Notices, &c.

A CHANCE FOR PROFITABLE INVESTMENT.—A business man with from 2 to 3 thousand Dollars Capital can get a one half interest in a Store, with an established trade, that can be doubled by increasing the capital. For particulars inquire of the Editor of this paper.
aug15w3

NOTICE TO TRESSPASSERS.—Notice is hereby given to all persons not to tresspass on my premises, known as the Breastwork Run property, by fishing, or in any other manner, as I will prosecute all such, without respect to persons, to the fullest extent of the law.
aug16w3* HENRY WOLFHOP.

NOTICE.—All in our debt will please bear in mind we are preparing to make our fall purchases, *and must have money*. In many cases longer indulgence cannot be given, and we earnestly hope all who know they *have not paid us*, will read this notice, come forward and *pay up at once*. Our terms are six months, and upon all accounts, we charge interest, after due.
aug9. A. B. CRAMER & CO.

MONEY SAVED.—Intending to adopt the cash system Oct. 1, 1867, and desirous of reducing our stock as low as possible, before making fall purchases, we will offer many great bargains for CASH. A. B. CRAMER & CO.
aug9

LUMBER.—60,000 feet Oak, White and Yellow Pine Lumber on hands and for sale by J. B. WILLIAMS & CO.,
jun14,'67tf Bloody Run, Pa.

COTTAGE SEMINARY FOR YOUNG LADIES, POTTSTOWN, PA.—This Institution is located on the Philadelphia and Reading Railroad, two hours ride from Philadelphia. The next yearly session will open Tuesday, September 10th, to continue ten months. Terms for Boarding and Tuition for ten months, $260. Extras at the usual rates For further information send for circular to Rev. JOHN MOORE,
jul26m3 Principal.

DISSOLUTION of COPARTNERSHIP.—We, the undersigned, having done business under the name and firm of Stover & Holsinger, hereby give notice that said firm has this day been dissolved by mutual consent.
STOVER & HOLSINGER.

☞ The notes and books of said firm will be left in the hands of C. R. Stover for collection, at their old stand.
Woodberry, May 27, 1867.

The business will be conducted under the name and firm of C. R. Stover & Co. Thankful for past favors, we would respectfully ask the continuance of the same for the future. We invite the public to call and examine our stock of GOODS, as we shall, as before, keep a general assortment of all kinds of goods usually kept in a country store.
jun7m3 C. R. STOVER & CO.

$2.00 PER HOUR realized by our agents. For particulars enclose stamp and address KEPHART, CRIDER & BRO., York, Pa.

WASHINGTON AND JEFFERSON COLLEGE.
NEXT TERM OPENS WEDNESDAY, SEP. 18.
Apply to the PRESIDENT, Canonsburg, or to the Vice President, Washington, Pa.
aug23w4

WORTHY OF NOTE!
The place to buy *good* BOOTS AND SHOES, *cheap*, is at the *Bargain Store* of G. R. & W. OSTER. They have just received a large assortment of superior quality.
Bedford, Aug. 23,'67.w4.

MONEY SAVED!
The place to buy your goods and *save* 25 *per cent.*, is at the *Great Bargain Store* of
G. R. & W. OSTER,
who are now selling off (prior to closing, to extend and otherwise repair their Store room) their entire *stock at greatly reduced prices*, many goods *at* and *below cost*.
Bedford, Aug. 23,'67.w6

NOTICE.—THE CASH SYSTEM IN FASHION!—The undersigned takes this method of requesting all persons indebted to him to call and settle their accounts. This notice must be observed On and after October 1, 1867, he will sell goods *for cash* and *approved produce only*, having been convinced, by experience, that the *cash* system is the best for his customers as well as himself. A. L. DEFIBAUGH.
aug23m3

SOLDIERS' MONUMENT.—The Central Committee and all the Borough and Township Executive Committees, of the "Bedford county Soldiers' Monument Association," are requested to meet at the Court House in Bedford, on Wednesday evening of next Court week, September 4th, at 7½ o'clock.
The attendance of every member of the several committees is earnestly requested, as important business will be laid before them.
aug23w2 C. N. HICKOK, Chairman.

