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ARGUMENT IN SUPPORT OF
SENATE BILL No. 679
AND
HOUSE BILL No. 5948,
IN RELATION TO CLAIMS ARISING UNDER THE CAP-
TURED AND ABANDONED PROPERTY ACTS,

By W. PENN. CLARKE.

The claims arising under the Captured and Abandoned Property Acts rest upon different grounds, and are more meritorious in their nature, than others growing out of the late civil war; and that Congress may act understandingly upon the subject, it is proper that we should examine the statutes relating thereto, and determine the object of their enactment, as the same is to be gathered from the language employed and as they have been construed by the courts. The greater part of the property known as Captured and Abandoned was seized under the provisions of the act of March 12, 1863. Now what was the object of such seizures? Early in the history of the war it became apparent that the basis of credit of the Confederate Government, upon which it relied to obtain munitions of war and supplies for the support of its armies, was the cotton and sugar raised in the Southern States. When this basis was destroyed, or removed, then the credit upon which it rested would fail, and the disunion organization must collapse. It became, then, a part of the policy of the National Government to seize this kind of property wherever it could be found in the insurgent States, and without regard to the question whether it belonged to private individuals or the Confederate Government, and without inquiry as to the loyalty or disloyalty of the owners. Every bale of cotton, every hogshead of sugar, taken from the rebels and transferred to Union men, weakened the one and strengthened the other cause. Hence, the act of March 12, 1863, provided for the seizure of all such property by the military authorities and by agents appointed by the Secretary of the Treasury, who were required to keep books, showing from whom such property was received, the cost of transportation, and the proceeds of the sale thereof, which proceeds

were to be paid into the Treasury of the United States. That the purpose of this act was to destroy the means of support of the Confederate Government, and cripple its credit with foreign nations, appears from the fact that the law did not provide for the confiscation of the property seized under it, and that it excluded from such seizure all property which had been used, or which was intended to be used, for waging or carrying on war against the United States, and which was lawful prize of war. Thus, the statute contemplated the seizure of private property, not as booty of war, not for condemnation and forfeiture, but as a means of crippling the insurgents, and upon this ground may be justified as a war measure. And, in pursuance of this act, wherever the Union armies went—into every city, town, and hamlet, on every plantation, wherever a Treasury agent could penetrate—private property of almost every nature and description, without regard to ownership or the political *status* of the owner, was carried off, sold, and the proceeds paid into the National Treasury. And that this seizure of private property did not divest the title of the owners, and that such was not the intention of Congress, was declared by the Supreme Court in the case of the *United States v. Klein* (13 Wallace, 137), in which the Court says:

“It thus seems that, except as to property used in actual hostilities, as mentioned in the first section of the act of March 12, 1863, no titles were divested in the insurgent States, unless in pursuance of a judgment rendered after due legal proceedings. The Government recognized to the fullest extent the humane maxims of the modern law of nations, which exempts the private property of non-combatant enemies from capture as booty of war. Even the law of confiscation was sparingly applied. The cases were few, indeed, in which the property of any not engaged in actual hostilities was subject to seizure and sale.”

Under the provisions of this act, a large fund had accumulated in the Treasury at the close of the war, and the latest returns show, that after paying all claims upon the fund which have been allowed up to this time, there still remains in the Treasury a balance of some ten millions of dollars, which, as I shall show before I get through, the Government holds as trustee for the lawful claimants.

While Congress, by the enactment of this and kindred statutes, intended that private property of this character should be seized, regardless alike of ownership or adhesion to the Union cause, the members well knew that there were in the South those who were loyal to their Government, and who would suffer in consequence of the policy adopted. For these it deemed it proper

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to make some provision, and hence it provided in the third section of the act of March 12, 1863, as follows:

“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, of 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.”

