examine those of the District Court only after they have been the subject of review by the Supreme Court, and then only in connection with the action of that court in affirming or reversing them. We cannot regard them until they have received the impress of the judgment of the higher local court.

The order dismissing the writ of error is REVERSED, and the cause will be remanded to the Supreme Court of the District of Columbia, with directions to proceed in the cause

IN CONFORMITY TO LAW.

---

## McVeigh v. United States.

1. In a libel of information for the forfeiture of property, under the act of Congress of July 17th, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," for certain offences charged against the owner, his alleged criminality lies at the foundation of the proceeding; and the questions of his guilt and ownership are fundamental in the case.
2. The owner of property, for the forfeiture of which a libel is filed under the act above mentioned, is entitled to appear and to contest the charges upon which the forfeiture is claimed, although he was at the time of filing the libel a resident within the Confederate lines, and a rebel; and he can sue out a writ of error from this court to review any final decree of the court below condemning his property.

ERROR to the Circuit Court for the District of Virginia.

On the 17th of July, 1862, Congress passed an act, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes." This act provided for the seizure and confiscation of the property of persons holding certain offices or agencies under "the Confederate States," and of persons engaged in the rebellion then existing, or aiding or abetting such rebellion, who should not cease to aid, countenance, and abet such rebellion within sixty days after public warn-

ing and proclamation by the President, and return to their allegiance to the United States. The act contains numerous sections. They are set forth with fulness in a case which was decided soon after this one, and which is reported next to it, *Miller* v. *United States*, the leading case on the Confiscation Acts, and in which, rather than in this one where the main subjects were hardly reached, the provisions of the statute are inserted. To understand the present case, it is indispensable that the reader be possessed of the nature of that statute, and of its provisions. He will, therefore, have the goodness to turn forward to page 269, and to read from the words, beginning with an *, "*The Act of July 17th*, 1862, contains fourteen sections," on that page, to the words on page 273, beginning with a †, "*In order to carry out these acts;*" after which he will resume his reading here.

With this statute in force the United States filed a libel of information in the District Court for the District of Virginia, for the forfeiture of certain real and personal property of one William McVeigh, situated in Virginia. The information was in form against "all the right, title, and estate of *William McVeigh* in and to all that certain piece, parcel, or lot of land," &c., describing it particularly.

The libel alleged that subsequent to July 17th, 1862, the said McVeigh held and exercised an office and agency of honor, and trust, and profit, under the government of the Confederate States, and under one of the States of said confederacy; and that he accepted the appointment, and was elected to the office and agency after the date of the ordinance of secession of said State; and that he took an oath of allegiance to and to support the constitution of the Confederate States; and that since July, 1862, he had assisted and given aid and comfort to the rebellion, and to those engaged in the rebellion, by acting on the 18th of July, 1862, and at various times subsequently as a soldier, and as an officer, and as a non-commissioned officer in the army and navy of the Confederate States; and by contributing money and property to the aid and encouragement of those engaged in the rebellion. The libel was afterwards amended so as

to charge, in addition to the above offences, that McVeigh, on the 18th of July, 1862, was engaged in armed rebellion against the government of the United States, and notwithstanding the President, on the 25th of July, 1862, issued his proclamation warning all persons thus engaged to cease participating in aiding, countenancing, and abetting such rebellion, the said McVeigh did not within sixty days thereafter cease to aid, countenance, and abet such rebellion, and return to his allegiance to the United States.

McVeigh appeared by counsel, made a claim to the property, and filed an answer. This answer was not contained in the record, and nothing of its contents appeared except what was stated in the order of the court made on the motion of the attorney of the United States.

The attorney of the United States, however, moved that the claim, answer, and appearance be stricken from the files, as it appeared from the answer filed, that at the time of filing it the party was "a resident of the city of Richmond, within the Confederate lines, and a rebel." The court granted the motion. Subsequently the default of all persons was taken, and a decree was rendered for the condemnation and sale of the property. The case was carried to the Circuit Court, and there the decree was affirmed. It was now brought here on writ of error.