THIS IS TO GIVE NOTICE, That on the 14th day of August, A. D., 1867, a Warrant in Bankruptcy was issued against the estate of William Spidle, of Bloody Run, in the county of Bedford and State of Pennsylvania, who has been adjudged a Bankrupt on his own petition; that the payment of any debts and delivery of any property belonging to such bankrupt, to him or for his use, and the transfer of any property by him are forbidden by Law; that a meeting of the Creditors of the said Bankrupt, to prove their Debts, and to choose one or more Assignees of his Estate, will be held at a Court of Bankruptcy, to be holden at the office of John Cessna, Esq., in Bedford, Bedford county, State of Pennsylvania, before Hastings Gehr, Register, on the 17th day of September, A. D., 1867, at 11 o'clock, A. M.
THOS. A. ROWLEY,
aug23w4 U. S. Marshal.

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The Bedford Gazette.

BY MEYERS & MENGEL. BEDFORD, PA., FRIDAY MORNING, AUGUST 30, 1867. VOL. 62.—WHOLE No. 5,407.

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The Bedford Gazette.

BORIE VS. TROTT.

Legal Tender Notes and their Constitutionality.

OPINION OF JUDGE SHARSWOOD.

In January, 1864, the District Court for the City and County of Philadelphia had before it two cases in which the constitutionality of the act of Congress of February 25, 1862, making United States notes a legal tender, was involved. In one of the cases the party had offered legal tender notes in payment of a mortgage, and the money was refused, and the party cited into court.

On Saturday, February 20, 1864, Judges Hare and Stroud delivered the majority opinion of the Court, affirming that the tender of the United States notes was legal, inasmuch as Congress, under the Constitution, had the authority to pass the act of February 25, 1862. Judge Sharswood delivered a dissenting opinion in which he held that Congress had no power under the Constitution to make notes a legal tender in payments of debts.

The following is Judge Sharswood's opinion in extenso:

If any point may be considered as well settled it is, that the Constitution of the United States is a special grant or delegation of limited powers to the Federal government. "It has been truly said," observes C. J. Marshall in the United States vs. Fisher (2 Cranch, 212,) "that under a Constitution conferring specific powers, the power contended for must be granted or it cannot be exercised." The same thing has been affirmed by Mr. Justice Story in Martin vs. Hunter's Lessee, (1 Wheat., 326.) "The government of the United States can claim no powers which are not granted to it by the Constitution and the powers actually granted, must be such as are expressly given or given by necessary implication." And not to multiply citations—on so clear a principle—again by C. J. Marshall in M'Cullough vs. the State of Maryland, (4 Wheat, 405.) "This government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it, would seem too apparent to have required to be enforced by all those arguments, which its enlightened friends, while it was depending before the people, found it necessary to urge. *That principle is now universally admitted.*"

It follows that to sustain the constitutionality of an act of Congress—to determine that it is a law—an authority for it must be affirmatively shown. That authority must exist in the Constitution in express words if the act must appear to be necessary and proper for carrying into execution some power or powers vested in Congress, in the government of the United States, or in some department or office thereof.

By this rule we are now to decide, whether that clause of the act of Congress approved February 25, 1862, entitled "An act to authorize the issue of United States notes and for the redemption or funding thereof, and for funding the floating debt of the United States," which provides that the notes issued in pursuance of that act "shall be lawful money, and a legal tender in payment for all debts public and private"—is or is not a law of the land.

The counsel of the defendant—recognizing that on him rested the burden of maintaining the affirmative of this issue—claimed that the provision referred to was an exercise of authority vested in Congress under one or other of the following clauses of the enumeration in Section 8 of Article 1:

PARAGRAPH 2.—To borrow money on the credit of the United States:

PAR. 3.—To regulate commerce with foreign nations, and among the several States, and with the Indian tribes:

PAR. 5.—To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures;

PAR. 18.—To make all laws, which shall be necessary and proper for carrying into execution the fore-going powers, and all other powers vested by the Constitution in the government of the United States or in any department or office thereof.

I propose to examine these clauses with such other parts of the Constitution as have been supposed in the course of the argument to illustrate them. I feel some degree of confidence, not only from the well-known ability, learning and research of the counsel for the defendant, but from my investigations, that if the act of Congress in question cannot be sustained on either of these clauses, it cannot be sustained at all.

