Case No. 4,344.

ELGEE'S ADM'R v. LOVELL.

[1 Woolw. 102;[1] Rev. Cas. 72.]

Circuit Court, D. Missouri. Oct. Term, 1865.[2]

PLEA OF ALIEN ENEMY—DISABILITY AT COMMENCEMENT OF SUIT—DISABILITY ARISING AFTERWARDS—IN ACTION ON CONTRACT—PLEADING IN DETINUE—ACT RELATING TO ABANDONED PROPERTY—PLEA MUST SHOW NON-EXISTENCE OF SPECIAL PROPERTY IN PLAINTIFF—REMEDY TO RECOVER PROPERTY SEIZED UNDER ABANDONED PROPERTY ACT EXCLUSIVE IN COURT OF CLAIMS—AMNESTY OATH—RELATIONS OF CITIZENS OF NATIONS AT "WAR—ENEMIES TO EACH OTHER—NO ACT OF DISLOYALTY NECESSARY—EFFECT OF PROCLAMATION ON STATUS OF LOYAL RESIDENTS OF "CONFEDERACY "—CANNOT CHANGE THE RULE—ITS DESIGN—SUCH PERSONS NEED NO PARDON—WHETHER ACTION SUSTAINABLE, QUAERE?

1. In a plea of alien enemy, by which it is sought to avoid the suit altogether, it is necessary to aver that such was the status and character of the plaintiff at the commencement of the suit.
2. If the disability arise afterwards, the further prosecution of the suit is suspended merely until peace is restored.
3. In an action on contract, the plea is good in bar, to show that the contract was made in time of war, with a public enemy, by a party in allegiance to the government in whose courts the suit is brought.
4. Notwithstanding the artificial words of a declaration in detinue, if the action be grounded on a tortious seizure, by the defendant of the property mentioned, it will not be held, contrary to the fact, an action on contract.

[Applied in Shippen v. Tankersley, 13 Fed. 539.]

5. Whether a public enemy can sustain an action in our courts for a trespass committed in his country in time of war, quaere?
6. The bar to an action provided in section 6 of the act of July 17, 1862 (12 Stat. 591), commonly known as the "Confiscation Act," applies only to property seized under the act. A plea which does not allege that the property was seized under the act, is bad.
7. A plea based on the act of March 3, 1863 (12 Stat. 820), relating to abandoned property, which does not aver that the property had been taken in a district which had been declared in insurrection, is bad.
8. The plea must exclude the idea of any special property in the plaintiff, with a present right of possession in him, in order to be good.
9. The remedy provided by the act of March 3, 1863, for the recovery of property captured or abandoned in the enemy's country, whether the capture be in accordance with its provisions or not, is exclusive in the court of claims.
10. This position is supported by a consideration of the circumstances of the agent of the treasury, who collects the property.

11. The act contemplates that, in some instances, property will be seized which should be returned to the owner.
12. The act makes the government the holder of the proceeds of the property, in trust for such claimant as may appear and show himself entitled to it. It can be recovered from the government only by such proceedings as it may authorize.
13. It is no answer to a plea of alien enemy, to aver that the plaintiff has taken the oath prescribed by the amnesty proclamation.
14. In time of war, all the subjects of the belligerent nations are themselves enemies to each other.
15. In the Rebellion, a resident in the "Confederacy," and subject to its control, is a public enemy, although he may have committed no act of disloyalty.
16. No proclamation can change or modify this rule, and it is doubtful if it can relieve a party from the disabilities which it imposes.
17. The president, in his amnesty proclamation, did not intend to place parties who should avail themselves of it in any better position than those who, residing in the insurrectionary districts, had always maintained their allegiance to the federal government.
18. When the war ceases, all their rights are at once restored, and their disabilities are removed.
19. Whether a public enemy can sustain an action in our courts for a trespass committed in his country in time of war, quaere?

The plaintiff brought his action in the circuit court of the state of Missouri for the county of Saint Louis, to recover the possession of 275 bales of cotton. The defendant appeared, and made affidavit that he held the cotton for the government of the United States, as its agent, and prayed that the case might be removed into this court, under the act of congress of July 28,1866 (14 Stat. 329). The state court ordered the removal accordingly. The plaintiff having died, and Gills having been appointed his administrator, the cause was proceeded in, in his name.

