

TRUST TERRITORY OF THE PACIFIC ISLANDS, Libelant

v.

LEN CHE SENG NO. 3, Libelee

Civil Action No. 571

Trial Division of the High Court

Palau District

August 17, 1972

Libel for condemnation and forfeiture of vessel. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, granted the libel where owner of vessel failed to appear and prove he had no knowledge or wilful negligence regarding the violation made the grounds of the libel.

Actions—Failure to Appear

Where owner of vessel involved in proceeding for condemnation and forfeiture failed to appear and meet his statutory burden of proving that violation made grounds of proceeding was without his knowledge or wilful negligence, court would order vessel condemned and forfeited. (19 T.T.C. § 156)

Counsel for Libelant:

PHILLIP JOHNSON, ESQUIRE

CARLOS H. SALII, ESQUIRE

Counsel for Libelee:

J. LEO McSHANE, ESQUIRE

BURNETT, Chief Justice

Libel was filed herein on April 27, 1972 seeking condem-

nation and forfeiture of the Taiwanese fishing vessel, the Len Che Seng No. 3. The vessel's captain and fishing master were previously convicted, *Trust Territory v. Hsu Deng Shung et al.*, Palau Criminal Case No. 430, of unlawful entry, unlawful entry of a vessel, and unlawful removal of marine resources. The vessel was seized on or about April 24, 1972, off Ngeruangel reef, Kayangel Municipality, Palau, and since that date has been in the custody of the District Administrator, Palau District, pursuant to 19 T.T.C. 154.

Notice of seizure and of forfeiture proceedings was given to the reputed owner of the vessel, and his response to the libel was filed on June 19.

The matter was set for trial in Palau on July 31. It appearing to the Court that notice of such trial setting had not been given to the owner in sufficient time to give him an opportunity to appear, it was stipulated by counsel that libelant could proceed with its case for forfeiture, and that the matter would be further continued to August 14 in Saipan to insure the owner of an opportunity to appear. Libelant then proceeded with the introduction of evidence in support of the libel.

Prior to the date set for further hearing, that is, August 14, the owner gave notice that he did not intend to appear.

Section 156, Title 19, provides for relief from forfeiture if the owner can establish that the violation occurred without his knowledge or any wilful negligence on his part. The Court has previously held that this statute imposes an affirmative burden of proof on the person seeking to avoid statutory penalty of forfeiture. *Trust Territory v. Kyoshin Maru No. 23*, 4 T.T.R. 452. In view of the owners decision not to appear and his failure to present evidence otherwise meeting his burden of proof, I must necessarily find for the libelant.

It is, therefore, Ordered, Adjudged and Decreed that the Taiwanese fishing vessel Len Che Seng No. 3 be, and it hereby is, condemned, together with her tackle, apparel, furniture and equipment, and all of the same is forfeited to the High Commissioner for the use of the Trust Territory of the Pacific Islands.