or indirectly, in the late rebellion, relieves claimants of captured and abandoned property from proof of adhesion to the United States during the late civil war. It was unnecessary, therefore, to prove such adhesion or personal pardon for taking part in the rebellion against the United States.

The judgment of the Court of Claims dismissing the petition is

REVERSED.

SEMMES *v.* HARTFORD INSURANCE COMPANY.

1 A condition in a contract of insurance that no suit or action shall be sustainable unless commenced within the *time of twelve months next after the loss shall occur*, and in case such action shall be commenced after the expiration of twelve months *next after such* loss, that the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim, does not operate in case of a war between the countries of the contracting parties, as does a *statute* of limitations in like case. And under such a contract the term of twelve months, which it allowed the plaintiff for bringing his suit, does not, as it does in the case of a *statute* of limitation, open and expand itself so as to receive within it the term of legal disability created by the war and then close together at each end of that period so as to complete itself, as though the war had never occurred.

2. However, in the case of such a contract followed by a war, the disability to sue imposed on a plaintiff by the war relieves him from the consequences of failing to bring suit within twelve months after the loss.

IN error to the Circuit Court for the District of Connecticut.

Semmes sued the City Fire Insurance Company, of Hartford, in the court below, on the 31st of October, 1866, upon a policy of insurance, for a loss which occurred on the 5th day of January, 1860. The policy as declared on showed as a condition of the contract, that payment of losses should be made in sixty days after the loss should have been ascertained and proved.

The company pleaded that by the policy itself it was expressly provided that no suit for the recovery of any claim

upon the same should be sustainable in any court unless such suit should be commenced within the term of twelve months next after any loss or damage should occur; and that in case any such suit should be commenced after the expiration of twelve months next after such loss or damage should have occurred, the lapse of time should be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced. And that the plaintiff did not commence this action against the defendants within the said period of twelve months next after the loss occurred.

To this plea there were replications setting up, among other things, that the late civil war prevented the bringing of the suit within the twelve months provided in the condition, the plaintiff being a resident and citizen of the State of Mississippi and the defendant of Connecticut during all that time.

The plea was held by the court below to present a good bar to the action, notwithstanding the effect of the war on the rights of the parties.

That court, in arriving at this conclusion, held, first, that the condition in the contract, limiting the time within which suit could be brought, was, like the statute of limitation, susceptible of such enlargement, in point of time, as was necessary to accommodate itself to the precise number of days during which the plaintiff was prevented from bringing suit by the existence of the war. And ascertaining this by a reference to certain public acts of the political departments of the government, to which it referred, found that there was, between the time at which it fixed the commencement of the war and the date of the plaintiff's loss, a certain number of days, which, added to the time between the close of the war and the commencement of the action, amounted to more than the twelve months allowed by the condition of the contract.

Judgment being given accordingly in favor of the company the plaintiff brought the case here.

The point chiefly discussed here was when the war began

and when it ceased; *Mr. W. Hamersley, for the plaintiff in error*, contending that the court below had not fixed right dates, but had fixed the commencement of the war too late and its close too early, and he himself fixing them in such a manner as that even conceding the principle asserted by the court to be a true one, and applicable to a *contract* as well as to a statute of limitation, the suit was still brought within the twelve months.

The counsel, however, denied that the principle did apply to a contract, but contended that the whole condition had been rendered impossible and so abrogated by the war, and that the plaintiff could sue at any time within the general statutory term, as he now confessedly did.

Mr. R. D. Hubbard, contra.

Mr. Justice MILLER delivered the opinion of the court.

It is not necessary, in the view which we take of the matter, to inquire whether the Circuit Court was correct in the principle by which it fixed the date, either of the commencement or cessation of the disability to sue growing out of the events of the war. For we are of opinion that the period of twelve months which the contract allowed the plaintiff for bringing his suit does not open and expand itself so as to receive within it three or four years of legal disability created by the war and then close together at each end of that period so as to complete itself, as though the war had never occurred.

It is true that, in regard to the limitation imposed by statute, this court has held that the time may be so computed, but there the law imposes the limitation and the law imposes the disability. It is nothing, therefore, but a necessary legal logic that the one period should be taken from the other. If the law did not, by a necessary implication, take this time out of that prescribed by the statute, one of two things would happen: either the plaintiff would lose his right of suit by a judicial construction of law which deprived him of the right to sue yet permitted the statute to run until

it became a complete bar, or else, holding the statute under the circumstances to be no bar, the defendant would be left, after the war was over, without the protection of any limitation whatever. It was therefore necessary to adopt the time provided by the statute as limiting the right to sue, and deduct from that time the period of disability.

Such is not the case as regards this contract. The defendant has made its own special and hard provision on that subject. It is not said, as in a statute, that a plaintiff shall have twelve months from the time *his cause of action accrued* to commence suit, but twelve months from the time of *loss;* yet by another condition the loss is not payable until sixty days after it shall have been ascertained and proved. The condition is that no suit or action shall be sustainable unless commenced within the *time of twelve months next after the loss shall occur*, and in case such action shall be commenced after the expiration of twelve months *next after such* loss, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim. Now, this contract relates to the twelve months next succeeding the occurrence of the loss, and the court has no right, as in the case of a statute, to construe it into a number of days equal to twelve months, to be made up of the days in a period of five years in which the plaintiff could lawfully have commenced his suit. So also if the plaintiff shows any reason which in law rebuts the presumption, which, on the failure to sue within twelve months, is, by the contract, made conclusive against the validity of the claim, that presumption is not revived again by the contract. It would seem that when once rebutted fully nothing but a presumption of law or presumption of fact could again revive it. There is nothing in the contract which does it, and we know of no such presumptions of law. Nor does the same evil consequence follow from removing absolutely the bar of the contract that would from removing absolutely the bar of the statute, for when the bar of the contract is removed there still remains the bar of the statute, and though the plaintiff may show by his disability to sue a sufficient answer to the twelve months provided by the con-

tract, he must still bring his suit within the reasonable time fixed by the legislative authority, that is, by the statute of limitations.

We have no doubt that the disability to sue imposed on the plaintiff by the war relieves him from the consequences of failing to bring suit within twelve months after the loss, because it rendered a compliance with that condition impossible and removes the presumption which that contract says shall be conclusive against the validity of the plaintiff's claim. That part of the contract, therefore, presents no bar to the plaintiff's right to recover.

As the Circuit Court founded its judgment on the proposition that it did, that judgment must be

REVERSED AND THE CASE REMANDED FOR A NEW TRIAL.

REICHE *v.* SMYTHE, COLLECTOR.

Where an act of 1861 exempted from duty "animals of all kinds; birds, singing and other, and land and water fowls," and a later act levied a duty of 20 per cent. "on all horses, mules, cattle, sheep, hogs, *and other live animals*," *held* that birds were not included in the terms "other live animals." The second statute must be read by the light of the first.

ERROR to the Circuit Court for the Southern District of New York; the case being thus:

The 23d section of the act of March 2d, 1861, chap. 68,* provides, that

"The importation of the articles hereinafter mentioned and embraced in this section shall be exempt from duty:

"'Animals, living, of all kinds; birds, singing and other, and land and water fowls.'"

This provision being in force, an act of May 16th, 1866,† was passed, which provided—

"That on and after the passage of this act there shall be

* 12 Stat. at Large, 193. † 14 Ib. 48.