

THE JOSEPH H. TOONE.

Case No. 7,543.

{Blatchf. Pr. Cas. 641.}¹

Circuit Court, S. D. New York.

July 17, 1863.²

VIOLATION OF BLOCKADE—EVIDENCE OF.

{The fact that a vessel loaded with ammunition was several hundred miles out of the proper course to her alleged destination, and heading towards a pass which was the customary entrance to a port, at that time in a state of blockade, is sufficient evidence to warrant her condemnation.]

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

In admiralty.

NELSON, Circuit Justice. This vessel was captured on the first of October, 1861, by the war steamer South Carolina, in the Gulf of Mexico, off Timbalier Island and Barataria Bay, on the coast of Louisiana. She was of the burden of 145 tons, and was laden with arms, ammunition, coffee, &c, and on a voyage from Havana to Tampico, Mexico. The vessel belongs to Aymar, a British subject, doing business at New Orleans, where he has resided for the past eight years. He was on board at the time of the capture. The cargo belongs to Spanish subjects, and was shipped on board at Havana, ostensibly destined for Tampico.

The only question in the case is, whether or not the vessel was, at the time of her capture, attempting to enter the port of New Orleans, which was in a state of blockade. The owner, who was on board, and the master, knew of the blockade. The vessel, at the time she discovered the war steamer, was heading northwest, and immediately tacked to the southwest, and was chased some four hours before she was overtaken and captured. She was some six degrees, or over five hundred miles, north, out of her proper course for Tampico, and heading towards a pass that would lead to the Mississippi river and New Orleans. Tampico is some eight or nine hundred miles south of west from Havana. The attempted explanation of this departure from the usual course to Tampico, namely, headwinds, and a defective barometer, is not satisfactory. Indeed it is admitted that the wind, at the time of the capture, was from the northeast. No one can look on the map without being struck with the insufficiency of the excuse for the position of the vessel in her extreme northern latitude, compared with her port of destination, and in the vicinity of one of the customary passes to New Orleans. I say nothing about the cargo on board. She had a right to carry it to Tampico. The difficulty in the case is, that the course of the vessel, from the commencement of the voyage until she was discovered by the South Carolina, was utterly

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inconsistent with an honest destination to that place, and was consistent with an intent to run the blockade of the port of New Orleans. I think that the intent is apparent, and that the vessel was in the act of carrying it into effect. Decree below affirmed.

{See Cases Nos. 7,540-7,542.}

¹ [Reported by Samuel Blatchford, Esq.]

² [Affirming Case No. 7,541.]