MRS. ALEXANDER'S COTTON.

1. The principle, that personal dispositions of the individual inhabitants of enemy territory as distinguished from those of the enemy people generally, cannot, in questions of capture, be inquired into, applies in civil wars as in international. Hence, all the people of any district that was in insurrection against the United States in the Southern rebellion, are to be regarded as enemies, except in so far as by action of the Government itself that relation may have been changed.
2. Our Government, by its act of Congress of March 12th, 1863 (12 Stat. at Large, 591), to provide for the collection of abandoned property, &c., does make distinction between those whom the rule of international law would class as enemies; and, through forms which it prescribes, protects the rights of property of all persons in rebel regions who, during the rebellion, have, in fact, maintained a loyal adhesion to the Government; the general policy of our legislation during the rebellion having been to preserve, for *loyal* owners obliged by circumstances to remain in rebel States, all property or its proceeds which has come to the possession of the Government or its officers.
3. Cotton in the Southern rebel districts—constituting as it did the chief reliance of the rebels for means to purchase munitions of war, an element of strength to the rebellion—was a proper subject of capture by the Government during the rebellion on general principles of public law relating to war, though private property; and the legislation of Congress during the rebellion authorized such captures.
4. Property captured *on land* by the officers and crews of a naval force of the United States, is not "maritime prize;" even though, like cotton, it may have been a proper subject of *capture* generally, as an element of strength to the enemy. Under the act of Congress of March 12th, 1863, such property captured during the rebellion should be turned over to the Treasury Department, by it to be sold, and the proceeds deposited in the National Treasury, so that any person asserting ownership of it may prefer his claim in the Court of Claims under the said act; and on making proof to the satisfaction of that tribunal that he has never given aid or comfort to the rebellion, have a return of the net proceeds decreed to him.

IN the spring of 1864, a conjoint expedition of forces of the United States, consisting of the Ouachita and other gunboats, with their officers and crews, under Rear Admiral Porter, and a body of troops under Major-General Banks, proceeded up the Red River, a tributary of the Mississippi, and which empties into that river three hundred and thirty-

four miles above its mouth, as far as Shreveport, in the northwestern corner of Louisiana. The Southern insurgents were, at this time, in complete occupation of the district. About the 15th of March these Government forces captured Fort De Russy, a strong fort, which the insurgents had built, about half way between Alexandria and the mouth of Red River. The insurgents now evacuated the district in such a way that most of that part of it on the river fell under the control of the Union arms. This control, however, did not become permanent. The insurgents rallied; and returning, reinstated themselves. The Union troops fell back, leaving the district occupied as it had been before they came. The actual presence and control of the Government forces lasted from the middle of March to near the end of April,—something less than eight weeks. During it, an election of delegates to a Union Convention, appeared to have been held in or about Alexandria, under the orders and protection of General Banks, though the evidence of what was done in the matter was not clear. "The community," one witness testified, "was almost unanimous against secession when it commenced, and have so continued." But of this they gave no overt proofs; none at least that reached this court.

During the advance of the Federal forces, and about the 26th of March, a party from the Ouachita—acting under orders from the naval commander—landed on the plantation of Mrs. Elizabeth Alexander, in the Parish of Avoyelles, a part of the region thus temporarily occupied, and upon the river. They here took possession of seventy-two bales of cotton which had been raised by Mrs. Alexander on the plantation, and which, having escaped a conflagration which the rebels, on the advance of the Government forces, had made of the crop of the preceding year, were stored in a cotton-gin house, about a mile from the river. The cotton was hauled by teams to the river bank, and shipped to Cairo, in Illinois. Being libelled there, as prize of war, in the District Court of the United States for the Southern District of Illinois, and sold *pendente lite*, Mrs. Alexander put in a claim for the proceeds, and the court made a decree giving them

to her. This decree being confirmed in the Circuit Court, the United States appealed here.

The question raised before this court was, whether this cotton was or was not properly to be considered as maritime prize, subject to the prize jurisdiction of the courts of the United States.

