where the recipients of his bounty are to be educated, it will then be a just tribute to his memory, that the canvas or the marble shall remind posterity of Charles McMicken.

On the whole case, we are of opinion that the plaintiffs, as devisees under the will of the testator, are entitled to the possession, and have the only title to the property they claim.

LEGAL MISCELLANY.

The Supreme Court of New York, sitting at Rochester, have recently made a very important decision (in the case of *Hague* vs. *Powers*), sustaining the constitutionality of the Act of Congress of February 25th, 1862, under which the United States legal tender notes are issued; or, in other words, affirming the power of Congress to authorize the issue of such notes, and to enact that they shall be a legal tender for the payment of debts. The case appears to have been elaborately discussed by counsel and Court. Judges E. D. SMITH, JOHNSON, and J. C. SMITH delivered opinions, the length of which unfortunately prevents us from giving them to our readers in full, and WELLES, J., concurred.

The following statement of conclusions we take from the able and learned opinion of E. DARWIN SMITH, P. J.

1st. The issue of treasury notes is warranted by the Constitution of the United States at all times, in the discretion of Congress, as a medium for the payment of taxes under the taxing power, and as a form of security to the public creditors for money loaned under the power "to borrow money."

2d. The form, size, and denomination of such notes, and the making of them in the similitude of bank bills, and payable to bearer, so as to be transferrable by delivery, and go into circulation as money—are matters entirely within the discretion of the Legislature; and so far as relates to their voluntary receipt and circulation by the public, they stand upon precisely the same footing as bills of exchange or promissory notes issued by private individuals or corporations, and rest exclusively upon their credit as merchantable securities.

3d. The power to make such notes a substitute for money, and a legal tender in payment of debts, may rest, as an incidental or implied power, upon the power to "impose taxes, duties, and imposts," and upon the power "to borrow money," and also upon the power given to Congress "to pass such laws as shall be necessary and proper to carry into effect the other specified powers."

4. In connection with these powers, the power to declare war, raise and support armies, to provide and support a navy, to suppress insurrection and repel invasion, being great governmental and sovereign powers, include and imply a grant of all the means necessary to the end of the powers granted, and money, being an indispensable agent, and necessary to carry such powers into effect, the power is implied to command, obtain, and secure it by any practicable means known or practised among civilized nations; and the issue of treasury notes, making them a legal tender in payment of debts, is a proper and lawful means to that end—a process of borrowing money from the people, or making from them a forced loan to meet the governmental necessities, and is entirely within the legitimate power of Congress, as the sovereign legislative authority of the nation.

It follows from these premises that the Act in question was fully warranted by the express and implied power given to Congress, and was and is a measure entirely within the discretion of the national legislature, and with which the Judiciary has no rightful authority to interfere.

We cheerfully give place to the following remarks from a correspondent in Chicago, upon a case reported in our May number:—

"Judge MILLER'S opinion in the case of *The United States ex. rel. Learned* vs. *The Mayor, &c., of Burlington*, as reported in the May No. A. L. Reg., p. 394, is one of unusual interest to the creditors of Western cities and counties; for it matters not whether the debts of those corporations were or were not contracted by authority of law, if the law will not compel their payment against the will of the debtors.

"The note of J. F. D. correctly says, that 'The charters of

most Western cities (and counties) contain limitations upon the power of taxation,' &c. (p. 399). And it is also true that some of these cities and counties endeavor to exhaust their powers of taxation for domestic purposes, to the exclusion of their bond creditors.

"This is certainly one of the worst forms of repudiation, and ought not to be sanctioned by the Courts, if any fair legal construction of those limitation laws can prevent it.

"The precise question involved in the case against the Mayor, &c., of Burlington, was presented to the United States Court for the Southern District of Illinois, in January last, in the case of *The United States ex rel. Toppan* vs. *The Supervisors of the County of Hancock*, where it appeared that a judgment had been recovered against the respondents, on coupons attached to county bonds issued under authority of the laws of Illinois, which they refused to pay; and that they also refused to levy taxes to provide means to pay it.

"The rate of taxation 'for county purposes' is limited to five mills on the dollar, and it would require a higher rate than that, in addition to the taxes levied in 1861 and 1862, to raise sufficient funds to pay the judgment in question.

