

**THE SEIZURE OF THE SOUTHERN  
COMMISSIONERS, CONSIDERED  
WITH REFERENCE TO  
INTERNATIONAL LAW, AND TO THE  
QUESTION OF WAR OR PEACE**

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and to the question of war or peace by Philip Anstie Smith

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**PHILIP ANSTIE SMITH**

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*with the author's respectful compli*

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OF THE  
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BY  
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BARRISTER-AT-LAW.

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LONDON:  
JAMES RIDGWAY, 169, PICCADILLY.  
1862.

A large part of this pamphlet had been printed before the writer was aware of the publication of others on the same occasion, by authors who have evidently studied the subject with care, and discussed it with ability. But, while some leading cases and topics have been mentioned in every instance, independent inquiries cannot but vary in some parts of their paths, and the merits of the question are not likely to receive too careful or full consideration. This contribution to the discussion is therefore left to take its place among others, if it shall be thought to deserve it.



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THE subject of these pages requires very few prefatory words, since it has for some weeks occupied the attention of the country, and been so frequently mentioned that its supposed facts have become generally known; while the very great importance of its possible consequences has contributed to awaken public interest and stamp the particulars more strongly on the mind. In such circumstances, the following very concise statement of the occurrence in question will serve to introduce a discussion of some points of international law which it involves.

Two Commissioners from the American Southern Confederacy were passengers on board a British Mail Steamship. This was stopped by an armed vessel in the service of the Federal Government, and the Commissioners were taken from on board as prisoners by the compulsion of superior force.



Several questions arise out of this transaction, which may be classified, as they relate, on the one hand, to the supposed liability of the Commissioners to detention in some regular mode, or, on the other, to the mode in which their detention has been actually effected. The latter of these topics shall be noticed first :—

Is, then, the forcible seizure of the Commissioners *from on board* a neutral vessel defensible by international law ?

The writer is not aware of any decision relating expressly to the removal of goods or persons, liable to seizure, from the neutral ship on which they are found. The difficulty of finding an instance in point indicates, at any rate, the infrequency of such occurrences.

In the absence of any known judicial statement of the law relating to such an act, it may be remarked—

*First*—That the general rule of maritime capture requires captured vessels to be taken into port, in order to a trial of the case before some competent tribunal.—“ Regularly a captor is bound by the law of his own country, conforming to the general law of nations, to bring in for adjudication, in order

that it may be ascertained whether it be enemy's property, and that mistakes may not be committed by captors in the eager pursuit of gain, by which injustice may be done to neutral subjects, and national quarrels produced with the foreign states to which they belong.\* If the captor "neglects to apply to any tribunal, he would be guilty of a great misdemeanour," says Sir William Scott in another case.† And elsewhere the rule is thus given, with some account of the occasion for it:—"In later times, an additional formality has been required—that of a sentence of condemnation, in a competent court, decreeing the capture to have been rightly made, *jure belli*; it not being thought fit, in civilised society, that property of this sort should be converted without the sentence of a competent court, pronouncing it to have been seized as the property of an enemy, and to be now become *jure belli* the property of the captor. The purposes of justice require, that such exercises of war should be placed under public inspection; and therefore the mere *deductio infra præsidia* has not been deemed sufficient."‡ The authority

\* Judgment of Sir W. Scott. *The Felicity*, 2 Dodson, 385.

† *The Huldah*, 3 Robinson, 238.

‡ Sir W. Scott, *The Henrick and Maria*. 4 Robinson, 55.

of Chancellor Kent may also be cited :—  
 “ When a prize is taken at sea, it must be brought, with due care, into some convenient port, for adjudication by a competent court, though, strictly speaking, as between the belligerent parties, the title passes, and is vested when the capture is complete ; and that was formerly held to be complete and perfect when the battle was over, and the *spes recuperandi* was gone.”\*

The rule above mentioned has, indeed, exceptions ; for “ if a king’s ship, bound on the public service, makes a capture in her course, such a vessel cannot depart from her instructions, but must proceed upon her original destination. That would be a case of necessity, arising out of the public service, for which states must make allowance reciprocally.”† And if a man-of-war belonging to a belligerent government be by very urgent occasions of the public service prevented from bringing a captured vessel to any port whatever for adjudication, then, if the vessel taken be hostile, it is said that she may lawfully be destroyed. But in connexion with this statement the peculiar rights of

\* Kent’s Commentaries, Vol. 1, 101.

† Sir W. Scott, *The Anna*. 5 Robinson, 385.