As respected the nature of the Red River and the character of the vessels used in the conjoint expedition, it appeared that seagoing vessels do not navigate it, the same not affording sufficient water for them; that no other vessels than steamboats of light draft, engaged in the transportation of passengers and freight, usually navigate it; that the gunboats so called, used on this expedition, were of light draft, similar, in many particulars, to steamboats, many of them having been steamboats altered to carry guns and munitions of war generally, though not previously used, nor well capable of being used at sea for any purpose; that guns were mounted on them in order that such guns might be used in connection with and in subordination to the army in its active operations against the enemy in the small streams of the West and Southwest, away from the seaboard.

As regarded Mrs. Alexander's personal loyalty the evidence was not very full. She had assisted somewhat to build Fort De Russy, which was within a few miles of her own plantation, but, according to the testimony, did this only on compulsion. She was equally kind, it was testified, to loyal persons and to rebels, when either were sick or wounded. She had particular friends among persons of known loyalty; but there were one or two Confederate officers who came to her house,—the testimony being, however, that they were perhaps attracted thither neither by Mrs. Alexander's politics nor by her cotton, but by the beauty of some "young ladies" who resided with her, and whom they went to "visit."

Three weeks *after* the cotton had been seized, Mrs. Alexander took the oath required by the President's proclamation of amnesty, of December 8, 1863; a proclamation which gives to persons who took the oath "full pardon," "with

Statement of the case.

restoration of all rights," except as to slaves and "property, cases where rights of third persons shall have intervened." But it was upon the condition that persons should thenceforward "keep their oath inviolate."* Mrs. Alexander never left the territory on which her plantation was situated, nor it. The estate was her own, and she had resided on it since 1835. She was about sixty-five years old at the time of these events.

Such were the *facts*. In order, however, perfectly to comprehend the case as it stood before the court, it is necessary to make mention of certain acts of Congress bearing on it.

Congress, by act of August 6th, 1861,† to confiscate property used for insurrectionary purposes, declared, that if any person should use or employ any property in aiding, abetting or promoting the insurrection, or consent to such use or employment, such property should "be lawful subject of prize and *capture* wherever found."

And by act of July 17th, 1862,‡ to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, &c., it declared (§ 6), that "all the estate and property" of persons in rebellion, and who, after sixty days public warning [which warning the President gave by proclamation], did not return to their allegiance, *liable to seizure;* and made it the duty of the President to "*seize*" it; prescribing the mode in which it should be condemned.

And by a third act, that of March 12th, 1863,§ "to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts," &c., made

* The oath now made by Mrs. Alexander, April 19, 1864, was, that she would "henceforth faithfully support, protect, and defend the Constitution of the United States, and the Union of the States thereunder;" and would, "in like manner, abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress, or by decision of the Supreme Court;" and would, "in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion, having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court."

† 12 Stat. at Large, 319. ‡ Id. 591. § Id. 821.

it the duty, under penalty of dismission, &c. (§ 6), of "every officer or private of the regular or volunteer forces of the United States, or *any officer, sailor or marine in the naval service* of the United States, who may take or receive any such abandoned property, or *cotton*, sugar, rice or tobacco from persons in such insurrectionary districts, or have it under his control, to *turn the same over to an agent*" to be appointed by the Secretary of the Treasury, under whose charge the matter is put by the act, and who accordingly issued regulations in regard to such property. The act provides, however, that none of its provisions shall apply "to any lawful maritime prize by the naval force of the United States." This act, it may be added (§ 3), provides that "any person claiming to have been the owner of such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims, and on proof to the satisfaction of the said court of his ownership, &c., and that he has never given any aid or comfort to the present rebellion, receive the residue of such proceeds after the deduction of any purchase-money which may have been paid, together with the expense of transportation and sale."

With these acts there may, perhaps, for the sake of absolute completeness, be presented the act of July 17th, 1862, for the better government of the navy,* enacting (§ 2), "that the proceeds of all ships and vessels, and the goods taken on them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel making the capture, be the sole property of the captors, and when of inferior force be divided equally between the United States and the officers and men making the capture;" and also that of 2d July, 1864,† *passed after this capture*, declaring "that no property, seized or taken upon any of the *inland* waters of the United States by the naval forces thereof, shall be deemed maritime prize," but shall be turned over, as provided in the already mentioned act of March 12th, 1863.

* 12 Stat. at Large, 606. † 13 Id. 377.

Argument for the Government.

