

## Statement of the case.

statements appearing in the record are true, the court did have jurisdiction of the person of the defendant, and could bind him by a judgment. No evidence was introduced to contradict the record. Its truth is, therefore, presumed.

5. In *Christmas v. Russell*,\* this court held that fraud could not be pleaded to an action in one State upon a judgment in another. With this we are satisfied.

Since the case of *Mills v. Duryea*,† it has been settled in this court that *nil debet* is not a good plea to an action upon a judgment in another State.

JUDGMENT AFFIRMED.

## HAYCRAFT v. UNITED STATES.

Under the act of March 12th, 1863, relating to captured and abandoned property, and which enacted that any person claiming to be the owner of such 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 . . . that he has never given any aid or comfort to the present rebellion," receive the proceeds of the sale of such property, a person who did give aid and comfort to the rebellion, and who has not been pardoned until after two years from the suppression of the rebellion cannot, on then preferring his petition, obtain the benefit of the act, even though in cases generally the limitation of actions in the said court is one of six years. The question is not one of limitation but of jurisdiction. And the inability of an unpardoned rebel to sue in the Court of Claims does not control the operation of the statute.

APPEALS from the Court of Claims; the case being thus: By an act of March 3d, 1863,‡ relating to the Court of Claims, it was enacted that—

"The said court shall have and determine *all* claims founded upon . . . *any* contract, express or *implied*, with the government of the United States."

\* 5 Wallace, 304.

† 7 Cranch, 481.

‡ Act reorganizing the Court of Claims, 12 Stat. at Large, 767; and see the act of February 24th, 1855, 10th id. 612, organizing the said court.

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It was further enacted :

“SECTION 10. That every claim against the United States, cognizable by the said court, shall be forever barred unless the petition setting forth a statement of the claim be filed in the court . . . *within six years after the claim accrued.*”

This statute relating to the Court of Claims being in existence, the act of March 12th, 1863, relative to captured and abandoned property was passed. That act enacts :

“SECTION 1. That it shall be lawful for the Secretary of the Treasury . . . to appoint a special agent or agents to receive and collect all abandoned or captured property in any State or Territory designated as in insurrection, &c.; *Provided*, That such property shall not include any kind or description which has been used or which was intended to be used for waging or carrying on war against the United States, such as arms, ordnance, ships, steamboats, or other water craft, and the furniture, forage, military supplies, or munitions of war.

“SECTION 2. That any part of the goods or property received or collected . . . may be appropriated to public use on due appraisement and certificate thereof, or forwarded to any place of sale within the loyal States, as the public interests may require; and all sales of such property shall be at auction to the highest bidder, and the proceeds thereof shall be paid into the Treasury of the United States.

“SECTION 3. That the Secretary of the Treasury . . . shall also cause a book or books of account to be kept showing from whom such property was received, the cost of transportation, and proceeds of transportation.

“And any person claiming to have been the owner of any 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 of said property, of his right to the proceeds thereof, and *that he has never given any aid or comfort to the present rebellion*, receive the residue of such proceeds,” &c.

All these provisions of the two statutes being in existence, one Haycraft, of Mississippi, *a person who had given aid and comfort to the late rebellion*, was the owner of a quantity of

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cotton in the State just named, which in April, 1863, during the rebellion, the United States had seized as abandoned property, and sold; the proceeds (\$27,000) being now in the treasury.

Haycraft having been, as just above said, disloyal to the United States, and unable to give all the proofs which the Captured and Abandoned Property Act required, was precluded by the terms of the act, as things stood at the time of its passage, from suing under it.

However, on the 8th December, 1863 (that is to say within less than nine months from the passage of the act), the President issued a proclamation offering full pardon and restoration of property to all insurgents (certain classes excepted), provided they would take an oath to support, protect, and defend the Constitution and Union, abide by and support all acts of Congress, and all proclamations of the President made during the rebellion, with reference to slaves.

Lee surrendered April 9th, 1865; Joseph Johnston on the 26th. On the 10th of May Jefferson Davis was captured, and on the 26th Kirby Smith gave up the remnant of the rebel army.