Under this provision of the statute many suits were commenced, but the language of the act was so vague, and the bitterness growing out of the war was so great, that proceedings under it progressed very slowly. The reports and records of the Court of Claims show that the judges of that court were thoroughly imbued with the feeling that then prevailed against all claimants who had resided in the South during the rebellion; that they ruled rigidly in favor of the Government; and that the claimants were barred in their progress by constant appeals to the Supreme Court. What constituted proof of loyalty? When was the rebellion suppressed, and when did the two years expire within which suits could be commenced? These, and many other questions equally important, had to be determined by the Supreme Court, which involved long delays; and it was not till 1872 that the Supreme Court decided that the rebellion was suppressed on the 20th of August, 1866, the date of President Johnson's final proclamation of pardon and amnesty, and hence that the limitation of the right to commence suits under the act of March 12, 1863, took effect on the 20th of August, 1868. This decision was made in the case of *Anderson v. The United States* (9 Wallace, 56); and thus it appears that not till *four years* after the time had expired within which claimants could bring suits, was the question as to the period of limitation determined. Owing to these obstacles, many Union men, or men who were only disloyal from necessity, were deterred from bringing suits to recover the proceeds of their property. There were also other difficulties in the way. When the war closed the South was impoverished. While the intelligent men, and those living in the centers of information, knew of the existence of the statute, those in the interior portions of the South, who were too poor to take the papers, and had no friends to inform them, had no knowledge of the law till the period of commencing suits had elapsed. Many of these claimants are widows, and others were orphans during the

continuance of the war, and too young to bear arms ; while others are negroes, who, during the contest, had raised cotton on the plantations of their late masters, and hoarded it up, as the means of starting in life, after the struggle had terminated. Thus it has happened that many of those for whose benefit this provision of the statute was enacted, have failed or been unable to take advantage of it, and thus they have become the sufferers.

This provision of the statute, while it made only present provision for loyal men, left the question of the final disposition of the proceeds of the other property undisposed of, and subject to the subsequent action of Congress. No subsequent act, providing for the forfeiture or confiscation of that portion of the fund not claimed by loyal persons, has ever been enacted, and it lies in the Treasury to-day undisposed of. This proves that it was not the intention of Congress, when the law was enacted, to punish men unheard, upon the assumption of their disloyalty, by the confiscation of their property, but to leave the final disposition of the fund to subsequent legislation. This is the view taken of the subject by the Supreme Court. Speaking of this act, in the case of *The United States v. Klein*, before cited, Chief Justice Chase says :

“ That it was not the intention of Congress that the title to these proceeds should be divested absolutely out of the original owners of the property, seems clear upon a comparison of different parts of the act.

“ We have already seen that those articles which became, by the simple fact of capture, the property of the captor, as ordnance, munitions of war, and the like, or in which third parties acquired rights which might be made absolute, as ships and other vessels captured as prize, were expressly excepted from the operation of the act ; and it is reasonable to infer that it was the purpose of Congress that the proceeds of the property for which the special provision of the act was made should go into the Treasury without change of ownership. Certainly such was the intention in respect to the property of loyal men. That the same intention prevailed in regard to the property of owners who, *though then hostile, might subsequently become loyal*, appears probable from the circumstance that no provision is anywhere made for confiscation of it, while there is no trace in the statute-book of intention to divest ownership of private property not excepted from the effect of this act, otherwise than by proceedings for confiscation.

“ It is thus seen that, except as to property used in actual hostilities, as mentioned in the first section of the act of March 12, 1863, no titles were divested in the insurgent States, unless in pursuance of a judgment rendered after due legal proceed-

ings. 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 capture as booty of war; even the law of confiscation was sparingly applied. The cases were few indeed in which the property of any not engaged in actual hostilities was subjected to seizure and sale."

And further on, after speaking upon the effect of a pardon and amnesty, which I deem it unnecessary to discuss here at present, the Court concludes as follows :

"We conclude, therefore, that the title to the proceeds of the property which came to the possession of the Government by capture or abandonment, with the exceptions already noticed, was, in no case, divested from the original owner. It was for the Government itself to determine whether those proceeds should be restored to the owner or not. *The promise of the restoration of all rights of property decided that question affirmatively as to all persons who availed themselves of the proffered pardon.* * * * *The restoration of the proceeds became the absolute right of the persons pardoned, on application within two years from the close of the war. It was, in fact, promised for an equivalent. Pardon and restoration of political rights were in return for the oath and its fulfillment.*"

In consonance with these views the Supreme Court held, in this and other cases (see *United States v. Padelford*, 9 Wall., 531), that the money in the Treasury arising from the sale of captured and abandoned property belonged to the owners of such property; that their title was not divested by the seizure and sale thereof; and that the United States held it in trust for the lawful claimants. Such have been the decisions of the highest judicial tribunal created by the Constitution as to the objects and purposes of the Captured and Abandoned Property Acts, and as to the rights of claimants under those acts, without regard to their previous conduct or political status.