Mr. Assistant Attorney-General Ashton, and Mr. Eames, for the United States:

1. At the time when the combined expedition entered this region, in March, 1864, and when it left it in May, eight weeks afterwards, it was completely in enemy possession and control. Rebel power, civil and military, held it. The region was, therefore, *enemies'* country, and the people were *enemies*, irrespectively of the loyalty or disloyalty of individuals. The *Prize Cases* in this court, and among them *The Amy Warwick*, adjudge this.* The fact that there was momentary *military* occupation of the region in part by the co-operating army of the United States on the day of this capture, did not change this enemy character;† for the possession of the United States was unfirm, as shown by the event. After constant military activity, the rebel power was reinstated. Independently of all this, insurrectionary and hostile character was fixed upon the region and property by different acts of Congress, including the "Abandoned and Captured Property Act" of March 12, 1863, which made the property of all people in the region "liable to seizure;" and made it the duty of the President to "seize" and have it condemned.

2. The property, though private property, was liable to seizure and confiscation, it being a great commercial staple of the enemy, the product of his own soil, grown and gathered in time of war; in peace his greatest, and in rebellion his only resource. It is matter of common knowledge that cotton has been the means by which the rebel confederation—"this government" of Davis—has procured money or munitions of war from England and France at all.

3. *It is lawful prize of war, though made by the navy on land.* The prize jurisdiction of courts of admiralty in England has always been exercised in cases of belligerent naval capture on land, as much as in cases of naval capture on the high seas; and this, too, whether such capture on land be made by the naval force acting alone or in co-operation with the

* 2 Black, 693; Id. 674. † The Circassian, *supra*, p. 135.

army. Enemy property so captured has always, in England, been condemned as prize of war.

This jurisdiction was declared by the Court of King's Bench, A.D. 1781, in the two great cases of *Le Caux* v. *Eden** and *Lindo* v. *Rodney;* Lord Mansfield delivering the judgment of the court in the latter case. The earliest British authorities are there cited and reviewed. Since these two judgments, no part of the law laid down in them has been disputed in England; but, on the contrary, it has been affirmed by the courts of common law, as in *Lord Camden* v. *Home*,† and *Smart* v. *Wolff*,‡ and has been accepted and applied to naval captures on land by Lord Stowell and other judges in the High Court of Admiralty in a series of cases.§ We may refer, also, to the case of *Alexander* v. *The Duke of Wellington*,‖ in the Chancery of England.

In the United States, this British view of the prize jurisdiction of the Court of Admiralty in England over such naval captures on land, has been recognized by this court in *Brown* v. *United States*,¶ and in *Jennings* v. *Carson*,** where Marshall, C. J., delivered the opinion.

But the District Courts of the United States have all the jurisdiction of the British courts of admiralty, both in prize and on the instance side. The case of *Glass* v. *Sloop Betsy*,†† decided by this court A. D. 1794, put this point at rest. Its authority, never seriously questioned as to this point, has been recognized in *Talbot* v. *Jansen*,‡‡ and in *The Brig Allerta*.§§ Judge Story, who is known to have been the author of the note in the Appendix to 2d Wheaton on "The Principles and Practice in Prize Cases," apparently takes the view which we here maintain.

* Douglas, 594, 620. See, also, Mitchell *v.* Rodney, 2 Brown, P. C. 423.

† 4 Term, 382. ‡ 3 Id. 323.

§ The Cape of Good Hope, 2 Robinson, 274; Thorshaven, Edwards, 102; The Island of Trinidad, 5 Robinson, 85; Stella del Norte, Id. 311; The Rebekah, 1 Id. 277; The Buenos Ayres, 1 Dodson, 28; The Capture of Chinsurah, 1 Acton, 179; French Guiana, 2 Dodson, 151; Geneva, Id. 444; Tarragona, Id. 487; Cayenne, 1 Haggard, 42, note; Anglo-Sicilian Captures, 3 Id. 192; The Army of The Deccan, 2 Knapp, P. C. 152, and note.

‖ 2 Russell & Mylne, 35. ¶ 8 Cranch, 137. ** 4 Id. 2.

†† 3 Dallas, 6. ‡‡ Id. 133. §§ 9 Cranch, 359.

Argument for the claimant.