On the 29th of May pardon and restoration was offered to all (certain classes excepted) who would simply *take an oath of allegiance*, and keep it.

The war in Mississippi was, by proclamation, *legally* ended April 2d, 1866.\*

On the 7th of September, 1867, another proclamation was made offering pardon and restoration of property to all (except certain classes more limited than before), who would take an oath of allegiance.

The latest of all these proclamations of pardon, it will be observed, was within two years after the war was legally ended.

On the 25th of December, 1868,—this being, however, more than two years after the war was ended, even legally viewed,—a final proclamation was issued by President John-

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\* *The Protector*, 12 Wallace, 700.

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son, by which "a full pardon and amnesty for the offence of treason against the United States, or of adhering to their enemies during the late civil war, with restoration of all rights, privileges, and immunities under the Constitution and the laws which have been made in pursuance thereof," was proclaimed and declared "unconditionally and without reservation to all, and to every person who directly or indirectly participated in the late insurrection or rebellion."

In the *United States v. Klein*,\* this court (December Term, 1874) decided that the restoration of captured and abandoned property became the absolute right of persons pardoned, as much as of loyal people; suit being brought for it in the Court of Claims within two years from the close of the war.

In this state of enactments and pardons, Haycraft, already mentioned, *on the 30th of July, 1872*, six years and more after the close of the war, filed his petition in the Court of Claims, and without so much as alleging that he had been within one of the classes excepted from the benefit of those different proclamations which preceded the last, sought to recover the proceeds of his cotton.

The petition was in the nature of an implied assumpsit for the value of the cotton. It alleged that during the rebellion the voluntary residence of the petitioner was in Mississippi, where, for some time during his said residence, the rebel force held sway; that he did give aid and comfort to persons engaged in the rebellion, and was, *therefore*, precluded from redress by suit in the Federal courts, and especially from the remedy afforded to claimants under the provisions of the act of Congress approved March 12th, 1863; the *Captured and Abandoned Property Act*.

It further averred that he was entitled to and had received the benefit of the "full pardon and amnesty, duly granted by the authority of the United States, on the 25th day of December, A.D. 1868, whereby his civil disabilities were removed, and his right of redress by suit in the United States courts was restored," together "with restoration of

\* 13 Wallace, 136.

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all his rights, privileges, and immunities under the Constitution and laws of the United States."

The petition went on :

"Your petitioner further states that his property aforesaid having been taken possession of by the United States government, and appropriated by it, and the money arising from the sale of said property being now held by the government, an implied contract has arisen on its behalf to make petitioner just compensation therefor, according to what it was reasonably and fairly worth at the time and place at which it was so taken from him as aforesaid, and accordingly to pay over to him the net proceeds of the sale of said cotton."

Finally, it alleged the cotton to have been at the time and place of its seizure as aforesaid, reasonably worth \$27,000, being the amount of the net proceeds of the sale thereof, which amount under the implied contract aforesaid, the claimant alleged himself entitled to receive from the United States.

The United States demurred, and the Court of Claims dismissed the petition; placing the dismissal upon the grounds—

1st. That no action for proceeds of captured and abandoned property would lie except under the provisions of the act of March 12th, 1863.

2d. That such action to be maintainable must be brought within two years after the suppression of the rebellion.

From this ruling the claimant appealed, alleging that the Court of Claims erred,

1st. In holding that the only right of action for such proceeds was exclusively under the act of March 12th, 1863.

2d. In holding that it had not jurisdiction, because the suit had not been brought within two years after the suppression of the rebellion.

3d. In holding further that this limitation was available to defeat the claimant's action, though he was debarred by an act of Congress from bringing or maintaining such an action.

## Argument for the claimant.

*Messrs. J. Casey and J. W. Bartley, for the appellant:*

I. *The right of suit for these proceeds was not exclusively under the act of March 12th, 1863.*

The radical error of the Court of Claims consists in supposing that the jurisdiction to hear and decide these cases is a special one. But what is the truth? The act provides that where a loyal man's property has been taken and sold by the United States, he may, within two years after the war, bring suit to recover the proceeds; that is to say, the United States have taken his property, which they had no right to take at all, and have converted it into money, and they hold it as a trustee for him, as the Supreme Court has declared in *United States v. Padelford*,\* *United States v. Klein*,† and in other cases. Then he brings an action for money had and received to his use, on the implied promise; and that is the whole of this action. This is the essence of the act.

