

**Case No. 1,894.**

The BRITANNIA.

[2 Spr. 225.]<sup>1</sup>

District Court, D. Massachusetts.

Sept. Term, 1863.

PEIZE—COSTS—EXPENSES OF CREW OF PRIZE VESSEL.

The expenses of the crew of a prize vessel, who are not needed or used as witnesses, incurred after their arrival in port, are not chargeable upon the proceeds of the prize.

In admiralty.

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

SPRAGUE, District Judge. The marshal of the southern district of New York petitions to be allowed \$274 for the board of forty-five men of the crew of the Britannia, sent to that port by the captors, in some other vessel. They were not sent there as witnesses, nor for any purpose connected with adjudication on the prize. All the documents and necessary witnesses were sent to this port in the prize. The retaining of the rest of the crew in New York was an executive act, and, if attended with expenses, the persons having claims for such expenses cannot have them satisfied from the prize. It seems that, on the arrival of these men in New York, the marshal of that district telegraphed to the marshal of this district to know if any of the men were needed here as witnesses, to which a reply was made in the negative; but a delay of several days occurred before the reply was received, owing to the suspension of communication, by reason of the mob then in control of parts of the city. This was a considerate and proper thing for the marshal of New York to do; but it does not authorize the court to charge the captors with the expense of witnesses they did not need, and did not send in.

It will be observed that this is not the case of expense incurred by the captors in the necessary care and sending into port of the crew of a prize, whom they did not need as witnesses, but whom, nevertheless, they must send to some convenient port when they take their vessel from them. It is a case of expenses incurred by the marshal for the board of the crew after they had reached New York, and were, so far as this court and the law of nations is concerned, free and entitled to the charge of themselves.

<sup>1</sup> [Reported by Hon. Richard H. Dana, Jr., and here reprinted by permission.]

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