

are justified as an exercise of belligerent rights against a public enemy, and are not, in their nature, a punishment for treason. Consequently, confiscation being a proceeding distinct from, and independent of, the treasonable guilt of the owner of the property confiscated, pardon for treason will not restore rights to property previously condemned and sold in the exercise of belligerent rights, as against a purchaser in good faith and for value. *Miller v. United States*, 11 Wall. 267; *Confiscation Cas.*, 20 id. 92; *Gay's Gold*, 13 id. 351.

By the seizure of the property, the District Court acquired jurisdiction to pass the decree of condemnation. All of the proceedings prior to and in the sale of the land were regular; and the assumption of power by the District Court, nearly three years subsequently, to restore the land, was wholly unauthorized, and was clearly error. Nor did the opening of the decree as to the two lots, not owned by the respondent, afford any justification for the action of the court in restoring the residue of the property, as it is settled law that a judgment may be good in part, and bad in part,—good to the extent it is authorized by law, and bad for the residue. *Bigelow v. Forest*, 9 Wall. 339; *Day v. Micou*, 18 id. 156; *Ex parte Lange*, 18 id. 163.

Much discussion of the special pardon is unnecessary, as it contained the provision that the respondent should not, "by virtue thereof," claim any property, or the proceeds of any property, that had been sold by the order, judgment, or decree of a court under the confiscation laws of the United States. Authorities to show that a pardon may be special in its character, or subject to conditions and exceptions, are quite unnecessary, as they are very numerous, and are all one way.

*Decree of the Circuit Court is affirmed.*

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#### MCLEMORE v. LOUISIANA STATE BANK.

Where, in time of war, a bank was, notwithstanding the protest of its officers, put in liquidation by order of the commanding general of the United States forces, and its effects transferred to commissioners appointed by him, who, during their administration, sold for less than their face value choses in action held by the bank as collateral security at the time of the transfer,—held, that as the proceedings of the commanding general and the commis-

sioners constituted "superior force," which no prudent administrator of the affairs of a corporation could resist, the bank was neither responsible for those proceedings, nor for a loss thereby occasioned.

ERROR to the Circuit Court of the United States for the District of Louisiana.

The facts are stated in the opinion of the court.

*Mr. Charles B. Singleton* for the plaintiff in error. *Messrs. E. and A. C. Janin, contra.*

MR. JUSTICE DAVIS delivered the opinion of the court.

It is unnecessary to consider whether in all respects the charge of the Circuit Court to the jury was correct, because the record shows the case of the plaintiff to be so fatally defective, that the judgment below would not be reversed for instructions, however erroneous. *Brobst v. Brock*, 10 Wall. 519; *Decatur Bank v. St. Louis Bank*, 21 id. 301. The case is this: The plaintiff was the owner of certain promissory notes and acceptances, in possession of the commercial firm in New Orleans of which he was a member, which were pledged by the firm, in 1861 and 1862, to the bank, as security for the payment of their promissory notes discounted by the bank. These notes were not met at maturity, and, with the collaterals pledged for their payment, remained in possession of the bank until June 11, 1863, when it was put in liquidation by order of Major-General Banks, and its effects transferred to military commissioners appointed to close it up. Its officers, while submitting to this order because they had no power to resist it, deemed it unjust and oppressive, and entered a protest against it on their minutes. During the administration of these commissioners, the pledged paper was sold for less than its face. In January, 1866, the military liquidation ceased by order of Major-General Canby, and the effects of the bank which were unadministered were restored to it. The plaintiff, on the ground that the securities were parted with illegally, seeks to make the bank responsible for the proceedings of the commissioners; but this he cannot do. Certainly no act was done, or omitted to be done, by it, inconsistent with its duty; for it was only bound to take that care of the pledge which a careful man bestows on his own property.

It is true, it was the duty of the bank to return the pledge, or show a good reason why it could not be returned. This it has done by proof, that without any fault on its part, and against its protest, the pledge was taken from it by superior force. Where this is the case, the common as well as the civil law holds that the duty of the pledgee is discharged. 2 Kent, 579; Story on Bailments, sect. 339; *Commercial Bank v. Martin*, 1 Annual, 344. That the proceedings of General Banks and the liquidators appointed by him constituted "superior force," which no prudent administrator of the affairs of a corporation could either resist or prevent, is too plain for controversy. It was in the midst of war that the order was made, and with an army at hand to enforce it. There was nothing left but submission under protest. Any other course of action, under the circumstances, instead of benefiting, would have injured, every one who had dealings with the bank. It has turned out that the plaintiff has suffered injury, but not through the fault of the officers of the bank; for they retained the notes and bills long after the paper for which they were given as security had matured, and until they were dispossessed of them by military force. Under such circumstances, they have discharged every duty which they owed to the plaintiff; and, if loss has been occasioned in consequence of the order in question, the bank is not responsible for it.

*The judgment is affirmed.*

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#### FARMERS' AND MECHANICS' NATIONAL BANK *v.* DEARING.

1. The only forfeiture declared by the thirtieth section of the act of June 3, 1864 (13 Stat. 99), is of the *entire interest* which the note, bill, or other evidence of debt, carries with it, or which has been agreed to be paid thereon, when the rate knowingly received, reserved, or charged by a national bank is in excess of that allowed by that section; and no loss of the entire debt is incurred by such bank, as a penalty or otherwise, by reason of the provisions of the usury law of a State.
2. National banks organized under the act are the instruments designed to be used to aid the government in the administration of an important branch of the public service; and Congress, which is the sole judge of the necessity for their creation, having brought them into existence, the States can exercise no control over them, nor in any wise affect their operation, except so far as it may see proper to permit.