

Case No. 143.

[18 Leg. Int. 405; 4 Phila. 418.]

THE ALBION.

District Court, E. D. Pennsylvania.

Aug. 31, 1861.

PRIZE—EXAMINATION OF PRISONERS—CUSTODY OF SHIP.

- [1. When a prize is sent into port, without the prisoners taken in her, whose examination is important, the prize commissioner will be ordered to give the ship and cargo into the custody of the marshal, to be held until the prize master shall have returned to the flag officer, in order that the prisoners, or an affidavit giving the reasons for their detention, may be brought into court.]
- [2. Where the prize master was present at the capture, the prize commissisoner will be ordered to examine him.]

In admiralty.

CADWALADER, District Judge. In this case the examination of the persons captured in the vessel is of immediate, as well as probable, ultimate importance. The usual and regular course is to send them in her, in the custody of the prize master, to the place of intended adjudication. This course has not been pursued in this instance. The prize master states that these persons were detained in the war steamer Seminole, in Hampton Roads, where he believes that they are now are. He does not know why they were not sent in her, nor does he know any reason why they should not be sent hither for examination. The papers of the vessel are all here. To send them away would be contrary to the usual course of practice, and would, unless under extraordinary circumstances, be objectionable. A commission to take the examinations where the witnesses now are, addressed to a person there, would be inconvenient, as the commissioner would not, without the papers, be able to take the depositions advisedly. The preparation and transmission of copies, besides being attended with delay and expense, might endanger their premature publication. Moreover, a prize commissioner, as the immediate delegate of the judge, ought, if possible, to be a person with whom he can, from time to time communicate, in the progress of the cause. Another course, which might be preferable, would be to send one of the prize commissioners of the court to Hampton Roads for the purpose of taking the examination. But this might be attended with great expense, and, though not necessarily improper, is, I believe, unprecedented.

Under the circumstances of the case, I will make an order that the prize commissioner to whom the papers have already been delivered shall, upon taking possession of the vessel and cargo, deliver them immediately into the custody of the marshal, who will remain in possession under the direction of the commissioner. This will enable the prize master to return with a copy of these proceedings, to the flag officer, under whose order he has brought the captured vessel hither. The flag officer will probably either send the prisoners to this place in the custody of the same prize master, or of another officer, or send

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an affidavit explaining the reasons for not sending them. The decision of a prize cause is usually pronounced upon the examination of the persons on board of the captured vessel, and of her papers. In this case there may, perhaps, be some special reason for examining the prize master, who states that he was present at the capture. The commissioner may therefore examine him at once, for which this will be his warrant.