rendered, a motion to rescind was made in behalf of the complainants, and was heard and decided.

There is no doubt that, during the term, the decree was, at all times, subject to be rescinded or modified, upon motion, and could not, therefore, be regarded as absolutely final, until the end of the term. It became final, in this case, when the motion to rescind had been heard and denied. This took place on the 13th of March, and, on the 20th, the appeal was prayed in open court, and on the 23d the bond of appeal was approved and filed.

We think this was in time, and the motion for supersedeas must, therefore, be allowed.*

ORDERS ACCORDINGLY.

MORRIS AND JOHNSON *v.* UNITED STATES.

1. An information under the acts of August 6th, 1861, and July 17th, 1862, which presents only a case of the unlawful conversion of property to the use of the persons proceeded against, cannot be sustained.
2. Neither the act of 1861, nor the act of 1862, contemplates any proceeding, as in admiralty, where there existed no specific property or proceeds capable of seizure and capture.

APPEAL from the District Court for the Middle District of Alabama.

By an act of Congress of August 6th, 1861, property used in aid of the rebellion was made the lawful subject of *prize and capture* wherever found; and it was made the duty of the President of the United States to cause the same to be *seized*, confiscated, and condemned. And a subsequent act, that of 17th July, 1862, authorized the *seizure* and confiscation of the property of certain persons engaged in the rebellion.

These statutes being in force, an information was exhibited in this case in the court below, alleging, in substance, that certain bales of cotton had become the property of the

* Brockett *v.* Brockett, 2 Howard, 240.

United States through the surrender of the Confederate General Taylor, on the 5th of May, 1865, or otherwise had become liable to seizure and condemnation under the acts of Congress just mentioned; that this cotton was stored, until some day in April not specified, in the warehouse of the defendant, Johnson; and on some day, not specified, in the year 1865, was removed by him and the defendant, Morris, from the warehouse and sold; and that the said defendants had appropriated the proceeds to their own use. The information did not allege that the cotton was at the time, or had ever been, in any place where it could be seized, or that any proceeds of the sale existed in any such form as to be capable of seizure.

The defendants answered, setting up various matters of defence, and filed with their answer several exceptions to the information, of which two only, as this court considered, required notice.

The first was, that the information did not show any valid and subsisting seizure at the time of filing the information.

The second was, that the information did not allege any seizure under the acts of Congress.

These exceptions were overruled by the District Court, which proceeded to render a personal judgment against the defendants for the value of the cotton, as found by the court. From this decree the defendants appealed.

Mr. Chilton, for the appellants.

Mr. Ashton, Assistant Attorney-General, contra.

The CHIEF JUSTICE delivered the opinion of the court.

In proceeding to render a personal judgment against the defendants, for the value of the cotton, as found by it, the District Court erred.

Without adverting to the principles settled in the cases of the *Union Insurance Company* v. *United States*,* and *Armstrong's Foundry*,† we are clearly of opinion—first, that the

* 6 Wallace, 763.

† Ib. 769.

information, at most, presents only a case of the unlawful conversion of property to the use of the appellants, and that for redress of such an injury this proceeding by information cannot be sustained; and second, that neither the act of 1861 nor the act of 1862 contemplated any proceeding, as in admiralty, where there existed no specific property or proceeds capable of seizure and capture.

The decree of the District Court must therefore be REVERSED, and the cause remanded, with directions to the District Court to cause restitution to be made to the appellants of whatever sum of money they have been compelled to pay under that decree.

UNITED STATES *v.* ROSENBURGH.

This court cannot take cognizance, under the Judiciary Act of 1802, of a division of opinion between the judges of the Circuit Court, upon a *motion to quash an indictment.*

ON certificate of division in opinion between the judges of the Circuit Court for the Southern District of New York.

The Judiciary Act of 1802 provides that whenever any question shall occur before a Circuit Court, upon which the opinion of the judges shall be opposed, the point upon which the disagreement shall happen, may be certified to this court, and shall by it be finally decided.

With this statute in force, one Rosenburgh was indicted in the court below, for an offence alleged to be within an act of Congress specified. *A motion being made to quash the indictment*, on the ground, among others, that upon the true interpretation of the act under which the indictment was made, no offence had been committed, and that the indictment was insufficient, a division of opinion on these points existed between the judges, involving, of course, a division as to whether the motion to quash ought or ought not to be granted.