TITUS *v.* UNITED STATES.

1. An informer does not acquire a right to a moiety under the Confiscation Act of August 6th, 1861, in regard to land informed against, *after* a complete title to the property has been acquired by conquest. [In the present case the information was filed July 17th, 1866, the rebellion being at the time suppressed, and the property in the possession of the military forces of the government.]
2. The government is not estopped from denying an informer's claim to a moiety in such a case,

   (*a*) by the fact that its district attorney has allowed proceedings in confiscation to be carried on under the act and the land to be sold, and the purchase-money to be received;

   (*b*) or by the fact that the Commissioner of the Freedmen's Bureau, to whom, as agent of the United States, Congress gives the control and management of all captured and abandoned land, never claimed the land itself, but after it had been sold and the price paid into court, and a moiety adjudged to the informer, has taken the other moiety without question.
3. The case of an informer in such a case stands on a very different footing, and is to be judged of by very different principles of estoppel, from that of a purchaser of the land, who has paid his money to the United States in consequence of their offer to sell under the act.

ERROR to the Circuit Court for the Southern District of Georgia. The case was thus:

On the 2d December, 1862, the executors of the will of C. J. McDonald, being fully authorized, sold and conveyed to the Confederate government certain land in Bibb County, Georgia, to be used (through the agency of certain laboratories built upon it for the preparation of ammunition) in promoting the rebellion against the government of the United States. This land remained the property of the Confederate government, and was used in aid of the rebellion, until the final surrender of the Confederate armies, when it was taken possession of and held by the military forces of the United States. On the 17th July, 1866, while it remained so in the possession of the military forces, one Titus filed with the district attorney an information against it under the act of

August 6th, 1861, known as the Confiscation Act.* This act provides, in substance, that if, during the (then) present or any future insurrection against the government of the United States, any *person* should, after the prescribed proclamation, purchase or acquire, sell or give, any property, of *whatsoever kind or description*, with intent to use or employ the same, or suffer the same to be used or employed, in aiding or abetting or promoting such insurrection; or if any *person*, being the owner of such property, should knowingly use or employ, or consent to the use or employment of, the same for such purpose, all *such* property should be lawful subject of prize and capture wherever found, and the President was required to cause it to be seized, confiscated, and condemned. The proceedings for condemnation were to be had in the courts of the United States having jurisdiction of the amount, or in admiralty in any district in which such "prizes and capture" might be seized, or into which they might be taken and proceedings first instituted. The Attorney-General, or the district attorney of the United States for the district in which the property might at the time be, was authorized to institute the proceedings of condemnation, and, in such case, they were to be wholly for the benefit of the United States; or any person might file an information with such attorney, and then the proceedings were to be for the use of an informer and the United States in equal parts.

The district attorney, in pursuance of the information filed by Titus, as already mentioned, and prosecuting "for the United States and *informant*," on the 15th January, 1867, commenced proceedings in the District Court of the Southern District of Georgia for the condemnation and sale of the property, alleging the conveyance to and use by the Confederate government, and averring that, *by the surrender of the Confederate armies, it had become the property of the United States.* No person appeared in the action to defend, or offered to claim the property, and, on the 26th February, the formal judgment of forfeiture and sale under the act was entered.

* 12 Stat. at Large, 319.

A warrant of sale was issued on the 25th March, 1867, to which the marshal, on the 21st November, returned that, on the 8th May, he had postponed the sale upon the order of the district attorney. On the 17th June Titus filed a petition in the cause, asking to be made a party, and for a judgment, asserting his right to one-half the proceeds of the sale and directing its payment to him. The prayer of this petition was granted on the 8th April, 1868, and, on the 20th January, 1870, the marshal made a second return to the warrant of sale, to the effect that he had sold the property for $19,542.75, and had paid the purchase-money into the registry of the court. On the 19th April following, the *Commissioner of the Freedmen's Bureau* asked for and obtained an order for the payment to him of *one-half* the net proceeds of the sale.

The reader will perhaps recall that the act establishing the Freedmen's Bureau, passed March 3d, 1865,* provides—

"That the commissioner, under the direction of the President, shall have authority to set apart for the use of loyal refugees and freedmen such tracts of land within the insurrectionary States as shall have been *abandoned or to which the United States shall have acquired title by confiscation, or sale, or otherwise*, and to every male citizen, whether refugee or freedman as aforesaid, there shall be assigned not more than forty acres of such land," &c.