PARDON AND AMNESTY.—ITS LEGAL EFFECT.

While some of the present claimants consistently adhered to the United States throughout the war, and gave no aid to the rebellion, it may be conceded that some of the others favored and assisted the Confederate cause. This leads to the consideration of the present position of the latter as American citizens, and their rights as such.

On the 20th of August, 1866, President Johnson, in pursuance of the authority vested in him by the Constitution and the laws, issued his proclamation, announcing the suppression of the rebellion, and granting full pardon and amnesty, unconditionally and without reservation, to all who had participated

therein, with restoration of their political and civil rights. No conditions were imposed, nor was any oath of future allegiance or good behavior required. That proclamation terminated the war legally, as practically it had been terminated by the surrender of Lee at Appomattox, and its legal effect was two-fold: In the first place, it not only pardoned the crime of treason which each individual who participated in the rebellion had committed, but it condoned his offense, *wiped out his guilt*, and placed him on the same plane of loyalty as the most gallant soldier who served under the National flag. From the date of that proclamation, no such thing as disloyalty existed, and any man who imputes disloyalty to one who aided the rebellion, or stigmatizes him as a traitor, is guilty of a libel or slander, and subject to an action at common law. And I here affirm that in the face of your statutes requiring proof of loyalty, any Confederate, by virtue of that proclamation, may go into court, and declare under oath that he has borne true allegiance to the United States, and gave no aid or comfort to the rebellion, and so long as that proclamation remains upon our statute-book, he can never be legally convicted of perjury. A reference to authorities will conclusively establish this proposition. Blackstone says:

“The effect of a pardon is to make the offender a new man; to acquit him of all corporal penalties and forfeitures annexed to the offense for which he obtains pardon; it gives him new credit and capacity; and the pardon of treason or felony, even after conviction or attainder, will enable a man to have an action of slander for calling him a traitor or felon.”

The Supreme Court of the United States, in the case of *ex parte Garland* (4 Wallace, 380), one of the earliest that arose, and which was well considered, held this doctrine:

“A pardon reaches both the punishment prescribed for the offense, and the *guilt of the offender*, and when the pardon is full, it releases the punishment, and *blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense*. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; *it makes him, as it were, a new man, and gives him a new credit and capacity.*”

And this doctrine was subsequently affirmed in the cases of *Armstrong's Foundry* (6 Wallace, 769) and *The United States v. Padelford* (9 *Ib.*, 542), and perhaps in other cases.

It is clear from these authorities that the first effect of the proclamation of pardon and amnesty of President Johnson was

to wipe out the guilt of all who had aided the Confederate cause; it invested them with a new character, and left them as though their loyalty and allegiance to the National Government had never been interrupted or questioned; and legally they stand as fairly before the country, and are entitled to precisely the same rights and privileges, as the staunchest defender of the Union cause.

This act of the President not only granted pardon and amnesty to every participator in the rebellion, whether that participation was active or passive, but it restored each to his *political* and *civil rights*. What *political* rights? The right to vote and to hold office, and every other right that pertains to a citizen of the Republic, and he may exercise those rights as unquestioned as any other citizen. What *civil rights*? The right to life, liberty, and property, guaranteed by the Constitution to every citizen, and the right that that property shall not be taken from him for the public use without just compensation. This grant placed him again under the protection of the Constitution, and secured to him the benefits of that instrument, which he had forfeited by his acts of treason. And the second effect of this proclamation of pardon and amnesty was to make *valid* any claim he might hold against the Government, for property seized and sold and its proceeds applied for the benefit of the United States, or placed in the National Treasury. The restoration of those who had been disloyal to their rights of property was not an idle act, or vain thing, and can mean nothing but this; for under the rules of modern warfare the private property of non-combatant enemies is exempt from seizure, and where it was seized and used for the support of our armies in the field, or in aid of the suppression of the rebellion, unless it had been confiscated by proper proceedings in the courts under the provisions of law, the Government became liable to its owners for its value, upon the restoration of the owners to their civil rights. And these views are sustained by the decisions of the Supreme Court. Thus, in the case of *The United States v. Klein* (13 Wallace, 137), Chief Justice Chase, delivering the opinion of the Court, says:

“It is thus seen that, except as to property used in actual hostilities, as mentioned in the first section of the act of March 12, 1863, no titles were divested in the insurgent States, unless in pursuance of a judgment rendered after due legal proceedings. 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 capture as booty of war. Even the law of confiscation was sparingly applied. The cases were few indeed in which the property of

any not engaged in actual hostilities was subjected to seizure and sale."