Messrs. Corwine and Springer, contra:

1. Fort De Russy was captured by the Government forces about the middle of March, and our forces held complete possession — though temporary — for about eight weeks. During this time, an election took place for delegates to a State Convention; which Convention was afterwards held, and a new Constitution formed for that State. Coming after the army had driven the enemy from all that part of Louisiana, and had taken possession of it,—so that her loyal citizens could hold a civil election at which they expressed their constitutional voice for delegates to a State Convention,—the flotilla, commanded by Commodore Porter, which came there to assist General Banks in clearing out the rebel army, seized the cotton in question. Is it possible to affirm of it that it was seized in a country then *enemies'* ?

The circumstances of the United States and these insurgent States are peculiar, and different from any presented in the books. In the first place, bands of men have formed combinations to resist the *authority* of the United States in portions of its territory. They deny and will not recognize the laws and authorities of the United States, and have taken up arms to enable them to hold our territory forcibly, to the exclusion of our law officers. We are opposing this rebellious force by armed force, in order that we may reassert our Government's constitutional authority over this territory. As fast as we can repossess ourselves of this territory, which we are constantly doing in greater or less quantity, we invite the people to resume their political and civil rights, and we extend to them the protection of law, supported by our military power. We have done this in West Virginia and in many other places, and those countries are now in the full enjoyment of their political and civil rights. Yet those territories and their people were as much under rebel rule and dominion at one time as is now that part of Louisiana under consideration. The enemy has been frequently in the territory of West Virginia—at this date, February, 1865, the best secured of any—in as strong force as he now is in Louisiana. The duration of his possession has no-

thing to do with the rights of the people *restored* to them by the act of our Government in resuming its lawful authority over the country. The moment the people were relieved from rebel military rule, the political and civil power of the usurpers was broken, and the jurisdiction and authority of the United States was supreme. It gave to the loyal citizen that *dominion* over his property, accompanied with *rights of property*, such as he enjoyed before this rebel rule intervened.

We have, therefore, only to inquire whether we held that part of Louisiana as reconquered territory for the time we were in possession? Was rebel rule at an end for that time? *While* we maintained the exclusive possession, we held it by a *valid title;* and it does not matter whether there was a full legal resumption of political and civil authority. It was such conquest and such possession as have been held by all authorities, and by our own Government, valid, and as entitling the loyal citizen to the enjoyment of his rights of citizenship and property. No act of the sovereign afterwards, whether the country is lost again by force of the enemies' reconquest, or by treaty and cession, can change it. The rights which accrued to the citizen by the resumption of this authority by his sovereign have become fixed; and if the subject-matter is within the reach of our courts, he may successfully assert them. The legal disabilities which were cast upon him and his property by the forcible and fraudulent occupancy of the country by insurgents, were removed the moment the United States wrested the territory from them and reasserted its authority.* It is a matter of common knowledge that vast amounts of property, reaching in value millions of dollars, were released by this single month's possession of our authorities, and that it found its way into the loyal portions of the United States by the simple volition of its owners. The legality of the title thus acquired has never been questioned. This case does not differ from those cases in any respect, except that these naval boats, instead of Government trans-

* Halleck's International Law, 789, and authorities there cited.

ports, took out this claimant's cotton. Both were taken out while we held this *exclusive* possession, and there was no enemy there to oppose. The navy might as well have captured that cotton of citizens while afloat, or after it reached its destination in the loyal States, as to have taken Mrs. Alexander's cotton. The legal status of the cotton when it reached the loyal States was no better than it was while on Red River, within our lines and jurisdiction. The principle which made the title valid in one place lost none of its power, in that respect, in the other place. *It was the occupancy and resumption of authority by the United States, in that country, which made the title in the loyal citizen valid.* There was no "illegal traffic," such as this court referred to in *The Amy Warwick*, cited by Mr. Assistant Attorney Ashton, which stamped this cotton as "enemies' property." It was not at that time within the control of the enemy, so that he could use it for war purposes. It is wholly freed from that difficulty.

The rule being *that the test is the predicament of the property*, not the sentiment or acts of the owner, the court will look at such predicament only. If the owner is not under the jurisdiction and control of the enemy, then his property, being at the time of the alleged capture free from that control, is not in the *predicament* which makes it *ex necessitati rei*, enemy property.