After providing that he shall be protected in the occupancy thereof, at an annual rental for the period of three years, the act concludes thus:

"At the end of said term, or at any time during said term, *the occupants* of any parcels so assigned may purchase the land *and receive such title thereto as the United States can convey*, upon paying therefor the value of the land, as ascertained and fixed for determining the annual rent aforesaid."

The twelfth section of the act of July 16th, 1866,† *continuing* the said bureau, also provides—

"That the commissioner shall have power *to seize, hold, use,*

* 13 Stat. at Large, 507.

† 14 Id. 173, &c.

lease, or sell, all buildings and tenements, and any lands appertaining to the same or otherwise, formerly held under color of title by the late so-called Confederate States, and not heretofore disposed of by the United States, and any buildings or lands held in trust for the same by any person or persons, and to use the same, *or appropriate the proceeds derived therefrom, to the education of the freed people,*" &c.

The district attorney, on the 2d May, filed a motion to set aside the judgment in favor of Titus, and, that motion being refused, took a writ of error to the Circuit Court, where the judgment was reversed. The case was here for a review of this action of the Circuit Court.

Mr. J. A. Wills, for the plaintiff in error:

I. The United States had certainly, as one ground of title to the property in question, that arising under the Confiscation Act of August 6th, 1861. Even conceding that they had a title arising by conquest, or by the surrender of the Confederate States on the field of battle, represented by the Commissioner of the Freedmen's Bureau, under the twelfth section of the act of July 16th, 1866, still they had a right to elect, and by the concurrent action of their several officers did elect to rely upon and assert their title and to enforce and dispose of it by the proceedings in confiscation. They are accordingly bound by all the legal consequences and incidents of that election.

The proceeding in confiscation, in which the judgment in favor of the informer was rendered by the District Court, was *a valid legal unit;* and, therefore, the judgment in favor of the informer was an integral, necessary, and logical sequence, or part of the confiscation proceedings, which, considered as such, cannot be maintained in part and set aside in part; in short, the whole must stand or fall together.

The land was *confiscable* under the Confiscation Act of August 6th, 1861.

The fact that it had been conveyed by its former owners, *directly*, "to the Confederate States," and had been used and employed by them in aid of the rebellion, did not render it

any the less nor any the more confiscable, under those laws, than it would have been if the title had remained in its former owners. In either case it would have been equally "used and employed in aiding, abetting, and promoting" the rebellion. The *title* of those who now hold the land under the decree and order of sale in the proceedings in confiscation against it, rests upon the truth of this proposition; and, indeed, this seems to be admitted on all sides, since no writ of error has been sued out by any one to call in question the validity of those proceedings, so far as they relate to the judgment of condemnation, and to the sale of the land confiscated.

By the act of August 6th, 1861, it was made "the *duty* of the Attorney-General, or of the district attorney of the United States for the district in which said land was situated, to institute the proceedings of condemnation, and *in such case* it is declared they shall be *wholly* for the benefit of the United States, or *any person may file an information with such attorney, in which case* the proceedings shall be for *the use of such informer and the United States in equal parts.*"

The information filed by the informer with the district attorney which led to the seizure of the property in this case, was filed July 17th, 1866. He also furnished *the evidence* used in the trial of this case for the condemnation thereof.* Now, if the district attorney had had all the information and evidence necessary to secure a condemnation of the said property, before or at the time the information of the informer was filed with him, it was his duty by law to proceed on his own information and evidence. But he did not so proceed. Presumptively, indeed evidently, because he could not.

When the two general facts are established in this case—first, that the land informed against was *confiscable*, and was actually *confiscated and sold* under a judgment of the District Court, and second, that the proceedings in confiscation were

* This fact was admitted in a certificate of the district attorney, filed below by consent, to supply lost parts of the record.—REP.

instituted in the beginning and carried on to enforce the law, at the instance of the plaintiff in error, an informer, whose relation as such has been admitted and proved—the courts of the United States in such confiscation proceedings have no right to disregard the third section of the act of August 6th, 1861, which declares expressly that "*in such case the proceedings shall be for the use of such informer* and *the United States in equal parts.*"

The statute of March 3d, 1865, giving the rights acquired by conquest to the Freedmen's Bureau, shows that the only title proposed to be given to the freedmen for any *such* property was a "quit-claim." Hence in the insurrectionary States but little value was attached, in point of fact, to property held by the title of conquest, while the fullest confidence was given to a title acquired by judicial proceeding under the confiscation laws; and that, therefore, the Commissioner of the Freedmen's Bureau acted wisely in this case by electing to assert the title of the United States in and by the proceedings in confiscation. The half that he did get was better than the whole which he might have had.