It seems clear, then, that where property was taken from persons residing in the insurrectionary States, for the use or support of the Federal armies, or which was sold and the proceeds used by the Government, without condemnation and confiscation as provided by law, and which property was not used in promotion of the rebellion, that the value of such property became a valid charge against the Government, upon the restoration of the owners thereof to their civil rights; and that it was one of the purposes of Johnson's proclamation, by restoring the owners to their civil rights, to give validity to such claims. Whether that was the purpose or not, such, I contend, was its legal effect. These claims, then, are *property*, as much so as the plantations from which the supplies were taken, of which the owner can not be deprived without due process of law, and to which their titles are as clear as those to any other property. And for Congress to exclude them from the judicial tribunals of the country, on the ground of the disloyalty of the claimants, is to attempt to do that indirectly which it can not do directly. It is virtually a confiscation of their property by methods unknown to, and in violation of, the Constitution; and, to use a plain word, amounts to little short of robbery.

Congress possesses no power to limit or destroy the legal effect of the proclamation of pardon and amnesty by subsequent legislation. This, it will be remembered, was attempted in 1870, by a provision of law, attached to an appropriation bill, and known as the Drake amendment, which prohibited the Court of Claims from receiving in evidence any proof of pardon and amnesty in support of loyalty, and limiting the effect of an Executive pardon, and the Supreme Court promptly pronounced the statute unconstitutional. This question arose in the case of the *United States v. Klein* (13 Wallace, 138), in which a special pardon was pleaded, and in the opinion of the Court, Chief Justice Chase uses this language:

"To the Executive alone is intrusted the power of pardon, and it is granted without limit. Pardon includes amnesty. It blots out the offense pardoned, and removes all its penal consequences. It may be granted on conditions. In these particular pardons, that no doubt might exist as to their character, restoration to property was expressly pledged, and the pardon was granted on condition that the person who availed himself of it should take and keep a prescribed oath. Now, it is clear that the legislature can not change the effect of such a pardon any more than the Executive can change a law, yet this is attempted by the provision under consideration."

This, then, is the effect of the President's Proclamation of Pardon and Amnesty, and the legal consequences growing out of it, and Congress possesses no Constitutional power to change the one or to restrict the other. Whether the President's act was a wise one, it is useless now to inquire. It can not be undone, and we must deal with facts as we find them. By virtue of the decisions of the highest judicial tribunal known to the country, the residents of the two sections stand upon the same plane of loyalty, and should be treated with the same justice, assured of the same rights, and their interests protected with the same care. While we may continue to remember that the rebellion existed, we have sunk into legal oblivion the criminal acts of those who made war upon the Government, and in our dealings with them hereafter we should deal with them as loyal and law-abiding citizens. Such, I trust and believe, they will prove themselves to be, and that their only rivalry with the North hereafter will be to prove their patriotic devotion to the whole Union and the Government which their fathers so faithfully labored to establish.

While the doctrines announced in the *Klein* case had reference to a special pardon, they apply with equal, if not more, force when applied to a general proclamation of pardon and amnesty, accompanied with a restoration of all rights, and it is the imperative duty of our National legislators to carry the promises of that proclamation into effect. In the language of the Supreme Court, these claimants have "become loyal," and they are entitled to precisely the same consideration and the same measure of justice as any other citizens of this great Republic. It is as much the duty of our legislators to carry into effect the promises of the President's Proclamation, as construed by the Supreme Court, and make effective the restoration of rights which it conferred, as it is to provide for the wants of the Government, or perform any other legislative act. These claimants are not asking that any *new* rights shall be conferred upon them—they only demand the privilege of being remitted to some judicial tribunal where their existing rights may be enforced—a right which should pertain to every citizen of this broad land, a right which has been conferred upon the subjects of all the civilized nations of Europe. Why should not Congress comply with this demand? By the decisions of the courts to which reference has been made, these claims have been rendered *valid*; their ownership is a *personal* and *private* right, as tangible as the right to life or liberty, which are held to be inalienable, except by due course of law; and if Congress refuses or neglects to provide a remedy by which this right may be enforced and made available to its possessor, it will prove recreant alike to its duty under the Constitution, and to the people whose representatives it claims to be.

