

Case No. 17,298.

THE WAVE.

[Blatchf. Pr. Cas. 148.]<sup>1</sup>

District Court, S. D. New York.

April, 1862.

CONDEMNATION OF PRIZE—PROCEDURE.

1. Vessel and cargo condemned as enemy property, and for a violation of the blockade.
2. The rules of practice in admiralty are the basis of practice in prize in our national courts.

BETTS, District Judge. This vessel and cargo were captured, as prize, off Boca Chica, and the coast of Texas, on the 1st of February, 1862, by the United States ship-of-war Portsmouth. The vessel was regarded as unfit for a voyage to a Northern port, and remains in possession of the captors. The cargo was transmitted to this port on board the prize steamer Labuan, and the vessel and cargo were here libelled, on the 27th of March, for condemnation as prize. Due service of process of attachment having been made thereon, and no person intervening for the same, default has been prayed for and ordered, and, on the proofs submitted to the court, a decree of condemnation is moved against the vessel and cargo. Prize rule 24; Dist. Ct. Adm. Rules 35, 184; Sup. Ct. Adm. Rule 46. The rules of practice in admiralty being the basis of the practice in prize in our national courts, and having been ordinarily, in the decisions of this court, referred to summarily as the fundamental authority in that respect, it is deemed appropriate to cite those rules textually: "As soon as may be convenient after the captured property shall have been brought within the jurisdiction of this court a libel may be filed, and a monition shall thereupon be issued, and such proceedings shall be had as are usual in conformity to the practice of this court in cases of vessels, goods, wares, and merchandise seized and forfeited in virtue of any revenue law of the United States." Prize rule 24, May term, 1861; Ben. Prac. 392. "On proclamation, after due return of process, the libellant shall be entitled to a decree of default or contumacy, according to the nature of the case, and the three proclamations heretofore used are abolished." Dist. Ct. Rules Adm. 1838, Rule 35; Ben. Prac. 364. "All rules applicable to the service of, or proceedings in relation to, process in plenary causes in admiralty shall equally apply to process on informations." Dist. Ct. Rules Adm. Rule 184; Ben. Prac. 385. "In all cases not provided for by the foregoing rules, the district and circuit courts are to regulate the practice of the said courts, respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty." Sup. Ct. Rules Adm. Rule 46; 3 How. 13; 1 Stat. 276, § 2; 5 Stat. 518, § 6.

The schooner belonged to a Confederate state, and sailed on January last, under a rebel flag, from New Orleans. The master and crew were from the same place, and knew that the port

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was blockaded by the United States at the time. She sailed from that port for Brazos Santiago, with a cargo of sugar, tobacco, and rice, both vessel and cargo being owned in New Orleans. All the letters on board of the vessel were thrown overboard before her capture, all but one of them being directed to one Kennedy, of Brownsville, and the master was to deliver the cargo according to his directions. The vessel was built at Wilmington, North Carolina, and registered December 26, 1861, at New Orleans, as owned by citizens of that place, in the name of George McGregor, agent of the Calhoun Marine Company. The manifest of the cargo bore the same date, and was in the name of the same marine company, and was sworn to on the same day at the New Orleans custom-house, and the vessel was then cleared for Brownsville, Texas. The proofs are clear that the capture was wholly enemy property, and had intentionally violated the blockade of New Orleans. The retention of the vessel for the use of the government was a matter at the sound discretion of the captors, her value being previously appraised and deposited in court. Upton's Prize Prac. (3d Ed.) 437. Judgment of condemnation is accordingly rendered against the vessel and cargo.

<sup>1</sup> [Reported by Samuel Blatchford, Esq.]