*Messrs. B. R. Curtis, Brent, Wattles, Moore, Hughes, Denver, and Peck, appeared for the plaintiff in error.* Mr. Curtis argued the case orally, the other counsel filing briefs.

Mr. Curtis: The claim and answer of McVeigh and the appearance of his counsel having been stricken out, of course nothing remained for him but to be defaulted, because he was not allowed to appear; and the question is, whether that was erroneous or not.

Now the act of Congress does not inflict forfeiture upon a person because he was a resident within the enemy's lines, nor because he was a rebel at the time when this answer was filed, even if it be assumed that the District Court interpreted "rebel" to mean a person giving aid and comfort to

the rebellion, of which interpretation this court has no evidence. The provision of the 5th section, which relates to persons owning property in any loyal State or Territory, or in the District, applies to those who, at any time after the passage of the act, should give aid and comfort to the enemy; but it does not apply to those who owned property within the State of Virginia, which was not one of the loyal States, but one of the Confederate. The 6th section, which provides for persons who own property and commit the described offences within the Confederate States, is limited. "If the person, &c., in any other than the loyal States shall not, &c., *cease* to aid, countenance, and abet such rebellion, and *return*" to his allegiance, his property is to be forfeited. But only then. This is a penal statute, not to be extended by implication.

Thus it did not appear by the answer of McVeigh that he was within the terms of the act. He was not within the terms as a resident within the rebel lines, nor by reason of being a rebel (whatever the District Court may, under the circumstances of the case, have construed that to be) when he filed his answer, because the 6th section does not apply to him. And it did not appear by his answer that he was a rebel by holding any of the offices that are mentioned in the 5th section. Therefore the case is this: that Congress provides such process as requires a notice to the party supposed to be guilty to come in and defend himself; and when he comes in and offers to defend himself and files an answer, then—inasmuch as the court say that on reading that answer they see (not that he has committed any one of the offences for which he is to forfeit his property) but has committed some other offence—therefore he must not be allowed to defend.

See how the action of the court below would operate. This court has decided that the question whether a person was guilty in point of fact of the offences leading to confiscation under this act must be tried by a jury.* And under

* Armstrong's Foundry, 6 Wallace, 766.

that decision we assume as a certainty that this case *must* go back to be so tried. Well; the case is called on; McVeigh appears ready to prove that he is not within the act. The judge says, "Yes; but you are a resident within the enemy's lines, and you are a rebel; you cannot be heard." How is he going to get to the jury? Manifestly he can have no trial by jury, for he can have no trial at all, and therefore—for this is the necessary consequence of his having no trial at all—he is to have his property forfeited by the decree of the court for want of a trial, not because he is found by a jury to have committed one of the offences which by force of the statute forfeit that property, but because he resides within the enemy's lines, and the judge, upon some facts which appear in his answer, pronounces the conclusion of law that he is a rebel.

*Mr. Akerman, Attorney-General, Mr. Bristow, Solicitor-General, contra, for the United States:*

An enemy has no standing in court, and cannot be admitted as a claimant even in prize. Whether he be an enemy or not, if contested, must be determined by the court; but it is a different issue from the issue on the merits, and is to be determined in the first instance by the court. In proceedings *in rem*, if it is admitted by the claimant that he is an enemy, his claim must be stricken out.*

Although the claim and answer are not set out in the record, yet as the order striking them from the files recites that "it appeared from the answer that the respondent, McVeigh, is, and at the time of the filing was, a resident of the city of Richmond, within the Confederate lines, and a rebel," it must be taken that this recital is true, and that it did appear in the answer that McVeigh was a resident of the city of Richmond, within the Confederate lines, and a rebel. If this fact was so, the court did right in striking out

* Mumford *v.* Mumford, 1 Gallison, 366; The Emulous, Id. 563; The Peterhoff, Blatchford's Prize Cases, 463; Halleck's International Law, 772, § 23; Hanger *v.* Abbott, 6 Wallace, 532.

his claim. For residents of hostile territory, in war, are regarded as enemies, and as McVeigh in his answer admitted substantially that he was an enemy, the action of the court was right.

In addition he is not a party to the proceedings below. The proceeding was conducted against the property alone. He cannot take a writ of error.