Under a rule to re-plead in this court, the plaintiff filed the ordinary declaration in detinue, to which the defendant pled the general issue and four special pleas. These four pleas were as follows:

"2. And for further plea in this behalf, the said defendant says, that the plaintiff ought not to have and maintain his aforesaid action thereof against him, because, he says, that before and at the time of the committing the grievances in the said declaration complained of, and before and at the time of the commencement of this suit, the said John K. Elgee, the original plaintiff-herein, was a resident of the state of Louisiana, the people whereof were then, and now are, in insurrection against the United States, and at war with the same, and that the said Elgee was then and there in rebellion against the lawful government of the United States, and did then and there adhere to, and aid and acknowledge allegiance to, the so called 'Confederate States of America,' then waging war against the United States of America, and was then and there a public enemy of the United States, and not a loyal citizen thereof, and this the defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him."

"3. And for a further plea in this behalf, the said defendant says, that the said plaintiff ought not to have and maintain his aforesaid action thereof against him, because, he says, the said John K. Elgee, in his lifetime,

claimed, and this plaintiff, since his death, claims, the said cotton in said declaration mentioned, as the property of the said John K. Elgee, wrongfully taken and detained from him, the said John K. Elgee, by the agents of the United States, and not otherwise. And the said cotton was, at the commencement of this suit, and now is, claimed by the United States as abandoned property, under the act of congress approved March 12, 1863; and that, at the time of the commencement of this suit, the said defendant was in possession of the said cotton in the said declaration mentioned, as agent of the United States, and not otherwise, and this the said defendant is ready to verify; wherefore," &c.

"4. And for a further plea in this behalf, the defendant says Actio non, because, he says, that the said goods and chattels in said declaration mentioned were, at the time of the commencement of this suit, and now are, the property of the United States, and this he is ready to verify; wherefore," &c.

"5. And the said defendant, by his attorney, comes and defends the wrong and injury when, &c., and says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against the said, defendant, because, he says, that the said 572 bales of cotton, for the recovery of which this action was instituted, had, prior to the institution of said action, to wit, in the month of March, 1864, in the state of Mississippi, been taken, received, and collected, as abandoned property, into the possession of one Ralph S. Hart, a special agent, appointed by the secretary of the treasury to receive and collect abandoned or captured property in said state, in pursuance of the terms of the first section of an act of congress entitled, 'An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States,' approved March 3, 1863; that prior to the time when the said cotton was taken, received, and collected into the possession of the said Ralph S. Hart, special agent as aforesaid, the said state of Mississippi had been, by the proclamation of the president of the united States of July 1, 1863, designated as in insurrection against the lawful government of the United States; that the said cotton was, in pursuance of the second section of the act aforesaid, forwarded by the said Ralph S. Hart, special agent as aforesaid, who had received and collected the same, from the said state of Mississippi, to a place of sale within the loyal states, and, in the course of being so forwarded, came, at the city of St. Louis, in the state of Missouri, into the possession of this defendant, as agent of the United States, and at the time of the institution of this action, and the issue and service of the summons therein, was in the possession and custody of this defendant as such agent, and not otherwise; that the possession and custody of said cotton by this defendant, at the time of the institution of this action, and the issue and service of the summons therein, was in pursuance of the act aforesaid; that this defendant then and there held such possession and custody for and on behalf of the United States, and not otherwise; and that the said cotton was then

and there claimed by the United States as abandoned property under the act aforesaid, and is still so claimed. And this defendant is ready to verify; wherefore," &c.

To these pleas were demurrers, which to the second and fifth were overruled, and to the third and fourth sustained. Thereupon to the second and fifth pleas, the plaintiff filed replications, as follows:

"And now comes the said plaintiff, and for replication to the plea of said defendant by him secondly above pleaded, says, that the said plaintiff, by reason of anything in said plea mentioned, ought not to be barred from having and maintaining his aforesaid action thereof against the defendant, because, he says, that before, and at the time of the commencement of this suit, the people of the state of Louisiana were not, nor are they now, in insurrection against the United States, and were not in rebellion against the lawful government of the United States; and the said John K. Elgee did not there and then adhere to, or aid, or acknowledge allegiance to, the so-called 'Confederate States of America,' then waging war against the United States of America, and was not there and then a public enemy of the United States, and was a loyal citizen thereof; and this the said plaintiff prays may be inquired of by the country," &c.

