Cold. 370, seems also to be in conflict with *Hammond* v. *The State*, and so far as they and similar cases in Coldwell's Reports are opposed to the views presented in this opinion, are overruled. The case of *Fottrell and Gorman*, 5 Cold. 581, in which it was held that a note executed by a Confederate surgeon for the rent of a hospital building was not illegal and void as being in aid of the rebellion, is approved, as far as it goes, and might, perhaps, be rested on firmer grounds. The case of *Wright and Cantrell* v. *Overall*, 2 Cold. 366, and other cases in which it was held that the Confederate or rebel government was not a *de facto* government are overruled, so far as they are not in unison with this opinion. The doctrine that the rebels were insurgents merely, and that the government of the Confederate States of America was not a *de facto* government involves, perhaps, the consequence that the United States might be liable to foreign governments, and, possibly, to their own citizens, for all their acts and liabilities, and we are not disposed to yield our assent to a doctrine fraught with consequences of such gravity and importance. Were it an original question, we would, without hesitation, declare that a government which assumed to form a Constitution, had a president and cabinet in actual authority, a congress that enacted laws on most subjects of national legislation, and published them in due form and enforced them; which was recognized as a belligerent power by two of the greatest nations on earth; was enabled to issue and keep afloat a currency; set on foot a navy that harrassed the commerce of the United States throughout the world; marshaled immense armies; fought great battles, and kept the power of the United States at bay for four years, was, to all intents and purposes, a *de facto* government, and that it required no recognition on the part of the government of the United States to establish a fact well known to millions of people, and which will be transmitted to future ages in every truthful history that has been or may be written of the war. But for the present, we are satisfied to declare that *Wright and Cantrell* v. *Overall* is in conflict with *Thorington* v. *Smith*, decided by the Supreme Court of the United States, and reported in 8 Wal. 1–15, where the government of the Confederate States is expressly held (pp. 9, 10) to have been a *de facto* government, or at least, a government of paramount force.

Let the judgment of the Circuit Court in this case be reversed and the cause remanded.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ILLINOIS.[2]

ADMIRALTY.

Salvage of Government Property—What is Possession by the Government.—When the property of the government has been saved from destruction by salvors, or by their sacrifices which are com-

1 From J. W. Wallace, Esq.; to appear in vols. 10 and 11 of his Reports.
2. From Hon. N. L. Freeman, Reporter; to appear in 51 Ills. Reports.

pensated by a contribution in general average, justice and sound policy require that it should be held to bear its share of the bur den which the maritime law imposes on all other property in like condition: *The Davis*, 10 Wall.

Although no suit in *rem* can be maintained against the property of the United States where it would be necessary to take such property out of the possession of the government by writ or process of the court, yet in the construction of this rule the possession spoken of must be an actual possession, and not that mere constructive possession which is very often implied by reason of ownership under circumstances favorable to such implication: *Id.*

The possession of the government can only exist through some of its officers, using that word in the sense of any person charged on behalf of the government with the control of the property, coupled with its actual possession: *Id.*

These principles applied, and the possession by the captain of an ordinary merchant vessel, on which cotton had been loaded at one port by a treasury agent of the United States, to be delivered to him or his assigns at another, *Held*, not to be possession of the government: and a libel to charge the cotton with salvage, sustained, the services having been services in their nature salvage-services, and a libel having issued and been served before the cotton was delivered by the master, and while it was yet in his control: *Id.*

Salvage–In whose name libel filed–Tug carrying Fire Engines into Harbor where Vessel is on fire entitled to Salvage.–A libel for salvage may be filed in the name of the master and owners of the salving vessel, although the master may make no claim in his own behalf, but contrariwise may disclaim: *The Blackwall*, 10 Wall.

A tug towing, under the direction of the fire department of a city, fire engines commonly used on land, from a wharf into a harbor where a vessel is on fire, and lying alongside of the burning vessel while the engines throw water upon her, is entitled to salvage, the fire being successfully extinguished: *Id.*

The owners of the tug will not be deprived of salvage because the representatives of the fire department have not made a claim as co-salvers. A vessel owned by a corporation may be entitled to salvage, the vessel being otherwise a salvor: *The Camanche*, 8 Wallace, 476, affirmed on this point: *Id.*

One-twentieth part of the value of the property saved allowed to a tug carrying fire engines, and lying beside a burning vessel while the engines, under the management of the fire department of the town, worked them and extinguished the fire. This reversed a decree which had allowed a tenth for the salvage service: *Id.*

Non-prosecution of their claim by one set of salvors, enures to the benefit of the owners of the vessel, and not to that of other salvors who do prosecute *their* claim: *Id.*

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A claim for arranging an elastic bed for printing designs is not a claim for a design under Act March 2, 1861, section eleven, but a claim for a device; *Clark* v. *Bonsfield*, 11 Wall.

DEED.