Of all such actions, the Court of Claims has had jurisdiction ever since it has existed. Under the acts constituting it,

“The said court shall have and determine *all* claims founded upon any law of Congress, or upon any regulation of an executive department, or upon *any* contract, express or *implied*, with the government of the United States.”

Now the Captured and Abandoned Property Act remitted claimants to that court, *under the general powers and faculties of the court*, as theretofore defined by law. Such has been the construction uniformly given to this act by this court.

In *United States v. Anderson*,‡ the counsel for the United States contended that the powers of the Court of Claims in these cases were defined and limited exclusively by the act of March 12th, 1863; and that the court could not render a judgment for a specific sum, because the act did not provide for that. But this court rejected this narrow view, and held that the authority conferred by this special act of March

\* 9 Wallace, 531.

† 13 Id. 139.

‡ 9 Wallace, 56.

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12th, 1863, was to be exercised by the court, under the general powers of the court.

So in the case of *United States v. Padelford*. The same strict and narrow construction was again urged upon the court by the counsel for the United States; and *that actual, personal, and continual loyalty* was a jurisdictional prerequisite to enable the Court of Claims to entertain the suit at all. But this court rejected the position of counsel.

So in *United States v. Zellner*,\* where the Court of Claims had decided that the act of March 12th, 1863, did not give the right of appeal; and where Congress, recognizing the same view, passed the act of June 25th, 1868,† to confer that right on the United States. But this court held that the claimant could appeal under the general provisions contained in the act of March 3d, 1863.‡

This court, by Nelson, J., says:

"The Court of Claims was organized as a special judicial tribunal to hear and render judgment in cases between the citizen and the government; *the subjects of its jurisdiction were defined in the act*, and generally the mode of conducting its proceedings, subject, of course, to such alterations and changes as Congress, from time to time, might see fit to make. The subject of its jurisdiction might be enlarged or diminished, *but this would not disturb or in any way affect the general plan or system of its organization.*"

II. *The difference in legal status of loyal and disloyal persons, affected differently, too, the property of such persons respectively, seized under the Captured and Abandoned Property Act, and of course affected differently its proceeds.*

There was no legislation of Congress that authorized any officer of the United States, civil or military, to seize and sell the property of a loyal man. But knowing that mistakes as to the true *status* of persons had been and would be made, Congress provided for loyal men in this act. As to the proceeds of the disloyal person's property, it remained in the

\* 9 Wallace, 244.

† 15 Stat. at Large, 75.

‡ 12 Id. 767, § 5, the act governing the court generally.

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treasury subject to the policy which the legislative or executive branches of the government should adopt.

In *United States v. Klein*, Chase, C. J., for the court, says:

"The act of March 12th, 1863, provided for the sale of enemies' property collected under the act, and payment of the proceeds into the treasury, and left them there subject to such action as the *President* might take under the Confiscation Act of the 17th July, 1862."

Under this act the President could grant the owners pardon and amnesty, with full restoration of the rights lost or forfeited by rebellion, and thus entitle them to the return of their property or its proceeds. This policy he adopted, and this finally settled the question, that these proceeds were to be restored to the owners of the property, out of which they had accrued.

This restoration, so determined on, could only be made through the Court of Claims, whose jurisdiction was exclusive;\* and from that court, every person, in any way implicated in the rebellion was excluded by Congressional prohibition until pardoned.

The *status* of this claimant was therefore this:

1st. Having aided the rebellion, his property was rightfully seized and sold, to be held by the United States, until they should determine, as a matter of public policy, whether it should be restored to the owner by pardon of his crime, or condemned and confiscated by judicial proceedings. Till then, his right to it was suspended.

2d. The jurisdiction of the Court of Claims was exclusive on the question whether he should recover these proceeds, and the legislation of Congress prohibited him from suing there at all. So that, not only his right to these proceeds, but the capacity to sue for them, was taken away by the capture and sale, and by the accompanying legislation of Congress.

