Chief Justice Roger Brooke Taney's Attitude Toward Slavery

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CHIEF JUSTICE ROGER BROOKE TANEY'S ATTITUDE TOWARD SLAVERY

By

Josephine C. Taheny

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The purpose of this thesis is to determine whether Roger Brooke Taney's views on slavery, as disclosed by his letters, papers, and legal decisions, were the result of his environment or an outgrowth of his deep religious nature. Chief Justice Taney, a staunch Roman Catholic, has been accused of upholding the institution of slavery because of his opinion in the Dred Scott case.

After a study of this case and other important slavery cases, decided by Taney, it would be impossible to say that the opinions delivered by him regarding slavery, were biased. On the contrary, Taney decided slavery cases as he did all others, in accordance with his interpretation of the Constitution and existing Federal laws.

Letters written by Taney, especially those to Rev. Samuel Nott, and Franklin Pierce, indicate that the Chief Justice did not approve of slavery. That he favored a gradual emancipation of slaves, rather than a liberation of slaves all at one time, is evidenced by the treatment of his own slaves. When Taney inherited slaves he manumitted all except the aged who could not provide adequately for themselves. These he supported for the remainder of their lives.

The Catholic Church condemned the slave trade but not
slavery. The Church approved of the emancipation of slaves when they were mentally and spiritually ready to accept freedom. Thus, a parallel may be drawn between the attitude of the Catholic Church in the United States and Roger Brooke Taney's views on slavery.

My acknowledgement is extended to Professor John A. Zvetina for his very helpful advice in the undertaking of this work.
## CONTENTS

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. LIFE AND ENVIRONMENT</td>
<td>1</td>
</tr>
<tr>
<td>II. ATTITUDE OF THE CATHOLIC CHURCH ON SLAVERY</td>
<td>23</td>
</tr>
<tr>
<td>III. SOME COURT DECISIONS ON SLAVERY</td>
<td>37</td>
</tr>
<tr>
<td>IV. THE DRED SCOTT CASE</td>
<td>72</td>
</tr>
<tr>
<td>V. TWO OTHER SLAVE CASES AND CONCLUSIONS</td>
<td>109</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>136</td>
</tr>
</tbody>
</table>
CHAPTER I

Life and Environment

A social class, known as the aristocracy or planter class, came into being in Maryland during the seventeenth century. This society had its foundation in extensive private landowning and in a labor class which exempted the wealthy planter from any physical toil. Before 1680 the labor class was composed of indentured servants.¹ At a later time Negro slaves were used almost exclusively. This white servant class was recruited from several sources, the most important of which were immigrants who became servants voluntarily. During this century many of the poorer classes in Europe could not afford to pay their passage to America. These people who were anxious to better themselves socially or economically, to secure freedom of worship, or "to escape officers of the law in the mother country"² signed a contract before sailing which fixed their indentures. Thus, a goodly portion of the population of Maryland came to America passage paid, but under contract to be employed as servants for a stated number of years. In Maryland the common term of serv-

vice was four years.  

Oftentimes a passenger came across without a written indenture, but with the understanding that a friend would defray expenses or he would dispose of himself on such terms as would pay the passage. Should he prove unsuccessful in this endeavor, the captain of the ship was at liberty to sell this passenger to the highest bidder. These indentured servants were termed "redemptioners" or "free willers". This "free will" servant was at a great disadvantage when he landed. He had to bargain in competition with so many others, and was, at the mercy of the buyer or ship's captain. Most of the colonies passed laws limiting the time of service and declaring certain rights for the redemptioners. Another source of supply consisted of people who were kidnapped or "spirited" from England and other countries by the so called "spirits" or "crimps". Vagrants and vagabonds were often seized by the ship's captain and sold in the colonies as servants.

3Nettles, p. 320
5"In response to many complaints the English government created an office in 1664 to register the names of persons sailing under contract. A few years later punishment by death was provided for conviction of the crime of kidnapping persons for transport."
The class of indentured servants that the colonists resented were the criminals who had been banished from the mother country. Convicts were often granted pardon by the king on condition that they be transported. For instance, Scharf declares that 20,000 felons were imported into Maryland before the Revolution. In 1676 Maryland passed an act requiring captains of ships to take an oath on landing servants that none of them were convicts. 6 Since the commercial interests disregarded the law, convicts continued to be brought in. 7

An excellent profit was collected by the importers on this indentured servant trade. The master paid from between L-10 and L-20 sterling depending upon the length of time the servant was bound to him. The cost of passage to America was about L-5; thus, the remainder was profit for those engaged in the traffic. The amount of profit gained from the sale of kidnapped servants was especially high; so profitable, in fact, that there developed a regular business in London and sea port towns. In the case of a voluntary servant this profit went to the master. 8

The passage of these servants from Europe to America paralleled the "middle passage" of slave times. The average cargo was

6 Ibid., p. 346
7 It must be borne in mind, however, that the word "felon" in the seventeenth century conveyed a different meaning than it does today. "The penal code of England in 1600 provided a death penalty for four hundred offenses many of which were of a trivial nature." Jernegan, Harpers, 1913. p. 747
8 Nettles, p. 320
three hundred persons, though the ship's captain often crowded on twice that number to increase his profits. These hundreds of herded humans had to spend the journey of from four weeks to four months in the most unsanitary conditions imaginable. Proper food and medical care for those sick with contagious diseases was lacking while the ship tossed at sea during a storm or rode the calm under the blazing sun. When the vessel finally made port no one was allowed to leave unless his passage had been paid. Consequently, children were separated from their parents, and husbands from their wives as they found themselves purchased by different masters. Thus, the indentured servants made possible the planter aristocracy of this period.

The first generation of planters in Maryland led the "sort of hand-to-mouth, happy-go-lucky existence that marked the beginning of all the colonies." 9 But after this early period had passed the planters soon learned the value of the soil and its products. By 1770 there was a distinctly aristocratic class in Maryland composed of wealthy planters, some of them well educated. They generally did not associate with the other classes. "The cadets of these families furnished the lawyers, and generally the men who held places in the civil government of the colony." 10

9 Johnson, John, Old Maryland Manor, Baltimore, Johns Hopkins University, 1883 p. 7.
These planters adopted the manorial system that had been used in the old country. They preferred rural life with their estates scattered along the waterways. A great social gulf came to exist between the planter class and the servant class, as is evidenced in the layout of the plantation. The manor house was situated in a most favorable spot and made aloof from the servants' quarters by hedges and shrubs. The servants' cabins were removed to a spot not very distant from the barns and pens that housed the cattle and hogs.

Most of the servants were unskilled laborers although artisans and professional people bound themselves to service. The main work of the unskilled laborer was to clear the land and cultivate the crops. Laws existed in most of the colonies which granted certain privileges to the servant as well as the master. The treatment and conditions of the servants varied, however, with the kind of work and the character of the servant and the master.

This white servant was an important factor in building up the landed aristocracy of the South. His presence upon the land made it possible for a man to cultivate extensive tracts of land. However, it was possible for an ambitious servant to become a planter within a short time. After a servant had completed his indentureship, he received his promised fifty acres. By constant hard work, many of them were able to buy indentured servants
which meant an increase in land and crops. By acquiring still more land they became owners of estates and plantations with negro slaves to do the work.

About 1660, an indentured servant, Michael Taney, came to Calvert County, Maryland. There is little record of the period of his indentureship, but Michael served out his period and received his land. This Taney continued to work and to prosper, so that, he was able to buy more and more land. "The rent rolls of the county list for him tracts bearing the names of Taney's Reserve, Taney's Right, Taney's Ease, Taney's Delight, Littleworth, Blind Tom, Long Point, Wooden Point, and Berry." Upon the tract of land called Berry, the ancestral home was built. It was here that Roger Brooke Taney was born in 1777. The success of Michael Taney soon raised him to the planter class where he was able to import indentured servants. Thus, he continued to increase his land holdings for with each new imported servant, 

11 Swisher points out that the indenture of Michael Taney might have been similar to that of his brother John Taney who arrived in the country about 1652. John was sold twice during the four years which were required to pay his passage. His value was estimated in tobacco, the only currency available, to the amount of eleven hundred pounds. At the end of his period of service he received from his owner the usual minimum equipment, in the form of three barrels of corn, a waistcoat, a pair of canvas drawers, a pair of shoes and stockings, a hat or cap, a weeding hoe and a falling axe. He received likewise an allotment of at least fifty acres of land on which to begin his new life of freedom. Swisher, Carl Brent, Roger B. Taney, N.Y., Macmillan, 1936. p.4.
12 Ibid.
Taney received an additional fifty acres. In 1692, when Michael Taney died he left to his heirs many thousands of acres of land in Calvert County. The various estates were divided among his children, but the estate overlooking the Patuxent River was given to Michael Taney II, as this son was called. For generation after generation this ancestral estate was given intact to the Michael Taney of that generation. In addition to these vast tracts of land, Michael Taney I, left personal property that was appraised at eight hundred pounds, not including 162,825 pounds of tobacco that had not been estimated. Had this tobacco crop been included, his personal property would have been greater since tobacco was the principal form of wealth, excepting land, in the colony at this time. The five indentured servants and eleven negro slaves that Taney had acquired placed him more securely in the planter class. "He had established a family, a family name and a family estate. He buried the record of his indenture in a position of unquestionable aristocracy, leaving to posterity all the prestige which any ancestor in such a locality could have handed down."13

The Taney family continued to live and to prosper in Calvert County without leaving any imprint upon local history. Each Michael Taney, however, was able to acquire slaves and land, so

13 Ibid., p. 6
that, the ancestral estate remained intact while two or more children inherited the property from their parents. Each succeeding generation managed to raise enough tobacco and make sufficient profit to maintain the family at the same social and economic level attained by the first Michael. The Taney planters must have been shrewd to have been able to continue their prosperity as tobacco exporters during the colonial period. Many neighboring planters in Maryland found themselves greatly indebted to the English merchants and shippers.

In Tidewater Maryland, the nearness of the large plantations to navigable rivers made direct trade with the English merchants possible. It was more economical to ship tobacco directly to England than it was to concentrate it at some central shipping point. The ocean going vessels were small enough, at this time, to enable them to collect the tobacco at the wharf of each plantation. The planter also found it more economical to have the vessel which collected his tobacco bring merchandise on the return voyage the following year. This system had many disadvantages for the colonial planter which tended to promote the Southern hatred for the merchant class at home and abroad.

The London merchants conducted a highly diversified business. They bought and sold colonial produce, purchased English wares to re-sell to the planters, owned the ships that carried on the trade, supplied the capital that was necessary for in-
urance, and with the surplus earnings lent money to the planters at interest. These London merchants did not run the risks that the outpost merchants did. Instead of purchasing the tobacco at the plantation, the London merchants acted as commission agents for the planter. Each year a fleet was sent across to America, between the months of May and July, when the crop was ready for market, which sailed along the coast from plantation to planta-
tion collecting the tobacco for shipment to England. The plan-
ter gave the merchant the right to sell his tobacco on the Eng-
lish market. At the same time the planter gave the merchant a list of articles that he was to purchase with the proceeds from the tobacco and deliver the following year.

The planter allowed the merchant 2½% of the English price of the goods as commission for purchasing the wares. In addition, the merchant had to be allowed the cost of the freight and insurance on the shipments to America. When the merchant sold the tobacco in England not all the proceeds went to the planter. The following deductions had to be made from the wholesale price as quoted in England: freight charges on the voyage to England, charge for handling the tobacco in London, such as, unloading, trucking, inspection and storage, the loss due to shrinkage, and the import duties. At the time the wholesale price of tobacco was so low that the price received for the crop was just enough

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14Gray, Vol I, p. 18
to take care of the customs, freight, insurance, commission and handling charges. There was nothing left with which to purchase English wares for the planter. The English merchants, however, were willing to advance credit to the planter because then the merchant would be sure to get next year's crop from the planter. With several succeeding hard years, the planter found himself much indebted to the merchant. Land, crops, servants and slaves were mortgaged to the merchant by the planter in his endeavor to free himself of debt. "In 1706, Governor Seymour of Maryland observed, 'how much the country is indebted' to London Merchants, 'very many plantations being mortgaged to them, of which there seems little probability of redemption, considering growing interest...Again in 1714 a Maryland act recited how the planters are 'becoming vastly indebted, and no prospect as yet of any means whereby they may extricate themselves out of their miserable and deplorable circumstances."\(^\text{15}\) The ten years between 1725-1735 were a period of severe depression for the tobacco planters in the South. "Two measures considered in 1727 and 1728 by the Maryland Assembly contain the declaration that for several years producers had been entirely unable to support themselves...The depression, which continued through the year 1733, was particularly severe in Maryland..."\(^\text{16}\) These periods of high and low in

\(^{15}\) Nettles, p. 256-257

\(^{16}\) Gray, p. 270
the tobacco market continued, so that, planters "were getting out of the industry."17

By 1750-60, tobacco production, due to soil exhaustion, the burden of debt, heavy fixed labor costs, and the British Acts of Trade, had reached the limits of expansion.18 After 1763, a large section of the upper class in American society objected to the treatment they received from Britain. Many southern planters complained that the British merchants paid extremely low prices for their crops and sent them inferior European goods at a high price. Under these conditions the debt burden became insupportable. "With their plantations, slaves and sometimes their furniture and ungrown crops mortgaged beyond their actual value, it seemed in 1775 that nothing less than virtual repudiation could save them."19 The difficulty of debt payment was increased by Britain, however, so there was nothing left for the planter to do but resist. Accordingly, the planters were ready to join the other patriots in their fight for freedom. In spite of the years of depressions, the legislation passed by Parliament, and the methods employed by the British merchants, Micahel Taney was able to maintain his estates and servants.

Roger Brooke Taney was born at this time, when the country was torn with a revolution and the planters in Maryland were suf-

17 Ibid., p. 270
18 Nettles, p. 601
19 Ibid., p. 620
ferring from the blockade imposed by the British. On March 17, 1777, the third child was born to Monica Brooke Taney and Michael Taney V. This second son was named Roger Brooke Taney. Since he was not the eldest son, Roger would not inherit the family estate, but would be educated properly to care for himself. This tradition had existed in the Taney family since the death of the first Michael. Roger received the same type of early training as did the other members of the family. His father trained the boys from their youth to participate and enjoy the life associated with the planter of that time. The boys were trained at an early age to take part in outdoor activities.

Roger, who was frail as a lad, was compelled with the others to take part, but he soon abandoned all forms of exercise, excepting to roam or ride through the countryside.

The educational facilities were very meager. Roger, his brother and eldest sister had to walk three miles to the only school in the district. These schools in Maryland did not have a very high scholastic standing as far as the masters were concerned. "The school-masters were a low and dissolute set, more than half of them being redemptioners and servants. They had Latin and Greek enough, perhaps, but were drunken in habit and severe and capricious in discipline, and teaching in a rude irregular way." The first school master that Roger encountered

Scharf, Vol. II, p. 27
was "an ignorant old man, who professed to teach reading, writing and arithmetic as far as the rule of three."\textsuperscript{21} The Bible was used to teach the young Catholic Taney's and others to spell and pronounce. After Roger and his brother had received all the formal education that was possible from this master, they were sent to a boarding school about ten miles from home. The children were removed from this school and returned home after the school master had been drowned in the Patuxent. Michael Taney then hired a tutor for his children. This was the common practice among the wealthy planters. The children were usually tutored at home and then the boys were sent abroad to complete their education in one of the universities on the continent. This first tutor that was hired did not have the time to prove his worth because he succumbed to consumption before his first year as tutor was completed. The second was dismissed after a year because of his lack of knowledge of the Greek and Latin languages. Finally, David English, a Princeton graduate was employed as the tutor. He was an accomplished scholar, and seemed "to take pleasure in teaching us, and was altogether an agreeable intimate in the family. At the end of the year he advised my father to send me at once to college, and encouraged him to do so by the very favor-

\textsuperscript{21}Tyler, Samuel, \textit{Memoir of Roger Brooke Taney}, Baltimore, John Murphy, 1872. p.27. All material pertaining to the life of Taney is taken from this volume unless otherwise indicated by footnotes.
able account he gave of my progress."22

The selection of a college was a very difficult matter. Roger's father had been sent abroad to the Jesuit College, St. Omer. Since the college was forced to move, a college in America had to be selected. Dickinson College, at Carlisle, Pennsylvania was selected because boys from families which Micheal Taney knew intimately, were attending. So Roger left home in company with one of these young men in 1792.