Conveyance–Notice of a Prior Conveyance.—Where a grantee of land takes a deed to the same, with notice of a prior conveyance, not then recorded, he is not an innocent purchaser, but takes subject to all the rights of the grantee under the prior conveyance: *Bayles* v. *Young*, 51 Ills.

And where such grantee, with notice, conveys to another, but subsequent to the recording of the prior conveyance, such subsequent purchaser is chargeable with notice by the record: *Id.*

EVIDENCE.

Allegations and Proof—Variance.—"Com." and "Co." are well understood abbreviations of the word "Company," when used as a part of the name of a commercial firm: *Keith* v. *Sturges*, 51 Ills.

So, in an action by the assignee of a note made payable to "Sturges & Com.," it was alleged that it was endorsed by "Sturges & Com.," and the note produced in evidence was endorsed "Sturges & Co.:" *Held*, there was no variance: *Id.*

Parol Evidence to Vary a Writing.—Parol evidence is inadmissible for the purpose of showing that other property, not answering the written description in a mortgage, was intended to be included by the mortgagor: *Hutton* v. *Arnett*, 51 Ills.

The principle is well settled, that a written instrument cannot be varied by parol evidence. The instrument must speak for itself, unless there be a latent ambiguity, which may be explained by such evidence: *Id.*

The case of *Myers* v. *Ladd*, 26 Ills. 415, is not in conflict with this principle: *Id.*

HUSBAND AND WIFE.

Divorce—Desertion—How Long.—The statute requires that desertion shall continue, without cause, for the space of two years, before a divorce can be obtained in this State for that cause, and courts have no power to prescribe a shorter period: *Thomas* v. *Thomas*, 51 Ills.

The statute does not confer upon the courts an unlimited discretion to grant divorces whenever they may deem it expedient or advisable. Their power to act is derived solely from the statute, and they must conform strictly to its requirements: *Id.*

In a suit for divorce on the ground of adultery, the evidence simply showed that the defendant frequently left her home in the absence of her husband, who was a trader, and would be absent several days at a time, and that her reputation for chastity was bad: *Held*, that this proof failed to establish the charge: *Id.*

Larceny–Husband or Wife Converting the Property of the other.—The act of 1861, known as the "Married Woman's Law," has not so far destroyed the relation of husband and wife as to render either guilty of larceny by converting the property of the other: *Id.*

It is no ground for a divorce, within the statute, that a party has committed a larceny, where no conviction has been had: *Id.*

The statute declares, that, to be a cause of divorce, the party must be convicted of felony, or other infamous crime: *Id.*

And a court has no authority to convict a defendant, *ex parte*, upon a default, of a felony or infamous crime, and then make such conviction the basis of a decree of divorce: *Id.*

INSURANCE.

Endorsement on Policy that Payment to be made to a Third Party.—The mere endorsement by a party assured, on a policy, "Payable in case of loss to E. C. B.," which endorsement he signs, does not, of itself, and necessarily, convey the idea of a *sale* of the property insured. It may properly enough indicate nothing more than that in case of loss the insurance money is to be paid to E. C. B. Hence, a subsequent endorsement by the company's agent, "Consent is hereby given to the *above* endorsement," does not necessarily give an assent to a sale of which the agent had no knowledge, and of which it is not shown that any officer of the company had notice: *Bales* v. *Equitable Ins. Co.*, 10 Wall.

This view applied to a policy with particular provisions about a vacation of the policy on a sale of the property; to a return of a proportionate part of premium, and to a continuance of the policy for the benefit of the purchaser in case of a sale to which the company should give its consent by endorsement on the policy: *Id.*

INTEREST.

Unreasonable and Vexatious Delay of Payment.—In an action to recover for the value of a quantity of corn loaned by the plaintiff to the defendant, interest is recoverable only upon the ground that there has been an unreasonable and vexatious delay of payment: *Davis* v. *Kenaga*, 51 Ills.

And, in such case, it is error for the court to instruct the jury that they may allow interest, because the question, whether there has been an unreasonable and vexatious delay of payment, is one of fact for the jury: *Id.*

TROVER.

Action of—Who can Maintain.—The doctrine is well settled, that the action of trover may be maintained by a naked bailee. And equally so by a pledgee for value; and, as this court has said, one in such position may loan the property pledged, temporarily, to the pledgor, for a special purpose, and recover in trover, if the property be not returned to him: *Hutton* v. *Arnett*, 51 Ills.

By an arrangement between A and D, D sold and turned out to A certain cattle, to secure the payment of $85 borrowed money, the property to be A's until the debt was paid, D to have until a day specified to pay it. Afterward, A loaned the cattle to D, temporarily, and for a specific purpose, D agreeing to re-deliver to him: *Held*, that this transaction amounted to a conditional sale of the property, and D failing to restore it, after the purpose was fulfilled for which it was loaned, A could recover in trover: *Id.*