"And for a further replication to the plea of the defendant by him secondly above pleaded, the said plaintiff says that he, the said plaintiff, by reason of anything in said plea mentioned, ought not to be barred or precluded from having or maintaining his aforesaid action thereof against said defendant, because, he says, that the president of the United States did issue his proclamation, bearing date the 8th day of December, 1863, whereby there was promised a full pardon and amnesty, with restoration of all their rights of property, except as to slaves, to all those living in the said insurrectionary districts, except certain classes of persons therein mentioned, who should thereafter take, subscribe, and keep inviolate, a certain oath therein prescribed; and that, prior to the commencement of this suit, the said John K. Elgee, then living in said insurrectionary districts, not being one of the persons excepted by the proclamation of the president of the United States aforesaid, did take and subscribe the oath required by said proclamation, which was duly registered in accordance therewith, and said John K. Elgee did, from thenceforth, for ever afterwards keep and maintain said oath inviolate, by means whereof all his rights of properly in the

goods, wares, and merchandise mentioned in said declaration, were, by the laws of the United States, and by the force of this proclamation, restored to him, and this he is ready to verify; wherefore he prays judgment,"&.

"And for replication to the plea of the defendant by him fifthly above pleaded, the said plaintiff, by reason of anything in said plea mentioned, ought not to be barred or precluded from having or maintaining his aforesaid action thereof against said defendant, because, he says, that the property in said declaration mentioned was, prior to and and the time it came into the possession of said Ralph S. Hart, as alleged in said plea, the property of, and belonged to, the said John K. Elgee; and that the president of the United States did issue his proclamation, bearing date the 8th day of December, 1863, whereby there was promised a full pardon and amnesty, with restoration of all their rights of property, except as to-slaves, to all those living in the said insurrectionary districts, except certain classes of persons therein mentioned, who should thereafter take, subscribe, and keep inviolate, a certain oath therein prescribed; and that, prior to the commencement of this suit, the said John K. Elgee, then living in said insurrectionary districts, not being one of the persons excepted by the proclamation of the president of the United States aforesaid, did take and subscribe the oath required by said proclamation, as therein mentioned, which oath was duly registered in accordance therewith, and said John K. Elgee did, from thenceforth, for ever afterwards keep and maintain said oath inviolate, by means whereof all his rights of property in the goods, wares, and merchandise mentioned in said declaration were, by the laws of the United States, and by the force of said proclamation, restored to him, and the said property was so taken and held from said John K. Elgee contrary to said proclamation and the laws of the United States, and this he is ready to verify; wherefore he prays judgment," &c.

And to these replications the defendant demurred.

Glover & Shepley, for plaintiff.

Drake, Hughes, Broadhead, & Hill, for defendant.

MILLER, Circuit Justice. The second plea is evidently directed to the personal character of the plaintiff. It may be regarded as a denial of his right, either to bring any suit in this court, or to bring a suit for property found in an insurrectionary district.

Looked at in the first view, it is a plea in abatement in analogy to the plea of alien enemy. As such it seeks to defeat this suit by the charge that the plaintiff is in the attitude towards the government in whose courts he seeks relief, of an alien enemy in time of war. But the plea does not contain an averment that such was the character and status of the plaintiff when the suit was commenced. That is a necessary averment in such a plea. For want of it the plea is bad. Chitty, in his approved forms, incorporates such an allegation (3 Chit. Pl. 911); and on this point in Levine v. Taylor, 12 Mass. 8, it is said: "This disability resembles that arising from the outlawry of the plaintiff: as to which, if pleaded in disabil-

ity, it is decided that if the cause of action accrues, or perhaps "if the action is commenced whilst the plaintiff is thus disabled, the plea quite overthrows the writ; and after a pardon or reversal of the outlawry, the plaintiff must begin de novo. But if the disability occurs after the commencement of the action, it only suspends the proceeding quousque, &c; and after the disability is removed, the plaintiff may recontinue the suit by re-summons or re-attachment Accordingly, in several cases, where the action was commenced before the declaration of war, this court have expressed an opinion that it produced only a temporary disability; and, at their recommendation, the parties have agreed to continuances without costs on either side, in order to avoid the trouble and expense of new process at the termination of the war."

It is obvious from this, that when the effort is to avoid the suit altogether, the disability must exist at its commencement for if it arise subsequently, the further prosecution is suspended merely until peace is restored. See Faulkland v. Stanion, 12 Mod. 400.

In an action on contract the plea of alien enemy is good in bar, when it shows that the contract sued on was made in time of war with a public enemy, by a party in allegiance to the government in whose courts the suit is brought Ex parte Boussmaker, 13 Ves. 71; Willison v. Patteson, 7 Taunt. 439.