If there were no positive law authorizing the court to recognize and enforce these rights with respect to the territory of which we are daily repossessing ourselves, the rule which we are contending for should be declared by this court as a matter of public policy, growing out of the necessities of our peculiar political situation. As one consequence of this rebellion, rules of property and of personal rights have been and must be declared by the courts, for which there is no clear judicial or legislative precedents. As there should be no right without a remedy, so the courts will not suffer our loyal people, who have been, themselves and their property also, placed in peril by this unfortunate conjunction of political circumstances, for which they are in nowise responsible,

to go away without redress. When delivered from these perils by the act of the Government, they and their property should be subjects of fostering care by all departments of the Government, where no rights are to be violated and no well-defined principles ignored. The frequency with which these cases must recur, and the vast magnitude of the interests involved, will not fail to commend them all to the favorable consideration of the court. In *Mitchell* v. *Harmony** this court said: "Where the owner (of property) has done nothing to forfeit his rights, every public officer is bound to respect them, whether he finds the property in a foreign or hostile country or in his own."

It is impossible to fix disloyalty on Mrs. Alexander. She took the oath of allegiance at the earliest practicable date. There was no one to administer it to her before the date when she actually took it. Her loyalty saves her property from the operation of the act of 6th of August, 1861, confiscating property used for insurrectionary purposes; and from that also of July 17, 1862, authorizing the President to seize and confiscate the property of rebels. It would be unreasonable to ask, that a *widow*, sixty-five years old, of infirm health, probably, who has lived in one spot—a plantation, in a rural parish—for thirty years, should leave the only home she has on earth, and follow the army of the United States, under penalty of being declared judicially a "rebel," and of having her estate confiscated. In such a case, the question of loyalty is to be tested by *animus* and acts. Here all establish loyalty.

Neither does her case come within the Abandoned Property Act of March 12, 1863. It is no part of this case that Mrs. Alexander ever abandoned her plantation. On the contrary, much of the argument of the other side proceeds on a supposition—a true one—that she remained on it; and so remained in an enemy's country.

2. If the property is not enemy's property at all, it matters not whether it be one sort of product or another. It is

* 13 Howard, 115.

to be protected, being *private*. "Private property on land is now," says Halleck,* "as a general rule of war, exempt from seizure or confiscation; and this general exemption extends even to cases of absolute and unqualified conquest."

There are exceptions to this rule, it is true. 1st. Confiscations, or seizures by way of penalty for military offences; 2d. Forced contributions for the support of the invading armies, or as an indemnity for the expenses of maintaining order, and affording protection to the conquered inhabitants; and, 3d. Property taken on the field of battle, or in storming a fortress or town.† But there is no pretence that the seizure here is on any such grounds.

If the property were on general grounds liable to seizure, Mrs. Alexander's having taken the oath, should save it. The good faith of the Government is involved. She took the oath of allegiance, in accordance with the invitation of the President's proclamation, December 8, 1863. She is entitled to an honest and faithful compliance on the part of the Government, with all the terms of pardon and exemption as to herself and her property of that proclamation. It is not acting in good faith with her to take her property and treat it as *enemy* property, when she so promptly responded to this Executive invitation. That proclamation, having been issued by the President of the United States, in so far forth as it held out inducements and made promises, and persons acted under and in pursuance with it, constitutes a legal contract, which shall be alike binding on the Government and such persons. The moment she took the oath prescribed by that proclamation, she was entitled to the full benefit of the "restoration of all rights of property," as therein promised, so far as this cotton is concerned.

3. *There can be no valid capture by the navy of enemy property on land.* What, in the first place, is this Red River? It is a wholly inland stream. Its mouth is more than three hundred miles from the ocean. But this cotton was not *on* the river even. It was a mile *away from it*, stored in a cotton-

* International Law, p. 456. † Id. 457.

gin house. There is no decision of this court recognizing right of capture by the navy in such cases. The act of July 2, 1864, forbids it. There are some decisions of courts other than this, which, it is contended, go to the necessary extent. But none of them, we think, really do. *Jennings* v. *Carson* simply decides, that the District Court has admiralty and maritime jurisdiction, and makes no reference to the jurisdiction in captures made on land. The same observation is true of *The Brig Allerta*, of *Glass* v. *The Sloop Betsey*, and of *Talbot* v. *Jansen*, cited on the other side.