It was no small undertaking, however in that day, to get from the lower part of Calvert County to Carlisle. We embarked aboard one of the schooners employed in transporting produce and goods between the Patuxent River and Baltimore, and, due to unfavorable winds, it was a week before we reached our port of destination; and as there was no stage or any other public conveyance between Baltimore and Carlisle, we were obliged to stay at an inn until we could find a wagon returning to Carlisle, and not too heavily laden to take our trunks and allow us occasionally to ride in it. This we at length accomplished, and in that way proceeded to Carlisle, and arrived safely, making the whole journey from our homes in about a fortnight. And what made the whole journey more unpleasant was that we were obliged to take, in specie, money enough to pay our expenses until the next vacation. The money was necessarily placed in our trunks, and they were often exposed in an open wagon yard, while the wagoner and ourselves were somewhere else. But, in truth, we were not very anxious on that score for a robbery in that day was hardly thought of as being hazards of travel.

22 Ibid., p. 35
23 Ibid., pp. 36-37
The difficulties of travel were so great that Taney did not return home but twice during his stay at college.

Roger's father sent him with a letter to Dr. Nesbit, president of the college, asking him to look after the welfare of this fifteen year old boy. Both the president and his wife did all they could to make his life comfortable and to advise him whenever they thought it necessary. Taney remembered Dr. Nesbit as a very fine teacher. Another professor who left a lasting imprint upon Taney was Charles Huston, a teacher of Latin and Greek. "He was an accomplished Latin and Greek scholar, and happy in his mode of instruction."

When Taney entered Dickinson, he was not far enough advanced to become a member of the junior class, and yet too far advanced to be placed in the class below. In company with a fellow student, John Lyon, a special class was made by Mr. Huston to have these two advance, so that, they would be able to carry on the work of the junior year. Both students worked diligently and when they took the examination preparatory to entering the senior class, "were by no means the worst scholars."

Before he was nineteen years of age, Roger Taney graduated,

24 Ibid., p. 40
25 Huston later became one of the judges of the Supreme Court of Pennsylvania.
26 Tyler, p. 44
27 Ibid., p. 45
in 1795, and returned home to spend the winter. During the winter he took part in fox hunts which were the pleasure of the Southern planters. Michael Taney was the owner of a pack of hounds and an ardent fox hunter. It was the custom for him to invite another gentleman who also owned a pack of hounds. The combined efforts of the two packs made the hunt more enjoyable. A party of eight or more hunters was usually gotten up and they participated in the hunt for a week. The party arose before dawn, "breakfasted by candle-light - most commonly on spareribs (or bacon) and hominy - drank pretty freely of eggnog, and were off to sight a fox before the sun arose. They usually rode all day, over rough countryside and returned in the evening to talk over the day's events or "to play at whist for modern stakes. There was certainly nothing like drunkenness or gambling at these parties. I myself never played." After a week, the hunters and the hounds were pretty tired and ready to return to their respective homes. However, they always made arrangements for the next hunt that usually took place about two weeks later. This sport continued throughout the season. Roger joined them in all their hunts and by the end of the season was a confirmed fox-hunter, even if the eggnog was apt to give me a headache." Roger tired of the "idle life" and was
anxious to begin the study of law. His father had always wanted him to pursue this career and Roger, himself, had a keen desire to become a lawyer. Accordingly, the following spring, in 1796, he went to Annapolis, "to read law in the office of Jeremiah Townley Chase, who was, at that time, one of the Judges of the General Court of Maryland."31

Roger Taney was intensely ambitious to become a lawyer. He spent ten to twelve hours each day for weeks reading law. During this time he formed many friendships with young lawyers that were to prove valuable to him in later life. After three years with Judge Chase, Taney was admitted to the bar, in 1799. He remained at Annapolis trying to find enough work to support himself, but when this proved unsuccessful, returned to Calvert County. Here, too, there appeared to be little work for the young lawyer. His father was anxious to have him enter politics, as a member of the House of Delegates, to which Roger consented. He was successful in the endeavor and so began as a member of the legislature in November, 1799. Taney felt that this provided one of the most profitable experiences of his life. The influence of his training as a Southern aristocrat determined his stand on many of the measures that arose during the session. Taney favored the building of a canal to connect the Chesapeake

31Ibid., p.56
and Delaware Bays since the farmers of the region felt it was for their good even if it meant breaking the trade monopoly at Baltimore by centering it northward in Philadelphia. It was his first skirmish with the mercantile interests. "It indicated the alignment to which he was to adhere throughout his life, when in various more influential positions he came in contact with what he regarded as mercantile cupidity." 32

Taney further showed his attachment to the planter class when he opposed the measure to have counties divided into electorial districts. By this proposed system the voting would be done in one day instead of four days as was then the practice. Too, he opposed a "provision for a fine of five hundred dollars and imprisonment for buying or making votes, and for setting up booths at the polls to give out food or drink. The system by which country gentlemen kept control of county elections seems to have been quite satisfactory to him." 33 In both these measures that he opposed, he was unsuccessful.

At the close of the session, Taney returned to his home in Calvert County confident that he would be elected the following year. However, he was greatly surprised. Again, he had to look elsewhere for his livelihood. He was informed that two members of the bar were retiring from practice in Frederick, so in March,
1801, Roger Taney left his home in Calvert County to seek one in Frederick. He was not without friends here because the families of several of the young men he had met at Annapolis resided in the community. Soon after his arrival, Taney was admitted to the bar. He did not specialize, but took any criminal cases or any other cases that were presented to him. Taney continued to forge ahead not only in this community, but was admitted to the bar in adjoining counties until ultimately he "became the most outstanding lawyer in that section of Maryland."

In 1823, at the age of forty-six years, Taney left Frederick to seek a wider field for his practice of law. He moved with his family to Baltimore. Five years later Taney was appointed as Attorney General of Maryland by Governor Kent upon the unanimous recommendation of the Baltimore Bar. In his later life Taney said that this was the only office he desired to hold. Taney held this position until 1831, at which time he resigned to accept the position of Attorney General of the United States. On June 21, 1831, President Jackson appointed

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34 Ibid., p. 43
35 The Attorney General at that period "had the appointment of Deputy Attorneys of the State in the several judicial districts ... In these appointments, while he showed his regard for the public interests, he manifested his personal friendships for those who stood in need of aid in their struggles at the beginning of professional life." - Tyler, p. 163
36 He was at this time council for many outstanding people, one of whom was Charles Carroll of Carrollton.
Taney to fill the position and Secretary of State, Edward Livingston, sent the announcement to Taney. Upon his arrival in Washington he filled two positions in the cabinet, his own and that of Secretary of War, since Lewis Cass had not yet arrived. He continued as acting Secretary of War until August 9, when Cass was sworn in. When Secretary of the Treasury, Dunne, was requested to resign this office on September 23, 1833, Taney was immediately appointed to fill the vacancy. During his two years as Attorney General, Taney had been able to continue his private practice, but upon assuming this new position in the cabinet, he had to drop it completely. Thus, when his nomination as Secretary of the Treasury was rejected by the Senate, June 24, 1834, Taney had to begin a practice again. This was to be a difficult task because of all the abuse that had been heaped upon him by the friends of the Bank. "Instead of having as of old, a host of friends eager to turn business in his direction, he found attempts being made to block him at every point."  

Gabriel Duvall, who had become so deaf, so that, he scarcely heard the arguments before the court, resigned his position in the Supreme Court on January 10, 1835. President Jackson

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37 Jackson had been informed by Francis Scott Key that Taney would accept the position. The president then sent word back to Taney, by Key, that the acceptancy of the position need not alter his affairs in Baltimore, nor his residence there if Taney so wished. Steiner, p. 102

38 Swisher, p 306
sent Taney's name before the Senate for the position of Associate Justice of the Supreme Court on January 15. Although the hostility of the Senate toward Taney was still great, Jackson relied on the backing of those senators who had promised to back Taney for any other position than that of Secretary of the Treasury.\textsuperscript{39} The Senate delayed the action upon the President's request until the last day of the session. Then, after twelve o'clock, when the senate clock had stopped, Webster called up the nomination for action. The outcome was a defeat for Taney by a vote of twenty-four to twenty-one. President Jackson was enraged by this decision, but he was not to be daunted in his efforts to make amends to Taney for the treatment he had received. On December 28, 1835, Jackson again sent Taney's name to the Senate. This time he requested the Senate to confirm the recommendation that Taney be appointed Chief Justice of the Supreme Court, this vacancy was caused by the death of Chief Justice Marshall early in July. After some delay, Taney's nomination was confirmed by a vote of twenty-nine to fifteen.\textsuperscript{40} On the morning of March 28, 1836, Taney was sworn in as Chief Justice of the Supreme Court of the United States and presiding judge of the fourth circuit, in the presence of a crowd of

\textsuperscript{39} Tyler, p. 240
\textsuperscript{40} A number of Whig Senators were conviently absent when the vote on Taney's nomination was taken. - Ibid
friends and members of the bar. He remained in this high position until his death on October 12, 1664.
CHAPTER II

Attitude of The Catholic Church on Slavery

Roger B. Taney's forefathers were Roman Catholics. They clung to their religion in spite of the fact that Catholics in Maryland were deprived of certain privileges because of their religious beliefs. Many other Maryland planters remained loyal to the Catholic Church also, in spite of the severe restrictions placed upon them by the early laws of Maryland. Charles Carroll of Carrollton, the signer of the Declaration of Independence and an outstanding leader of the Catholics in Maryland during the Revolution, was one of the most outstanding of this class. The Brooke family, of which Monica Brooke, Roger's mother, was a member, continued their practice of the Catholic faith. These outstanding Catholic families were all slave holders. Charles Carroll owned numerous slaves. Micheal Taney the first, acquired eleven slaves during his lifetime.

1 Tyler, p. 20
2 Charles Carroll of Carrollton, was reputed the wealthiest man in the colony. An estimate of his property made by his own hand in 1764 is as follows:
   40,000 acres of land, two county seats............L40,000
   20 houses at Annapolis..............................4,000
   285 slaves, at an average of L30 each............8,550
   Stock on plantations...............................1,000
   Household Plate.....................................600
   Debts Outstanding.................................24,230

Total: L78,380

Russell, Wm. T., Maryland: Land of Sanctuary, Baltimore, J. H. Hurst Co., 1907 p. 589
Perhaps, the idea of slavery was not so startling to these Roman Catholics as it would be today. When one considers that a number of these planters started their lives in America under the system of white servitude - the practice of negro slavery was to them an accepted condition. This system of negro slavery replaced the system of indentured servants that has been described in the preceding chapter. The trade in indentured servants to the South began to decline in the latter part of the seventeenth century. There are several reasons advanced for the change in trade from this white servant class to the negro slaves. The English Government was interested in promoting the profits of the Royal African Company. Measures had been passed in 1664 and 1684 to prevent kidnapping which was the greatest source of profit in the indentured trade. An outstanding reason for the decline in trade was the preference of the planters for the negro slaves. Servants moved to start life for themselves just when the planter had gotten them accustomed to the work.\(^3\) It meant that the planter had to constantly train a corp of workers since the indentured servant left after four years. The negro

\(^3\)Gray, Vol. I. p.349
slave, on the other hand, was bound to the master for life. Too, the negro servant was just as capable to do the work in fields as was the indentured servant. "Unquestionably, tobacco made Maryland a slave state, and much poorer than she otherwise would be." Land was cheap and abundant. The exclusive tobacco cropping in old Maryland did not require careful husbandry. New land would yield large crops of the finest tobacco. The planter who had the most number of hoes at work reaped the most profit. Therefore, the influx of negro slaves was deemed worthwhile at first.

The succeeding generations of Maryland planters were accustomed to the negroes from birth. Swisher points out that, "Taney, like most other sons of Maryland planters, had been brought up in the midst of slaves, with pickaninnies as playmates and had accepted the conditions of the black people as normal and right." And again, "Taney had been brought up in an undiluted Southern agrarian atmosphere, and his life was permanently conditioned by it." Tyler, the biographer of Taney, and himself a Southern, paints a similar picture of the relation of the negro slaves and the whites. "Slave labor became the only labor in

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4 Scharf, Vol. II p. 48
5 Swisher, p. 93
the Southern colonies; and therefore slavery became incorporated in the whole fabric of society. The slaves rocked the cradle and dug the graves of their masters; and the masters from the birth to the death of the slaves, in sickness and in health, sheltered and protected them. Out of this mutual dependence and association grew a mutual regard and kindness. My ancestors, for two centuries, were slave holders on a plantation in Maryland, where I was born, and often in the neighborhood have I seen slaves shed as sorrowful and affectionate tears at the funerals of members of the white family as their own kindred did. 7

The Catholic Church, however, voiced its stand on slavery through letters of the various Popes. "Gregory the Great in the sixth century, Pius II in the fifteenth, Paul III in the sixteenth, Urban VIII in the seventeenth, Benedict XIV in the eighteenth - all raised their voices either in commending the slave to the humanity of their masters, or in advocating their manumission, or in the righteous condemnation of the slave trade." 8 Gregory

7 Tyler, p. 124-125. Beveridge also establishes the same fact. "The Southern people took the existence of slavery as a matter of fact. They had been born among slaves as their fathers and and mothers had been for several generations. It was an immemorial relation. Nothing seems to be more natural. Beveridge, Albert J., Abraham Lincoln 1809-1865, Vol. II, Boston, Houghton Mifflin Co., 1923, p.15

8 Gibbons, Cardinal. Our Christian Heritage, Baltimore, J. Murphy, 1889, p. 434
XVI published an Apostolic Letter in 1839 which caused much comment. This letter voiced the condemnation of the Catholic Church upon the slave trade, but not upon domestic slavery. On

9 The first portion of the letter which deals with the Apostolic Letters of his predecessors has been omitted. "Wherefore, We, desiring to turn away so great a reproach as this from all the boundaries of Christians, and the whole matter being maturely weighed, certain cardinals of the old Roman church, do vehemently admonish and adjure in the Lord all believers in Christ of whatever condition, that no one hereafter may dare unjustly to molest Indians, negroes, or other men of this sort; or to spoil them of their goods; or to reduce them to slavery; or to extend help or favor to others who perpetuate such things against them; or to exercise that inhuman trade by which negroes as if they were not men, but mere animals, howsoever reduced into slavery, are, without distinction, contrary to the laws of justice and humanity, bought, and sold and doomed sometimes to the most severe and exhausting labors; and moreover, the hope of gain being in that trade proposed to the first captors of the negroes, dissensions, also, and, as it were, perpetual wars are formented in their country. We, indeed, with apostolic authority, do respect all the aforesaid actions as utterly unworthy of the Christian name; and by the same apostolic authority do strictly prohibit and interdict that any ecclesiastic or lay person shall presume to defend that very trade in negroes as lawful and under any pretext or studied excuse, or otherwise to preach, or in any manner, publicly or privately, to teach contrary to those things which we have charged in this, our Apostolic Letter." From translation contained in Letters of The Late Bishop England to Hon. John Forysth on the Subject of Domestic Slavery, Baltimore, J. Murphy, 1844

10 The Catholic Hierarchy in America was accused of concealing the letter for four years; Bishop England proved that this accusation was false, when he showed that a copy of the letter was read and accepted unanimously by the prelates at the Council of Baltimore in 1840.
May 21, 1840, at the Fourth Provincial Council of Baltimore, this Apostolic Letter of Pope Gregory XVI was read. Bishop England, of Charleston, in commenting on the Apostolic Letter states that, "if the document condemned our domestic slavery as an unlawful and consequently immoral practice, the bishops could not have accepted it without being bound to refuse the sacraments to all who were slave holders unless they manumitted their slaves."