In June, 1873, the case of *Haycraft v. The United States* (22 Wallace, 81), was commenced in the Court of Claims to recover the net proceeds of certain property of the claimant, seized under the Captured and Abandoned Property Acts. The suit was brought more than two years after the suppression of the rebellion, that is, after the 20th of August, 1868, upon the theory that as the Government held those proceeds *in trust*, as decided in the Klein and other cases, it was liable outside of the act of March 12, 1863, upon an implied promise to pay to the claimant his portion of the fund; but the Court of Claims decided that the provision in that act limiting the right of the claimant to two years in which to prefer his claim was a limitation upon its jurisdiction, and thereupon it dismissed the petition. In January, 1875, this decision was affirmed by the Supreme Court, which held that the question was one of jurisdiction, and not of limitation, and that Congress having legislated upon the subject, the Court of Claims did not possess jurisdiction to entertain suits of this character under an implied contract to refund to claimants the net proceeds of their property in the Treasury.

While the Haycraft case was pending in the Court of Claims, and before its decision by the Supreme Court, a large number of suits were commenced in the former court upon the theory on which the Haycraft case was based—viz., that the Government was liable to the claimants for the net proceeds of their property, under an implied contract, and these cases were all continued upon the dockets of the court till the decision of the Supreme Court to which I have referred, when they were all dismissed for want of jurisdiction.

Here, then, was the difficulty which existed—*parties having rights which they were unable to enforce, for the reason that there was no tribunal to which to resort for their enforcement*. It requires no argument to prove that a right may exist where there is no remedy for its enforcement; and this was, and is to-day, the precise predicament of all persons claiming an interest in the captured and abandoned property fund. While the power of the Court of Claims in the premises had ceased to exist, the rights of the claimants had survived; and neither the court nor the claimants, in order to enable each to act, required anything more than this: *the one, the privilege to sue, and the other the right to entertain and determine such suits*.

To remedy the wrong which existed in this respect, and in order to make effective the decisions of the Supreme Court, to which reference has been made, Congress enacted the 4th clause of section 1059 of the Revised Statutes, giving the Court of

Claims jurisdiction of cases arising under the Captured and Abandoned Property Acts, which reads as follows :

“ Fourth. Of all claims for the proceeds of captured or abandoned property, as provided by the act of March 12, 1863, chapter 120, entitled ‘ An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States, or by the act of July 2, 1864, chapter 225, being an act in addition thereto : *Provided*, That the remedy given in cases of seizure under the said acts, by preferring claim in the Court of Claims, shall be exclusive, precluding the owner of any property taken by agents of the Treasury Department as abandoned or captured property, in virtue or under color of said acts, from suit at common law, or any other mode of redress whatever, before any court other than the Court of Claims.”

And Congress provided for the payment of any judgment the court might render in favor of claimants under said fourth clause, by section 3689 of the Revised Statutes, which, under the head of “ Permanent Annual Appropriations,” among other things, provides as follows :

“ For the return of proceeds from sale of captured and abandoned property in insurrectionary districts to the owners thereof, who may, to the satisfaction of the Court of Claims, prove their right to and ownership of said property.”

These provisions of the Revised Statutes, construed together, provided a complete and adequate remedy for the claimants under the act of March 12, 1833, and subsequent statutes relating to the subject. The statutes declare this was the law on the 1st of December, 1873, though they were not approved by the President till June 22, 1874, and were not published till in 1875. These provisions of the statutes were in force, though not published, when the Haycraft case, above cited, was decided by the Supreme Court, and it can hardly be doubted that the decision in that case would have been different, if the court had been aware of the existence of the two clauses in sections 1059 and 3689 of the Revised Statutes.