\* Mrs. Alexander's Cotton, 2 Wallace, 404; Act of March 12th, 1863, § 3, 12 Stat. at Large, 820; Act of July 2d, 1864, 13 Id. 375; Act of July 27th, 1868, 15 Id. 248.

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3d. While this condition of things continued he could not sue, and consequently could not be barred by neglecting to do that which the law prohibited him from doing.

4th. No judicial condemnation having been decreed, and his offence having been pardoned, both his right to the property and his capacity to sue for it, were restored by that act of pardon, and from its date.

Haycraft's disabilities continued until the 25th December, 1868, when the President issued an unconditional proclamation of pardon and amnesty.

This pardon, confessedly, under many decisions of this court,\* put the person pardoned, in all legal aspects and relations, in the same condition as if he had never transgressed.

The condition or predicament of these proceeds, the owner being disloyal, is similar to property seized under our customs, or revenue, or neutrality laws. In either case the property, under certain conditions and limitations, may be sold. In such case, where the litigation for forfeiture or non-forfeiture is undetermined, and the offence unpardoned, or the forfeiture not remitted, the owner has no right to the proceeds and could not maintain a suit for them. His right to them accrues, and his ability to maintain a suit for them commences at the moment of remission of the offence for which they are held or final judgment of non-forfeiture in his favor. No statute of limitations would run against him before this time.

Now, this court has decided† that the war, irrespective of a statute, suspended the running of the statute of limitations between private persons living in the loyal and insurrectionary States. But here, by the statutes of the United States, there was neither right to the money nor capacity in Haycraft to sue for it until December 25th, 1868. The same act that released the right of the United States re-

\* *Ex parte Garland*, 4 Wallace, 333; *Cummings v. Missouri*, Ib. 277; *United States v. Padelford*, 9 Id. 531; *United States v. Klein*, 13 Id. 139.

† *Hanger v. Abbott*, 5 Wallace, 532; *The Protector*, 12 Id. 700; *Insurance Company v. Kauffman*, 18 Id. 151, and other cases.

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stored his and also gave him ability to sue. From that time, therefore, the limitation commences to run against him. What limitation? Not that of the two years in the act of March 12th, 1863, because that had already passed; but if any, the only other one in existence, that of the tenth section of the act of March 3d, 1863, which provides—

*“That every claim against the United States, cognizable by the Court of Claims, shall be forever barred unless the petition, setting forth a statement of the claim, be filed in the court or transmitted to it under the provisions of this act within six years after the claim first accrues.”*

*Mr. G. H. Williams, Attorney-General, Mr. Samuel Field Phillips, Assistant Attorney-General, Mr. John Goforth, Assistant Attorney-General, contra :*

1. The claimant, who it is not pretended came within any excepted class, could at any time after the 8th of December, 1863, have taken an oath to abstain from rebellion and to support the government, and been pardoned. But he was stiff-necked, and would not comply even with these terms, or, as the result showed, with the easier terms of later proclamations. He would never have been pardoned had not pardon been “thrust” upon him by the proclamation of President Johnson, pardoning rebels in spite of themselves.

2. The argument of the other side puts all rebels including such a one as Haycraft, above described, whose property was captured, and deserved to be captured and confiscated, in a better position than loyal men where the capture was by mistake, and where a great injury was done to the owner. These last must sue in two years after the war is closed. The others, according to the argument of the claimant's counsel, might sue at any time within six after being pardoned in spite of a determination that they would not be pardoned. This *reductio ad absurdum* of the opposite argument proves the *quod est demonstrandum*, as well as any direct argument.

*Reply:* The first point in the argument of the govern-

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ment is, of course, that the legal effect and operation of a free and full pardon, is destroyed by proof of the extrinsic fact, that the offender could have been pardoned before, if he had asked for it, and complied with the conditions. If there be any principle or authority in the law, which gives support to such a position it is unknown to us.