The majority of prelates attending this council were from the slave holding territories of the country. Among them was Archbishop Eccleston, of Baltimore who was also administrator for Richmond and in charge of the slave holding territory of the states of Maryland and Virginia. Bishop England further points out that these prelates saw no objection to domestic slavery since "the most pious of their parishioners are large slave holders who are most exact in performing all their Christian duties, and who frequently receive the sacraments. The prelates under whose charge they are, have never since the day on which they accepted the letter, indicated to them the necessity of, in any manner, adopting any new rule of conduct respecting their slaves." 

The stand of the Catholic Church upon slavery in the United

11 Guilday, Peter, A History of the Councils of Baltimore, New
York, Macmillan, 1932. p.123
12 Letters of the Late Bishop England. p. 19
13 Ibid., preface vi.
States is best expressed by the prelates who were present at the First Plenary Council of Baltimore in 1852. At this particular time in our history there was great dissension among the Protestant churches over the question of the abolition of slavery. The Northern and Southern Methodist, Baptist and Presbyterian churches were losing their unity. Therefore, all religious and social

14 "When the Council began its deliberations on May 8, 1852, all who were present sensed the fact that they were participating in one of the major events in the history of the American Church. The eyes of the entire nation were upon the stately procession that moved from the archbishop's house that Sunday, May 9, to the cathedral. The six archbishops and twenty-four prelates, robed in rich vestments, carrying their crosiers and wearing miters, preceded by hundreds of priests, secular and regular, many of whom were to take part in the proceedings, made a picture of old world beauty never seen before in the United States." - Guilday, p. 163

15 The Weekly Union of May 14, 1845, contained the news item from Louisville, "Resolved by the Delegates of several Annual Conferences in the South and Southwestern States in general convention assembled. That we cannot sanction the action of the late general conference of the Methodist Episcopal Church, on the subject of slavery, by remaining under the ecclesiastical jurisdiction of the body, without deep and lasting injury to the church and country; we, therefore, hereby instruct the committee on organization, that if, on careful examination of the whole subject, there is no reasonable ground to hope that the Northern majority will recede from their position and give some safe guarantee for the future security of our civil and ecclesiastical rights, they report in favor of a separation from the ecclesiastical jurisdiction of the said general conference." p. 28.
institutions were most eager to learn just what action the Catholic Church would take upon the question of abolition. "There was no more unity in the Catholic ranks on the slave question than those of prominent Christian churches at the time. It seemed inevitable that, with the whole nation roused to intense feelings, even as early as 1832, over the question of slavery, Catholics and non-Catholics would expect the council - the first of its kind in our history - to cast its voice either with slavery or with abolition. There had been passages at arms between our prelates of the North and South and between those of each section among themselves. All knew what the doctrines of the Church were, but all knew instinctively that the foremost political problem of the day had become too complex and was being too bitterly discussed to permit any hope that moral distinction between slavery and the slave trade (as made clear by Gregory XVI in his letter of 1839 and Dr. John England's Letters to Forsyth) would be heeded. When, therefore, as the Council proceeded, it became evident that the attending prelates had decided to keep silent on the question, neither condemning nor condoning slavery." The prelates of the Catholic Church refused to break the traditional policy of the Church "which excluded rigorously all discussions on political debate. The prelates were face to

16 Guilday, p. 169
face with problems of far greater importance in their efforts to keep abreast of the tide of immigration to our shores. No other Church in the land, then as now, has realized the supreme need of keeping free from political questions..."17

The Second Plenary Council was called in 1866, fourteen years after the First Council. The intervening years between these Councils were crowded with events that are important to American History and to the progress of the Catholic Church. During the years between 1852 and 1861, the Abolition propaganda, which was closely associated with the Know-Nothing party, had roused the North and South to the pitch of Civil War. Attacks were made upon visiting Catholic prelates, Catholic priests, and Catholic laymen resulting in several riots in the large cities.18

"From that time (1854) to the outbreak of the Civil War the anti-

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17 Guilday points out that the Church showed this same wisdom during the anti-Catholic movement of the Know-Nothing party between 1854 and the Civil War. Ibid., p. 184. Archbishop John Hughes, of New York, who did not approve of emancipation of the negroes in 1854, and was a non-believer "in the doctrine of State sovereignty or the right of succession," went to Europe in 1861 as an envoy to inform the European public of conditions in the United States. The Archbishop was severely criticized by the clergy and the Catholic Press for his actions. "How much the Archbishop may have done for the country can only be conjectured...An official intimation was conveyed to the Holy See that the President, unable to offer Dr. Hughes a reward that he could accept, would feel particular gratification in any honors the Pope might have in his power to confer." Hassard, John, Life of Archbishop Hughes, New York, Appleton, 1866, p. 485. Also Brann, Rev. Henry, Most Rev. John Hughes, New York Dodd, Mead, 1892, Chapter 28.

18 Attacks made upon Archbishop Gaetano Bedini and at Ellsworth, Maine, upon Fr. John Bapst, S.J. in 1854, Guilday, p. 187
Catholic and abolition movements walked hand-in-hand until the former was forgotten in the bitterness of the latter; but forgotten only while the War was on. 19

While these Councils of the Church judged it better for all concerned to remain silent upon the question of slavery, it did not necessarily mean that the members of the Catholic Church did nothing to improve the status of the slave. On the contrary, much was done by members of the Catholic Church to aid the negro spiritually. 20 The Catholic slaves were "distinguished as a body for orderly habits and fidelity to their masters; so much so, that in Maryland, where they are numerous, their value is 20 to 25 percent above that of the others." 21

19 Ibid., p. 187
20 The Catholics were the first to send missionaries to Africa. Therefore the Catholic Church is the first Christian Church in which Negroes were received as members. As far back as 1490, two years before the discovery of America, Catholic missionaries visited the mouth of the Congo River. For several centuries after this a Negro Catholic kingdom existed in this part of Africa. Some of the first Negroes to reach America were Catholics. They came over with the early Spanish discoverers.

Negro Catholics had never been numerous in the United States except in Maryland, which was a Catholic colony, and in Louisiana. In 1829, a number of Catholic refugees came to Baltimore from Santo Domingo, and at this time there was founded, in connection with the Oblate Sisters of Provident Convent, the St. Francis Academy for Girls." Washington, Booker T., The Story of the Negro: The Rise of the Race From Slavery, Vol. I, New York, Doubleday, Page 1909, p. 271. Also see Wright, James M. Studies in History, Economics, and Public Law. "The Free Negro In Maryland," Vol. 97, N.Y., Columbia U., 1921, pp. 206-236

21 Vale, Charles, Views of Baltimore, Balt., Sam. Young, 1833 p. 33

Letters of the Late Bishop England, preface.
Members of the Catholic Church who retained their slaves were anxious to have them liberated, but felt it best to do so gradually. Charles Carroll, while he was a slave holder, bitterly lamented the existence of slavery and would have adopted any intelligent means by which he might rid the country of the evil. Roger B. Taney, who inherited slaves from his father, was in favor of gradual emancipation. He was interested in the local chapter of the "American Society for the Colonization of Free People of Color" and served as its vice-president for some time. In his early life, in 1818, Taney set seven negroes free and together with his brother, Octavius Taney, liberated two slaves who had been owned by his father. Still later, in 1821, he manumitted another slave. The old slaves were supported by him until their deaths. Each month these slaves received their allowance in silver coins of small denominations. This was done to prevent the negro from losing his money by any fraudulent means.

The prelates of the Catholic Church were also ardent in their endeavor to aid the slaves. Bishop England expressed his personal opinion on the slave question in 1841 when in response to the questions concerning his feeling toward slavery. "I have

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22 In 1797, Carroll introduced a bill into the Senate in Maryland "for the gradual abolition of slavery." Scharf, Vol. III, p. 308
23 Stiener, p. 56
24 Tyler, p. 478
been asked by many, a question which I may as well answer at once, viz: Whether I am friendly toward slavery? I am not — but I also see the impossibility of now abolishing it here. When it can and ought to be abolished is a question for the legislature and not for me.\textsuperscript{25} The prelates of the Catholic Church again took the opposite stand to the leaders of the Protestant Churches concerning slavery. The ministers maintained that the reading of Holy Scripture by every person is the divinely appointed means of attaining the doctrines of salvation. Yet, these very people deemed it wisest not to teach the negro to read lest he become aware of his class and thus endanger the well being of the master. Bishop England, on the other hand, "opened a school for negroes in spite of the opposition that was stirred up against his plan. His own Mass on Sundays was offered for them. At an appointed hour the Cathedral was reserved for their exclusive use. He habitually instructed them from the altar or pulpit... and so well were his labors for their welfare becoming appreciated that many highly respectable and intelligent Protestant planters, in spite of every prejudice, avowed their disposition to accord him every facility to instruct the negroes on their plantations, even to the exclusion of missionaries of other denominations."\textsuperscript{26}


\textsuperscript{26} ibid., p. 204
Thus, we find members of the Catholic Church, both the hierarchy and the laity working for the welfare of the negro slave. Slavery was certainly not approved by the Church, but neither was it condemned with the loud disapproval of the Protestant Churches. The Catholic Church was, however, loud in its condemnation of the slave trade. It is my belief that the Catholic Church allowed its members to hold slaves and continue to be members in good standing because the institution of slavery had been deeply rooted in Maryland, by the British government, while the Catholic Church was suppressed. To decree that all slaves be manumitted would have wrought a greater crime than to hold them in servitude until the slaves were mentally and spiritually ready to be freed.27 The Catholic Church has always considered it wrong to enslave a person against his will. Each man is considered in his own right in the eyes of the Church, therefore, it is evil to force a person into slavery as the negro had been. Consequently, the Church denounced the slave trade because that

27...When slavery presents itself as an existing fact which cannot be removed only at the great disadvantage of the slaves and to the detriment of the government, the Pope declares existing conditions must be tolerated and the slaves are held to practice patience and forbearance. Prudent opposition to slavery, Leo declares, marks the history of the Church." Letter written by Pope Leo XIII to the Bishop of Brazil. Messmer, Rev. Sebastian, Works of Right Reverend John England, Cleveland, Clark, 1908. Vol. 5, p. 187
practice was evil in its means. While the Church has never changed its moral opinion on slavery, it deemed it wisest at this time to allow the existing evil to continue rather than to permit greater evils to come into being by immediate emancipation. Eventually, with the constant striving of the Catholic Church, to improve the negro spiritually and educationally, as was done by Bishop England, slave holding would have been abolished or in most cases greatly lessened among the Catholic members of the planter class.28

28 "No one...can escape the conclusion, that slavery in modern times exists in its mildest form in countries where the Roman Catholic religion is the established religion, and where the government is despotic and purely monarchical, as in Spanish or Portuguese colonies - that it becomes more ferocious and oppressive in Protestant countries, where the government is a mixed monarchy, as in the British colonies - and that it is most debasing of all in countries, where the religion is purely Protestant, and the government free and republican, as our own." An extract from the Christian Intelligencer of Feb., 1862. p. 64. contained in Christy, David, Pulpit Politics or Ecclesiastical Legislation on Slavery, Cincinnati, Frere and McLean, 1862. p. 81.
CHAPTER III

Some Court Decisions On Slavery

During the Revolutionary epoch, at which time Taney was born, slavery was on the wane.¹ The "peculiar institution" was condemned by leaders such as Washington, Jefferson, Madison, Monroe, John Randolph, and Patrick Henry.² Agriculture in the South had been declining for years. The planters were sinking deeper and deeper into debt owing to the burden of their slave labor. In lean years, as well as in good, the plantation owner had to care for his help, in contrast to the North where additional help was employed when needed and dismissed when the demand diminished. Maryland was busily engaged, by 1787, in her pursuit of manumission, while the New Englanders were vigorously pursuing the trade in Negro slaves.³ The first association, on record, for the abolition of slavery, and the relief of poor

¹Wright, p. 306
²Washington and Randolph provided in their wills for the emancipation of their slaves "and Jefferson to the end of his life argued for the adoption of a system of gradual emancipation combined with deportation." Channing, Edward A., A History of The United States, Vol. V. New York, Macmillan, 1921. p. 120
³"At this period the whole legislation of the non-slaveholding States demonstrates that they regarded the question of slavery as one of State jurisdiction alone; and as an illustration of this the abolition of slavery, when it had become unprofitable in those States, was by the general voice of the people effected by the Acts of their own State Legislature." Scharf, Vol. III-305
negroes and others unlawfully held in bondage," which was organized on September 8, 1769 by a number of prominent citizens. Thus, it is very evident that at an early date in the history of our country anti-slavery sentiment existed in the South. Scharf, in the History of Maryland, indicates this fact when he states that,

it is a very remarkable fact that nowhere was slavery denounced with stronger condemnation than in this State; a condemnation founded on purely moral grounds, and unconnected with any political associations. Here the sentiment had a distinguished and a continuous antecedent, for every distinguished statesman in the State, without one exception, no matter what had been his votes or acts in the interest of slavery and on the issue concerning it, made by political parties, has not hesitated to express his depreciation of the institution. All the distinguished early Marylanders were indeed anti-slavery men. Owning slaves and upholding slavery against the Northern interference, they yet protested against it, as of their conscience.6

The old crops of rice, indigo and tobacco were not as profitable as they had formerly been and slave labor was too expensive to be engaged in extensive cotton cropping. A slave working for one month was able to remove the seeds from one bale of cotton.6 In 1793, when there was an ever increasing demand

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4Ibid., p. 306
5Ibid., p. 309
6Adams, James Truslow, The Epic of America, Boston, Little, Brown and Company, 1931. p. 112
for cotton, Eli Whitney invented the cotton gin "which would clean a thousand pounds in the same time it took a slave to clean only five." In addition, the discovery of the short staple cotton which would grow on the uplands of Georgia, South Carolina and the territory to the west, changed the whole social and economic life of the South. Now the planter would be able to increase his acreage in cotton. Thus, the demand for slave-labor grew with the additional demands that were placed upon the planter for cotton. The social structure of the ante bellum period began to materialize at this time. The "Cotton Kingdom" arose with its huge estates and the ever increasing demand for slaves. Cotton planters increased their landholdings in accordance with the profits from their cotton. In addition to the staple crop sufficient foodstuffs and animals to maintain the planter's family and the slaves were produced on the plantation. Clothing, tools and luxuries continued to be purchased from abroad.

The Virginia planters of this generation no longer talked of manumission, but found a market for their slaves which encouraged the breeding of Negroes for that purpose. The slaves

7Ibid., p. 113
8Few things in life have so greatly influenced modern life as the fiber of the upland cotton plant. Channing, Vol. V. p. 407
9It is estimated "in 1859 that a planter could get a thousand acres of good cleared cotton land for $10,000, but it would cost him $50,000 to get the slaves to work it." Adams, p.160
caused much anxiety to the cotton planter. In addition to supplying adequate food, clothing, and shelter for the slaves, they required constant tending. The maintenance of the slaves was a major factor; in addition, the escape or theft of a slave had to be prevented; and the superintendence of the overseer was important.10

Ulrick B. Phillips describes the sentiment among the people of the South as "Southernism." This "American with a difference" came into being when the negroes became numerous enough to create a problem of race control in the interest of orderly government. "It is not the land of cotton alone nor of plantations alone... Yet it is a land with a unity despite its diversity, with a people having common joys and common sorrow, and, above all, as to the white folk a people with a common resolve indomitably maintained - that it shall be and remain a white man's country... And when in the course of time slavery was attacked, it was defended not only as a vested interest, but with vigor and vehemence as a guarantee of white supremacy and civilization."