I will begin with the last paragraph of the enumeration, because its proper construction has an important bearing on the others; PAR. 18. "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers." I will not here revert to political and controverted grounds, nor to the arguments, by which in the *Federalist*, No. 44, and elsewhere, the objections of the enemies of the Constitution to the sweeping words of this clause, were met and answered by "its enlightened friends." I mean to take exclusively as my guide the principles, judicially settled by the Supreme Court of the United States in the leading case of M'Cullough vs. the State of Maryland (4 Wheat., 316.) The rule established in that case is well expressed by the reporter in the syllabus. If the end be legitimate, and within the scope of the Constitution all the means which are appropriate, and which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect. Let us recur, however, to the very words of the opinion, as delivered by C. J. Marshall: "We think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means, by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to the end, and which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." P. 421.

This is, certainly, a very large charter to the discretion of Congress, yet as a rule for judicial cases, I am willing to accept it. It is apparent however, from the very terms in which the principle is ennunciated, that this discretion is not without limits.

It is not Congress which is to be the final judge as to whether a measure is necessary and proper for carrying into effect any of the delegated powers. Were it so, the enumeration would have been a vain and delusive mockery, and the fundamental principle that the federal government is one merely of limited authority, an unmeaning formula of words.

The limits plainly set in this language are these: 1. The end must be legitimate and within the scope of the Constitution. 2. The means must be appropriate and adapted to the end. 3. The means must not themselves be prohibited, but consist with the letter and spirit of the Constitution.

There is, however, another limitation upon the discretion of Congress in the choice of necessary and proper means. It is clearly stated in M'Cullough vs. the State of Maryland, and indeed the principle of it may be considered to have ruled that case. I quote again the very words of the opinion:

"The power of creating a corporation, though appertaining to sovereignty, is not like the powers of making war or levying taxes, or of regulating commerce, a great substantive and independent power, *which cannot be implied* as incidental to other powers, or used as a means of executing them." [4 Wheat., 411.]

I understand the Supreme Court in this language to lay down the simple and reasonable—I might, perhaps say, the self-evident—proposition that no one enumerated power can be incidental to another enumerated power. Three cases are stated as examples of substantive powers, but clearly only as examples. We have no right to say that any of the express powers is more substantive and independent than another. Their very expression authoritatively stamps their character. If, therefore, a power is delegated, but in terms which import a limitation or qualification, it cannot be exercised as incidental to some other power, disregarding the limitation or qualification annexed to the express grant. Indeed, such limitation or qualification may be considered as a prohibition against the exercise of that power in any other way, and therefore, within the limit which the Supreme Court places upon the discretion of Congress in the enunciation of the general principle, viz: That Congress cannot employ a measure, however necessary and proper it may be for carrying into effect some express power, if that measure has been prohibited.

I pass now to the consideration of those grants, from which, by the aid of the last paragraph of the enumeration, it is contended that Congress have authority to issue what this act calls "United States Notes" and to make them a legal tender in payment of all debts, public and private.

1. "To regulate commerce with foreign nations and among the several States and with the Indian tribes." Art. 1; sec. 8, par. 3.

It must be admitted that standards of value and of weights and measures are means very appropriate and adapted in the regulation of commerce. But then we have in this enumeration a clause, which expressly grants and defines the authority to create such standards. If it directs of what they shall consist, Congress cannot make another kind as incidental to the regulation of commerce.

With equal plausibility might it be pretended that, for the regulation of commerce, Congress could lay duties, imposts and excises, and pass bankrupt laws. Such measures might be very appropriate and adapted to that end. Yet surely it will not be maintained that assuming these powers as incidental, Congress could disregard the rule of uniformity, which limits and qualifies the express delegation of them. This qualification is, in fact, a prohibition of any duties, imports or excises, which shall not be uniform throughout the United States—of any laws on the subject of bankruptcies which shall not, in like manner, be uniform throughout the United States. [Art. 1, sec. 8, par. 14.] These cases present a perfect illustration of the soundness of the limit to the discretion of Congress, prescribed by the Supreme Court, that a substantive power shall not be exercised as incidental. I do not, however, consider them as any more perfect than the very case before us. If the power to create a standard of value and medium of exchange is expressly delegated, but confined by its terms, as we will presently see, that is, to coins—foreign or domestic—it is a prohibition of any other kind of money. Congress cannot, under the pretext of regulating commerce, infringe the prohibition thus laid on them.