The second point made in that argument—to wit, that our positions put rebels in better condition than loyal men—is not true, and would not prove what it is meant to prove if it were. The loyal man's right accrued so soon as his property was sold and the money paid to the United States officers, from the year 1861 till 1865, and that right continued till two years after the close of the war; continued, we may say, till 20th August, 1868. All this time the rebel was debarred: 1st. For lack of right to the possession of the proceeds; 2d. For want of capacity to sue; 3d. Because of actual legislative prohibition of the court to entertain his suit or render a judgment in his favor. In the next place, whatever benefit accrues to the former disloyalist is an incident rather than the object of the policy of reconciliation and reconstruction, adopted for their own benefit by the United States.

To recapitulate. The case is this: The United States took Mr. Haycraft's property and sold it, charged him with all the expenses, and paid the balance into the treasury. They might have libelled, condemned, and confiscated it, and have made it the property of the United States. But they said, "We will not do so; the future interests and dignity of this great nation require that we pardon his offence and restore his property." But now, when he applies to the designated tribunal to take his proofs, and give him the proceeds of his property that the United States hold as mere trustees for him, they interpose the plea of the statute of limitations. Can this promise of restoration—these fiduciary obligations of trustee—be thus fulfilled and discharged? Can the United States fully and freely pardon our client's offence and still punish it, by this confiscation of his property?

## Opinion of the court.

The CHIEF JUSTICE delivered the opinion of the court.

The main question presented for our consideration in this case is whether one who gave aid and comfort to the late rebellion can, after the expiration of two years from its suppression, commence and successfully maintain an action in the Court of Claims for the recovery of money in the treasury arising from the sale of his cotton taken possession of by the United States, and sold under the provisions of the Captured and Abandoned Property Act.

The case has been argued to some extent as though it involved the consideration of a statute of limitations. To our minds the question is one of jurisdiction. A sovereign cannot be sued in his own courts except with his consent. This is an action against the United States in its own Court of Claims. The appellant must, therefore, show that consent has been given to its prosecution. That being done, the jurisdiction of the court is established and he may proceed. Otherwise, not.

It is conceded that the required consent is not contained in the Captured and Abandoned Property Act itself, for the only action there consented to is one to be commenced within two years after the suppression of the rebellion. But inasmuch as the United States has consented to be sued in the Court of Claims upon contracts, express or implied, it is contended that this action may be prosecuted on account of an implied promise by the United States to pay to every owner of captured and abandoned property, whether loyal or disloyal, the proceeds of his property taken and sold.

As the taking was under the authority of an act of Congress, we must look to the act to see if this promise has been made. It is not claimed that any exists if it is not to be found there. If it has been made at all, it was when the property was taken, and is equivalent to an undertaking by the United States *at that time* to receive and hold the property, or its proceeds if sold, in trust for the use and benefit of the owner, whoever he might be. The claim is, that the trust in favor of the owner having *then* been created, the remedy for its enforcement in the Court of Claims as a con-

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*tract* was restored to the disloyal owner by the operation of the President's proclamation of December 25th, 1868, granting unconditional pardon to all who participated in the rebellion.

The act authorizes the Secretary of the Treasury, from time to time as he shall see fit, to appoint special agents to receive and collect all abandoned or captured property in the insurrectionary States, not including, however, any which had been used, or was intended to be used, for waging or carrying on the war, such as arms, ordnance, ships, munitions of war, &c. Any part of the property collected might be appropriated to public use, on due appraisement or certificate thereof, or forwarded to any place of sale in the loyal States, as the public interests might require. All sales were to be at public auction to the highest bidder, and the proceeds paid into the National treasury. The Secretary of the Treasury was required to cause books of account to be kept, showing from whom the property was received, the cost of transportation, and the proceeds of the sale. And any person claiming to have been the owner of such property was authorized, at any time within two years after the suppression of the rebellion, to prefer his claim to the proceeds in the Court of Claims, and, on proof of his ownership, his right thereto, and that he had not given aid and comfort to the rebellion, receive the balance of the proceeds remaining in the treasury, after deducting certain expenses.

Such was the power to take given by the act, and such the obligation assumed by the United States upon the taking, with the remedy provided for its enforcement. It was evidently a war measure, and the statute is to be construed in the light of that fact. It was confined to private property of the enemy. Public property was expressly excluded. It embraced no private property except such as was abandoned by its owners or liable to capture. The property in this case was cotton, and, according to the uniform decisions of this court, the subject of capture.\* As was said in Mrs.