Western Maryland also developed rapidly during the nineteenth century. The young professional man benefited by this

10 This was a difficult problem for the plantation owner. A good overseer was hard to obtain. One that could produce a good crop and keep the slaves healthy and contented was in demand, and an overseer that lacked these qualities was useless.

development as well as other classes of workers. It was in this part of the State, at Frederick, that Roger B. Taney began his career. Most of the twenty-two years that he spent in Frederick were devoted to his practice of law. During the years from 1818 to 1821, however, he was engaged in politics, but after that time he was occupied with his legal work. The cases which were brought to Taney grew out of the problems of the community. Many of them were concerned with boundaries and titles to land. Taney made no effort, however, to specialize in cases, but took criminal cases and cases of every nature that were presented to him.

Much of the legal business was transacted in the General Court in Annapolis, which necessitated the transportation of witnesses, jurors and judges to that city. The hardships which were thus imposed tended to cause resentment which was relieved when the system was changed to that of district courts. Each district was composed of three counties and presided over by three judges. The Chief Justices of these courts made up the Court of Appeals, which presided in Annapolis. It was before the Court of Appeals that Taney built up an extensive practice. His first criminal case before this Court, was one in which he defended a negro, Thomas Burk. Burk had been charged with crim-

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12"Taney's career at the bar of Maryland was the school in which he became fitted to serve his country in the Cabinet, and for a period of twenty-eight years as Chief Justice of the United States Supreme Court." Delaplaine, Ed.S., "Chief Justice Roger B. Taney: His Career At The Federal Bar," Maryland Historical Magazine
nally assaulting a young white girl, Catherine Maria Brawner, who was under twelve years of age. In February, 1809, the Grand Jury of Frederick found an indictment, but the case was removed to Hagerstown. Here the negro was found guilty and sentenced to be hanged by Judge Buchanan. Taney and his associate in the case, Mr. Lawrence of Hagerstown and Mr. Martin, moved for an arrest of judgment which was refused. They then brought the proceedings before the Court of Appeal by writ of error. This Court, however, decided in favor of the State. In this case we find that Taney endeavored to give the client every protection the law afforded, regardless of his race. 13

Ten years later, in 1819, Taney defended Reverend Jacob Gruber, a Methodist Presiding Elder of Carlisle, Pennsylvania, who delivered a sermon at a camp meeting held in Washington County, Maryland, in August, 1818. Gruber was forced to give this sermon when the minister who was scheduled to speak was unable to appear. There were about 3,000 persons present, four hundred of whom were negroes who listened to him preach for one hour. He spoke on "National Sins," with the text, "Righteousness exalteth a nation, but sin is a reproach to any people!"

The last of the national sins that were expounded by Reverend Gruber were slavery and oppression. He told how other nations were ground down under the heel of iron oppression.

That this nation is happily delivered from such bondage. We live in a free country; and that all men are created equal, and have inalienable rights, such as life, liberty and the pursuit of happiness, we hold as self-evident truths. But there are slaves in our country, and their sweat, and blood, and tears declare them as such. The voice of our brother's blood cries. It is not a reproach to a man to hold articles of liberty in one hand and a bloody whip in the other, while a negro stands trembling before him with his back out and bleeding.14

Gruber continued by making a comparison of the views of the slave situation in Pennsylvania with that of Maryland.

We Pennsylvanians think it strange, and it seems quite curious to read in the public prints from some states an advertisement like this: "For sale, a plantation, a house and lot, horses, cows, sheep and hogs. Also a number of negroes, men, women and children, some very valuable ones.15

After having delivered his message to the masters, Reverend

15 Maryland Historical Magazine, Vol. 13, p. 136
16 Strickland, p. 136. Tyler, p. 126
Gruber then turned to the negro slaves, who were seated, according to custom, in the rear of the stand and addressed them.

Of all people in the world you ought to have religion; you have most need of it, in order that you may enjoy some peace and happiness... Some of you have cruel masters; are slaves to them, slaves in sin and slaves to the devil; and if you die without religion you will be slaves in hell, forever wretched, poor and lost to all eternity...16

Many of the slave holders present were much displeased with the sermon. They felt that the remarks were enough to arouse the slaves to rebellion,17 thereby, endangering their lives and the lives of their families. It was rumored at the time that Reverend Gruber would be arrested. A few weeks after the camp meeting, a warrant was issued for his arrest. The friends of Gruber went into action to secure legal aid. On October 11, Gruber received a letter from Reverend S.S. Rosel who wrote saying, "I have seen brother Pigman,18 on the business, and he has promised to interest on your behalf, should you be arrested, Lawyer Taney, the most eminent barrister in Washington and Frederick."19

16 Strickland, p. 139
17 The horrors of the uprising under Toussaint L'Ouverture made the Southerner ever fearful lest the negroes repeat the act upon American soil.
18 Breene S. Pigman who practiced exclusively in Hagerstown and Frederick and who like Taney was a council for the society for the protection of free negroes, secured Taney's services for the defense of Gruber. Swisher, p. 96
19 Strickland, p. 140
About two months after the warrant had been issued, Gruber was arrested at Williamsport. He went before a magistrate and gave the necessary security for his appearance in Court. Then he sought the advice of his councilors, Messrs. Pigman, Roger Taney and Luther Martin who had been retained to aid the defense.

Because the hostile feeling in Hagerstown was so great, the trial was transferred to Frederick.²⁰ Even in this court the odds seemed to be against them. The jury undoubtedly would be composed of slave holders who were to render a verdict upon a man, foreign to this section of the country, who was charged with undermining one of the local institutions.

Roger B. Taney delivered the opening and closing arguments of the case.²¹ It was in his opening speech that Taney seemed to reveal his own opinion on slavery.²² Taney began this address by recalling to the jury the statements that had been made by the district attorney concerning the interesting principles involved in the trial. He continued by making his appeal to the jury on

²⁰Taney was largely responsible for the removal, being firmly convinced that there was no just cause for instituting this prosecution. Steiner, p. 74.
²¹Taney delivered the closing address which has been lost to history because his persistent ill health in the following months prevented his arranging his material for publication. Swisher, p. 98.
²²Pigman examined the witnesses and all three lawyers delivered impressive arguments to the jury, after the evidence had been submitted. Steiner, p. 74.
the grounds that freedom of speech was guaranteed to all citizens by the laws of Maryland. These laws prohibited prosecuting any man for preaching the doctrines of religious creed, unless these teachings were immoral "and calculated to disturb the peace and order of society; and subject of national politics may at all times be freely discussed in the pulpit or elsewhere without limitation or restraint." Taney informed the jury that the Reverend Gruber could not be liable to prosecution unless it was proven that the doctrines he preached were immoral and calculated to disturb the peace and order of society. But the defendant was accused of an attempt to incite insubordination and insurrection among our slaves; and the intention of the preacher is the essence of the crime...It is necessary, in order to support the prosecution, that the wicked intention charged in the indictment should be made by proof...You must be satisfied before you can say he is guilty, that such was his intent.

Taney continued by recalling to the jury the position held by Gruber in the Methodist Church and the stand this church had taken on slavery; that gradual and peaceful abolition of slavery was one of the objects of this Methodist group and no minister was allowed to be a slave holder. It was the custom of Methodist ministers to preach on the subject of the injustice and oppression of slavery.

23 Strickland, p. 155. Tyler, p. 126
24 Strickland, p. 157
And if any slaveholder believed it dangerous to himself, his family or the community, to suffer his slaves to learn that all slavery is unjust and oppressive, and persuade himself that they would not of themselves be able to make the discovery, it was in his power to prevent them from attending the assemblies where such doctrines are likely to be preached. Mr. Gruber did not go to the slaves; they came to him. They could not have come if their masters had chosen to prevent them.25

At this point Taney defended Gruber's sermon by showing that the defendant quoted the language of the Declaration of Independence and did insist on the principles contained in that instrument.

He did rebuke those masters, who, in the exercise of power, are deaf to the calls of humanity; and he warned them of the evils they bring upon themselves. He did speak with abhorrence of those reptiles, who live by trading in human flesh, and enrich themselves in tearing the husband from the wife, and the infant from the bosom of the mother; and this, I am instructed was the head and front of his offending. Shall I content myself with saying he had a right to say this? that there is no law to punish him?...A hard necessity, indeed, compels us to endure the evil of slavery for a time. It was imposed upon us by another nation, while we were yet in a state of colonial vassalage. It cannot be easily, nor suddenly removed. Yet, while it continues, it is a blot on our national character; and every lover of freedom confidently hopes that it will effectually, though it must be gradually, wiped away; and earnestly looks for the means by which this necessary object may be best at-
tained. And until it shall be accomplished until the time when we can point without a blush to the language held in the Declaration of Independence, every friend of humanity will seek to lighten the galling chain of slavery, and better, to the utmost of his power, the wretched condition of the slaves.

The case continued with an examination of the witnesses, speeches of the other lawyers and a closing address, which was delivered by Taney and lasted for an hour. At the close of the address the jury retired, but quickly returned with a verdict of "Not Guilty." In his opening address Taney reveals the attitude of the Roman Catholic Church. His language depicts the horrors of the slave trade which was so thoroughly condemned by the Church. His opinion, that slavery is wrong, but since it exists in the country everyone should strive to lessen the burden of the slave and relieve him of the wretched condition by a gradual and peaceful emancipation is similar to that shown by the Catholic Church prelates who assembled in Baltimore years later. The fact that Gruber was an abolitionist would not necessarily indicate that Taney approved of the methods endorsed by this group. Again, this fact only tends to show that he pleaded cases in order that justice might be meted out to every citizen.

26 Strickland, pp. 157-168; Tyler, pp. 122-131, Steiner, p. 76.
Smith, p. 97, Swisher, pp. 143-144
27 The credit for the verdict was for the most part given to Taney and it is said that for many years thereafter the Roman Catholic lawyer, who in his old age was accused of saying the negro had no rights the white man was bound to respect, was remembered gratefully by Methodists of Maryland. Swisher, p. 98
The next case in which Taney acted as defense counsel did not receive a favorable verdict. In this case, Hughes v. Negro Milly, he opposed the great Maryland lawyer, Reverdy Johnson, and Daniel Raymond, in a case that was instituted in the Hartford County Court to oppose the liberty of ten negro slaves, who were seeking their freedom. A deed of manumission had been executed in compliance with provisions of the will. A jury in Hartford County had handed down a decision granting the negroes their emancipation. Taney filed an appeal and, without any assistance, argued the case before the Court of Appeals. He was unable to change the verdict that had been rendered in the lower court, which granted emancipation to the ten negroes who claimed it.

The cases in which Taney acted as counsel do not of their nature indicate his stand on slavery. Certainly, if one were to judge his views on slavery, from the Hughes v. Negro Milly case,

"The will of Margaret Coale, dated 1776 read: I give and bequeath unto my son, Phillip Coale, my negro girl Prima, until she arrives at the age of twenty-one, being at this time about fifteen years of age, and I do order him, that immediately after my decease he manumit her, and her posterity, so that their freedom may be secure to them at the age of twenty-one years."

Taney would be accused of favoring the institution. This can be proven false by the fact that he freed his own slaves several years before the case mentioned above was decided. Additional proof can be taken from views which he expressed in the Gruber case showing clearly that Taney was against slavery.

The following case to be discussed, is another one in which Taney might also be accused of favoring the "peculiar institution." But we must recall his language in the Gruber case which definitely shows his deep hatred for the slave trade. In the case, the United States v. Gooding, in which Taney acted as counsel, he was not able to win a favorable verdict for the defendant. This case concerned the purchase of a vessel, "The General Winder," by Gooding, which vessel was built in the port of Baltimore and sold by McElderry before the boat was completely

29"Gustavus Myers, a Socialist Historian of the Supreme Court, condemns Taney for his work as attorney for John Gooding, an alleged slavetrader, in the United States v. Gooding. Gooding's attorneys successfully based the defense largely on technicalities. Myers says Taney's part in this case won the high regard of the slave owners, and was one thing that caused them to push him forward later for Attorney General of the United States, Secretary of the Treasury, and then for Chief Justiceship of the Supreme Court of the United States." G. Myers, History of the Supreme Court of the United States, p.365, from Smith, p.145. Smith refutes this by stating that "Taney's work in this case is offset by the fact that in 1809 he tried to secure the freedom of a negro accused of rape of a white girl, largely on technicalities...As a matter of fact neither case indicates anything about Taney's own views on slavery. He was merely serving as a lawyer for the defense in both instances.
finished. It was completed under the direction of Captain John Hill, who had been hired as captain of the ship. This vessel was only partially equipped as were the vessels employed in the slave trade. The "General Winder," thus equipped, set sail from Baltimore, August 21, 1824, bound for St. Thomas in the West Indies. The rest of the equipment for this boat was sent on the Pocahontas, which sailed about a month later for St. Thomas. Here the rest of the "fitments" were put on the "General Winder."

About six or seven months after this boat had sailed from Baltimore the defendant declared, "That the "General Winder" had made him a good voyage, having arrived with a cargo of slaves, the witness thought he said about 290. At St. Thomas, Captain Hill proposed to "Captain Coit," to engage on board the "General Winder" as mate for the voyage then in progress, and described the same voyage to the coast of Africa for slaves and thence back to Trinidad to Cuba. That he offered said witnesses (Coit) 70 dollars per month, and five dollars per head for every prime slave which would be brought to Cuba."

The court held that "any preparations for a slave voyage, which clearly manifest or accompany the illegal intent, even though incomplete and imperfect, and before the departure of the vessel from port, do yet constitute a fitting out within the purview of the law." As Chief

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30 Catterall, p. 75
31 Ibid.
Justice of the Supreme Court of the United States, some years later, Taney rendered a decision similar to that given in this case. It must be taken into consideration that at the time Taney rendered the decision similar to that mentioned above, he was the presiding judge and not a defending lawyer.

In 1831, while Taney was Attorney General of Maryland, he was asked to give his opinion concerning the status of slaves who had been taken to Texas (then a part of Mexico) by their master and returned to the United States. They had not become citizens of Mexico; they merely resided there. Taney delivered the opinion that the length of time these people remained in Texas was unimportant. Their intent, whether to become permanent residents or just temporary residents, however, was important. Since they had gone to Texas with the view of returning to the United States in a short time, the slaves might be brought back. This is the same principal that Taney maintained later when as Chief Justice he rendered the decision in the case of the United States v. Carrone.

As Attorney General in Jackson's Cabinet, Taney rendered his opinion concerning the rights of negroes. The negro problem

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32 The case referred to is United States v. Morris which will be discussed later.
33 Smith, p. 148. United States v. Carrone, Peters 73 (1837)
34 Ibid.
had continued to grow more intense within the United States with each succeeding year because the cotton growing South became more dependent upon the slaves while the North became more industrialized, thus excluding slavery. The South had a growing hatred of the North and felt that eventually the Northerners would become powerful enough to have the federal government interfere with its "peculiar institution." The plantation owner with his increasing fear of a negro insurrection demanded the enactment of additional laws regulating the lives of the slaves and especially the free negro. In South Carolina a law required the seizure of free negroes employed on foreign ships that came.

