observation or bearing at that time to fix your location?

A I took bearings at once.

Q How far away did you figure the Island to be?

A 4-1/2 miles from Northeast point.

Q Did you see any revenue cutter that morning?

A I saw a vessel just as the fog lifted.

Q Did you know what vessel it was?

A At that time I did not know.

Q How far were you from this vessel when you first sighted her?

A I do not remember.

Q Did you make any computation of the distance?

A I noted her course but not the distance.

Q How far do you think she was?

A I cannot be certain; possibly 1-1/2 miles.

Q In which direction from you?

A South.

Q What did the vessel do when you sighted her?

A Immediately came to us.

Q Did they come up close to you?

A Came alongside and stopped us.

Q Did anybody from the vessel come aboard?

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A Yes a boat-load came from that vessel to ours.

Q What did the officer in charge of the boat say to you?

A I did not understand his language, I do not know what he said.

Q Did you know, at any time during the night, that you were drifting from the position you occupied the evening before?

A I did not.

Q After you sent out the small boats, did the schooner move after she was boarded by the Revenue Cutter?

A I sent the small boats out at 3 o'clock and did not sight the schooner until five o'clock; I did not know whether we had moved or not.

Q Did the small boats return to you at any time that morning?

A One of them was taken by the Cutter and six came from the Northeast.

Q About what time did the six return?

A According to our time it was six o'clock.

Q Was that before or after you were boarded by the Revenue Cutter?

A It was afterwards.

That is all.

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Cross Examination.

By Mr. Ray:

Q How much deviation was there to the compass at that point?

A Northeast point west by south, and the eastern point South - Southeast.

Q How much deviation is there to your compass?

A The compass usually employed was injured and we were using another compass. I was not able to take correct observations.

Q What was the bearing when you took your position at six o'clock P.M. July 21st, 1908?

A On a line south by east from the highest mountain on St. Paul Island, 12 miles.

Q How did you determine your position to be 12 miles from St. Paul Island?

A It was foggy at the time and I could not see the land at any spot, so I estimated it as near as possible from where I was at the last bearing.

Q Was there any wind?

A There was a little wind.

Q About how much had you moved from your former position?

A I estimated it as about 3-1/2 miles from the bearing taken on the 20th.

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Q In what direction?
A To the east.
Q How is it you were a mile and a half off St. Paul Island on July 22nd, if on July 21st you were 12 miles away and going further away to the east?
A. I said I shifted about 3-1/2 miles from the position occupied the day before, towards the east.
Q What did you hoist a sail for when you sighted land?
A What day?
Q July 22nd, 1908?
A All sealing schooners have that amount of sail up all the time.
Q When you were 4-1/2 miles away from St. Paul Island why did you hoist all sails?
A I did not.
Q Which way were you headed when you found you were 4-1/2 miles away from St. Paul Island?
A East.
Q Away from St. Paul Island?
A St. Paul Island was off our port quarter.
Q What sail did you have set when you sighted St. Paul on July 22nd?
A Mainsail, Foresail and jib.
Q Were you hove to and stationary?
A Yes.

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Q And all these sails set?
A We were stationary because there was no wind.
Q What time did you send the boats out on the morning of July 22nd?
A Three o'clock.
Q What time did you discover land?
A Five o'clock.
Q Under what sails were you when the small boats left the schooner?
A The same as mentioned before.
Q When the small boats leave the ship, don't you usually simply hoist the mainsail?
A We had the sails up mentioned.
Q How many small boats are there belonging to the Saikai Maru?
A Eight.
Q How much of a crew to each boat?
A Three.
Q What was the total number of your crew?
A Thirty.
Q So that 24 of your crew were away in the small boats at three o'clock on the morning of July 22nd?
A Yes.
Q Leaving six remaining on board the schooner?
A Yes.