Counsel argue that the general jurisdiction in maritime and admiralty, which these cases decide as belonging to the District Court, draws after it the jurisdiction of land captures, because it has been recognized in the Prize Courts of England. But the Prize Courts of England derive this peculiar jurisdiction from municipal statutes. To give the court jurisdiction of captures on land, in any other case, it must appear that the property so captured belonged in some way to a capture made on the sea, as in the case of *Lindo* v. *Rodney*. And what sort of a "navy" were these inland boats?

As to the English cases cited by Judge Story in his Essay in 2 Wheaton, it is enough to say, that the case of *Le Caux* v. *Eden*, is the leading one, and that finally went off on the proposition that the treaties, laws of England, and the orders of the Admiral, justified the seizure of the property on land. Lord Mansfield, who decided the case, in the note to it, put his decision on that ground; the facts of the case did not require him to go further. He also held that when property is once captured on the high seas, and it is unlawfully carried ashore, the captors may recapture it on the land.

It is worthy of remark that *Lindo* v. *Rodney*, and *Alexander* v. *The Duke of Wellington*, cited to sustain the position that lawful captures may be made on land by naval forces, both disclose the important fact that that jurisdiction is derived from municipal law. Lord Mansfield cites and relies upon treaties, acts of Parliament, &c., to sustain this jurisdiction. The statutes are 17 Geo. II, c. 34, § 2, and 29 Geo. II, c. 34, § 2, in which power is given to the Lords of the

Admiralty, to grant commissions, &c., "for attacking or taking with such ship, or with the crew thereof, any place or fortress *upon the land*," &c. Having cited them, Lord Mansfield says, "Upon *these* authorities, there can be no doubt of the right to make land captures." And so in the case of *Alexander* v. *The Duke of Wellington*, it appears that the proceedings sought to be reviewed, were in pursuance to the statute 54 Geo. III, c. 86, § 2, where land captures by the *army* are provided for, and prize-money awarded the officers and men engaged in the capture as booty.

No case has ever arisen in this country which has made it necessary to decide the question broadly. This court, in *Brown* v. *United States*, cited on the other side, rather disclaims the doctrine that captures, as prizes of war, could be made on land, without further legislation by Congress.

The CHIEF JUSTICE delivered the opinion of the court.

This controversy concerns seventy-two bales of cotton captured in May, 1864, on the plantation of Mrs. Elizabeth Alexander, on the Red River, by a party sent from the Ouachita, a gunboat belonging to Admiral Porter's expedition. The United States insist on the condemnation of the cotton as lawful maritime prize. Mrs. Alexander claims it as her private property. The facts may be briefly stated.

In the spring of 1864, a naval force of the United States, under Rear Admiral Porter, co-operating with a military force on land, under Major-General Banks, proceeded up Red River towards Shreveport, in Louisiana. The whole region at the time was in rebel occupation, and under rebel rule. Fort De Russy, about midway between the mouth of the river and Alexandria, was captured by the Union troops about the middle of March. The insurgent troops gradually retired until a considerable district of country on Red River came under the control of the national forces. This control, however, was of brief continuance. An unexpected reverse befell the expedition. The army under General Banks was defeated, and was soon after entirely withdrawn from the Red River country. The naval force, under Admiral Porter,

necessarily followed, and rebel rule and ascendency were again complete and absolute. The military occupation by the Union troops lasted rather less than eight weeks. Its duration was measured by the time required for the advance and retreat of the army and navy. The Parish of Avoyelles was a part of the district thus temporarily occupied; and the plantation of Mrs. Alexander was in this parish, and upon the river. The seventy-two bales of cotton in controversy were raised on the plantation, and were stored in a warehouse about a mile from the river bank. A party from the Ouachita, under orders from the naval commander, landed on the plantation about the 26th of March, and took possession of the cotton. It was sent to Cairo; libelled as prize of war in the District Court for the Southern District of Illinois; claimed by Mrs. Alexander; and, by decree of the District Court, restored to her. The United States now ask for the reversal of this decree, and the condemnation of the property as maritime prize.