35 "The Southern slave holders in the earlier part of the century had grave doubts as to the advisability of the slave system. This opinion continued in the northern tier of the Slave States until 1830, but the profits to be derived from the slave-grown cotton were so great in the Southern group of the planting States that the people there before 1830 had come to regard slavery as the very basis of their prosperity...It had become economically unsound in the Northern States and had either died out there or was dying out." Channing, Vol. V. p. 159

36 Swisher, p. 147

37 The American Colonization Society was formed in the winter of 1816 and 1817 as a solution to the free colored menace. The pro-slavery men felt that they would find a sufficient remedy in exiling or enslaving the free negroes. Bancroft, Frederick, Slave Trading in The Old South, Baltimore, J.H. Furst, 1931. p. 17.
into port and the retention of the negroes in jail until the vessel was ready for departure. Then, if the master of the ship paid the costs of imprisonment, the negroes would be released, otherwise, they were sold to recover costs. The diplomat from Great Britian objected to this practice on the grounds that it violated the treaty between the two countries. The Secretary of State referred the case to Taney for his opinion.

Taney postponed giving his opinion for several months.38

"Fortunately, or so it must have seemed at the time, it became impossible to answer the question not directly but by implication through the answer to another, without offending either the North or the South."39 A man from Philadelphia, who was interested in the trade with the West Indies, asked Secretary of State, Livingston, whether slaves on board vessels flying the British flag were protected by the laws of that country while in the United States ports or if they were subject to the laws of the states. Taney declared that the treaty with Great Britian expressed no provisions on the subject. "The engagements for mutual freedom and liberty of commerce could not be construed to imply the obligation to protect slave property. Certainly Great Britian had not so construed it, for it was said to be a fixed principle of

38 This delay was probably due to the Nat Turner insurrection in Southampton County, Virginia.
39 Swisher, p. 161
the law of England that a slave became free as soon as he touched her shores." Taney asserted his belief that the federal government had the power to make treaties, but the treaty could not interfere with the states' rights to deal with slavery as it saw fit. He later confirmed this opinion when he was again pressed by the Secretary of State about a North Carolina law that was similar to the one in South Carolina. It was his opinion that any slave state had a right to protect itself against dangers likely to arise from the importation of free negroes; that federal laws or treaties could not remove these rights of the state; that any treaty which came in conflict with the rights reserved to the states would be void.

Negroes had no constitutional rights. The African race in the United States even when free, are everywhere a degraded class, and exercise no political influence. The privileges they are allowed to enjoy, are accorded to them as a matter of kindness and benevolence rather than of right...They were not looked upon as citizens by the contracting parties who formed the Constitution. They were evidently not supposed to be included by the term citizens. And were not intended to be embraced in any provisions of the Constitution but those which point to them in terms not to be mistaken.  

In rendering his opinion in this case, Taney presented the same

40 Ibid., p. 150
41 Ibid., pp. 154-155. "Taney confessed his own opinion that a milder measure would have achieved the desired object and created less dissatisfaction."
point of view that caused so much difficulty in the Dred Scott case years later; that "Negroes had no constitutional rights. They were not looked upon as citizens by contracting parties who formed the Constitution." However, in 1831 the Bank was the pressing political issue and not slavery, consequently, the opinion rendered by United States Attorney General, Taney, did not bring the avalanche of abuse that it did some twenty-one years later.

The first opinion, that in United States v. Ship Garonne, delivered by Taney as Chief Justice of the Supreme Court of the United States, was concerned with slavery. A negro slave had been taken by her mistress to France while she visited there. Upon returning to the United States the Ship Garonne was libelled under the Act of 1818. This act prohibited the importation of slaves into the United States. Chief Justice Taney delivered the opinion of the entire court. He stated that the law prohibiting the importation of slaves was directed against those Negroes who were inhabitants of foreign countries. This act did not apply to domestic negro slaves who returned to the United States after a temporary absence. "In the case before the court," said the Chief Justice, "although the girl had been staying for a time in France, in the service of her mistress, yet in the

United States v. The Ship Garonne, 11 Peters 73 (1837)
construction of law, she continued an inhabitant of Louisiana and her return home in the manner stated in the record, was not an importation of a slave into the United States."

Several years later Taney had the opportunity to again deliver an opinion concerning the slave trade in the case of United States v. Morris.43 The defendant, Morris, Captain of the ship, Butterfly, had sailed from Havana for the coast of Africa. Before reaching its destination, the vessel was boarded and examined by the British brig of war Dolphin, on suspicion of being a Spanish vessel engaged in the slave trade. There were no slaves on the ship, however, but "the vessel had on board 24 large leagers capable of containing each from two hundred and fifty to three hundred gallons of water, eighteen of these were in shocks, that is, the staves were in bundle not fatted,... there was a quantity of plank stowed away in the hold similar to the planks used in framing slave decks, but this plank could not have been fitted as a slave deck until the vessel discharged her cargo."

43 United States v. Morris 14 Peters, 464(1840). Steiner says, "Taney has been accused of being a friend of slavery, but he did not show such leanings in the opinion in the case of United States v. Morris. Mikell remarks. "He brushes aside technicalities of the defendant's argument and, looking to the intent of the act, to abolish the slave trade, holds that in sailing to the coast of Africa equipped (as she was) the vessel was engaged as a slaver." Mikell, William E., "Roger Brooke Taney," Great American Lawyers, Philadelphia, Winston, 1908. p. 104
Taney delivered the opinion that

The defendant, Isaac Morris, was indicted under the second and third sections of the Act entitled "An Act in addition to an Act entitled 'An Act to prohibit the carrying on the slave trade approved on the 10th of May 1800."

The second section of the Act of Congress declares "that it shall be unlawful for any citizen of the United States, or other persons residing therein, to serve on board any vessel of the United States, employed or made use of in any way in the transportation or carrying of slaves from one foreign country or place to another; and any such citizen or other person voluntarily serving as aforesaid, shall be liable to be indicted therefor, and on conviction thereof shall be liable to a fine not exceeding two thousand dollars and be imprisoned not exceeding two years."

The question in the case was, whether a vessel on her outward voyage to the coast of Africa, for the purpose of taking on a cargo of slaves, 'is employed or made use of' in the transportation or carrying of slaves from one foreign country to another, before any slaves are received on board.

To be 'employed' in anything, means not only the act of doing it but also to be engaged to do it; to be under contract or orders to do it. And this is not only the ordinary meaning of the word, but it has frequently been used in that sense in other acts of Congress.

The vessel in question was employed in the transportation of slaves, within the meaning of the Act of Congress of May 10th, 1800, if she was sailing on her outward voyage to the African coast, in order to take them on board, to be transported to another foreign country. In such a voyage, the vessel is employed in the business of transporting and carrying slaves from one foreign country to another. In other words, she is employed in the slave trade. And any citizen of the United States who shall vol-
untarily serve on board any vessel of the United States on such a voyage, is guilty of the offense mentioned in the second section of this Act of Congress.

The same reasoning applies to the third section of the law...The vessel is 'employed in the slave trade' when sailing to the African coast for the purpose of taking the slaves on board. 44

Here again, Taney is unrelenting, as was the Catholic Church, on the evils of the slave trade and this might be interpreted as another instance wherein Taney not only reflects the attitude of the Church but interprets existing laws as well.

The Supreme Court was again called upon to render an opinion in the case of Groves v. Slaughter in 1841. 45 An attempt was being made to collect payment for the importation of thousands of slaves from other states who had been sold in Mississippi. 46 The people in these other states were anxious to be relieved of the huge debts caused by the marketing of the slaves, but the Mississippi planters were unable to pay because of unfavorable conditions. 47 In 1832, an amendment to the State Con-
stitution was drawn up which forbade the importation of slaves as merchandise after May 1, 1833. The amendment did not indicate whether it was self-enacting or whether an act of the legislature was necessary to make it effective. No act was passed. In 1839, a planter, who was being pressed for the debt he owed, refused to pay for the slaves which he purchased because they had been imported in violation of the state constitution. The case was taken from the Federal Circuit Court of Louisiana to the Supreme Court of the United States.

Outstanding barristers appeared on both sides. Robert J. Walker, United States senator from Mississippi and Henry D. Gilpin argued that the contract to purchase slaves was invalid, while Henry Clay, Daniel Webster and Walter Jones argued to the contrary. The council broadened the subject when they debated upon this case. From the question of whether the constitutional provision had become operative or not, the debate broadened to two possibilities providing the provision was operative: one to determine whether it was in conflict with the power of Congress whether it does not carry with it an implied prohibition on the State from making any regulations on the subject." Carson, Hampton L., Supreme Court of the United States - Its History, Philadelphia, Huber, 1891. p. 317.

This was done to prevent the withdrawal of capital from the state. Swisher. p. 396.
to regulate interstate commerce; and the other to determine if
the slaves were persons not articles of commerce, whether their
constitutional rights had been infringed. Mr. Justice Thompson
spoke for the Court which rendered the decision that
because of the absence of a legislative
act the constitutional prohibition against
the importation of slaves had not become
operative.

A number of judges insisted on presenting their opinions on the
controversial points. Taney felt obliged to answer the argu-
ments of McLean who stated that a state council could not regu-
late interstate commerce, but could exclude slaves in their ca-
pacity as persons rather than as articles of commerce. Taney
gave the following opinion in regard to the federal government
regulating the slave trade between the states:

In my judgment, the power over this subject
is exclusive with the several states; and
each of them has a right to decide for it-
self, whether it will, or will not, allow
either for sale or for any other purpose;

49 "A decision on the latter question would have caused the Court
to confront, in 1841, the same weighty problem which was to
come before it fifteen years later in the Dred Scott Case.
Warren, p. 70.
50 It is possible, however, that since McLean had insisted on dis-
scussing points not necessary to the decision, Taney turned o-
ver to Thompson the opinion of the Court, so that he might be
unhampered in replying to McLean. Swisher, pp. 397-398
51 15 Peters, 449.
52 It was McLean, the most eager of the judges to maintain influ-
ence in national politics, who provoked the unnecessary strife.
Swisher, p. 397.
and also to prescribe the manner and mode in which they may be introduced, and to determine their condition and treatment within their respective territories; and the action of the several states upon this subject cannot be controlled by the Constitution of the United States.53

In 1840, while he was Chief Justice, Taney decided a case concerning the slave trade that is not a decision of the Supreme Court because at that time the judges of the Supreme Court had to preside over several circuit courts which were assigned to them. Many of the judges and their friends complained that the distances traveled in the circuit were too great for these elderly men. It was pointed out that it would be much more beneficial for the judges to remain in Washington adding to their knowledge of the law instead of presiding over these circuit courts. Taney’s task was great since he presided over the circuit court in Baltimore for two terms, each year; and one term in the New Castle court as well as the Dover court in Delaware.

53Peters 15, 449; Swisher points out that this case placed the Supreme Court definitely in the arena of conflict. "From this time onward it was taken heavily into account in appraising the strength and the weapons of opposing forces, and decisions of the court on the controversial issues were watched with anxiety. "Swisher, p. 419; Frankfurter states that this case is the one instance where Taney "expressed very narrow views as to the scope of the commerce clause, when the interests of a slave state plainly coincided with those views. Frankfurter Felix, The Commerce Clause, Under Marshall, Taney and Waite, Chapel Hill, University of North Carolina, 1987. p. 67."
In addition he had to go to Washington every January for the regular term of the Supreme Court and again in August for a vestigial term at which he alone was required to be present. 54

The case of Strohm v. United States 55 was decided by the Chief Justice in the Baltimore Court in 1840. This case involved the slave trade and again Taney's language showed his hatred for that institution in the decision he rendered. Two schooners were built for a Portuguese merchant, De Sylva, who resided in Cuba, but was established as part owner of a mercantile house in South America. These two vessels were built under the supervision of a Spaniard and Portuguese who were to have command of these schooners when they were completed. The contracts for the construction and equipment of these vessels were given to Strohm and Company, Baltimore merchants. When the "Anne", one of the schooners was completed, it was registered by Strohm and Company as their property. Strohm took the usual oath at the custom-house to obtain American papers for this vessel. Immediately, the vessel was seized and a suit was lodged with the district attorney because the Act of Congress of April 20, 1818 56 had been violated. In giving his opinion of this case, Taney held

54 Swisher, p. 354
55 Catterall, p. 95. Strohm v. United States, 23 Fed. Cas. 240 (Taney 413), April 1840.
56 In 1818 there was an important change in the slave trade legislation. The prohibition was put upon the vessel and was to the effect that no vessel should be fitted out by any person for the purpose of transporting negroes or persons of color from
that Strohm and Company knew this vessel had been constructed for slave trade; and that when criminal purpose is proved to exist in the owner, the factor or the master at the time the vessel is built and equipped, the vessel is subject to forfeiture. Thus the "Anne" was forfeited.

One of the outstanding problems of slavery that caused much irritation between the North and the South was that of dealing with slaves who escaped from their masters and fled northward seeking their freedom. Before the Constitution was adopted, there was a tendency to regard fugitive slaves as free when they had escaped into a free territory. Southern representatives to the Constitutional Convention were firm in their demand for protection of their property rights in fugitive slaves. Consequently, the compromise provision was incorporated in the Constitution providing that "No person held to service or labor in one State, under the laws thereof, escaping to another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered upon claim of the party to whom such service or labor may be due." In 1793, Congress enacted the Fugitive Slave Law which provided that fug-

one country to another, there to be held as slaves, under penalty of forfeiture of the vessel and cargo. The law also provides that every owner, or master or factor who fits out such a vessel in such manner with the intent to employ her in such transportation of negroes, shall be liable to fine and imprisonment. see New York Herald - "African Slave Trade," April 1, 1857.
itive slaves must be restored to their masters, after ownership had been demonstrated before a state or federal magistrate. However, means were employed whereby the slave was aided in his escape.⁵⁷ For instance, Pennsylvania had dealings with fugitive slaves, with the kidnapping of free negroes, and with false claims of ownership. Accordingly, detailed legislation protecting the rights of the negroes within the states had been enacted. In 1826 a law was passed which was intended to prevent the taking of negroes not legally owned by those claiming them. Anyone who claimed a fugitive slave had to present evidence of ownership to a magistrate, who had the negro brought before the court. If the magistrate was convinced that the claim was well founded, a certificate was issued authorizing the removal of the negro from the state.⁵⁸ The constitutionality of this law was challenged in Prigg v. Pennsylvania,⁵⁹ which was brought before the Supreme Court in 1842.⁶⁰ This case concerned a negress who

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⁵⁷ The underground railroad lines, old state laws were enforced and ones were enacted to aid the slaves to escape. On the other hand, with the increase in value of negroes, traders often kidnapped free negroes in the North and sold them into slavery, necessitating laws to protect the rights of the free negroes.⁶¹ These state officers were often personally abolitionists in sentiment. Swisher, p. 420.


⁶⁰ Historically, the Prigg case is one of the most important decided by the Supreme Court of the United States. Knowledge of it is indispensable to an understanding of the American conflict over slavery." Beveridge, Vol. II. p. 69; also see Channing, Vol. VI. p. 89.
had escaped from Maryland into Pennsylvania. When the owner learned of her whereabouts, he sent Edward Prigg to bring her and her child, who had been born during her flight, back to Maryland. In accordance with the Pennsylvania law, Prigg appeared before a magistrate with the negroes. When the magistrate refused to issue the certificate without further proof of ownership, Prigg seized the negroes and took them back to Maryland. Prigg felt justified since he was acting as the agent of the owner.