\* Mrs. Alexander's Cotton, 2 Wallace, 419; Padelford's Case, 9 Id. 540.

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Alexander's case, cotton was regarded by the insurgent government as one of its "main sinews of war." It was in fact the foundation upon which the financial system of the rebellion was built. It was a security the insurgents offered for the payment of their debts. Upon it they relied for their influence abroad. To obtain it, forced contributions were exacted from its owners. From time to time in the progress of the war it was found upon the enemy's territory occupied by the military forces of the United States. While, when so found, it might have been owned by non-combatant enemies and, in that sense, private property, it was in fact, under the circumstances, at least semi-public. If left undisturbed, and the insurgents should repossess themselves of the territory, it would again be placed where it might strengthen the rebellion. Its capture was, therefore, legitimate; not for booty, but to cripple the enemy. In that way it was kept out of the insurgent treasury. It might have been destroyed, but the unnecessary destruction of property ought always to be discouraged. The act of Congress looked to its preservation, but authorized its capture. In so doing Congress acted within its constitutional power to "make regulations concerning captures on land and water."\*

In the indiscriminate seizure which was likely to follow such an authority, it was anticipated that friends as well as foes might suffer. Therefore, to save friends, it was provided that any person claiming to have been the owner might, at any time within two years after the suppression of the rebellion, prefer his claim, and, upon proof of his ownership and loyalty, receive the money realized by the United States from the sale of his property. That expresses all there is of the trust or the remedy provided.

In Klein's case,† the property collected under this act was said to be of "a peculiar description, known only in the recent war, called captured and abandoned property," and that "the government recognized to the fullest extent the humane maxims of the modern law of nations which exempts private property of non-combatant enemies from cap-

\* Art. I, section 8, paragraph 11.

† 13 Wallace, 36.

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ture as booty of war." "No similar legislation," it was also said, "is mentioned in history," and "the government constituted itself the trustee for those who were *by that act* declared entitled to the proceeds of captured and abandoned property, and for those whom it would thereafter recognize as entitled." And again (p. 139), that "the proceeds of the property have passed into the possession of the government, and the restoration of the property is pledged to none except those who have continually adhered to the government. Whether restoration will be made to others, or confiscation will be enforced, is left to be determined by considerations of public policy subsequently to be developed."

In the same case it was also held\* that "the restoration of the property became the absolute right of the persons pardoned on application *within two years from the close of the war.*" Under this construction the effect of the act was to provide a reward for submission to the government and the acceptance of amnesty, as well as authority for the seizure of property, and it is thus made to operate in two ways to weaken the insurgents: first, by depriving them of their property; and second, by inducing their adherents to submit to the authority of the United States as a means of regaining that which they had lost personally. In that view time is material. The length of a war depends largely upon the relative strength of the contending parties. As a rule, that belligerent is the first to surrender, other things being equal, who first loses the elements of warlike power. Especially is this true in a civil war. Strategy sometimes gives unnatural strength, and thus obtains success, but more commonly war resolves itself into a question of men and money, of strength and endurance.

According to the doctrine of Klein's case, if a suit was commenced within two years a pardoned enemy could recover as well as a loyal friend. But the commencement of the suit within the prescribed time was a condition precedent to the ultimate relief. The right of recovery was made to depend upon the employment of the remedy provided by

\* Page 142.