11. "To borrow money on the credit of the United States."—Art. 1, Sect, 8, Par. 2.

It has been argued that under this clause Congress may issue these "United States Notes," because they are only acknowledgements of debt in a negotiable farm, and in order to give them greater credit, make them a legal tender. That there may be constitutionally issued to the public creditor certificates of the amount due, transferable by assignment—or bonds or notes payable to bearer, which can pass from hand to hand by mere delivery—I do not deny. These are all securities, and Congress are vested expressly with power "to provide for the punishment of counterfeiting the securities and current coin of the United States." Art. 1, Sect. 8, Par. 7. This language is accurate. Securities *ex vi termini* are something different from money. This view is strengthened when we find the coin described in the same paragraph as *current coin*.

These United States notes are not securities for money which may be issued under the authority to borrow, but they are "bills of credit"—things distinct and different from securities. That there is such a distinction may be clearly shown by the judgments of the highest tribunal which gives the law on these subjects to all other courts. According to that tribunal, bills of credit are not certificates of loan—nor Treasury bonds or notes—nor acknowledgments of indebtedness, all of which are mere securities but bills invested with the functions of money—just such bills as the United States notes issued in pursuance of the act of Congress in question. In Craig vs. the State of Missouri (4 Peters, 431,) C. J. Marshall, in delivering the opinion of the court, says:

"In its enlarged and literal sense the term 'bill of credit' may comprehend any instrument by which a State engages to pay money at a future day; thus including a certificate given for money borrowed. But the language of the Constitution itself, and the mischief to be prevented, which we know from the history of our country, equally limit the intepretation of the term. The word 'emit' is never employed in describing those contracts by which a State binds itself to pay money at a future day for services actually received or for money borrowed for present use; nor are instruments executed for such purposes in common language denominated 'bills of credit.' To 'emit bills of credit' conveys to the mind the idea of issuing *paper to circulate through the community for its ordinary purposes as money*, which paper is redeemable at a future day. This is the sense in which the terms have always been understood." The definition here given was subsequently reconsidered and sustained in Briscoe vs. the Bank of Kentucky, (11 Peters, 237.)

According to this clear and authoritative exposition, what distinguishes bills of credit from such securities as are issued to the public creditor, is, that the former are, and the latter are not, intended to circulate as money. These United States notes, then, are not acknowledgments of debt nor "securities of the United States," but "bills of credit"—in other words—"money." Indeed, this act of Congress of February 25, 1862, intends to leave no doubt on that point, for it expressly declares that they shall be "lawful money." In conformity, then, to the principle, as settled by the Supreme Court in M'Cullough vs. the State of Maryland, we must turn to the money clause to ascertain whether Congress had authority to make them "lawful money." That body cannot, as incidental to the power to borrow, create any kind of money, which will not stand the test of the express power which is granted on that subject.

If any doubt remains as to whether the right to emit bills of credit—to make paper money—can be exercised as incidental to the borrowing power, it ought, as it appears to me, to be entirely dissipated by the proceedings of the Federal Convention when this clause was before them. I freely admit that the opinions expressed in that body are not conclusive upon the interpretation of the Constitution. That instrument is to be construed like all others—by its four corners. But surely as C. J. Marshall relied "on the history of our country" in limiting the meaning of the words 'bills of credit,' we may resort for light to the opinions and votes of the men who framed the Constitution, in deciding whether in the words "to borrow money" was intended to be included "to emit bills of credit," for that is the precise question we have here to consider.