The State of Pennsylvania issued an indictment for kidnapping against Prigg and demanded that the Governor of Maryland surrender him for trial. The constitutionality of the Pennsylvania law was questioned by the Maryland legislature and a demand was made to have the indictment withdrawn, and this law modified. Both the states came to an agreement that judgment might be entered against Prigg and the case taken to the Supreme Court of the United States. Justice Story delivered the opinion of the court, by declaring that the Pennsylvania law was unconstitutional because some of the provisions interfered with the federal Fugitive Slave Law. He went further, however, in asserting that states could not pass laws dealing with fugitive slaves since the Constitution gave this power to the federal government; and that the States would not be obliged to enforce this provision of the Constitution through state officials.
Chief Justice Taney did not agree with the latter part of the decision. He thought that the states were not prohibited from helping the owner regain his property if found in their territory. In fact, it was the duty of the state to do so. "The Constitution of the United States, and every article and clause in it, is a part of the law of every state in the Union; and is the paramount law. The right of the master, therefore, to seize his fugitive slave, is the law of each state; and no state has the power to abrogate or alter it. And why may not a state protect the right of property, acknowledged by its paramount law? Besides, the laws of the different states, in all other cases, constantly protect the citizens of other states in their rights of property, when it is found within their respective territories and no one doubts their power to do so."61

This decision of the Supreme Court was particularly offensive to the State of New York because it nullified a law of that State. This law, which had caused endless controversy between New York and the Southern States, permitted a jury trial in case of the arrest of a fugitive slave, thereby, rendering the provisions of the Federal Fugitive Slave Law useless. The excitement caused by the Prigg Case wore off temporarily because there were problems of a more pressing nature than slavery to be dealt

61 16 Peters, 336
with. Public attention was focused upon the contests over the Bank, the Texas and the Oregon questions and the struggle between President Tyler and the Whigs. In 1843, however, Massachusetts took advantage of the decision as rendered by Justice Story and enacted a statute which made it a penal offence for a state officer to aid in the enforcement of the Federal Fugitive Slave Law. 62

In 1843 another case involving slavery, the Williams v. Ash 63 case, was before the Supreme Court of the United States. Chief Justice Taney delivered the opinion in favor of the plaintiff, a negro who was suing for his freedom. Gerald T. Greenfield had inherited all the negroes from his aunt Maria with the provision that these slaves were not to be removed from the State of Maryland nor were they to be sold. In either of these events the negroes were to be freed for life. James Ash was one of the negroes who was bequeathed to Greenfield. In 1839, Greenfield sold this negro to Williams. Soon after the transaction, Ash presented a petition stating that he was free. Taney freed the slave.

The question of the admission of slave and free states in-

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62 Warren points out that "Personal Liberty Laws, similar to the law enacted by Massachusetts, were passed by Vermont in 1846, Pennsylvania in 1847, Rhode Island in 1848, Wisconsin in 1857."
p. 87. For a discussion of the Personal Liberty Laws see The National Intelligencer, December 11 and 12, 1860.

63 William v. Ash 1, Howard, 1, (1843).
to the Union was being widely discussed at the time the case of
Strader v. Graham was decided by the Supreme Court in 1851. At
the session of Congress in 1849, it became very noticeable
that the Free-Soilers were planning a campaign to "undermine the
popular confidence of the court and in its impartiality of de-
cision in any case involving even remotely the slavery issue." On
the other hand the Democrats of the North and South stressed,
on every occasion, the lack of bias in the decisions of the Su-
preme Court. The very year this opinion was rendered, John P.
Hale, of New Hampshire attack the Court during the first ses-
sion of the thirty-second Congress in the following manner,
"There is a tribunal which sits beneath this Senate Chamber
which is the very citadel of American slavery...Upon its deci-
sions rest the final hopes of slavery." In this case of Strader
v. Graham, a resident of Kentucky wished to have three of his
negro slaves trained as musicians. These negroes were hired
out to a man who took them from place to place to perform for
public entertainments. The trainer received compensation at
these public performances, and at the same time supervised the

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65 An attempt had been made to secure from the court a definition
of the power of the federal government to prohibit the geogra-
phical extension of slavery in this case. Swisher, p. 484.
66 Warren, II, p. 216
67 Ibid., p. 223
the training of his charges. In his travels he took the negroes across the Ohio River into the State of Ohio. This state was a free state because it had been carved out of the Northwest Territory where slavery had been prohibited by the Ordinance of 1787, as well as by the state laws which declared it a free state. These slaves were returned to their master in Kentucky where they continued to reside for two years. At the end of this time the negroes escaped from their master and were taken on board a steamboat at Louisville into Ohio by a man named Strader. He was prosecuted under a Kentucky law and received punishment for aiding slaves to escape their master. Strader was defended on the grounds that these negroes were not slaves but were free since they had been taken into free territory with the consent of their master. When Strader lost in the lower court he appealed to the Supreme Court of the United States.

Taney delivered the opinion of the court which upheld the judgment of the lower court.\(^6\) He pointed out that the Constitution and the Act of Congress admitting Ohio into the Union gave this state and not the federal government the right to decide the status of the negro in this state. The status of the negroes, as to their freedom or slavery, after their return, de-

\(^6\) The decision rendered in this case was held as a precedent in Dred Scott Case to show the residence of Scott in Illinois did not free him. Steiner, p. 354.
pended upon the laws of Kentucky. Under the laws of this state they were slaves; therefore Strader had been aiding slaves to escape and was subject to punishment. Thus the court did not decide the question of whether the federal government had the power to prohibit the extension of slavery geographically, as the abolitionists had hoped they would. Wisely at this time the court acted upon the points in the case that were necessary for the decision of this particular case. It was not until six years later that the Dred Scott Case, which was now pending in the lower courts of Missouri, caused the Supreme Court to declare the power the anti-slavery faction wanted.69

69 Warren points out that if the Court adhered to its wise decision in this case, when the Dred Scott Case, involving almost identical facts arose, the whole history of the country might have been changed. p. 225.
CHAPTER IV

The Dred Scott Case

Before taking up the Dred Scott Case, a summary of the development of slave legislation in Maryland and its subsequent growth into a national question will be presented, in order to better understand the condition of the institution at the time the Supreme Court of the United States rendered its decision in this case. When, and by whom, the first negroes were brought into Maryland is not known. But in 1642, Governor Calvert bargained with a ship master to have thirteen slaves delivered at St. Mary's. The development of slavery was slow during the first half of the seventeenth century which is accounted for by conditions determining the supply of Negroes...English merchants were slow to enter the slave trade. It was not until the close of the seventeenth century that the English slave trading companies became an important source of supply of negroes to Maryland and Virginia. Slavery had not been established very long, however,

2 Gray, Vol. I. p. 352
3 "To the British the slave trade only supplemented the policy of discouragement of manufactures and the encouragement of tobacco. Brackett, p.41. All material concerning slavery legislation in Maryland is taken from this source unless otherwise indicated by footnotes.
when problems concerning their status arose. The question of whether or not the slave became free by his conversion to Christianity came before the Maryland Assembly in 1664. A message was sent to the Maryland Council, by the House, requesting that an act be passed by the legislature which would require negroes to serve for life. A law was enacted to that effect. In spite of the law, many masters were denying their slaves the right of baptism lest the negroes would be free. Accordingly an act was passed seven years later, in 1671, which declared that conversion or the holy sacrament of baptism should not be taken to give manumission in any way to slaves and their issue, who had become or should become Christians, or had been baptized, either before or after importation to Maryland, any opinion to the contrary not withstanding. Laws were passed in 1664 and 1692 imposing certain conditions upon whites who married negroes. Fines were placed upon masters who allowed such unions as well as upon those performing such marriages.

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1Ibid., p.29; "This problem was common to North and South. American Historical Review, Vol.18, Apr.1913, p.531; Lord Chancellor Hardwicke, one of the greatest lawyers of England, rendered opinions that maintained the legality of slavery and the protection of it against the apprehended effect of Christian baptism. McCrady, Ed., Slavery in the Province of South Carolina, Annual Report American Historical Association for 1895, Washington, p. 671

2The act provided that white women who married slaves should not serve during their husband's lives, but the children of the union should serve for thirty years. This law was changed, so that such women were to serve for the life of the slave and the children "be as their fathers were." Brackett, 33(Md.Arch.1,526,533)
Toward the close of the seventeenth century a tax was placed upon imported slaves. This tax was deemed necessary for the payment of public charges. The tax on negroes was raised to twenty shillings by an Act of 1704. This tax on negroes continued and at times was increased to the need of revenue. In 1754, new duties were imposed to meet the expenditure incurred during the French and Indian War. A duty of two pounds a head was placed on negroes, over and above the still existing duty of forty shillings. By 1771 additional duties were imposed so that, the total duty on importation of negroes was eighty shillings, a head. In 1783, an Act was passed which forbade the importation, by land or water, of slaves for sale in Maryland. By this time, however, the slave trade had become a national issue.

This maritime slave traffic had developed into one of the most important phases of the world's economic life. People in Liverpool became millionaires, and elsewhere in England, Europe, and New England prosperity came to ship owners, distillers of rum.

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5 A tax of twenty shillings per poll tax was placed on Irish servants to prevent too large a number of Irish Papists into this province. After 1732 Protestant servants from Ireland could be imported free. Ibid. p. 42.

7 This money was applied to the school fund.
and manufacturers of other trade goods.\textsuperscript{8} In the South, the abundance of negroes stimulated the production of staple crops. "On the other hand it kept the planters constantly in debt for expensive labor, and it left a permanent and increasingly complex problem of rapid adjustment."\textsuperscript{9} The prohibition of the slave trade was strongly advocated by most of the colonial assemblies,\textsuperscript{10} but with the profits that came to those engaged in the trade, nothing was done by the British Government to relieve the condition. By the compromise in the Constitutional Convention, which was later incorporated into the Constitution of the United States, the slave trade was prohibited after 1808.\textsuperscript{11}

Another phase of slavery that caused worry to the people of Maryland, and which broadened into a national problem was that of

\textsuperscript{8} Gray, Vol. I, p.354. The same opinion is advanced in the Southern Literary Messenger, "Slavery in The Southern States," IX, 1843, pp. 736-44. "Thus at the very beginning, the South had been inflicted with the thick lipped African, fresh from the jungles of the Congo and still reeking with bloody stains of cannibalism. And who had brought most of the black? The ship owners of New England."

\textsuperscript{9} Phillips, p. 45.

\textsuperscript{10} South Carolina and Georgia never attempted to restrain the importation of slaves; see Friedenwald, Herbert, The Declaration of Independence, New York, 1904, p. 130.

\textsuperscript{11} "The external trade ostensibly came to an end in 1808, but there are many instances of the importation of foreign negroes into the United States for years after that time." Channing, Vol. 5, p. 128
the fugitive slave. From the very beginning of the colony the indentured servants ran away which increased the labor problem for the planters. Laws to prevent this were soon passed. The recaptured servant had additional time added to his indenture for the offense. With the disappearance of white servitude, a "runaway" came to signify a negro. To aid masters in the recovery of fugitives, Annapolis was made a sort of clearing house. Not all runaway slaves were brought here, but notice was sent, from all points, of negroes who were being held in custody. Notices in all court houses of runaways who were being held in custody in that particular district. After 1802, sheriffs were obliged by law to advertise runaway slaves in some public newspapers of Baltimore or Washington within fifteen days after their capture. A minute description of the runaway was to be given in the publication. If the owner did not apply after sixty days and give security for all costs, the slave was to be sold to the highest bidder. In 1818, a law was enacted which fixed the penalty for inciting or aiding a runaway to escape, or for harboring a runaway, at six years imprisonment. The newspapers carried accounts and advertisements of the insecurity of slave property. Besides the sheriff's advertisements in the various papers the description of the runaway, with the wood cut of a black man on the run, with a stick and a bundle over his shoulder could be

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12Brackett, p. 76
The federal government had passed an Act in 1793 which aided the master in recovering fugitive slaves. Again in 1850 the Fugitive Slave Law was violently attacked when a more stringent act for the recovery of fugitive slaves was proposed in the Compromise by Clay. At this time the decision of the Supreme Court in the Prigg v. Pennsylvania case was brought up in the Legislature. The Southerners upheld the decision while it was violently assailed by the Northern leaders. This compromise

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1300 DOLLARS REWARD - Ran away from the subscriber, living in Prince George's County, Maryland, on the 18th April last, Negro Tom, about fifty years age, 5 feet, 10 or 11 inches high when erect, but stoops when he walks, quite black, had a mild placid manner when spoken to; he has several scars on his breast from a burn, and one on the back of his neck or head, occasioned by a wound two years ago. Tom has been accustomed all his life to the management of horses, and pretends to be as much of a furrier, will probably offer his services as a waggoner, carriage driver, etc. I will give one Hundred Dollars if he is taken out of the State and District of Columbia, or fifty dollars if delivered to me, and all reasonable charges paid. Clement Brooke, County near Upper Marlboro, Md. from National Intelligencer, April 12, 1825. also see Baltimore Sun, January 4 to 10, 1856.

After the decision of Prigg v. Pennsylvania the states in the North refused to render aid to federal officers in recapturing fugitives because Justice Story said, "that state magistrates did not have to obey that part of the Fugitive Slave Law of 1793 applicable to them and that State Legislatures might forbid them to do so." Beveridge, Vol.II, p.68

Webster and Douglas upheld the Supreme Court decision while Seward and Chase denounced it. "Fewer statements have ever been made in a parliamentary body which aroused such general dissenasion among lawyers, legislators and the great body of people, as did Seward's and Chase's announcement of the doctrine of a 'higher law' than the written constitution and...statutes. Ibid"
brought forth a burst of abolition propaganda16 which kept the issue of slavery conspicuously before the eye of the American voter. The Northern agitators were angry because the new Fugitive Slave Law entrusted its enforcement into the hands of federal magistrates. In Pennsylvania and other northern points there was open resistance to the law.

During the early years of the nineteenth century, countless projects for the social betterment of the masses were begun.17 The first organized movement against intoxicants began in Boston, in 1824, with the formation of societies pledged to abstinence. The use of liquor was quite universal in our country at this time. Free liquor was provided in large decanters for dinner patrons at the inns; and politicians furnished free punch to all voters who attended the barbecues. Within five years after the organization of this movement, more than a thousand similar societies had been formed throughout the country. By 1840 the movement had gathered such momentum that the societies were demanding state laws for the prohibition of the liquor traffic. The woman's rights movement was for the improvement of education for women and gradually expanded until in the forties the followers were demanding equal suffrage. So too, the abolition of slavery

widen its scope during this period. At first the people interested in abolition proposed and fostered a colony in Africa for the emancipated negroes. In the beginning this colonization movement received the sanction of numerous slave owners as well as non-slave owners in the South. This movement underwent a change and in the hands of William Lloyd Garrison became a so-called, "crusade for equal racial rights. The American Anti-Slavery Society was founded; and by 1840, two thousand centers of abolition propaganda existed in all parts of the North."

Territorial expansion of the United States provoked additional strife between the North and South. It was this specific issue of the slavery question that caused so much irritation between the two sections of the country from the adoption of the Constitution until the close of the Civil War. At the close of the War of 1812, there were nine free states and nine slave states in the Union. Then in 1816, Indiana, which had been carved out of the Northwest Territory, was admitted as a free state. The following year Mississippi, organized as a slave state, was admitted. Then in 1818, Illinois came into the Union as a free state. Late that same year Missouri applied for admission, but was refused. For two and one half years the House and Senate debated about the admission of this state. In the meantime, Georgia, in 1819, had been admitted as a slave state and Maine,
which had separated from Massachusetts in territory and politics, applied for admission. Maine's request was blocked in the Senate until Missouri could come into the Union as a slave state. The request was granted. The Missouri question was not settled until 1820, then only temporarily, when the compromise provided that Missouri would be admitted as a slave state and that the rest of the territory in the Louisiana Purchase lying north of Missouri's southern border was to be free territory.

