

that on the log book kept by the mate the line at the head of each page up to and including Monday, 18th July, is, "Journal from Halifax, N. S., towards Kingston and Vera Cruz." On Tuesday, 19th July, the head line is, "Journal from Halifax, N. S., towards Vera Cruz and Kingston." If, after reaching Nuevitas, there was an intention to go to Vera Cruz, the westwardly course would be the most direct. It is earnestly contended by the attorney for the government that the sailing in the direction of Sagua and Caibairien, after notice by the officer of the *Badger* that those ports were blockaded, is ground of forfeiture, and in support of such contention he cites *The Vrow Johanna*, 2 C. Rob. Adm. 109, and *The Neptunus*, Id. 110. These cases are sufficient authority to the point that the act of sailing for a blockaded port after receiving notification of the blockade is a breach of the blockade. These were cases of blockade by notification. Sir William Scott, in *The Neptunus*, says:

"In the case of a blockade de facto only, it may be otherwise." In case of a blockade by notification he says: "It is to be presumed that the notification will be formally revoked, and until that is done the port is to be considered as closed up, and from the moment of quitting to sail on such a destination the offense of violating the blockade is complete, and the property engaged in it subject to confiscation. It may be different in a blockade existing de facto only. There no presumption arises as to continuance, and the ignorance of a party may be admitted as an excuse for sailing on a doubtful and provisional destination."

In *The Circassian*, 2 Wall. 135, Chief Justice Chase says:

"It is a well-established principle of prize law \* \* \* that sailing from a neutral port with intent to enter a blockaded port, and with knowledge of the existence of the blockade, subjects the vessel, and in most cases its cargo, to capture and condemnation. We are entirely satisfied with this rule. It was established with some hesitation, when sailing vessels were the only vehicles of ocean commerce; but now, when steam and electricity have made all nations neighbors, and blockade running from neutral ports seems to have been organized as a business, and almost raised to a profession, it is clearly seen to be indispensable to the efficient exercise of belligerent rights."

In the case of *The Admiral*, 3 Wall. 603, the ship sailed for Savannah, after notice of the blockade, and was captured "near the blockaded port, and when heading for the land, and when, in point of fact, she was in the act of entering the port." The facts here clearly distinguish this case from that of *The Admiral*, there being no testimony tending to show any attempt to enter either Sagua or Caibairien. Sailing for a blockaded port and sailing by a blockaded port are very different. No case has been cited to support the view that the sailing in the direction of a port not blockaded by notification, but which is reported to be blockaded de facto, is of itself, without more, a breach of the blockade. Chief Justice Chase, in *The Circassian* (page 150), takes note of the distinction between simple and public blockades:

"A simple blockade may be established by a naval officer acting upon his own discretion, or under the direction of superiors, without governmental notification; while a public blockade is not only established in fact, but is notified by the government directing it to other governments. In the case of a simple blockade the captors are bound to prove its existence at the time of capture, while in the case of a public blockade the claimants are held to proof

of discontinuance in order to protect themselves from the penalties of attempted violation."

To subject the Newfoundland to confiscation for passing near and by the ports of Sagua and Caibairien, after he had received notice from the boarding officer of the Badger that these ports were in fact blockaded, the government should show that the blockade as established by the naval officers on that station at Sagua and Caibairien was still in existence, and some act on the part of the Newfoundland indicating an intention to enter those ports, or one of them. The record contains no testimony on either point, and the contention of the government that she should be condemned on this ground, being supported by neither proof, reason, nor authority, must fail. Passing by Sagua and Caibairien, ports which appear on the maps as lying to the westward of the middle of the island, the Newfoundland was next boarded by the United States coast guard ship Hudson, about 11:30 a. m. on Tuesday, July 19th, off Cardenas. Her papers were examined, and she was allowed to proceed. At 6:20 p. m. of same day she was boarded by an officer of the United States steamship Tecumseh, was warned not to approach any nearer the island of Cuba, or to attempt to enter any port. This warning was entered upon the log, and she was allowed to proceed, passing on in a westward course. The log contains this entry, "8:30 p. m., Havana light bearing south 10 miles," and the master's testimony is that at 10:05 p. m. a gun was fired from the Mayflower, and his ship was seized, at a point 21 miles N. N. W.  $\frac{1}{2}$  W. from Havana light. In answer to the interrogatory, "For what reason, or on what pretense was the seizure made?" the master says:

"Captain Mackenzie [who commanded the Mayflower] said the ship was out of her course for either Vera Cruz or Kingston. I protested against the seizure, saying, so far as I know, I had not violated the blockade law. He then asked some one on board—I don't know who he was—what they had on board the Mayflower about the Newfoundland. A letter was brought to him, and, after he read, he told me he had information by or through the United States consul at Halifax to the effect that the Newfoundland had left Halifax with the intention of running the blockade to Cuba or Havana,—I don't know for certain which,—and for that reason he would have to send me in."

The testimony of the chief mate as to the time, place, and circumstances of the seizure accords with that of the master. He gives the bearing of Havana light as S. E. by S.  $\frac{1}{2}$  S., 21 miles, and says they were about 13 or 14 miles off shore. A typewritten sheet of paper, containing the following statement by Commander Mackenzie, is pasted in the log book:

"U. S. S. Mayflower.

"Off Havana, Cuba, July 19, 1898.

"July 19, about 8:30 p. m., the Mayflower, then being about eight miles north of Morro light, Havana, started in chase of a faint light to the northward, which was only occasionally visible. The chase occasionally changed course two or three times, and was finally brought to about 10:30 p. m., about 17 miles north-northwest of the Morro. She had been warned by the Tecumseh about 6 p. m. (four hours and a half before we brought her to), and previously by the Badger. She was out of her shortest course either for Jamaica or Vera Cruz, for both of which places she had clearance. The