By the ninth of the old articles of Confederation, Sec. 5, it was declared that "the United States in Congress assembled, shall have authority to borrow money or emit bills on the credit of the United States." In the plan of the Constitution, as reported to the Convention, by the committee of detail, of which Mr. Rutledge was chairman—this clause was copied: "To borrow money and emit bills on the credit of the United States." On the 17th of August, 1787, in convention, Mr. Governeur Morris, of Pennsylvania, moved to strike out the words "and emit bills." There was a debate on this motion, which is reported by Mr. Madison. It was argued by some, and Mr. Madison himself among the number, that the words had better remain with a provision prohibiting them from being made a legal tender. Mr. James Wilson, of Pennsylvania, afterwards one of the Justices of the Supreme Court of the United States appointed by President Washington, contended that it would have a most salutary influence on the credit of the United States "to remove the *possibility of paper money*." Other members who spoke concurred with him in this view. The motion was carried, and the words stricken out by a vote of nine States to two. Mr. Madison has added in a foot note, that the vote by Virginia in the affirmative was occasioned by his acquiescence, because he became satisfied that striking out the words would not disable the Government from the use of public notes, as far as they could be safe and proper, and would only cut off *the pretext for a paper currency*, and particularly for making the bill *a tender either for public or private debts*. [5 Elliott's Debates, 434, 435.] I do not know how these proceedings may strike other minds, but they have convinced me that the Federal Convention understood by "bills of credit," not securities—certificates of loan or indebtedness—Treasury notes—or Exchequer bills—but just what Chief Justice Marshall afterwards defined them to be, "paper money," and meant to deny to Congress the power to make such money.

Luther Martin, in his address to the Maryland Legislature in justification of his course in retiring from the Federal Convention, has also given a brief sketch of this interesting debate, which corresponds in the main with that of Mr. Madison. He declared in the most emphatic manner that "a majority of the Convention being willing to risk any political evil rather than admit the idea of a *paper emission in any possible case*, refused to trust this authority to the Federal Convention, p. 57.] He afterward informs the Legislature as indicative, of the temper of the body, from which he had withdrawn, that as the Constitution "was reported by the committee of detail, the States were only prohibited from emitting them (bills of credit) *without the consent of Congress*; but the Convention were so smitten *with the paper money dread*, that they insisted that the prohibition should be absolute." "It was my opinion sir," he proceeds to say, "that the States ought not to be totally deprived of the right to emit bils of credit, and that as we had not given an authority to the general government for that purpose, it was the more necessary to retain it in the States."

The members of the Federal Convention truly represented the views and feelings of the people of the States, by whom they had been chosen. No one acquainted with the history of the Revolution can be surprised at the extreme jealousy entertained of investing either the Federal or State government or even both, by joint action with any discretion on this subject. It is plain that the men who framed the Constitution—the men who ratified it in the State conventions—the great mass of their constituents—meant nothing less than to exclude, forever, *in any possible case*—(Mr. Martin)—*the possibility of paper money*—(Mr. Wilson.) The public faith again and again solemnly pledged, for the redemption of the continental bills of credit, had been shamefully violated. The tender laws of the States, enacted at the urgent solicitation of Congress for the purpose of sustaining their credit, had utterly failed. The amount of private wrong thereby inflicted on individuals and families was incalculable. Congress in a circular address in 1779—after promising solemnly that the amount of the bills should on no account exceed $200,000,000—indignantly repelled the idea that there could be any violation of the public faith, or that there did not exist ample funds to redeem them. The emission, however very soon after swelled to $379,000,000, and having ceased to circulate, quietly died in the hands of its possessors. [3 Story on the Const. 223-224.] No financiering was found so easy—so attractive—and at the same time so delusive and destructive as that of resorting to paper money. "Who," said a member of the Revolutionary Congress in debate, "will consent to load his constituents with taxes, when we can send to our printer and get a wagon load of money, and pay for the whole with a quire of paper?" [Breck's History of Continental Money, p. 13.] Well said Mr. Read, of Delaware, in the Federal Convention, that such a power would stamp the Constitution with "the mark of the beast in Revelations;" and Mr. Langdon, of New Hampshire, only expressed the feelings of the entire country when he declared that he would rather reject the whole plan than retain the three words "and emit bills." It requires but a slight knowledge of the times to conclude that if these three words had been retained, or had it been imagined that, though stricken out, as by comparing the new with the old system everybody could see that they were, they still lurked in the instrument as incidental to some other power, the Federal Constitution would never have been ratified by nine States. In the discussion and publications, which followed on the promulgation of the plan, before proceeding to vote on it in the State Convention as well as in the debates of those bodies, so far as they have been preserved and handed down to us, though every hole and corner of the instrument was ransacked to find objections, I am not aware that it was ever suggested that it might possibly contain so odious and unpopular a power. The voice of the instrument itself appeared sufficiently marked and unmistakable.

