

Case No. 4,357.

{18 Leg. Int. 308.}<sup>1</sup>

THE ELIZABETH ANN.

District Court, E. D. Pennsylvania.

Aug. 7, 1861.

PRIZE—ENEMIES' PROPERTY—WHO ARE ENEMIES.

[The claimants of a vessel taken as prize were inhabitants of Chincoteague island. This island is separated from the coast of Virginia by a ship channel which may be commanded by the naval forces of the United States. It appeared that a lighthouse was maintained upon it, under the flag of the United States, by a keeper who recognized the authority thereof, and that the inhabitants remained loyal, so that the federal laws could be peaceably executed there. *Held*, that these facts enabled the court to make a distinction in favor of the claimants, and to award them restitution.]

Mr. Harrison, for complainants, moves that a monition be awarded, requiring the captors, or the attorney of the United States, to proceed to adjudication on the question of prize or no prize.

Mr. Coffey, the attorney of the United States, and advocate of the naval captors, states that on behalf of the captors, and of the United States, he waives the monition,

## The ELIZABETH ANN.

and states further, that, if the claimants are willing to accept the restitution of the captured property, it is not intended to oppose its restitution to them, or to institute proceedings for its condemnation as prize.

Whereupon THE COURT said: It appears that the laws of the United States may at present be peacefully executed in the small island of Chincoteague, off the coast of Virginia, where these claimants reside. The lighthouse of the United States, which is the principal structure on the island, is maintained under the flag of the United States by a superintendent appointed by the proper department of their government, who recognizes, and acts under, the authority of that department. The inhabitants of the island are few in number, and from the information received by the court, through the district attorney of the United States, have been loyal during the revolutionary contest in other parts of Virginia. Their insular position, and the fact that the ship channel inside of the island may be commanded by the naval forces of the United States, enables the court to make, in their favor, a distinction which, in the present hostile relation of eastern Virginia, might be impossible in the case of a resident of the state on the other side of this channel.

These views take the case of the claimants out of the rule of decision in the late case of *The Parkhill* [Case No. 10,755a]. The advocate and proctor of the claimants will, therefore, say, whether they are disposed to accept restitution of the captured property without further proceedings. In so doing they will waive all claim upon the captors, and all complaint of the capture as having been made without probable cause.

Mr. Harrison thereupon stating, on behalf of the claimants, that they were willing to accept restitution of the property, and that the proceedings be terminated, THE COURT order that a decree be entered liberating the vessel and her contents from custody, and directing restitution to the claimants.

<sup>1</sup> [Reprinted by permission.]