It is insisted that this is an action on contract because the declaration alleges a bailment by the plaintiff to the defendant to be re-delivered on demand, and a demand and refusal;—that therefore the plea is good in bar.

It is true that there are authorities holding that the action of detinue is sometimes treated as an action on contract; and it is no less certain that the allegations of the declaration set out in words a contract in bailment.

But without pursuing the authorities as to whether detinue is to be held an action on contract or in tort it is sufficient to say, that it is often brought for a tort: and we think it would be straining the technical point beyond its just use, to hold the plaintiff to the literal meaning of the words of his declaration. The form of words, like that in trover and ejectment, is purely artificial and conventional, and is never required to be proved as laid. It being clear, from all that appears in this case, that the suit is grounded on a tortious seizure by the defendant of the property mentioned, we will not hold, on this demurrer, contrary to the fact that the plaintiff has sued upon a contract, because, by the

rules of pleading, lie has been compelled to use a fictitious form.

Viewing the ease as in tort, the question has been asked and discussed, whether a public enemy can sustain an action in our courts for any trespass committed in his country, in time of war, by one owning allegiance to our government. It is unnecessary to decide this question here. It is claimed that section 6 of the act of July 17, 1862 (12 Stat. 591), commonly called the "Confiscation Act," is decisive of the question raised on this plea. That act provides that the property of certain individuals may be seized by the president, or under his orders, and turned over to the courts, which shall, by a regular judicial proceeding, confiscate and sell the same. The closing provision of the 6th section alluded to, reads thus: "And it shall be a sufficient bar to any suit brought by such person for the possession or use of such property, or any of it, to allege and prove that he is one of the persons described in this section."

Assuming that the plaintiff is shown to be one of the persons described in that section which is doubtful, we are of opinion that the bar applies only to property seized under that act, and to no other. This is apparent from the terms of the section. Provision is made for the seizure of the property, and for a judicial proceeding for its condemnation; and then follows the clause giving a bar to the proceeding. The bar could be alleged and pleaded only to a suit to condemn property seized under the act. There is no allegation here that this property was seized under the confiscation act, or that the defendant had any purpose to libel it in any court for condemnation.

On the whole, the defendant having expressed a wish to amend this plea, so far as to make the allegation of the plaintiff's character apply to the time of the bringing of this suit, he is permitted to do so now; and such amendment being made the demurrer to that plea will be overruled.

The third plea is based on the act of March 3, 1863 (12 Stat. 820), which provides, that the special agent may "receive and collect all abandoned or captured property in any state or territory, or any portion of any state or territory, of the United States, designated as in insurrection against the lawful government of the United States, by the proclamation of the president of July 1, 1862." In order to show his right under this act the agent must show that the property was taken by him in a district which had been designated as in insurrection. This plea does not contain such averment, and is therefore bad.

The fourth plea is bad, because, while the general property in the cotton may be in the United States, this fact does not exclude the idea of such a special property, with present right of possession in the plaintiff, as may enable him to sustain the action.

The fifth plea presents the main ground of defence on the merits, if the personal status of the plaintiff is such that he can bring his suit in this court. It contains a full statement of the facts in the case. It shows that the cotton mentioned in the declaration was seized as abandoned property in one of the districts declared by the proclamation to be in a state

of insurrection, by a special agent of the treasury department for that district; and that, when this suit was brought, it was held by the defendant as an agent of the government, with the view of disposing of it under the act.

The objection taken to it is, that it does not aver that the property, when taken possession of by the treasury agent, was captured or abandoned property, nor in any other manner show that it was rightfully seized.

Much and able argument has been presented on both sides of this issue, drawn from considerations of the powers possessed by military and civil officers in an enemy's country; the general policy of the government in reference to permitting suits to be brought to recover property in the hands of its revenue officers; and from the construction of the act of March 2, 1832 (4 Stat. 632), as applicable to this case. But the majority of this court are of opinion that the solution of the question must be found in the just construction of the act under which the treasury agent proceeded, namely, the act of March 3, 1863 (12 Stat. 820).