III. I come now to consider the remaining clause, which has been relied on as the source of authority to pass the act in question. "To coin money, regulate the value thereof and of foreign coin and fix the standard of weights and measures." (Art. 1, sec. 8, par. 5.) It is evident not merely from the words, but from their juxtaposition with the clause for fixing a standard of weights and measures, that the Constitution intends that the money of the United States shall be not merely a medium of exchange but *a standard of value*.—Uniformity and stability were the ends in view, and for this reason those powers were vested exclusively in the Federal goverment. Here and here alone, and not as a mere incident to some thing else, are we to look for whatever authority Congress possesses over the subject of money. In the *Federalist*, No. 42, this is taken for granted. "All that need be remarked on the power to coin money, regulate the value thereof and of foreign coin is, that by providing for this last case, the Constitution has supplied a material omission in the articles of confederation. The authority of the existing Congress is restrained to the regulation of coin *struck* by their own authority or that of respective States. It must be seen at once that the *proposed uniformity in the value of the current coin* might be destroyed by subjecting that of foreign coin to the different regulations of the different States." Judge Story thought so, for he says: "The power to coin money is one of the ordinary prerogatives of sovereignty, and is almost universally exercised in order to preserve a proper circulation of *good coin of a known value* in the home market," (3 Story on the Const., 17). But the Supreme Court of the United States have not left this to inference, but have distinctly declared the same opinion in the United States vs. Marigold (9 Howard, 500), in which an act of Congress punishing the offense of importing spurious coin was held to be constitutional on the ground that the provisions or the act appertained, to use the very words of the opinion, to the execution of an important trust on the part of the government, namely, the trust and the duty of creating and maintaining a *uniform and pure metallic standard of value* throughout the Union. The power of coining money and of regulating its value, was delegated to Congress by the Constitution for the very purpose, as assigned by the framers of that instrument, of creating and preserving the uniformity and purity of such a standard of value.

The word *coin* is one of well settled meaning. The primary sense of the *noun*, according to Dr. Webster, is "the die used for stamping money," and the undisputed signification of the *verb*, according to most, if not all the lexicographers, is "to stamp metal and convert it into coin." In Wharton's Law Lexicon (*ad verbum*) it is said: "Strictly speaking, coin differs from money as the species differs from the genus.—Money is any matter, whether metal, paper, beads, shells, &c., which has currency as a medium in commerce.—Coin is a particular species always made of metal and struck according to a certain process called coining." It was urged at the bar—I do not know whether seriously or not—that printing is stamping, and these notes might, therefore, literally be said to be coined. No such use of the word in any author has been shown. We may say, figuratively, to coin a story, meaning to invent one, but never to coin the book in which it is printed. The story is a fiction—the coinage of the brain—the book a reality. Surely, however, no one will contend in earnest that if a sufficient number of clerks had been employed, and these notes had all been written with the hand, they would have been unconstitutional, but that printing makes them valid. To state the case thus is to reduce the argument to an absurdity.

It may seem like laboring unnecessarily a very plain proposition, but I will hazard some further illustrations.

The notes is question draw a plain distinction on their face between themselves and coins. They promise to pay *dollars*. What is a *dollar?* To a similar question—what is a pound? Sir Robert Peel answered: "A pound is a definite quantity of gold with a mark upon it to determine its weight and fineness." Many pages have been written to controvert this definition and to prove that a pound is a mere abstraction—something like a mathematical point without length, breadth or thickness. But common sense, I think, vindicates Sir Robert Peel. A standard measure must be some actual length or capacity—a standard weight some actual weight. How else can other weights and measures be compared with it? This is the object of a standard. So a standard of value must be some actual value. I would say, drawing the definition from the statute book—I know not where else to look for it—a dollar is a silver coin, weighing four hundred and twelve and one-half grains, of gold coin, weighing twenty-five and four-fifth grains, of nine tenths pure to one tenth alloy of each metal. These notes then promise to pay coins. To say that they are themselves coins is to make the promise and performance identical.