After the seizure of the cotton, Mrs. Alexander took the oath required by the President's proclamation of amnesty. The evidence in relation to her previous personal loyalty is somewhat conflicting. She had furnished mules and slaves, involuntarily as alleged, to aid in the construction of the rebel Fort De Russy. She now remains in the rebel territory. Before the retreat of the Union troops, elections are stated to have been held, under military auspices, for delegates to a constitutional convention about to meet in New Orleans.

These facts present the question: Was this cotton lawful maritime prize, subject to the prize jurisdiction of the courts of the United States?

There can be no doubt, we think, that it was enemies' property. The military occupation by the national military forces was too limited, too imperfect, too brief, and too precarious to change the enemy relation created for the country and its inhabitants by three years of continuous rebellion; interrupted, at last, for a few weeks; but immediately renewed, and ever since maintained. The Parish of Avoyelles,

which included the cotton plantation of Mrs. Alexander, included also Fort De Russy, constructed in part by labor from the plantation. The rebels reoccupied the fort as soon as it was evacuated by the Union troops, and have since kept possession.

It is said, that though remaining in rebel territory, Mrs. Alexander has no personal sympathy with the rebel cause, and that her property therefore cannot be regarded as enemy property; but this court cannot inquire into the personal character and dispositions of individual inhabitants of enemy territory. We must be governed by the principle of public law, so often announced from this bench as applicable alike to civil and international wars, that all the people of each State or district in insurrection against the United States, must be regarded as enemies, until by the action of the legislature and the executive, or otherwise, that relation is thoroughly and permanently changed.

We attach no importance, under the circumstances, to the elections said to have been held for delegates to the constitutional convention.

Being enemies' property, the cotton was liable to capture and confiscation by the adverse party.* It is true that this rule, as to property on land, has received very important qualifications from usage, from the reasonings of enlightened publicists and from judicial decisions. It may now be regarded as substantially restricted "to special cases dictated by the necessary operation of the war,"† and as excluding, in general, "the seizure of the private property of pacific persons for the sake of gain."‡ The commanding general may determine in what special cases its more stringent application is required by military emergencies; while considerations of public policy and positive provisions of law, and the general spirit of legislation, must indicate the cases in which its application may be properly denied to the property of non-combatant enemies.

In the case before us, the capture seems to have been jus-

* Prize Cases, 2 Black, 687. † 1 Kent, 92. ‡ Id. 93.

tified by the peculiar character of the property and by legislation. It is well known that cotton has constituted the chief reliance of the rebels for means to purchase the munitions of war in Europe. It is matter of history, that rather than permit it to come into the possession of the national troops, the rebel government has everywhere devoted it, however owned, to destruction. The value of that destroyed at New Orleans, just before its capture, has been estimated at eighty millions of dollars. It is in the record before us, that on this very plantation of Mrs. Alexander, one year's crop was destroyed in apprehension of an advance of the Union forces. The rebels regard it as one of their main sinews of war; and no principle of equity or just policy required, when the national occupation was itself precarious, that it should be spared from capture and allowed to remain, in case of the withdrawal of the Union troops, an element of strength to the rebellion.

And the capture was justified by legislation as well as by public policy. The act of Congress to confiscate property used for insurrectionary purposes, approved August 6th, 1861, declares all property employed in aid of the rebellion, with consent of the owners, to be lawful subject of prize and capture wherever found.* And it further provided, by the act to suppress insurrection, and for other purposes, approved July 17, 1862,† that the property of persons who had aided the rebellion, and should not return to allegiance after the President's warning, should be seized and confiscated. It is in evidence that Mrs. Alexander was a rebel enemy at the time of the enactment of this act; that she contributed to the erection of Fort De Russy, after the passage of the act of July, 1862, and so comes within the spirit, if not within the letter, of the provisions of both.

If, in connection with these acts, the provisions of the Captured and Abandoned Property Act of March 12, 1863,‡ be considered, it will be difficult to conclude that the capture under consideration was not warranted by law. This

* 12 Stat. at Large, 319. † Id. 591 ‡ Id. 820.

last-named act evidently contemplated captures by the naval forces distinct from maritime prize; for the Secretary of the Navy, by his order of March 31, 1863, directed all officers and sailors to turn over to the agents of the Treasury Department all property captured or seized in any insurrectionary district, excepting lawful maritime prize.*

Were this otherwise, the result would not be different, for Mrs. Alexander, being now a resident in enemy territory, and in law an enemy, can have no standing in any court of the United States so long as that relation shall exist. Whatever might have been the effect of the amnesty, had she removed to a loyal State after taking the oath, it can have none on her relation as enemy voluntarily resumed by continued residence and interest.

