

THE NELLIE.

[Blatchf. Pr. Cas. 553]¹

District Court, S. D. New York. Oct. 14, 1863.

PRIZE—VIOLATION OF BLOCKADE—ADDITIONAL
PROOF.

In this case, no witnesses having been sent in with the vessel, and no reason being furnished for not producing them, and the commander of the capturing vessel being examined by order of the court, but not furnishing any proof of any violation of the blockade, or that the captured property was enemy property, the court ordered the case to stand over for further proof as to the criminality of the vessel and in order that the absence of all evidence from on board of her might be accounted for, and allowed six months time for that purpose.

In admiralty.

BETTS, District Judge. This vessel and cargo were captured at sea, about 25 miles northeast from Port Royal, South Carolina, March 29, 1863, by a United States ship-of-war. The vessel was, by due valuation and course of procedure, taken for the use of the United States at the time, and the cargo was 1309 sent to this port for adjudication. Due service and return of the warrant of attachment and of the monition were made; and, no one intervening in defence of the action, judgment of condemnation and forfeiture was regularly entered, by default; against the vessel and cargo.

In the absence of other witnesses in the case, John J. Almy was, by order of the court, examined in preparatorio in the cause. He testifies that he was present at the capture of the Nellie at sea; that she had no papers on board; that she was captured because she was found at sea without papers; that her master acknowledged that he had ran the blockade out of Charleston with her, and was bound to Nassau; that the capture was made by the United States ship-of-war

under command of the witness; that the vessel carried about 75 bales of cotton; and that her master said he came out of Charleston and was going to Nassau, and knew all about the war. No witnesses were sent in with the captured vessel, nor is any reason furnished for not producing them. No doubt the officer making seizure of a vessel at sea is a competent witness to prove the act of capture, and also circumstances, accompanying the capture, which afford reasonable cause for believing the culpability of the property arrested. No proof is furnished by Captain Almy that the vessel in fact evaded the blockade of Charleston, or that the person who made the declarations testified to has been really master of the *Nellie*, or that the *Nellie* or her lading were enemy property. The unseaworthiness of the prize vessel and her appropriation to the use of the United States are, *prima facie*, adequately authenticated if the prize is shown to have been enemy property at the time or to have violated the blockade.

The case must stand over for further proof as to the criminality of the vessel seized, and in order that the absence of all evidence from on board of her may be accounted for; and it is ordered by the court that the United States be allowed the period of six months from the entry of this decree to produce proof to that end.

¹ [Reported by Samuel Blatchford. Esq.]