As they do not state on their face when they are to be paid, in law, if issued by an individual or corporation, they would be payable on demand. Whitlock vs. Underwood (3 B. & C., 187,) Story on notes par., 29. Payable in what? In themselves, if they are coins or dollars. They are promises to pay on demand. A promise to pay may represent coin and circulate as such.—It is properly designated as *currency*, and is one of many modes by which the use of an expensive standard may be spared by the substitution, as a medium of exchange, of public or private credit. It is safe and convenient as well as economical, as long as it truly represents the standard, by being immediately convertible into coin. But in its very nature it is not coin. Its value or power of purchasing other commodities depends as well upon the confidence of the issuers to redeem it as upon the amount issued. Coin, on the other hand, possesses present, actual and intrinsic value. If you obliterated from the pound weight the public mark, which attests its conformity to the standard, it still weighs the same as before. So you may erase the image from the coin, yet its value remains. Blot out, however, the superscription from these pieces of paper and nothing remains—they are worthless. The stamp on the coin is really nothing but a certificate of the weight and fineness of that piece of metal. Government guarantees nothing but this—makes no contract to deliver corn, wool, or leather in exchange for it. The power of regulating its value can only extend to declaring that in law a certain number of one coin shall be deemed the equivalent of another of a different denomination in contracts and other transaction. In the market unequal values cannot be made equal by law. Congress has no power to enact how many bushels of wheat an eagle shall exchange for, and if they had and should make the experiment, the act, like all attempts by government to change the laws, would be futile.

The legislation of Congress upon this subject recognizes the difference between these United States notes and coin, and that they are not of equal value.

That act before us (February 25, 1862) requires duties on imports, and the interest of the public debt to be paid in coin; and provides that the notes "shall be received the same as coin at their par value, in payment for any loans that may hereafter be sold or negotiated by the Secretary of the Treasury." So by the act of March 17, 1862, the Secretary of the Treasury is authorized to purchase coin with them at such rates and upon such terms as he may deem most advantageous to the public interest.—And the act of March 3, 1863, prohibits the loan of *currency* or money on the security of gold or silver coins, exceeding in amount the par value of the coin pledged or deposited as security. By the first of these acts, coin is treated as the standard; by the last, paper. The one speaks of the par value of the notes, the other of the par value of the coins.

If the word *coin* has any more general or figurative sense in the phrase, *to coin money*, than that I have assigned to it, it must be held to have the same in other parts of the article. In foreign coin will be included foreign paper money, and Congress may regulate its value and make it a legal tender. They may thus treat notes of the Bank of England and France, Austrian and Russian government money; but not State bank notes. Congress has no power of regulating the value of money except foreign coins and money coined by its own authority. If to coin money mean to stamp paper, then the clause which forbids the States "to emit bills of credit" was unnecessary; the prohibition "to coin money" included it. The terms of that very prohibition show that in the minds of the makers of the Constitution, "to coin money" and to 'emit bills of credit," were two entirely distinct and different things. In short, in whatever point of view it is regarded, it seems to me that the position that this clause authorizes or permits any other but metallic money is untenable. The restriction on the States illustrates and confirm the opinion which I have expressed upon the proper construction of the paragraph before us. "No State shall coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts; pass any law impairing the obligations of contracts." Art. 1, sect. 10. The whole power over contracts resided in the States before the ratification of the Federal Constitution. This section admits it and leaves it there, subject only to two restrictions—both having the same end in view—the inviolability of contracts. Inasmuch as the States cannot coin, and the Federal Government alone can, and inasmuch as the States cannot make anything but gold and silver a tender in payments of debts, it follows that gold or silver coins, foreign or domestic as regulated by Congress, constitute the only lawful money. This was evidently Mr. Webster's opinion in that able speech on the Specie Circular, which was cited at the bar, and in which he declared that "*gold and silver*, at rates fixed by Congress, constitute the legal standard value in this country, and that neither Congress nor any State has authority to establish any other standard, or to displace this." And still more emphatically: "Most unquestionably there is and there can be no legal tender in this country under the authority of this government or any other, but gold and silver. This is a constitutional principle, perfectly plain and of the very highest importance. The States are expressly prohibited from making anything but gold and silver a tender in payment of debts, and although no such express prohibition is applied to Congress, yet as Congress has no power granted to it, but to coin money and to regulate the value thereof, it clearly has no power to substitute paper or anything else for coin as a tender. The constitutional tender is the thing to be preserved and it ought to be preserved sacredly and under all circumstances." [4 Webster's works, 271, 280.] I must confess that upon a question of this magnitude—amid the conflict of opinion by which I am surrounded—my mind has rested with confidence and satisfaction upon this clear and decided conclusion of a great intellect. Mr. Webster's fame rests mainly on his eminence as a constitutional lawyer. The Constitution had been the study of his life—the subject of most of his professional and political efforts. He belonged to no school of strict construction, but on all occasions was found earnestly contending for the broadest charter to the Federal Government. The opinions he expressed in his seat in the Senate of the United States under the sanction of his official oath, are entitled to be received as deliberate and well considered.