"The case was argued in February last, and taken under advise ment by Judge TREAT (late Chief Justice of the Supreme Court of Illinois), who recently gave a decision awarding a peremptory writ of *mandamus*, requiring the respondents to levy this year a sufficient tax to pay the relators' judgment, and to keep the funds specifically for that purpose.

"This case will go to the Supreme Court of the United States, where both it, and, probably, the Iowa case, will be finally determined.

"The very point involved in both cases was decided by the Supreme Court of Pennsylvania in 1861, in *The Commonwealth* vs. *The Commissioners of Allegheny County*, 4 Wright 348, 40 Penna. State Rep., where it was held that 'the grant of authority by the Legislature to county commissioners to create a debt, and to provide for the payment of the interest thereon, is an enlargement of the power to assess taxes to meet the demand, and an implied repeal of any conflicting statutory limitation.'

"The Legislation of Illinois is much more bare of express grants of the powers of taxation, than that of almost any other State where similar questions have arisen.

"Yet the United States Court for Southern Illinois found enough in those laws to authorize the delinquent county to provide means by taxation to pay its debts.

"I do not intend to open any discussion of those questions in your pages, but it seemed to me a subject of sufficient importance to call the attention of your readers to decisions opposed to the one reported in your May number, without intending to question the correctness of Judge MILLER'S opinion.

"The real point involved in these cases, so far as the limitation upon the taxing power of the debtor corporations is concerned, is this: Whether or not the express authority to contract the debt impliedly confers the power to provide by taxation sufficient means to pay it, and to that extent is a repeal of the limitation."

S. W. F.

We have received, through the courtesy of Charles Tracy, Esq., Librarian, a pamphlet containing the proceedings of the New York Law Institute on the occasion of the death of John Anthon. Mr. Anthon was well known to the profession by his Nisi Prius Reports, and still more by his works for the direction and assistance of students.

Mr. Gerard made some very appropriate as well as true remarks on the shortness of the duration of a lawyer's fame, alluding, among other things, to the fact that a great lawyer is frequently better remembered for his exceptional powers, his eccentricities of manner and speech, than for the solid abilities which made the foundation of his fame. A witticism, a keen retort, a burst of eloquence will go down to posterity, while the profound learning, sound judgment, and keen power in the analysis of principles, which the daily and nightly labor of years has given him, are forgotten.

From the remarks of Mr. Gerard we learn that Mr. Anthon, at the time of his death, was the oldest working member of the New York bar, and that he had been for many years in the most exten-

sive practice. Though not a man of striking eloquence or shining genius, yet he possessed a sound judgment, was a safe counsellor, a learned and accurate lawyer, and above all a scholar and a gentleman.

It is doubly pleasant to find the character of such a man appreciated and his memory preserved by his professional brethren.

We notice with regret also, the death on May 16th, of Hon. Robert S. Blackwell, of Chicago. Mr. Blackwell was the author of a work on Tax Titles, which is received as authority throughout the Western States, and also of a Digest of Revised Statutes, Blackwell's Condensed Reports, and other works.

We find the following paragraph in the London Law Times of May 2d, from which it will be seen that our professional brethren in England are beginning to get restive under the evils of the multiplication of Reports—evils with which we are still afflicted, though most of the States have attempted to cure, or at least confine them within reasonable limits by statutory regulations.

"CONSOLIDATION OF THE LEGAL REPORTS.—A deputation from the Law Amendment Society waited on the Lord Chancellor last week, to call the attention of his Lordship to the present system of law reporting. The deputation, consisting of the Right Hon. T. E. Headlam, Q. C., M. P., Judge-Advocate General, W. T. S. Daniel, Q. C., Thomas Webster, Esq., F. R. S., James Vaughan, Esq., A. Pulling, Esq., A. Edgar, Esq., and G. Harry Palmer, Esq. (the Secretary), referred to the reports of the special committee of the society, the resolutions which had been adopted at their general meetings in favor of reducing the present system into some systematic order, and of adopting in future a better plan of reporting the decisions of the Courts of common law and equity. His Lordship adverted to the great difficulties in which the subject was involved, the conflicting interests which had to be conciliated, the schemes which had been propounded, and the general working of the present system. The subject was, he said, so important, and surrounded with so many difficulties, that he should consider the interview as preliminary, and that upon some future occasion he would be glad to receive the deputation again."