

Case No. 11,767.

THE RICHARD O'BRYAN.

[2 Spr. 197.]¹

District Court, D. Massachusetts. Nov., 1862.

PRIZE—VIOLATION OF BLOCKADE—CONTRABAND
GOODS.

Cargo condemned for breach of blockade and for being contraband of war.

The Richard O'Bryan, a British schooner of about one hundred tons burden, was discovered July 4, 1862, by the United States ⁶⁹⁰ gunboat Rhode Island, Commander Trenchard, at St. Louis Pass, near Galveston, Texas, close in shore, landing cargo by boats. When discovered, her crew made sail on her, ran her ashore, and deserted her. She was boarded by boats from the Rhode Island, under charge of Acting Master Pennell, who found her bilged, and a large part of her cargo taken out. The rest of the cargo was taken from her and transferred to the Rhode Island, and the schooner set on fire, as unfit to bring oft. The cargo was sent into this district for adjudication. The log-book, certificate of registry, certificate of clearance, bills of lading and invoice, were found on board. No claimant appeared.

R. H. Dana, Jr., U. S. Atty., for the United States and captors.

SPRAGUE, District Judge. The certificate of registry shows this to have been a British vessel, built in Nova Scotia, and owned by H. F. Colthirst, of Jamaica; and there is nothing to contradict this proof. The clearance of June 13, 1862, is for Matamoras, in Mexico, and her bills of lading and invoice are for that port; and she was, in form, consigned to one Wilbur, of that place. The cargo was shipped by the owners of the vessel. The log-book shows that she was boarded by the United States gunboat Hatteras, June 29th, and

duly warned of the blockade of the United States ports in the Gulf of Mexico. The boarding officer also entered on the log, that he found the vessel entirely out of her proper course for a voyage to Matamoras; but, as the master alleged an error in his chronometer, and heavy weather, as an excuse, she was allowed to proceed, the boarding officer entering a correction of her reckoning in the logbook. July 1st she was again boarded and warned by the United States steamers Sam Houston and De Soto, each of which vessels, after examination, let her go, although she was still somewhat out of her proper course. Her discovery and capture by the Rhode Island, in the act of landing her cargo on the beach near Galveston, were three days afterwards.

A portion of this cargo, at least, is contraband of war. There can be no doubt that this vessel sailed from Jamaica destined to Galveston, and that Galveston was under actual and effective blockade at the time of her sailing, of the warnings, and of her capture. She would be therefore prize of war on the ground of attempt to break the blockade; and, as the cargo belonged to the owners of the vessel, it is liable to condemnation for the same cause. Decree of condemnation and decree of distribution in favor of the United States steamer Rhode Island.

NOTE. See *The Cornelius*. 3 Wall. [70 U. S.] 214; *The Admiral*, Id. 603; *The Josephine*, Id. 83; *The Cheshire*, Id. 231.

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