With Mr. Webster, I regarded those provisions of the Constitution upon the subject of contracts and tenders as "of the very highest importance," and to "be preserved sacredly under all circumstances." They rest upon sanctions, which ought to be considered as of the most inviolable solemnity, at all times and in all emergencies. The true strength of a government—the best foundation on which can rest the confidence and affection of its people—is the security which it guarantees to property. This depends in this country upon those constitutional provisions, which absolutely protect under the Ægis of the Courts of Justice, alike the daily earnings of the poor and the accumulated earnings of the rich man, not only from fraud and violence, but from the government itself, except in the form of open and equal taxation.

It has been strongly urged upon us that Congress has the power of debasing the coin, either in weight or fineness, without changing the denomination or legal value. What, it has been asked, is the difference between that and issuing paper money, even though that paper should be at the time depreciated below the value of coin? I answer, that because Congress may possibly accomplish a certain end by constitutional means, it does not follow that the same object can be attained by means which are not constitutional. Though, by the process of debasing the metallic standard congress may, perhaps, reduce all debts, public and private, fifty per cent., it does not follow that they can enact directly that the man who owes one hundred dollars to another, shall be quit upon the tender of fifty. We apply no such principle to other cases. Because under legal power a man may dispose of an estate by will, we do not hold that he can do the same in any other way than that directed or prescribed.

But considering it merely as an argument of the intention of the framers of the Constitution, it appears to me equally inconclusive. There are very important differences between debasing the coin and issuing paper money, though their practical results may in some respects be similar. It may well have been intended to leave to Congress discretion as to the one, but to deny to either branch of the government, State or Federal, discretion as to the other.

I. The debasing of the coin as a financial measure for the purpose of discharging the Public Debt would be an open, gross and palpable breach of faith, scarcely possible in the present age of the world. Changes, however, for the mere purpose of regulating the value of the currency, may be occasionally necessary. "Arbitrary governments," says Albert Gallatin, "have at various times, in order to defraud their creditors, debased the coin whilst they preserved its denomination, and thus subverted the standard of value, by which the payment of public and private debt and the performance of contracts ought to have been regulated. This flagrant mode of violating public faith has been long proscribed by public opinion. Governments have, in modern times, substituted for the same purpose, issues of paper money gradually increasing in amount and decreasing in value. It was to guard against these evils, that the provisions in the Constitution on that subject were introduced." [Considerations on the Currency, p. 72.]

It is true that the coin has been debased in our own times and country but never with a view to defraud either public or private creditors. When the coinage of the United States was first regulated, in 1795, a double standard, both of gold and silver, was adopted, and the proportion of these two metals fixed at one to fifteen, which was then about their true relation in the market. But though the relation between gold and silver is certainly more steady than that between any two other commodities, at least within short periods of time yet it is not immutable. Accordingly; about the year 1821, a change was observed to have occurred. An ounce of gold instead of being worth only fifteen ounces of silver, was really exchangeable for about sixteen ounces. Of course no one would pay a debt with sixteen ounces of silver, when he could do so with fifteen. The consequence was that the gold coins disappeared entirely from circulation, in obedience to the invariable law that the metal legally undervalued is always expelled. Silver became practically the only standard. The act of June 25, 1834, commonly called the gold bill, undertook to restore the true relation. To do this, either the gold coin must be debased or the silver enhanced. The latter course would have been fraught with more injustice and mischief than the former. Though the true policy may have been to let things alone, or to have established as the only legal, what had practically become the actual standard, yet many pure and eminent statesmen were then and still are wedded to a different policy. Subsequently, by the act of January 18, 1837, the weight and standard of the coin of both metals were slightly changed, with no design but to maintain, if possible, a currency of both gold and silver. Silver, however, being now undervalued, was banished from circula-