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Q How many of these were sailors?
A Two.
Q So that with the sails set you have mentioned, you had two sailors to handle your ship?
A There were six of us; enough to handle that amount of sail.
Q When you were within a mile and a half of St. Paul Island, was not you under the mainsail only?
A I never was within a mile and a half of the island.
Q How many sealskins did you catch on July 22nd, 1908?
A 18.
Q On July 21st, you had 244 seal skins?
A That number includes the catch on the 22nd.
Q At three o'clock on the morning of July 22nd, you sent out 24 of your men, how near did you come to the Island of St. Paul on July 22nd?
A The nearest bearing was 4-1/2 miles.
Q Did you head away from St. Paul Island after you found out where you were?
A I had not time to get away, the war vessel sighted us.
Q Did you sight land and the war vessel at the same time?
A Yes.
Q Which way were you headed?

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A East.
Q Were you at any time headed west on that morning?
A No.
Q At any time were you under the main sail alone previous to sighting the war vessel on that date?
A I did not have the main sail up at all, I had the main tri-sail.
Q Is that all you had up?
A Main tri-sail, fore-sail, stay-sail and jib sail.
Q In what direction did your small boats go when they left the schooner at three o'clock that morning?
A Northeast.
Q When they came back which direction did they come from?
A Six of them from the northeast.
Q Did any of them come from the Northwest?
A Six came from the Northeast.
Q Did you see one of your small boats captured by the Bear?
A I knew it was my boat when the Bear returned from the capture of the Kensai Maru.
Q Did you know a small boat belonging to your schooner had been captured before you were seized?
A I did not.
Q Did you know that one small boat belonging to the

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schooner was to the South?

A I did not.

Q Did you know that five of your boats came from towards the Island of St. Paul with ten or 15 seal skins?

A No.

Q Did you know that your compass was not a correct one?

A I did not know it was a bad one.

Q How many compasses did you use on the schooner?

A Two.

Q Which one was broken?

A The one I bought this year was broken.

Q Was the one you used on July 22nd as good as the one you bought this year?

A The same thing.

Q When the small boats go away from the schooner, how do they know where to return to when they make their catch of seals?

A Each boat has its own compass.

Q Does the schooner stay as near as possible in the same place as where the small boats left?

A Yes.

Q How do you keep the schooner as near as possible in the same place?

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A We change the boat every two hours, back and forth in order to keep it in the same position.

Q Wouldn't the schooner travel a further distance in the light wind with more sails set than with less sails?

A When the jib is hoisted, the ship does not move so very much.

Q Is it foggy very often when you send out your small boats to hunt seals?

A Sometimes it is foggy; sometimes clear.

Q Are there more seals 12 miles away from St. Paul Island than there are within three miles of the island of St. Paul?

A This is the first time I have been so near the Island. I do not know.

Q Are there more seals at a 12 mile point than there are at a three mile point from St. Paul Island?

A There are more seals nearer the Island than far away.

Q Have you ever been nearer to St. Paul Island, except on July 22nd, 1908, than 12 miles?

A No.

Q You know, under the American law, that you cannot seal within three miles of St. Paul Island?

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A I do.

Q How near have you been to the three mile limit at any time this Summer?

A You mean my vessel?

Q Yes.

A Not nearer than 12 miles.

Q July 22nd, 1908 is the first time since May 20th, that you have been within 12 miles of St. Paul Island?

A Yes.

Q How do you know that you have been 12 miles away from the Island of St. Paul every day this summer except on July 22nd?

A I think it was on account of the tide that I approached nearer.

Q How was the tide on the morning of July 22nd, 1908 at six o'clock in the morning?

A It was flowing southeast from my vessel.

Q Were you heading into the tide?

A We were headed east at that time.

Q How were you headed just before your capture?

A Also headed east.

Q How long had you been headed east previous to six o'clock in the morning?

A Up to midnight we were headed east northeast;

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after midnight east.

Q Did you drift with the tide?

A I do not know how the tide was at that time.

Q How was the wind?