Toward the close of the war with Mexico, and the expectation that additional territory would be annexed to the United States, David Wilmot, senator from Pennsylvania, proposed that slavery should not be permitted in any that would be acquired from Mexico. Th9, when the vast territory was added to our country after the war, the South felt that control of this new land should be equally divided between the two sections. Supporters of the Southern cause insisted that the lines of the Missouri Compromise should be drawn to the Pacific. Yet, the North was just as strong in its demands to keep slavery out of

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19Adams, p. 238. This proposal was annexed to an appropriation bill for $3,000,000. The bill, with the proviso passed the House, on February 15, 1848, but the Senate, with a pro-slavery majority, had the proviso stricken from the bill on March 1. Then on March 3, the House accepted the bill as passed by the Senate. Also see Miller, Marion M., Great Debates in American History, Vol. 4, New York, Current Literature, 1913, pp. 134-132.
the newly acquired territory.

When the Thirty-first Congress met in 1849, the views of the Southern conservatives were almost as alarming as those of the Southern "fire-eaters." They talked of disunion should the North persist in encroaching on Southern rights. On January 29, 1850, Henry Clay proposed his famous compromise that was designed to "preserve the peace, concord and harmony of the union, by settling the controversy between the States, arising out of the institution of slavery." Clay's resolutions proposed the admission of California as a free State; the remaining territory acquired from Mexico was to be admitted as slave or free, depending upon the desires of the residents; an effective and stronger Fugitive Slave Law; the abolition of the slave trade in the District of Columbia, but slavery would be allowed there at the insistence of Maryland. During these heated sessions of Congress the views of the South were expounded by Jefferson Davis, the future president of the confederacy, and Calhoun, who was so weak that he had to have his speech read by James Mason, senator from Virginia. Both these leaders stressed the fact that the Union would be dissolved unless the North took heed of the grievances of the South. The Northern views were upheld by Seward and Chase. Seward asserted that he never would vote to have

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20 Beveridge, p. 79. see Cong. Globe, 31st Cong. 1st Sess. xxi, Pt. 1; 244-6
slavery continue in the District of Columbia. In reference to the territories and slavery, he declared that the Constitution "only regulated our stewardship devoting to domain, to justice, to defense and to liberty. And a higher law than the Constitution devoted the territory to the same noble end." Both these northern leaders scorned the threat of secession by the South. Webster, like Clay, sought to have a compromise between the extreme propagandists on both sides. The more conservative leaders were anxious to preserve the Union and hoped the Compromise would settle this sectional strife. But they were to learn by its adoption, that this cherished hope was impossible. The feelings of discord had grown too deeply. Northern abolitionists were blind to any question, but the freeing of the black man.

The discovery of gold in California was partly responsible for a quick settlement of the newly acquired territory. To promote territorial expansion many leaders advocated the building of a transcontinental railroad. Again the North feared that a Southern route would aid the spread of slavery while the Southerners were opposed to any measure which might aid the North.

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21 Miller, p. 156
22 In spite of the fact that a Southern convention has been called to meet in Nashville on June 3, 1850.
23 "The plight of the red man, for example, left the abolitionists cold, though they were willing to pull down the whole frame of America if need be, to free the black man." Adams, p. 248.
Stephen A. Douglas, of Illinois, who was most anxious to have a northern transcontinental railroad, aided in the formation and passage of the Kansas-Nebraska Act which was adopted in 1854. The Act provided that two states were to be carved from the "sacred" Indian territory, which would be admitted into the Union as free or slave according to the votes of the respective residents in the areas. Thus Douglas and his group were willing to pay the price of a Northern transcontinental railway. The entire North was not in accord with the plan as witnessed by the heated debates which took place in Congress. The Missouri Compromise was practically repealed by this Act, which heaped additional abuse upon the South.

Immediately, the North went into action to populate Kansas with people of Northern sentiments. Abolition, Emigrant Aid Societies, and other groups sent settlers into the region with "Bibles and breech-loaders, not to make homes, hunt gold, or raise hogs, but to vote the Territory on the side of freedom and non-slavery." Slave holders, on the other hand, could not transport their slaves into the region, due to the expense and risk. On election day the slave owners, armed with rifles, rode over

24Ibid., p. 246
25Miller, p. 258-369.
26Adams, p.246. The North had just been indulging an orgy of fanaticism against foreigners and Catholics, but the threat to extend slavery threw all minor crusades into discard.
27Ibid., p. 247.
from Missouri and stuffed the ballot boxes. Frequently "blood was spilled" in the encounters of these "border ruffians" and the Northerners. However, all the fighting for "Bleeding Kansas" was not done on the soil of that territory. In the senate, Sumner of Massachusetts delivered a violent speech on the "Crime of Kansas" which resulted in his being beaten into insensibility by Preston Brooks, of South Carolina, a member of the House. Thus the nation was aroused to this high tension when, a year later, in March 1857, the Supreme Court of the United States rendered its decision in the Dred Scott Case.

This decision was considered important, at the time, because of its effect upon the country and the slavery question. The decision was made public just after the inauguration of James Buchanan, a Northern Democrat, who was eager to have the slavery question settled. Buchanan had been accused of having been in conspiracy with Taney. This accusation was brought about by the inference made by the President in his inaugural address when he said, "A difference of opinion has arisen in regard to the time when the people of a Territory shall decide this question (that of slavery) for themselves. This is, happily, a matter of little practical importance, and besides, it is a judicial

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question, which legitimately belongs to the Supreme Court of the United States, before whom it is now pending, and will, it is understood, be speedily and finally settled. To their decision, in common good with all citizens, I shall cheerfully submit, whatever this may be, though it has been my individual opinion that under the Nebraska-Kansas Act the appropriate period will be when the number of actual residents in the Territory shall justify the formation of a constitution, with a view to its admission as a State into the Union;...29

The case referred to by the President was that of Dred Scott, a negro slave, who was owned by Dr. Emerson, an army surgeon. This negro was purchased from Peter Blow, an important business man of St. Louis.30 When Dr. Emerson was sent to the military post at Rock Island, Illinois, in 1834, he took Dred Scott with him. For two years they resided here, Scott as a slave, in spite of the fact that Illinois was free territory. After two years, Dr. Emerson was ordered to Fort Snelling,31 an outpost in the Wisconsin Territory, which was near the present

29 The New York Herald, March 5, 1857. Justice Grier of Pennsylvania had written to Buchanan telling him of the differences that had arisen in the Court over the questions in the case—see—Warren's, Chap.XXVI. Beveridge, Vol. II. p.466; Steiner Swisher, p. 499.

30 Scott had been born on the Blow plantation in Virginia some time during the Presidency of Jefferson. Beveridge, p. 454.

31 This was located in the northern portion of the Louisiana Purchase where slavery was forbidden by the Missouri Compromise.
city of St. Paul, Minnesota. At this post Dred Scott married a
negress, Harriet, who was owned by an army officer. Dr. Emerson
purchased Harriet, so that, the family might be kept together.32
A short time afterwards, Dr. Emerson was transferred back to
Missouri—taking Dred Scott and his wife with him. On the way
back a daughter was born to them before the family had reached
the Missouri line. A year later another girl was born in St.
Louis. This negro family continued to live as slaves of Dr.
Emerson when, because of ill health, he retired from the army
in 1842. Two years later, at the death of the doctor, the ne-
groes became the property of Mrs. Emerson. According to the
will left by Dr. Emerson, the property was left "in trust for
his child."33 Mrs. Emerson was not desirous of owning slaves,
but could not sell them nor emancipate them "under the terms of
her husband's will."34 Therefore, Scott and his family was left
to their own devices when Mrs. Emerson went to live in Massachu-
setts.35 Before long the negroes became charges of Taylor Blow,
a son of his old master and a former playmate of the negro. This
situation became too burdensome for Blow since the negroes were
the property of another. Blow brought Scott to the attention of
Field and Hall, a well known firm in St. Louis to discover some

32 Dred Scott v. Sanford, 19 Howard, 393 (1856).
33 Steiner, p. 329.
34 Hill, Frederick Trevor, "Decisive Battles of Law: Dred Scott v.
35 Hill points out that Scott might have enjoyed his freedom to
legal solution to the difficulty. A suit was brought against Mrs. Emerson in a Missouri Court on the grounds that Dred Scott was free because of his residence in free territory. The case dragged through the court for three or four years before a decision was rendered in favor of Dred Scott. Mrs. Emerson appealed to the Supreme Court of the state which delivered an opinion in March, 1852, reversing that of the lower court. This higher court ruled that Scott returned voluntarily, and resumed his status as a slave under the laws of the state.

In the meantime, Mrs. Emerson had married Dr. Calvin Clifford Chaffee, of Springfield, Massachusetts. Chaffee, a representative from his state to the Thirty-fourth Congress, was a Know-nothing and an abolitionist. Dr. Chaffee's chief interest in the case of Dred Scott was to discover whether a slave became free automatically when taken by his owner into free territory. Accordingly, an endeavor was made to have the case

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36 "There is little likelihood, however, that it was this nice point of law or any humanitarian impulse that actuated the attorneys. Indeed there is every indication that their motives were anything but disinterested, for the papers show that their main object was to pave the way for a suit against the Emerson estate for the twelve years wages to which Scott would be entitled should the Courts declare that he had been illegally held as a slave since 1834." Ibid.

37 "At this point politics comes upon the stage," Beveridge, p.455
brought into a federal court.\textsuperscript{38} To avoid bringing Mrs. Chaffee's name into the suit,\textsuperscript{39} the ownership of Scott was transferred to her brother, John F. Sanford, of New York.\textsuperscript{40} Since Sanford lived in New York and Dred Scott in Missouri, assuming both were citizens, federal jurisdiction could be secured in the United Circuit Court where a suit for assault against Sanford was brought.

Sanford went to St. Louis and accepted the summons the day that Lawyer Field filed the Scott suit. Sanford filed a "plea in abatement" which was to be the subject of endless discussion in the years that followed; it was contended in the plea that the court had no jurisdiction in the case, because Scott was not a citizen of Missouri "because he is a negro of African descent; his ancestors were of pure African blood, and were brought into this country and sold as negro slaves." Field demurred to this plea, contending that the facts stated by Sanford did not prove that Scott was not a citizen, and therefore, that the Court did have jurisdiction. The judge, Robert W. Wells, a United States District Judge, agreed with Field on this point - thus the case

\textsuperscript{38} Soon after the final decision in Missouri, Chauvette, E. L. Baume, a lawyer related by marriage to Blow, approached Hoswell M. Field, in reference to having a suit for freedom brought by Scott in the Federal Court." Steiner, p. 330.

\textsuperscript{39} Swisher points out that the transfer was made to protect Chaffee's reputation as an abolitionist and to conceal the friendly character of the suit. p.486. also see Beveridge, p. 456.

\textsuperscript{40} His name appears as Sandford on the Records.
was argued before a jury. When all the facts had been submitted the Judge instructed the jury to bring verdict against Scott. "It is obvious that from the first the whole case was arranged for appeal to the Supreme Court of the United States where it was promptly taken on writ of error." The case was filed during the term which began in December, 1854.

The Supreme Court was behind with its work, and the case was not reached until February, 1856, more than ten years from the date of its original action. At this time Taney had just returned to the bench following the illness and grief occasioned by the death of Mrs. Taney and their daughter Alice. From February 11 to 14, the case was argued by Montgomery Blair of St. Louis for Dred Scott; and by Henry S. Geyer, a native of Frederick County Maryland, who had recently been elected United States Senator from Missouri, and Reverdy Johnson, for the master, Sanford. At this particular time the Dred Scott case was not im-

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41 Beveridge, p. 457. also see Warren, pp. 281-282.
42 Dred Scott's appeal bond was signed by H. Blow. Steiner, p. 331.
43 Lincoln, "when he delivered his famous speech in June, 1858, claring "The House Divided Against Itself Shall Not Stand" said "Why was the court decision upheld?...Why the delay for reargument? Why the incoming President's advance exhortation in favor of the decision? These things look like the cautious petting of a spirited horse preparatory to mounting him, when it is dreaded that he may give the rider a fall." Delaplaine, Edward S. The Dred Scott Case, Frederick, Chief Justice Taney Home, 1934.
44 Tyler, p. 328.
important and was "ignored by the papers." During this conference the judges debated and disagreed as to whether the question of Dred Scott's eligibility to sue in a federal court was involved. At the December term the case was reargued and the majority decided that the question was not before them for consideration. A majority of the judges came to the conclusion that the case should be decided upon the narrower points; that Dred Scott's status in Missouri, after his return to that state, must depend upon the law of Missouri. Under those laws the highest court of Missouri had adjudged him to be a slave and not a citizen, its conclusion must be accepted by the Supreme Court of the United States. Judge Nelson was assigned the duty of writing the opinion of the court, and did write an opinion to that effect.

Shortly after this assignment was made to Justice Nelson, the other members of the court were informed that Judges McLean and Curtis intended to write dissenting opinions discussing the constitutionality of the Missouri Compromise. Because of this dissention the majority changed their minds as to the nature of

45 Palmer, Ben.W., Marshall and Taney, Minneapolis, University of Minnesota, 1939. p. 220
46 Both these justices were anti-slavery in sympathy. "Justice McLean, a candidate for the Republican presidential nomination had determined to make political capital of the controversy by writing a dissenting opinion, reviewing at length the history of African slavery in the United States from the Free-Soil point of view." Corwin, Edward S., "The Dred Scott Decision, In the Light of Contemporary Legal Doctrines," American Historical Review, Vol. 17, Oct. 1911 to July 1912. p. 53.
the decision. "This action forced the majority of judges to reconsider the necessity of discussing that point as well themselves. Judge Wayne became convinced that it was practicable for the court to quiet all agitation on the question of slavery in the territories by affirming that Congress had no constitutional power to prohibit its introduction. With the best intentions, with entirely patriotic motives, and believing thoroughly that such was the law on this constitutional question he regarded it as eminently expedient that it should be so determined by the Court." Justice Wayne moved that the assignment given to Justice Nelson to write the opinion of the Court be withdrawn and that the Chief Justice should give the views of the Court covering all the points involved." In this way it came about that Chief Justice Taney took up the task of writing the opinion of the majority of the Court in the Dred Scott Case which was to heap abuse upon him as soon as the decision was made public.

On March 6, 1857, as soon as the Court assembled for business, the eighty-one year old Chief Justice began to read, in a

47Warren, p. 293.
48Wayne had not talked to the other Justices before he made his proposal to the full Court in conference." Tyler, p. 364.
low and feeble voice, the opinion of the court. Almost at once Taney came to the main question of Dred Scott's citizenship:

"Could a negro, whose ancestors were imported into the country and sold as slaves, become a member of the political community brought into existence under the Constitution of the United States and as such become entitled as citizens to sue in a court of the United States as specified in the Constitution?" Taney said, "No!" Then in support of this answer he gave an historical account of how the negro race was regarded at the time the Declaration of Independence was adopted, the Constitution formed and ratified, and the government established. Taney presented this argument in the following manner:

It is difficult at this day to realize the state of public opinion in relation to that unfortunate race...at the time of the Declaration of Independence, and when the Constitution was framed and adopted. But the public history of every European nation displays it, in a manner too plain to be mistaken.

They had for more than a century before been regarded as being of an altogether inferior order; and unfit to associate with the white race, either in social or political relations; so far inferior, that they had no rights which the

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50 Greeley's Tribune attacks Taney because of his voice. "However feeble his voice might have been, what he had to say was still feeble." Plumer, p. 206.

51 19 Howard, 401.
white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion.

This view of the status of the Negroes was imposed upon the colonies by England. All the colonies had slaves at the time of the Revolution and the colonial laws forbade the marriage between white and black even though the negroes were free. Taney then considered the Declaration of Independence to show that the enslaved negro was not considered as part of the human family.