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the act. There was no promise even under the rulings in that case, except to such as should commence the suit in time, and upon the trial be in a condition to bring themselves within the requirements of the act. The promise, such as it is, was express. There is no room left for implication. Pardon and amnesty have no effect, except as to such as sue in time. In this, Klein's case but adopts the ruling in previous cases. Thus, in Mrs. Anderson's case,\* the doctrine is stated in these words: "But by the act in question the government yielded its right to seize and condemn the property which it took in the enemy's country, if it belonged to a faithful citizen, and substantially said to him: 'We are obliged to take the property of friend and foe alike, which we will sell and deposit the proceeds of in the treasury; and if at any time within two years after the suppression of the rebellion you prove satisfactorily that of the property thus taken you owned a part, we will pay you the net amount received from its sale.'" And in Zellner's case,† "Any person claiming to be the owner of abandoned and captured property, within the meaning of the act, may, at any time within two years after the suppression of the rebellion, present his claim to the Court of Claims," &c. And again, in Armstrong's case, decided at the same time with Klein's, this is the language of the court, speaking through the late Chief Justice: "And that the person so pardoned is entitled to the restoration of the proceeds of captured and abandoned property if a suit be brought within 'two years after the suppression of the rebellion,'" the special provision as to the time being brought to the attention of the reader by the marks of quotation.

Provision might have been made for the institution of suits by loyal owners at any time, but it was not, and the reason may perhaps be found in Klein's case. According to that, an insurgent who accepted the offers of pardon which were from time to time extended to him, and became loyal in fact, received as one of the privileges and immunities to which he was restored, the right to recover the proceeds of

\* 9 Wallace, 67.

† 9 Wallace, 248.

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the sale of his property taken under the act, if he made his claim in time. To obtain a pardon before the war closed an insurgent must withdraw himself from the enemy and become loyal. There could be no recovery even in a suit commenced until the pardon was obtained, and there could be as soon as it was. Hence the sooner the pardon the sooner the money could be had. So, too, after the contest was over, an early submission by all to the authority of the government was important. To this the act, as construed, furnished an additional inducement by its promise of restoration if application therefor was made in time.

Additional strength is given to this interpretation of the act by what followed its enactment. On the 17th of July, 1862, the President was authorized by Congress to extend pardon and amnesty by proclamation to persons engaged in the rebellion, with such exceptions and upon such conditions as he should deem expedient.\* On the 8th December, 1863, nine months after the passage of the Captured and Abandoned Property Act, he issued his first proclamation under this authority.† By this he offered full pardon and restoration of property to all insurgents, except a few designated classes, who would take a prescribed oath to the effect generally that they would thereafter abstain from the rebellion, and support the government of the United States. On the 26th March, 1864, by a further proclamation, he excluded from the operation of the writ, prisoners of war and those confined for crime. Thus during the war actual withdrawal from the enemy and an oath of allegiance were made conditions precedent to amnesty; but on the 29th of May, 1865, and within three days after the surrender of the last organized army of the rebellion, another proclamation was issued,‡ offering pardon and restoration of property to all, with certain exceptions, who would take an oath of allegiance alone. On the 7th September, 1867, but still within two years after the suppression of the rebellion, as it has been determined, another was issued extending the operation of the last to all save three of the excepted classes of persons.§ Thus, after

\* 12 Stat. at Large, 592. † 13 Id. 737. ‡ 13 Id. 758. § 15 Id. 700.

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the war, simple submission by an insurgent to the authority of the government was the only price to be paid for pardon and restoration to the right, according to Klein's case, of using the means provided by Congress for the recovery of the proceeds of the sale of his captured or abandoned property. Pardon was, therefore, easy to be had, and the promise of a restoration of this class of property was tendered as a reward for its acceptance to such as would qualify themselves within the prescribed time to receive it.

This appellant, though one of those who might, did not accept these easy terms. He would not render even this small equivalent for the restoration of his property, and consequently he has not availed himself of the only promise the United States has as yet offered to make looking to that end. The Court of Claims may act upon promises made, but cannot make them.

There is here no question of confiscation. The title of the United States, whatever may be the rights it carries with it, is by authorized capture or appropriation of enemy's property on land. But the same statute which authorized the capture gave a right to certain persons to demand and receive a restoration of their property taken. Coupled with the right to demand was a provision for the remedy by which it was to be enforced. Both the right and the remedy are, therefore, created by the same statute, and in such cases the remedy provided is exclusive of all others. The defendant in this case neglected to avail himself of the remedy provided, and consequently he is now without any. That remedy was the only one of which the Court of Claims or any other court has been authorized to take jurisdiction. It is for Congress, not the courts, to determine whether this jurisdiction shall be extended and other remedies provided.

JUDGMENT AFFIRMED.