A There was no wind.

Q Why did you have so much sail set if there was no wind?

A We kept the sail up all the time not knowing when the wind might rise.

Q What time after you saw the Bear did you see the land?

A As soon as I saw the Bear I discovered we were 4-1/2 miles from the land.

Q How far did you drift after you saw the Bear; before she came up to you?

A There being no wind, we did not drift at all.

Q Why did you drift all night and not drift from the time you first saw the Bear until your capture?

A I knew we had moved more or less seeing the mountains had changed.

Q If there was no wind, the tide caused you to drift?

A I think so.

Q And caused you to drift to the eastward?

A I do not know.

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Q Did you know where you were at five o'clock on the morning of July 22nd?

A I did not know where we were exactly when we sent out the boats; not until the fog cleared.

Q Can you determine the position of your schooner by one bearing?

A I can only estimate by reference to the bearing of the previous day.

Q Have you any method to tell how far your schooner travels in a single day?

A I use the chart and compass clear days.

Q How when it is foggy?

A We calculate from the position we were in at the last bearing.

Q What papers do you hold in Japan and America?

A Third Class License.

Q Do you mean to say that you can determine the position of the schooner when only one bearing is taken?

A Cannot do it with a single bearing without reference to previous bearings.

Q When did you have the compass you used on July 22nd tested?

A I do not remember.

Q Have you had the compass tested since you arrived

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in Bering Sea?

A It was tested before leaving Japan.

Q Was the compass tested in Bering Sea?

A No.

Q When did you leave Japan?

A March 23rd, 1908.

Q What part of St. Paul Island did you first sight on the morning of July 22nd?

A The high place; a little bit this side of the Northeast.

Q Do you know where Northeast Point is?

A Yes.

Q But you have never been within 12 miles of Northeast point until the morning of July 22nd, 1908?

A Yes.

Q How did you recognize it as Northeast point?

A The bearing from Walrus Island.

Q Did you ever see Northeast point nearer than 12 miles away before that morning?

A No.

Q How much deviation is there to your compass?

A I do not know.

Q Did you ever state that your compass was not very good and that you did not know the deviation?

A No sir.

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Q Did you ever state that you ordered the boats to be lowered, but that when they got into the water, they go where they like?

A I stated that I order the boats lowered but when they get away from the ship I do not always know what direction they take; I have no means of knowing that.

Q Did you state that your compass was not very good?

A I stated that the compass we were using on this occasion was our last year's compass; that the new compass purchased this year was out of order.

Q Didn't you say just before adjournment that one compass was broken and the other was not good?

A No.

Q Do you mean to tell this jury that you did not say before you went out to dinner that one compass was broken and the other not good?

A Is that not a mistake on your part?

Q Do you want to change any of the testimony which you have given under oath?

A No sir.

Q Was your schooner at any time headed towards St. Paul Island on July 22nd, 1908?

A No.

Q Were you always headed towards the eastward?

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A Towards the Eastward.

Q Did you see St. Paul Island any time before six o'clock on the morning of July 22nd?

A I saw it at five o'clock.

Q How was the schooner headed at five o'clock?

A East.

Q How headed at four o'clock?

A East.

Q How headed at three o'clock?

A East.

Q Did you know where St. Paul Island was at 3 o'clock?

A No.

Q Is that the reason you sent your boats to the Northeast?

A I did not know where the Island was; when the boats were lowered at three o'clock I told them to go to the Northeast.

Q Did you not say that when your boats left the Schooner you went two hours in one direction and two hours back over the same course?

A I was speaking with reference to our usual practice on such occasions.

Q Did you at any time head two hours west on the morning of July 22nd, 1908?

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A No.

That is all.

Re-Direct Examination.

By Mr. Ritchie:

Q You stated this afternoon that you left the Fair-weather grounds the 25th of May, why did you leave at that time?

A The seals disappeared at that time; there were no more to be seen in that location.