To every unprejudiced mind the language of the fourth clause of section 1059 is clear and unambiguous, and requires *no* construction to arrive at the intention of the National Legislature. It could have had but one object, and that was to confer upon the Court of Claims a jurisdiction which had once existed, and which Congress well knew had expired by limitation. While the provision confers no new rights upon those claiming the fund derived from the sale of their property, but, on the contrary, restricts those rights by making the jurisdic-

tion exclusive, it provides a tribunal before which they can go to enforce existing rights, and that tribunal one specially provided for adjudicating claims against the Government. Acting upon the assumption that the Government can not be sued without its consent, the legal effect of the clause is to give that consent, with the proviso that the claimants shall be confined, in the prosecution of their claims, to the provisions of the acts of March 12, 1863, and July 2, 1864; that is to say, that they should only recover the net proceeds of the sale of their property, after deducting all costs and charges. And this conclusion is strengthened when section 3689 is construed in connection with section 1059.

The act of March 12, 1863, provided for the payment of all judgments rendered under its provisions; and if by the fourth clause of section 1059 it was only intended to continue the jurisdiction of the Court of Claims as to suits then pending before it, then no additional legislation was necessary to provide for the payment of any judgments rendered by the court in favor of the claimants. Besides, the limitation of two years in the act of March 12, 1863, operated upon the claimants, rather than upon the court. It gave them the two years in which to prefer their claims to the proceeds of their property, and the act nowhere provided that the jurisdiction of the court should terminate in two years, whether the cases then pending were disposed of or not. But when Congress came to confer a new jurisdiction upon the court, without limitation as to time in which suits might be commenced, in order to make the remedy effective, it was necessary to make provision for the payment of any judgments obtained by the claimants, and this Congress did by the enactment of section 3689 of the Revised Statutes.

The Court of Claims, however, adhering to its habit of ruling rigidly against claimants in that court, has recently taken a different view of sections 1059 and 3689, and in the cases of *Mary A. Wade*, administratrix, and *B. A. Martel, syndic*, has held that Congress did not intend by the above sections to repeal the two years' limitation in the act of March 12, 1863, and that these sections will not admit of such a construction, thus placing Congress in the ridiculous attitude of conferring jurisdiction upon the court, and in the same clause limiting that jurisdiction to a period of time which had expired five years previously. This decision is based upon the ground "that the object of the revision of the statutes was not to change existing law, but to revise, simplify, arrange, and consolidate all statutes of the United States, general and permanent in their nature, which shall be in force at the time the Commissioners should make the final report of their doings;" and that the Commissioners, "instead of re-enacting the full language, for conciseness and condensation, merely referred

to the act, and provided that the court should have jurisdiction of all claims for the proceeds of captured or abandoned property, as provided in the act of March 12, 1863."

The cases of Wade and Martel, above referred to, the decisions in which virtually nullify section 1059 of the Revised Statutes, were not in a position to be taken to the Supreme Court, and hence that tribunal was not resorted to.

Without stopping to criticise further this decision of the Court of Claims, it is sufficient to say that it completely nullifies the fourth clause of section 1059 of the Revised Statutes, and defeats the will of the law-making power as expressed by that provision of the law. So long as that decision stands, even were there no other obstacles in the way, no suits can be maintained in the Court of Claims for the recovery of any portion of the captured and abandoned property fund, and the doors of that court, as well as all other legal tribunals, are closed against the claimants.

This is the condition and state of the law bearing upon this subject, from which it not only appears that the effort of Congress to provide a remedy by which this fund might be distributed to its owners, has been defeated by the action of the courts, but that the claimants have not been guilty of *laches* in pressing their claims upon the legislative department of the Government. For more than twenty-five years the Government has had the use of the money derived from the sale of the claimants' property. For more than twenty years the claimants have been appealing to Congress for relief; and if Congress, in the discharge of more pressing duties, has neglected this appeal, or if the remedy it provided has proved inefficacious, the stronger the reason for some action in this direction at the present time. The claimants are fast passing away, leaving as an inheritance to their children the prospect of litigation with their Government, and the witnesses, upon whom the claimants must depend to establish their rights, are being scattered and lost sight of, and to delay further is simply to rob and deprive these parties of their rights, some of whom are widows and orphans, while others are colored or men of small means. That Congress has from time to time felt the necessity for making some provision for the disposition of this fund, is evident from the fact that at nearly every session special acts have been enacted for the benefit of claimants of this fund, thus doing justice to some at the expense of others, and it seems to me that common justice demands that a general law should be enacted, by which all claimants to the fund may be relegated to some tribunal where they can establish their rights according to legal methods, and each receive that portion of the fund to which he shows himself entitled, and that is the object of the bills under consideration.