This statute enacts, that property in any of the states, or parts of states, the inhabitants of which are declared to be in insurrection, which has been captured by our military forces, or been abandoned by its owner, shall be taken possession of by special agents of the treasury department appointed for that purpose, and may be used by the United States, after appraisal, for any of its purposes, or sold, and the proceeds of the sale deposited in the treasury. Section 3 of the act, after providing that such agents shall give bond, with such securities, and in such amounts, and as often, as the secretary may require, and keep, in proper books, accounts of all their transactions, adds: "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 said court of his ownership of said property, to his right to the proceeds thereof, and that he has never given any aid or comfort to the present Rebellion, to receive the residue of such proceeds, after the deduction of any purchase money which may have been paid, together with the expense of transportation and sale of said property, and any other lawful expenses attending the disposition thereof."

The question is, whether congress intended to make the remedy given by this act exclusive of all others, or to permit the treasury

agents to be sued for the possession of proceeds of such property wherever the party aggrieved might find a court of general jurisdiction.

The hardships, on the one hand, of allowing these agents, without liability to the law, at their discretion, to seize upon any property anywhere in these insurrectionary districts; and, on the other hand, of subjecting persons in their situation to be harassed by litigation at the hands of every person claiming an interest in the property, have been forcibly urged upon us. It is not inappropriate to remark, that their functions were to be exercised, so far as the seizure of property was concerned, in an enemy's country. They were vested with almost unlimited powers over all the property in the designated districts. They could take, and hold, and proceed against, whatever they, in the exercise of their arbitrary judgment, saw fit to seize. All that, on behalf of the plaintiff, has been urged in this regard is very true. But if, in the exercise of functions so delicate and so odious, in an enemy's country, surrounded by hostile inhabitants, they were to have every step in their proceedings tested the courts of law, the expenses of judicial proceedings imposed upon them, and the delays incident thereto interposed, their office would be practically useless, and few men of responsibility would be willing to accept it. The very considerations urged for the plaintiff, go to show that the remedy prescribed by the law was intended to be exclusive.

Another circumstance of their situation, which should be noted, is this, that they were to discharge these duties not only in an enemy's country, but in such parts thereof as had been overrun, and were then held by our military forces. While these forces were in the occupancy of any section of country, all the movable property therein would necessarily be liable to destruction by the soldiers. And when the army advanced to other lines, the yet more lawless mob were left to depredate upon what should remain. Under such circumstances, it could be no great hardship—on the other hand, it might be the best and the only protection to the owner—to have an authorized agent of the government intervene, and take and preserve the property, to be restored at a proper time and under proper circumstances. Congress saw fit to prescribe that time and those circumstances in the act, evidently Intending to exclude all other means of determining them.

The act evidently contemplates that, in some instances at least, property will be seized which ought to be returned to its owner, or for which compensation should be made by paying him the proceeds. Otherwise it were unnecessary to provide any means of determining when a return should be made. And the remedy applies to property taken by mistake, or by the unjustifiable act of the agent, equally as to property which has been, abandoned or captured. It is equally appropriate and necessary. Indeed, the just occasion for it is greater. It is answered, with much ingenuity, that the remedy is by petition in the court of claims, and that, in fact, the whole act assumes that it is only captured or abandoned property which, or the proceeds of which, may be recovered by that process; that, beyond the definite limits set by those terms, the remedy has no application. But

this I think is sticking in the bark. It does not meet the fact patent upon the act, that, by means of the remedy which it provides, an inquiry whether the property is abandoned or captured is to, be made, in order to determine whether a return should be awarded.

There is yet another view which may be taken. The proceeds of property seized by the agent are to be deposited with the treasury, where, for the time limited, they may be said to await the claimant who shall show himself entitled thereto. The act makes the government a holder of the property, or its proceeds, as a trustee for such party. A proceeding of some sort against the government is necessary to compel it to surrender the property which it thus holds in trust. But it cannot be sued for this, or any other matter, unless it authorize the proceeding against it. Of course it may, in its grant of such authority, prescribe the manner and the court, in which it shall be called to account; and that manner must be pursued in the tribunal provided. That is what congress has done here. It has authorized a suit against the government, to be prosecuted by petition in the court, of claims. That is the situation in respect of the proceeds of property which has been sold. And whatever may be said in that respect, is equally true of the property when in the hands of the agent. To suppose that congress sent forth its civil agents into a hostile country to perform these delicate functions, and left them liable to actions for damages in any court within whose territorial jurisdiction they might chance at any time to be, and at the same time provided a forum and a rule by which what it considers right in the premises may be determined, is a reflection on that body, which, in this case, I do not think it deserves.

