

consideration, demand the property; and if it be not returned, he may maintain replevin therefor: *Tucker vs. Mowrey*.

Assumpsit for Property converted by a Co-tenant.—A denial by one tenant in common of wheat, of the rights of his co-tenant, and a refusal to deliver his share—the former being in exclusive possession—amounts to a conversion: *Figuet vs. Allison*.

In such case the co-tenant may maintain assumpsit for the value of his share of the wheat, without showing that it has actually been sold or otherwise disposed of by the co-tenant: *Id.*

NOTICES OF NEW BOOKS.

UNITED STATES DIGEST: containing a Digest of Decisions of the Courts of Common Law, Equity, and Admiralty, in the United States and in England. By H. FARNHAM SMITH, of the Boston Bar. Vol. XV. ANNUAL DIGEST FOR 1861. Boston: Little, Brown & Co. 1864.

We have just received the above volume, which is prepared and published in the usual careful and tasteful manner with the other publications of the same well-known house. The volume is of somewhat less size than its predecessors, the reports of most of the Southern and Southwestern States not being embraced as heretofore. But it will be none the less valuable and indispensable to the profession in the loyal states; and none the less complete, as it is not probable that any Law Reports will be published in the seceded states during the continuance of the present war.

I. F. R.

A PRACTICAL TREATISE ON THE POWER TO SELL LAND FOR THE NON-PAYMENT OF TAXES. Embracing the Decisions of the Federal Courts, and of the Supreme Judicial Tribunals of the several states. By ROBERT S. BLACKWELL, of the Illinois Bar. Second Edition, revised and enlarged. Boston: Little, Brown & Co. 1864.

We have here a new and carefully prepared edition of a work which had already acquired considerable reputation with the profession, as a reliable treatise and digest of the cases upon a subject which is becoming more and more important every year, and especially in the newly-settled states.

This is the only work of the kind which has yet appeared, and the multiplication of decisions upon the subject rendered a new edition especially desirable; and we believe that the work of preparing this edition has been performed faithfully by Mr. Bennett, a well-known and highly-esteemed editor and author of law books. It will be grateful to the profession both for its accuracy and good taste, and for the essential aid which it will render in giving them the present state of the law upon an important subject.

I. F. R.

THE TRIAL OF THE CONSTITUTION. BY SIDNEY GEORGE FISHER. Philadelphia: J. B. Lippincott & Co. 1862. 8vo., cl., pp. 391.

Though, perhaps, scarcely to be called a very new book, having been before the public for some eighteen months, in these times when months are cycles, yet we cannot allow this volume to pass entirely without notice. It is not a book on politics but on constitutional law, a calm, conservative, but not timid discussion of the nature and powers of the government of the United States under the constitution, and the adequacy of the latter to perform its purpose in its hour of danger and trial. Chapter first, on a written constitution, opens with a general argument in favor of the superior pliancy and adaptability to the will of the people and the changes of time, of an unwritten common law even in the fundamental constitution of a government, and where that cannot be obtained, being the growth of centuries, the wisdom of approximating to it even under a written constitution. A strong argument follows for the possession by the government of the United States of all the powers of the people, notwithstanding any nominal limitations in the constitution, and the impossibility of treating the latter as a finality to be interpreted from itself alone, without regard to custom and practice under it.

Chapter second develops very strongly the historical character of the Union, and shows clearly how closely allied it is to the form of Anglo-Saxon government exhibited in the English and Scotch Union, and inherited throughout our whole system of counties and towns. Nowhere else, that we are aware of, is the logical character of the Union under the Constitution, as a necessary sequence to the circumstances under which it arose, so sharply defined or so clearly presented. If we might suggest any deficiency in this part of the book, it is that the author does not picture, as forcibly as he might, the generally overlooked intimacy of rela-

tions between all the Anglo-American colonies prior to the revolution; how citizens transferred themselves from one to another, assuming at once all the political rights of the rest of the people of their new home, *i. e.*, as Englishmen everywhere; how governors and chief justices and other officers were appointed and interchanged without local jealousy; in short, how the United States might just as readily have included other colonies but for geographical reasons that made it inexpedient, and how the separation between the included and excluded colonies grew afterwards even more rapidly than the union among those who had cast their lots together. Such a picture would have been a strong warning to those who contend that the feeling of brotherhood would always remain after a separation of the Northern and Southern States. This, however, was scarcely within the scope of Mr. Fisher's purpose, and we have merely mentioned it as a matter to which even historians have not given the prominence we think due.

The author then proceeds to the argument for the possession by the government of powers of an imperial, that is a really governmental, character, powers "adequate to the exigencies of the Union," and among them that of preserving a union by allowing or refusing secession, or by expulsion of a state. "History, English analogies, the fundamental principles of all politics, and the language of the Constitution, prove that the central government, representing a majority of the states and the people, has legal power over the Union, to preserve it, and to limit, extend, or diminish its size as justice and necessity may demand."

This same chapter also marks out the true character of the Southern movement as treason and *rebellion*, and not secession; even, for argument's sake, granting that to be a constitutional right.

The remaining chapters discuss Executive Power, Slavery, and Democracy, and some of the topics we should be glad to notice in detail, but our limits will not permit. We have, we hope, said enough to show that the book deals with the most momentous and vital questions that can be presented to the American people, and that it deals with them in a spirit of thoughtful and liberal patriotism. That all the opinions advanced will be concurred in by any one person is not to be expected, but the most conservative or the most radical will find here nothing partisan, and much that demands the most attentive consideration. It is a book which every thinking man, whatever his politics, will do well to read, and which no student of constitutional law can hereafter afford to ignore.

J. T. M.