

Case No. 4,374.

THE ELLA WARLEY.

{Blatchf. Pr. Cas. 648.}¹

Circuit Court, S. D. New York.

July 17, 1863.²

PRIZE—VIOLATION OF BLOCKADE—MUTILATION OF LOG-BOOK—FALSE DESTINATION ON VESSEL'S PAPERS.

1. Decree of the district court, condemning vessel and cargo for an attempt to violate the "blockade, affirmed.
2. Mutilation of the log-book and destruction of papers.
3. False destination on the papers of the vessel.

{Appeal from the district court of the United States for the southern district of New York.

{In admiralty. The steamer Ella Warley and cargo were libeled as prize, and upon preliminary motion an order was made that the cargo, consisting of arms and munitions of war, be transferred to the government upon deposit of the appraised value. Case No. 4,370. The authority of the court to make this order was confirmed in Case No. 4,371, and afterwards an order for the sale of the vessel was made, on the ground that she could only be preserved by constant watchfulness on the part of the officers in charge of her. At a hearing on the merits a decree of condemnation and forfeiture of the vessel and cargo was entered by the district court (Case No. 4,373), and is now heard on appeal from that decree.]

NELSON, Circuit Justice. This vessel was captured about one hundred miles north of the island of Abaco, one of the Bahamas, east of the Gulf Stream, on the 24th of April, 1862, by the war steamer Santiago de Cuba. The cargo consisted principally of arms, Enfield rifles, Austrian rifled muskets, and other muskets, lead, saltpetre, &c. The vessel belongs to E. Adderly, of Nassau, a British subject, and, probably, the cargo also, although this is left in some uncertainty. The vessel had been recently purchased from a citizen of Charleston, South Carolina, after running the blockade of Charleston two or three times, between that city and Nassau, N. P. She left the latter place in ballast, for Havana, where she took in a part of her cargo. She then returned to Nassau, completed it there, and then sailed, according to her papers, for St. John's, N. B., and was captured some twenty-four hours out, as above stated.

The master, A. G. Swasey, states that the vessel was cleared at Nassau for St. John's, and that the cargo was consigned to W. B. Wright, of that place, in the same way that previous cargoes had been consigned, when he ran the blockade of the port of Charleston. R. W. Lockwood, the pilot, says that he cannot say where the vessel was bound after leaving Nassau, and that he does not know where she was bound. He further says: "I

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never heard nor asked any question as to where we were bound. The master, to the best of my knowledge, was the only one who knew where we were bound.” He also says: “I think the last voyage began at Nassau, N. P., but I don’t know where it was to have ended.” And again: “At the time we were taken we were steering our course about north half west, in order to get into the Gulf Stream, and we were not steering to any particular place.” Again: “I don’t know whether or not we were bound to that port, (Charleston, South Carolina,) on the voyage during which we were captured.”

It is remarkable that the pilot should be thus in doubt and uncertainty as to the course of the vessel in her voyage from Nassau, and as to her destination. If her course and destination were for St. John's, he was, of all persons on board the vessel, the most likely to have been advised of it. The uncertainty leads to strong suspicion as to the ostensible voyage. The log-book was mutilated after the capture, or about that time, together with other papers. It is urged, that the only part destroyed was that which related to the former voyages in violation of the blockade of Charleston. But the only evidence of this is that of the master, who gave the order to burn the papers. His testimony on this subject is not entitled to full credit.

The whole of the proofs in the case, which I have attentively studied, appear to me to lead to the, conclusion that the port of St. John's, N. B., as in former voyages of the vessel from Nassau, was used, simply, as a pretext to cover a voyage to Charleston, in violation of the blockade of that port, and that the destination of the vessel was in reality to that port at the time of the capture. I affirm the decree condemning the vessel and cargo.

¹ [Reported by Samuel Blatchford, Esq.]

² [Affirming Case No. 4,373.]