*Reply:*

Alien enemies at the common law it is true are not admitted; but even alien enemies are admitted as parties to proceedings in courts of admiralty—international courts—where they come for a purpose proper to be considered by such tribunals. Suppose a British ship, in the event of a war with England, is captured, belonging to a British owner, and he comes into a court of admiralty and files an answer and claim. If, indeed, he said, "I am an inhabitant of the enemy's country, and this is my property," he would state himself out of court. But suppose he says, "When that ship was captured, she was under your cartel; I will prove it," is there any doubt that he is to be listened to?*

But this case is peculiar. It is not within this principle with regard to alien enemies. Persons like McVeigh, though residing within the Confederate lines, and though rebels (whatever meaning was attached to this word by the District Court), were not alien enemies; they were enemies for the purpose of having war made upon them, and for the purpose of having their property confiscated if Congress took proper measures to confiscate their property as enemies; still they were citizens of the United States, and they are not to be kept out of the courts of the United States for the purpose of presenting any rights which it was proper those courts should consider. Now was it not proper that this court of the United States should consider the question whether McVeigh had committed the offences alleged in the libel to cause the forfeiture of his property? Did not

* The United States *v.* Certain Shares of Stock, 5 Blatchford, 231

Reply.

Congress intend when it enacted this law, that that should be considered, and considered in every case? It has not passed a sweeping decree of condemnation, nor called on the courts to pass sweeping decrees of condemnation against all rebels or all enemies, but it has singled out persons guilty of certain offences, and has said, that *these* offenders are to be punished by the forfeiture of their property. But are they to be punished without hearing them? In *Harris* v. *Hardeman*,* it is declared to be a principle of universal jurisprudence, and one which cannot be disregarded, that every party who is proceeded against in a court of justice, civilly or criminally, must have notice. Why? That he may appear and be heard. For from the days of Magna Charta, as Lord Coke tells us, and down to the present time, due process of law includes *actor*, *reus*, *judex;* and how is anybody to be *judex* unless he hears?

It is alleged by the opposing counsel that McVeigh was not a party. In one sense he was not a party, because when he applied and desired to be admitted as a party, the court refused to admit him; but one of the questions is whether he was not wrongfully refused, and can he not have that question decided here?

This is not a proceeding *in rem* on account of the fault in the thing, or the illegal predicament in which the property has been placed. It is a proceeding against all the property of a particular person by name, on account of his guilt. From the nature of the proceeding he is necessarily a party to that proceeding. His being so does not depend on any order of the court; it arises out of the very nature of the case. Must he not have notice? If he has notice, has he not a right to appear,—a right which cannot be denied him, any more than it can be denied to any person indicted for a crime,—to appear and defend himself? And if he not only must have notice, but has the right to appear, then will the fact that he has not been allowed to appear debar him from his writ of error?

* 14 Howard, 334.

Mr. Justice SWAYNE delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the District of Virginia.

The defendants in error filed in the District Court of the United States for that district a libel of information, under the act of July 17, 1862, to reach, for the purposes of forfeiture and sale, certain real and personal property of McVeigh, a description of which is fully set forth. The original libel was the same, *mutatis mutandis*, as that in the case of Garnett, claimant of certain real estate, against the United States.* An amendment was subsequently made, whereby a farther charge was alleged of the offence defined in the sixth section of the act. The plaintiff in error appeared by counsel, interposed a claim to the property, and filed an answer. The attorney of the United States submitted a motion, that the appearance, answer, and claim should be stricken from the files, for the reasons that the respondent was "a resident of the city of Richmond, within the Confederate lines, and a rebel." An order was made according to the motion. Subsequently a decree *pro confesso* was taken. The property was condemned as forfeited, and ordered to be sold. The Circuit Court upon error affirmed the decree, and the case is now before us for review.