But this reasoning, while it supports the lawfulness of the capture, by no means warrants the conclusion that the property captured was maritime prize. We have carefully considered all the cases cited by the learned counsel for the captors, and are satisfied that neither of them is an authority for that conclusion. In no one of these cases does it appear that private property on land was held to be maritime prize; and on the other hand, we have met with no case in which the capture of such private property was held unlawful except that of Thorshaven.† In this case such a capture was held unlawful, not because the property was private, but because it was protected by the terms of a capitulation. The rule in the British Court of Admiralty seems to have been that the court would take jurisdiction of the capture, whether of public or private property; and condemn the former for the benefit of the captors, under the prize acts of Parliament, but retain the latter till claimed, or condemn it to the Crown, to be disposed of as justice might require. But it is hardly necessary to go into the examination of these English adjudications, as our own legislation supplies all needed guidance in the decision of this case.

* Report of the Secretary of the Treasury on the Finances, December 10, 1863, p. 438.

† Edwards, 107.

There is certainly no authority to condemn any property as prize for the benefit of the captors, except under the law of the country in whose service the capture is made; and the whole authority found in our legislation is contained in the act for the better government of the navy, approved July 17th, 1862. By the second section of the act,* it is provided that the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall be the sole property of the captors, or, in certain cases, divided equally between the captors and the United States. By the twentieth section, all provisions of previous acts inconsistent with this act are repealed. This act excludes property on land from the category of prize for the benefit of captors; and seems to be decisive of the case so far as the claims of captors are concerned.

As a case of lawfully captured property, not for the benefit of captors, its disposition is controlled by the laws relating to such property. By these laws and the orders under them, all officers, military and naval, and all soldiers and sailors, are strictly enjoined, under severe penalties, to turn over any such property which may come to their possession to the agents of the Treasury Department, and these agents are required to sell all such property to the best advantage, and pay the proceeds into the National Treasury. Any claimant of the property may, at any time within two years after the suppression of the rebellion, bring suit in the Court of Claims, and on proof of ownership of the property, or of title to the proceeds, and that the claimant has never given aid or comfort to the rebellion, have a decree for the proceeds, deducting lawful charges. In this war, by this liberal and beneficent legislation, a distinction is made between those whom the rule of international law classes as enemies. All, who have in fact maintained a loyal adhesion to the Union, are protected in their rights to captured as well as abandoned property.

It seems that, in further pursuance of the same views, by

* 12 Stat. at Large, 606.

an act of the next session, Congress abolished maritime prize on inland waters, and required captured vessels and goods on board, as well as all other captured property, to be turned over to the Treasury agents, or to the proper officers of the courts. This act became a law a few weeks after the capture now under consideration, and does not apply to it. It is cited only in illustration of the general policy of legislation, to mitigate, as far as practicable, the harshness of the rules of war, and preserve for loyal owners, obliged by circumstances to remain in rebel States, all property, or its proceeds, to which they have just claims, and which may in any way come to the possession of the Government or its officers.

We think it clear that the cotton in controversy was not maritime prize, but should have been turned over to the agents of the Treasury Department, to be disposed of under the act of March 12th, 1863. Not having been so turned over, but having been sold by order of the District Court, its proceeds should now be paid into the Treasury of the United States, in order that the claimant, when the rebellion is suppressed, or she has been able to leave the rebel region, may have the opportunity to bring her suit in the Court of Claims, and, on making the proof required by the act, have the proper decree.

The decree of the District Court is reversed, and the cause remanded, with directions to

DISMISS THE LIBEL.

TOBEY *v.* LEONARDS.

1. Positive statements in an answer to a bill in equity—the answer being responsive to the bill—are not to be overcome, except by more testimony than that of one witness; but by such superior testimony they may be overcome; and where, as was the fact here, *seven* witnesses asserted the contrary of what was averred in such answer, the answer will be disregarded.