Q Following the seals you went where?

A I was headed for Bering Sea.

Q You told Mr. Ray that you remained most of the time while in Bering Sea about 12 miles from St. Paul Island, could you see the Island from time to time from the 19th of June until the 22nd of July?

A Yes, I had seen it.

Q When the fog lifted, did you take bearings from time to time, to determine your position?

A Yes.

Q Did you have information regarding the Island from Japanese schooners there and from other navigators familiar with it?

A You mean this year?

Q Yes, this year?

A No.

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Q Did you ever engage in sealing around St. Paul Island previous to this year?

A Yes.

Q What year?

A Last year and the year before.

Q Is there anyone on board your ship, besides yourself, that understands navigation?

A No.

That is all.

Re-Cross Examination.

By Mr. Ray:

Q You stated that your usual custom was, when the small boats were sent out, to sail two hours one way and two hours the other way?

A Yes, that is our practice.

Q Why did you do different on the morning of July 22nd?

A Because there was no wind that night and it was not necessary.

Q How many other schooners were there near you that morning?

A At the time when the fog lifted there was only my schooner and one other.

Q How many seals are there at Northeast point, do you think?

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A I do not know.

Q Did you know there were any seals at Northeast point?

A There were plenty of them last year and the year before, and I supposed they were there this year.

That is all.

K. Hioka, one of the defendants, being called as a witness on the part of the defense, after being duly sworn, testified as follows:

Direct Examination.

By Mr. Ritchie:

Q State your name?

A K. Hioka.

Q What is your business?

A Fisherman.

Q Are you one of the crew of the Saikai Maru?

A Yes.

Q What is your occupation on the Saikai Maru?

A Gunner.

Q Does that mean the same as hunter?

A Yes.

Q You were gunner or hunter on one of the small boats?

A Yes.

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Q Do you remember where the vessel was on the 22nd of July, 1908?

A I do not.

Q Do you know where the vessel was the morning you were captured?

A I do not.

Q Did you go out in your small boat the morning you were captured?

A Yes.

Q At what time?

A We left the vessel at three o'clock.

Q Which way did you go from the vessel?

A We were commanded to go to the Northeast; when we left the vessel we endeavored to do so, but it was so dark and foggy we drifted about.

Q Have you a compass on your small boat?

A Yes.

Q Did you get any seals that morning?

A Yes.

Q How many?

A Two.

Q How long after you started out did you get the first one?

A I did not pay much attention to the time; we were hunting seals, I cannot say how much time elapsed.

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Q How long after you caught the first did you catch the second?

A I think about thirty minutes.

Q How was the weather when you left the schooner?

A It was foggy.

Q How heavy was the fog?

A It was very foggy. Heavy.

Q Could you see far from your small boat?

A Not very far.

Q Did the fog lift?

A It lifted after we were taken by the war vessel.

Q Did the fog lift any before you were captured?

A No.

Q Could you see land before you was captured?

A No.

Q Did you know how far you were from the Island when captured?

A No.

Q Who were the two men in the small boat with you?

A T. Terada and Y Kometani.

That is all.

Cross Examination.

By Mr. Crossley.

Q. Was you in the small boat captured by the Bear?

A Yes.

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Q Did you have two seals, one seal just killed and one seal skin in your boat when captured?

A Yes.

Q You had just shot them, had you?

A We had taken them soon after leaving the schooner.

Q After leaving the schooner Saikai Maru?

A Yes.

Q Your boat and crew was sent out from the Saikai Maru, was it?

A Yes.

Q You were here last year?

A No sir.

Q Were you not brought here this last year or two years ago with a crew of seal fisherman.

A Year before last I was here.

Q You were brought here year before last with some seal fishermen?

A Yes.

That is all.

Defendants Rest.