It is objected that McVeigh was incompetent to sue out this writ of error. His alleged criminality lies at the foundation of the proceeding. It was averred in the libel that he was the owner of the property described, and that he was guilty of the offences charged, which rendered it liable to forfeiture. The questions of his guilt and ownership were therefore fundamental in the case. The notice by publication was given to bring him constructively before the court. It was in the nature of the substituted service of process. If he failed to appear, his absence and silence could not affect the validity of the proceedings. After the decree, *pro confesso*, he occupied the same relation to the record as a

* See *supra*, 256.

defendant against whom a judgment by default has been taken. The case is wholly unlike a proceeding purely *in rem*, where no claimant is named, and none appears until after the final decree or judgment is entered, and the case has terminated. We entertain no doubt that the plaintiff in error had the right to sue out the writ, and that the record is properly before us for examination.

In our judgment the District Court committed a serious error in ordering the claim and answer of the respondent to be stricken from the files. As we are unanimous in this conclusion, our opinion will be confined to that subject. The order in effect denied the respondent a hearing. It is alleged that he was in the position of an alien enemy, and hence could have no *locus standi* in that forum. If assailed there, he could defend there. The liability and the right are inseparable. A different result would be a blot upon our jurisprudence and civilization. We cannot hesitate or doubt on the subject. It would be contrary to the first principles of the social compact and of the right administration of justice.*

Whether the legal *status* of the plaintiff in error was, or was not, that of an alien enemy, is a point not necessary to be considered; because, apart from the views we have expressed, conceding the fact to be so, the consequences assumed would by no means follow. Whatever may be the extent of the disability of an allen enemy to sue in the courts of the hostile country,† it is clear that he is liable to be sued, and this carries with it the right to use all the means and appliances of defence. In Bacon's Abridgment,‡ it is said: "For as an alien may be sued at law, and may have process to compel the appearance of his witnesses, so he may have the benefit of a discovery."

* Calder *v.* Bull, 3 Dallas, 388; Bonaker *v.* Evans, 16 Adolphus & Ellis N. S. 170; Capel *v.* Child, 2 Crompton & Jervis, 574.

† Clarke *v.* Morey, 10 Johnson, 69; Russel *v.* Skipwith, 6 Binney, 241.

‡ Title Alien, D see also Story's Equity Pleadings, § 53; Albrecht *v* Sussmann, 2 Vesey & Beams, 323; Dorsey *v.* Kyle et al., 30 Maryland 512, 522

Syllabus.

The judgment of the District Court is REVERSED, and the cause will be remanded to the Circuit Court with directions to proceed in it

IN CONFORMITY TO LAW.

---

## MILLER *v.* UNITED STATES.

1. In a judicial proceeding to confiscate stocks in a railroad company under the acts of Congress of August 6th, 1861, and July 17th, 1862, the person whose property has been seized, may sue out a writ of error though not a claimant in the court below. (*McVeigh* v. *United States*, *supra*, 259, affirmed.)
2. Seizure of such stocks may be made by giving notice of seizure to the president or vice-president of the railroad company; and a seizure thus made by the marshal in obedience to a warrant and monition is sufficient to give the District Court jurisdiction.
3. Stocks and credits are attachable in admiralty and revenue cases by means of the simple service of a notice, without the aid of any statute.
4. In admiralty and revenue cases when a default has been duly entered to a monition founded on an information averring all the facts necessary to a condemnation, it has substantially the effect of a default to a summons in a court of common law. It establishes the fact pleaded, and justifies a decree of condemnation.
5. Where a court having jurisdiction of the case and of the parties enters a judgment, there is a presumption that all the facts necessary to warrant the judgment have been found, if they are sufficiently averred in the pleadings.
6. A trial by jury in cases of seizure upon land is not necessary when there are no *issues* of fact to be determined.
7. The confiscation acts of August 6th, 1861, and July 17th, 1862, are constitutional. Excepting the first four sections of the latter act they are an exercise of the war powers of the government, and not an exercise of its sovereignty or municipal power. Consequently they are not in conflict with the restrictions of the 5th and 6th amendments of the Constitution.
8. In the war of the rebellion the United States had belligerent as well as sovereign rights. They had, therefore, a right to confiscate the property of public enemies wherever found, and also a right to punish offences against their sovereignty.
9. The right of confiscation exists as fully in case of a civil war, as it does when the war is foreign, and rebels in arms against the lawful government or persons inhabiting the territory exclusively within the control of the rebel belligerent, may be treated as public enemies. So