What, then, was the legal effect of his election?

This question was submitted to Mr. Stanbery, when attorney-general, in regard to the Macon armory property. He was asked—

"If, in your opinion, a complete title to that property is *not* already vested in the United States, to direct such proceedings to be instituted as may be necessary for the purpose of having the title perfected."

Under date of October 5th, 1866 (after the information in this case had been filed), that distinguished lawyer says:*

"*The United States is in possession of the property, I understand,* and in so far as the operation of *the law of war* may be concerned, the title is as perfect now as it can become.

"The property, however, may be liable to confiscation under the act of August 6th, 1861, &c. In respect to the institution of proceedings under that statute, the first objection that occurs to

* 12 Opinions of Attorney-General, pp. 76–78.

me is, *that it waives the claim of title by conquest.* Furthermore, on the filing of the information, *the property would pass at once into judicial custody*, and continue in such custody until the determination of the cause, &c. *I do not think that I can safely direct judicial proceedings against the property*, &c. I mention that law [of August 6th, 1861] as it is the only one known to me under which an allegation of forfeiture could probably be framed."

II. At any time before the information was filed, and at all times afterwards and before the sale of this property, it was in the power of the Commissioner of the Freedmen's Bureau, under the act of March 3d, 1866, to have elected to claim title by conquest alone, and through the law officers of the United States to have discontinued the confiscation proceedings, and to have relied on the title by conquest alone. But that was not done. In addition to his passive acquiescence, he came forward, and by his application to the court for *his half* of the proceeds of the sale of the property, he directly and positively ratified and approved the confiscation proceedings, and the claim of the informer to the other half of the proceeds under them.

Mr. S. F. Phillips, Solicitor-General, contra.

The CHIEF JUSTICE delivered the opinion of the court.

In war the public property of an enemy captured on land becomes, for the time being at least, the property of the conqueror. No judicial proceeding is necessary to pass the title. Usually the ultimate ownership of real property is settled by the treaty of peace, but so long as it is held and not surrendered by a treaty or otherwise it remains the property of the conqueror.

This well-settled principle in the law of war was recognized by this court in *United States* v. *Huckabee*,* as applicable to the late civil war. At the close of that war there was no treaty. When the insurrection was put down the government of the insurgents was broken up, and there was no

* 16 Wallace, 434.

power to treat with. Hence the title to all captured property of the Confederate government then became absolute in the United States.

Titus, however, claims as an informer under the act of 1861. This act provided, in substance, that if, during the (then) present or any future insurrection against the government of the United States, any *person* should, after the prescribed proclamation, purchase or acquire, sell or give, any property of whatsoever kind or description, with intent to use or employ the same, or suffer the same to be used or employed, in aiding or abetting or promoting such insurrection; or if any *person*, being the owner of such property, should knowingly use or employ, or consent to the use or employment, of the same for such purpose, all *such* property should be lawful subject of prize and capture wherever found, and the President was required to cause it to be seized, confiscated, and condemned. The proceedings for condemnation were to be had in the courts of the United States having jurisdiction of the amount, or in admiralty in any district in which such "prizes and capture" might be seized, or into which they might be taken and proceedings first instituted. The Attorney-General, or the district attorney of the United States for the district in which the property might at the time be, was authorized to institute the proceedings of condemnation, and, in such case, they were to be wholly for the benefit of the United States; or any person might file an information with such attorney, and then the proceedings were to be for the use of an informer and the United States in equal parts.