Captain Berthault, being called by the Government in rebuttal, testified as follows:

By Mr. Ray:

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- Q In what direction does the tide ebb and flow in the region of St. Paul Island?
- A The ebb tide, ebb currents flows to the westward; the flood current to the eastward; it splits at Northeast point and runs down each side of the island.
- Q On July 22nd, 1908, at 6 o'clock in the morning, please state what the tide was?
- A The tide was ebbing.
- Q Assuming the schooner to be 12 miles away from Northeast point, in a Northwest direction, in which direction would the schooner move to?
- A To the west, perhaps a little to the southward, mostly to the westward.
- Q With reference to the rough log, Captain, there was some question raised by brother Ritchie with reference to why a portion of the log was written in ink and a portion in pencil?
- A The rough log is usually written in pencil, but I realized at this particular time that the log would be used more or less, and that the pencil writing would smudge, so I passed the word along to have the rough log written in ink.
- Q You heard the testimony of the defendant Captain with reference to the way his schooner was headed,

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when the schooner was first sighted by you, in what direction was she headed?

- A To the west; bow toward the Island.
- Q Under what sail?
- A The only sail up was the mainsail.
- Q After you sighted her first what happened?
- A She moved to the East.
- Q Stood to the east, and it was something like 40 minutes from the time you first sighted her until her capture?
- A Yes.
- Q Is it possible to determine the location of a ship with one bearing?
- A No sir.
- Q Would it be possible for the Captain of the schooner to determine his position by looking at the mountain on the Island and one bearing only?
- A It could not be done except by guess.
- Q Assuming that the schooner was in a position 12 miles N. of W. of Northeast point, there being no wind, the sea smooth and it being foggy, in your opinion would it be possible for the ship to have been in the position she was captured, if she was 12 miles away from Northeast point at six o'clock the evening before captured?

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A No sir, it was impossible.

That is all.

Cross Examination.

By Mr. Ritchie:

Q Which way would he drift with the tide, the schooner, if she 12 miles a little south of east off St. Paul Island at six o'clock the night of July 21st, Captain?

A He got his position at 6 o'clock that night; it was low water at 4:55 and it was high water at 11:00 o'clock; therefore from six o'clock until eleven o'clock he had drifted with the flood tide to the eastward; therefore, at eleven o'clock, if he started 12 miles east of the Island, he would be further to the eastward; and if he drifted in a general direction from then on, he would be ashore on Walrus Island before getting to Northeast point.

Q During the last hour or two of ebb tide, the water moves very slowly?

A Yes.

That is all.

Re-Direct.

By Mr. Ray:

Q Where is Walrus Island on the map?

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A About six miles south of east, in a general direction, from Northeast point.

Q Referring to the question, of tides, there would be two hours in favor of his going to the eastward, so that at six o'clock he was 12 miles away from the Island and six o'clock in the morning about the same place.

A There would be two hours preference to the westward. Five hours flood tide to the eastward, and seven hours to the west - two hours more to the westward than to the eastward, but to go a distance from a point 12 miles to the point three miles off the Island, he would have to drift nine miles in two hours. No boat ever did that. The tide isn't that fast.

That is all.

Re-Cross.

By Mr. Ritchie:

Q If it was not dark until nine o'clock, it would be easy for him to hold his vessel in place until that time?

A If he wanted to.

That is all.

Government Rests.

Defendants rest.

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I hereby certify that the above and foregoing pages, numbered one to fifty-seven inclusive, are a full, true and correct transcript of my original stenographic notes, taken at Valdez, Alaska, during the Special October Term 1908 of the District Court for the Territory of Alaska, Third Division, in case No. 138, United States of America, Plaintiff vs. Y. Sagumura et al, defendants.

(Signed) Charles E. Parkes,
Official Stenographer, District
Court for the Territory of Alaska,
Third Division.

Subscribed and sworn to before me this fifth day of March, one thousand nine hundred nine.

O. A. Wells,
Clerk of the District Court
for the Territory of Alaska,
Third Division.

(SEAL)

By A. I. McDonald,
Deputy.