It may not be improper for me to refer to another matter in connection with this subject. Under treaties with England and France, every subject of those nations residing in the South during the late war who professed to have remained neutral during hostilities has been paid for his property seized and sold by the United States under these acts, not merely the net proceeds in the Treasury, but its actual value, with interest at 5 per centum per annum from the date of its seizure; and yet every Southern member of this committee must know that nearly all these resident aliens sympathized with the people of the South during the conflict, and would have rejoiced at the success of the Confederacy. Had these aliens any stronger claim to relief than our own citizens? And if this class has been paid, why should not our own people receive like justice? Shall it go out to the world, that the American Government, or the American Congress, as a part of that Government, has granted to alien residents, upon the demand of the nations to which they belonged, that justice and that consideration which they have denied their own citizens? In view of these facts, I ask in all sincerity, and I put it to the consciences of members, why punish the obscure people who are claiming this fund, by denying them access to the courts, or the privilege of establishing their legal rights, in violation of the promises of the Executive and the dictates of common justice, thereby confiscating their property in a manner unknown to, and in derogation of, the Constitution itself?

This fund is in the National Treasury. It lies there idle. The Government has no right to use it, and it is doing no one any good. It belongs to those whose property was seized and sold, as the Supreme Court—the highest judicial tribunal in the land—has decided. The Government has deducted from it the expenses of the seizure and sale of the property, and by its distribution, in the language of that Court, the United States loses nothing. Why not, then, open the doors of the courts to these claimants, and allow each of them to establish his right to a specific portion of the fund? After a delay of more than twenty-five years, it is certainly not asking too much to demand payment of the principal. Common justice, as well as the honor of the Government, demands that the redress asked for should be granted.

THE STATUTE OF LIMITATIONS.

Section 1069 of the Revised Statutes provides that every claim against the United States, cognizable by the Court of Claims, shall be forever barred, unless a petition setting forth a statement thereof is filed within six years after the cause of action accrued. Cases arising under the Captured and Abandoned Property Acts, as well as all others growing

out of or resulting from the late war, accrued more than six years since, and are, therefore, liable to the ban of the statute. Merely conferring jurisdiction upon the Court of Claims to hear and determine any of such causes, without more, will not remove the bar of the statute. It is true that in common law courts, the statute of limitations can only be taken advantage of by plea, and if not pleaded, is waived; but this rule does not seem to prevail in the Court of Claims, and in that court the question may be raised by a motion to dismiss on the ground that the claim is barred by the statute. At least, that was its decision in the recent case of *Ford, Administrator, v. The United States*. That case was a claim arising under the Captured and Abandoned Property Acts, transmitted to the court by the Senate Committee on Claims under the act of March 3, 1883 (known as the Bowman act). The defendant moved to dismiss the petition on the ground that it was barred by the third section of that act, which reads as follows:

“Nor shall the said court have jurisdiction of any claim against the United States which is now barred by virtue of the provisions of any law of the United States.”

The court held that the claim was barred, and sustained the motion, dismissing the petition, and in its opinion uses this language:

“The point then is, whether the claim set up in the petition is barred by virtue of the provisions of any law of the United States. This does not mean merely the provisions of any law of limitation, but of ‘any law.’ Nor does it mean any *express* law barring the claim in direct prohibitory terms, but ‘any law’ which has the effect of barring it.”

And then the court goes on to argue that the claim was one that might have been brought under the act of March 12, 1863, and not having been so brought within two years from the suppression of the rebellion, the claim was barred by the limitation in that act, holding that “he who failed to come here within that *period was wholly without recourse anywhere, at any time, in any way.*”

This decision would be as applicable to any new act conferring jurisdiction upon the Court of Claims in cases arising under the Captured and Abandoned Property Acts, which did not waive the present statute of limitations of six years as to the case in which it was made. The principle is precisely the same; the statute of limitations acts upon the cause of action, and not upon the jurisdiction of the court; and hence, in view of this decision, which was affirmed by the Supreme Court, the committee must be satisfied that any legislation enacted conferring



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jurisdiction upon the Court of Claims to hear and determine claims arising under the Captured and Abandoned Property Acts must waive the statute of limitations now in force, or, in other words, expressly provide that it shall take jurisdiction of such claims without regard to any statute that may operate as a bar to their final settlement.