Clearly this act was intended for private, not public property—for such property of persons as required, under the laws of war, a judicial sentence of condemnation to divest the title of its owner,—not such property of a hostile government as had already been captured by an army and subjected to the complete and undisputed dominion and ownership of the conquering power. It applies, as will be seen, to all property, personal as well as real. Not only to a laboratory in which ammunition is prepared, but to the am-

munition itself; not to armories simply, but to their product. If the laboratory, owned by the hostile government, when captured in the progress of the war and held by the army, can be informed against and condemned for the benefit of the informer and the United States, so also can the ammunition prepared therein and captured in battle. If the armory, then the gun. Once incorporate this statute, with such a construction, into the law of war, and the attention of the soldier in battle will be divided between the capture of arms, ammunition, and stores on the field, and the search for a district attorney with whom to lodge a statutory information, and demand, as a matter of right, a proceeding in the court for its condemnation on the joint account of himself and the government in whose service he is. We doubt if the counsel for the informer in this case, who has so earnestly and so ably advocated the cause of his client here, would be willing to enlist himself in behalf of such a claim, and yet it is difficult to see how, if he succeeds in this, he might not in that.

An informer, to entitle himself to the statutory reward for his service, must inform against property which is the subject of judicial condemnation. There can be nothing to divide if there is nothing to condemn. In this case the land, when informed against, was already the property of the United States. The title had passed by the completed conquest. There was nothing to reach by judicial process. Information, in the statutory sense, could do no good. The property had been devoted to the war and followed its fortunes. The capture was the result of many battles, but it was none the less, on that account, captured property, needing no judicial sentence of forfeiture to make it absolutely the property of the United States.

But it is claimed that the United States are estopped by the proceedings of condemnation instituted, as they were, in behalf of itself and an informant, from denying, as against the informer, that the property in question was the subject of forfeiture on joint account under the act. There is no pretence that there was any claim, adverse to the title of the

United States as conqueror, that was, or could be, cut off by the judgment of the court. It will hardly be contended, we think, that if, after the close of the war, an information had been filed with the district attorney against the Charleston custom-house, and he had proceeded to have it condemned under the act, the United States would be estopped from objecting to the claim of an informer, for one-half its value, and yet the custom-house, although owned by the United States before the war, was no more its property at the close than was the laboratory informed against in this case, if the statements in the record are true. The very libel of information, filed by the district attorney, shows upon its face that the title of the United States was then complete, and the fair inference from the petition of Titus to be made a party to the cause is, that the case made by the libel is the same as that he presented to the attorney for proceedings. Certainly the United States are not prohibited from asserting, as against the informer, that the case he brought to its consideration, and upon which it acted, was not one in which he could be interested.

But it is further claimed that there is an estoppel in favor of this informer because the Commissioner of the Freedmen's Bureau omitted to appear and resist the judgment of condemnation, and, after the sale was made, applied for and received from the court one-half the proceeds.

The act of July 16th, 1866, gave the commissioner of that bureau the control and management of property of the character proceeded against, for certain purposes specified, but in this he was only the agent of the United States. His bureau was the department of the government authorized to manage the trust to which the property had been devoted. He is not estopped if the United States are not, and his neglect to appear and defend against the proceedings can certainly have no more effect against the United States than the institution of the original proceedings.

Neither was an estoppel created by the receipt of the purchase-money. The order in favor of the informer was made on the 8th April, 1868, and the property remained unsold

until December 7th, 1869. On the 19th April, 1870, the commissioner made his application to the court for the money. One-half the proceeds was all he could ask for, so long as the judgment in favor of the informer remained in force. This he applied for and received, and on the 2d May the proceedings now under consideration were commenced to set aside that judgment. Certainly, under these circumstances, it cannot be said that, even if he had the power to do so, the commissioner has yielded the claim of the government to the money which had been adjudged to the informer.

Very different questions, and very different principles of estoppel, will have to be considered if the United States or the commissioner shall ever attempt to assert title against the purchasers at the sale. They claim under the sale, and have paid their money in consequence of the offer of the United States to sell in that way. The informer stands in no such position. He has parted with nothing he ever had. He stands upon the original title. If, when he informed, the United States had no title, and through his information one was acquired, he is entitled to the statutory reward for his service. But if the United States had then a perfect title and nothing could be added to it by reason of his information, he has done nothing for which the statute has provided a reward. Whether he should be paid for furnishing the government with information by which it has been able to make its conquest available, is a question we are not called upon to consider. We deal with him only as an informer under the statute, and as such he has no standing in court.

In the view we have taken of the case it is not necessary to consider whether the District Court erred in permitting Titus to become a party to the proceedings after the judgment of condemnation had been entered, and all chances of liability for costs had been resolved in his favor.

JUDGMENT AFFIRMED.