I have not noticed the fact that the statute provides that a bond, with abundant security, is to be given by the agent, because it is somewhat aside from this inquiry. It may be that, in the case of an arbitrary exercise of authority over property not liable to seizure, under color of the law, the agent's bond might be sued by the government for the use of the injured citizen. But upon that, I need not here remark.

I am of opinion that congress intended, to prescribe to all claimants, who should prove their loyalty and then: right to the property,

this remedy for all cases of seizure by agents under this law, whether made in strict accordance with its provisions or not; and also, that this should be the exclusive remedy in such cases, unless, perhaps, in some cases, a suit might be maintained on the official bond.

The demurrer to this plea is overruled.

At a subsequent day in the term, the plaintiff filed replications to the second and fifth pleas. To these replications, demurrers were interposed, which, being argued by the learned counsel who had argued the questions raised before, were decided by the court.

MILLER, Circuit Justice. The act of March 3, 1863, evidently contemplates that property of loyal citizens might and would be taken under it; for the provision for claimants asserting their rights in the court of claims is restricted to such persons as can prove that they have "never given, any aid or comfort to the present Rebellion." Such persons never having been guilty of any offence against the government, need no pardon, and are surely in as good condition as pardoned traitors.

Property seized by a treasury agent in an insurrectionary district, as abandoned property, may be owned by a loyal citizen of a loyal state; and yet his only remedy is an application to the court of claims. The amnesty of the president was not intended to, nor could it, place a man who has committed treason in a better situation, in reference to property so seized, than a loyal citizen of a loyal state. This replication is therefore bad as an answer to the fifth plea.

Does the act remove the disability to sue which is set forth in the second plea? This plea is not founded on any act of congress, nor on any law growing out of our state or national jurisprudence. It is based on a principle of the law of nations, recognized and enforced in all civilized countries, that in time of war, an enemy cannot sue in the courts of the country with which his nation is belligerent. This grows out of the principle, that all persons, citizens or subjects of the nations thus at war, are themselves enemies each to the other. In the war of the current rebellion, this principle has been extended to all the citizens of the rebellious states found inside of the so called "Confederate Lines." The Prize Cases, 2 Black [67 U. S.] 635; Mrs. Alexander's Cotton, 2 Wall. [69 U. S.] 404.

According to this principle, a man residing in the Confederacy, and subject to its control, is, in law, a public enemy, although he may have committed no act of disloyalty. He is so far a public enemy that, while the war is flagrant his property found on the high seas is lawful prize of war; and that he cannot in our courts, maintain any suit against citizens residing in loyal states. These are disadvantages imposed upon him by the law of nations, and not by our local, or national legislation. And as no proclamation of the president can change or modify this law, I doubt very much whether it can relieve any party from the disabilities which it imposes. This disability is independent of any personal guilt and grows out of no violation of any criminal statute. The right of the president to par-

don for all offences against the laws of congress, to extend amnesty where there has been personal guilt is not questioned. Whatever his power, I have no idea that he intended to do more than this. He did not purpose to place the parties who should avail themselves of this proclamation in any better position than those who, residing in the insurrectionary districts, had always maintained their allegiance to the federal government.

Such persons need no pardon. In by judgment, all their rights of property and person are at once restored when the war ceases. The disabilities under which they lay were imposed, not by reason of their personal guilt, but were necessities of the Civil War. When those necessities ceased, their disabilities ceased, in all courts, and in all places. Being without guilt, they need no pardon. On the contrary, they merit the gratitude of the government and of the people. It is absurd to suppose that the president, if he had the power, would have the wish, to place traitors in a better posture than that in which loyal persons stand.

That the plaintiff, after taking the oath of allegiance, became a loyal citizen, and, at the time of bringing his suit, was under no disability from residence, may be true; but these replications do not show it, and are therefore bad.

The demurrer is sustained. Demurrer sustained.

Judgment was ordered on these demurrers for the defendant and the judgment afterwards affirmed in the supreme court by an equal division of the judges.

{NOTE. Five several claims for the proceeds of this cotton were afterwards filed in the court of claims, including one by the heirs and executrix of Elgee. Judgment was rendered in favor of four of the claimants, including the representatives of Elgee, and appeals were duly taken to the supreme court, where the judgment of the court of claims was reversed, and the record remitted, with instructions to dismiss the petitions of three of the claimants, and enter a judgment in favor of the personal representatives of Elgee for the net proceeds of the cotton. The Elgee Cotton Cases, 22 Wall. (89 U. S.) 180.}

[1] {Reported by James W. Woolworth, Esq.}

[2] {See note at end of case.}