Taney continued his historical argument by showing that the

52 These words were flashed before the country by the abolitionists. "They had no rights which the white man was bound to respect." see Chicago Daily Tribune, March 16, 1857. These attacks continued even after the death of Taney. In 1865, a pamphlet entitled, The Unjust Judge, was widely circulated. This was an extremely bitter attack upon the chief Justice which indicated that Taney was the "worst of all judges except Pontius Pilate." The Unjust Judge "A Memorial of R.B. Taney," N.Y. Baker and Goodwin, 1865.

53 19 Howard, p. 407
54 ibid., p. 409
States did not consider negroes as citizens after the Union was formed as evidenced by their court decisions and legislatures. He indicated specific cases in Kentucky, Tennessee, and Connecticut to prove his point. Further, that laws were enforced in New Hampshire, Massachusetts, Connecticut and Rhode Island.

The legislation of the states therefore, shows in a manner not to be mistaken, the inferior and subject condition of that race, at the time the constitution was adopted, and afterwards, throughout the thirteen states by which that instrument was framed; and it is hardly consistent with the respect due to these states, to suppose that they regarded at the time, as fellow citizens and members of the sovereignty, a class of beings whom they had thus stigmatized; whom, as we are bound, out of respect to the states sovereignties, to assume they had deemed it just and necessary thus to stigmatize, and upon whom they had impressed such deep and enduring marks of inferiority and degradation; or that when they met in convention to form the constitution, they looked upon them as a portion of their constituents, or designed to include them in the provisions so carefully inserted for the security and protection of the liberties and rights of their citizens. It cannot be supposed that they intended to secure them rights, and privileges, and rank, in the new political body throughout the Union, which everyone of them denied within the limits of its own domain. More especially, it cannot be believed that the large slaveholding states regarded them as included in the word citizen, or would have consented to a constitution which might compel them to receive them in that character from another state.55

55Ibid., 416.
Taney contended that the negroes could never be made citizens under the Constitution as it stood. Neither the State nor the federal government could make them be citizens. Perhaps a state might give an individual all the privileges of citizenship "within its boundaries," but that would not make him a citizen in a state where such citizenship was not permitted. If the Constitution seemed unjust in this respect, then an amendment, according to the method prescribed, within the "fundamental law," was the only means of altering the situation. Negroes were thus condemned to stand outside the pale, as long as the constitution remained unchanged.

After Taney had decided that Scott was not a citizen of Missouri, and therefore not entitled to sue in the federal courts on the basis of his citizenship, the Chief Justice then considered the claim of Scott's that he became free, and a citizen when he had been taken into a territory where slavery had been prohibited by law. The law that was considered was the Missouri Compromise. The main question in connection with this law was the constitutionality of this Act of Congress which prohibited slavery in the Louisiana Territory north of the thirty-six degrees thirty minutes north latitude. Taney presented the argument that Congress had the right to acquire new territory and govern it until the region was ready for statehood.

Thus the rights of property are united with the rights of persons, and placed
on the same ground by the fifth amendment of the Constitution, which provides that no person shall be deprived of life, liberty and property, without due process of law. And an Act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular territory of the United States, and who had committed no offense against the laws could hardly be dignified with the name of due process of law.56

Taney then showed that there is no difference between property in a slave and other property. The Constitution, he pointed out, recognized the right of an owner merely because he took his property into a particular territory of the United States. Therefore, the opinion of the Court was that the Missouri Compromise was null and void.

The Chief Justice quickly disposed of the claim that Dred Scott was made free by his residence in Illinois. He indicated that this particular point had been settled by the court in an identical case.57 In the present case, since Dred Scott returned to Missouri as a slave he was subject to the laws of Missouri as expounded by its Supreme Court. Scott was, therefore, a slave:

56 Ibid., 450
57 The case referred to was that of Strader v. Graham, 10 Howard 82 (1850).
not a citizen and not able to sue in a federal court. 58

Each of the other Justices of the Supreme Court delivered his own opinion of the case. Justice Wayne presented his four page opinion after Taney's. In the summary of his opinion, Justice Wayne, believed that "the case involves private rights of value and constitutional principles of the highest importance about which there had become such a difference of opinion, that the peace and harmony of the country required the settlement of them by judicial decision." 59 Justice Nelson followed with the opinion that was originally intended to be the opinion of the Court. He maintained that the decision of the Missouri Court "must be admitted as the settled law of the State," in this case. Therefore, Scott remained a slave. Justice Grier's opinion was contained in two short paragraphs which concurred with Taney's and Nelson's opinions. Justice Daniel followed with a twenty-four page opinion that emphasized the importance of the case and included an elaborate account of slavery and Roman Law. 60 Justice Campbell included a discussion of various historical questions in his twenty-five page opinion. Justice Catron, in

58 "The third point was substantially that which Nelson made in the opinion which he had written as the opinion of the court. It was all that was really necessary to the decision of the case." Swisher, p. 509.

59 Steiner, commenting on the opinion of Justice Wayne says, "In other words the court must settle a political situation...the union loving Georgian slaveholder, who largely caused the Court's decision to take so wide a scope." p. 355.

60 Steiner indicates this account is inaccurate. p. 357.
a ten page opinion indicated that the Missouri Compromise violated the terms of the treaty by which the Louisiana Territory had been obtained. The two remaining judges, McLean and Curtis, dissented from the other seven in maintaining that Scott was a free man. McLean declared that negroes could be citizens within the meaning of the Constitution; and that the language of the Constitution gave Congress power to regulate slavery in the territories. Furthermore, a human being, even a slave, was not chattel. And, lastly, that the court had no jurisdiction to consider the constitutionality of the Missouri Compromise.

Curtis pointed out that free Negroes, even though descendants of African slaves, were included as citizens in five states at the time the Constitution was adopted. That a citizen of a state is also a citizen of the United States, he further contended. And, finally, he brought out that the Constitution gave Congress power to make all needed rules and regulations for territories.

Mikell believes that Curtis failed completely in his endeavor to disprove Taney's argument. "The dissenting opinion of Justice Curtis has been thought by some to furnish a complete answer to the argument of Taney on this part of the case... The main positions he not only leaves untouched, but only makes a skillful and misleading feint of attacking. When Taney shows that negroes were not generally regarded as citizens of the states at the formation of the government, it was all that was necessary to show. Curtis cites the laws and Constitutions of five states, giving the right to vote to every male inhabitant, but does not notice Taney's proof that citizenship did not necessarily follow the bestowal of franchise; that aliens were in some states allowed to vote." p. 157.
The opinion of the Supreme Court, as delivered by the Chief Justice, was the motive that set abolitionist propaganda circulating at top speed. "It is safe to say that no case that ever came before an Anglo-Saxon tribunal was fraught with more momentous consequences, and that no judge has ever been more bitterly assailed, even the infamous Jefferies, than was Taney for his opinion in this case."\(^62\) Horace Greeley and the New York Tribune led the attack upon Taney. In an editorial on March 7, 1857, his Tribune said, "The decision we need hardly say, is entitled to just so much moral weight as would be the judgment of those congregated in any Washington bar room."\(^63\) The Springfield Republican, an influential anti-slavery newspaper, declared "that the Supreme Court had given no judgment and had simply dismissed the case for want of jurisdiction. Everything beyond this uttered by the Court is just as binding, as if uttered by a Southern debating society and no more."\(^64\) Ellis in an article in the Atlantic Monthly, said that Taney "will most likely, after the traitor leaders, be held in infamous remembrance; that he covered the most glorious pages of his country's history with infamy and insulted the virtue and intelligence of the world...But those

\(^{62}\text{Ibid., p. 149}\)
\(^{63}\text{New York Tribune, March 7, 1857.}\)
\(^{64}\text{Channing, Vol. VI. p. 195}\)
he served themselves with the sword out of the knot he so securely tied; his own state was tearing off the poisoned robe in the very hour in which he was called before the Judge of all...The work that he had watched for years and generations, the work of evil to which all the art of man and the power of the State had been subservient,..."65

Not only was Taney berated by the press and periodicals, but stump speakers, politicians, and ministers took occasion to stigmatize him even at his death as an "Unjust Judge."66 Senator Hale of New Hampshire called the decision "an outrage upon the civilization of the age and a libel upon the law."67 Seward, in the United States Senate, in March, 1858, pictured the Dred Scott Case as "one trumped up and managed by the slavery interests from beginning to end."68 Taney was so enraged by this speech that he said if Seward had been elected president he would have refused to administer to him the oath of office.69 Sumner spoke of the decision as "that atrocious judgment...false in law, false

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66But what else could be expected of those, who as Judge Black said of them: applauded John Brown to the echo for a series of the basest murders on record. They did not conceal their hostility to the Federal and State Governments, nor deny their enmity to all laws which protected white men. The constitution stood in their way and they cursed it bitterly." Christian, American Law Review, Vol. 46, Jan. and Feb. 1912.
67Palmer, p. 209
68Swisher, p. 520. It is pointed out that 20,000 copies of this speech were printed and distributed. p.393. Steiner.
69Tyler, p. 391.
in history... a disgrace to the country, an insult to conscience, to reason and to truth.™70 Later when the discussion of a bill to provide that a bust of Taney be placed in the court room, Sumner again showed there was no end to his hatred when he said, "The name of Taney is to hooted down the pages of history. Judgment is beginning now and an emancipated country will fasten upon him the stigma he deserves."71 A radical speaker in the North, Frederick Douglass, told an abolition audience in New York, "that a huge judicial lie had been palmed off upon you."72 Senator Robert Owen, of Oklahoma, declared "that the decision of the Supreme Court of the United States in the Dred Scott Case was fatal and unwise, the deadly consequences of which was the war of rebellion."73

Some of the legislatures of the Northern states showed their indignation by their actions. "In New York the legislature appointed a joint committee to consider what measures were necessary to protect the rights of her citizens, and upon that committee's report, passed resolutions to the effect that the State would not allow slavery within its borders, and that the Supreme Court, having identified itself with a sectional and aggressive

70Plamer, p. 209
71Warren, p. 393-394.
party" had 'impaired the confidence of the people' in the tribunal. 74 In April, 1857, the legislature of Maine, passed a resolution, "That the extra judicial opinion of the Supreme Court of the United States, in the case of Dred Scott, is not binding, in law or in conscience, upon the government or citizens of the United States, and that it is of an import so alarming and dangerous as to demand the instant and emphatic reprobation of the country." 75 That same month the legislature of Ohio officially denounced the decision and in November of that year Vermont did likewise. 76 Christian points out that the North was just as wrong as the South was in its reaction to the decision of the Supreme Court as the South was in seceding. 77

The reaction of the South, on the other hand, was very favorable to the decision rendered by the Supreme Court. "Vice-President Breckenridge was so pleased with Taney's opinion that he had it printed at his own costs and scattered throughout Ken-

74Steiner, p. 392.
76Smith, p. 173.
77"Many of the Northern States refused to abide by that decision and these actually nullified the provision of the constitution and the laws passed in pursuance thereof in reference to the rendition of fugitive slaves, by the enactment of fourteen of these of what they were termed "personal liberty bills", thus making these states guilty of nullification, an offense against the constitution with far less reason and justification than ever the North can allege against the action of the South in seceding from the Union." p. 14.
Southern and Democratic papers denounced the assault and upheld the decision. The Washington Union stated "that the decision came at the right time and would restore harmony and fraternal concord throughout the country." But the strength of the abolitionists proved too great for the fulfillment of this cherished Southern wish. Dred Scott and his family were emancipated shortly after the decision was rendered. Neither Sanford nor Dred Scott lived to witness the Civil War. John A. Sanford died almost directly after the decision, and Scott fell victim to consumption on September 17, 1858, in St. Louis, his death being scarcely noted in the fierce political excitement then raging. But though he died in poverty and neglect, and the location of his grave is uncertain, the famous cause with which his name is linked will outlast any monument.

The unfair wrath that was heaped upon Taney by the abolitionists was deeply felt by the aged Justice. Yet Taney believed
that the dignity of his office would not allow any public de-
nunciation of these attacks either by himself or his friends. However, he has expressed his feelings upon the subject in a
letter written to Franklin Pierce. "You see I am passing through
another conflict, much like the one which followed the removal
of the deposits, and the war is being waged upon me in the same
spirit and by many of the same men who distinguished themselves
on that occasion by the unscrupulous means to which they resorted.

"At my time in life when my end must be near, I should have
enjoyed to find that the irritating strifes of this world were
over, and that I was about to depart in peace with all men and
all men in peace with me. Yet perhaps it is best as it is. The
mind is less apt to feel torpor of age when it is thus forced
into action by public duties. And I have an abiding confidence
that this act of my judicial career will stand the test of time
and the sober judgment of the country, as well as the political
act of which I have spoken...."  

True, to the prediction of the courageous Chief Justice,
"this judicial judgment" has stood the "test of time" and the

Shank, Hon. John A., Chief Justice Taney," The Green Bag,
"Letter from Chief Justice R.B. Taney To Franklin Pierce,"
"sober judgment of the country" has begun to reveal the case in its true light. The main criticism of the opinion of the Court, by authors today, is that the Court went too far in its judgment. Swisher, who has already been cited makes this point clear. 

Shauck, makes the following comment. "The opinions in the case and subsequent statements made by the court attempted that which is always perilous, namely, to do more than to determine the rights of the parties." Smith reveals the same attitude when he declares, "The only objection which the student of political science or constitutional law can have to Taney's opinion is that it was not necessary for the court to deal with all the questions that were discussed." In reference to the above mentioned comments, the court went no further in its opinion in the Scott Case than it did in rendering the opinion in the Strader v. Graham case which was delivered in 1851. Taney considered the Strader case as a precedent, established by the Supreme Court, to clinch the point that Scott's residence in Illinois did not free him.

Albert Mallison indicates a discrepancy in the Dred Scott case as far as the first points decided upon by the Court. This writer comments on the fact that Taney cited laws and decisions.

84 See Swisher, p. 509 
85 Shauck, p. 566 
to prove that Dred Scott was not a citizen, yet he heard a case started by a negro, in the William v. Ash case. The case of William v. Ash was not presented to the Court to determine the citizenship of the negro, but to render a decision upon his plea for freedom. In the Dred Scott case, the question of citizenship had been raised by the plea in abatement in the lower court, therefore, Taney was being consistent in his judgment upon this case.

An accusation was made that the Dred Scott decision as rendered by the Court was political. Cairnes, Professor of Jurisprudence at Queen's College in Galway, stated, "The judges of the Federal Court were appointed by the President and approved by the Senate. In the Senate the Slave party was predominate and had hereto been able to nominate the President. It had, therefore, the appointments to the national judiciary in its own hands." This argument has been refuted by Warren, when he point out that the four justices appointed to the Supreme Court since 1840, when the slavery question became a vital political issue, only one, Justice Campbell was a Southerner with pro-slavery views. He was appointed to the Court to fill Judge McKinley's vacancy, who had been imbued with the same opinion on slavery. All the other judges had been appointed "to the Court before the

slavery question had become a political and sectional issue. So far as the charge that Judges were appointed or were acting for political reasons was concerned, the South had more just reason to complain than the North; for the only Judge who had taken an active part in politics, or who had openly expressed his views on crucial political questions was a Northern Judge - John McLean of Ohio.\(^89\)

The second point in the court decision, dealing with the Missouri Compromise, is the one which the majority of the Court had reconsidered in making its decision. The constitutionality of this Compromise was a burning political question at the time Dred Scott's Case was before the Supreme Court.\(^90\) These judges knew that a judicial opinion was bound to bring resentment.\(^91\) It seems that Taney was anxious to preserve peace and knew that the

88Cairnes, J.E., The Slave Power, New York, Carleton, 1862, p.125
89Warren, II, p. 269.
90During the argument of the case, the fact became public (therefore not generally known) "that the negro was still owned by Mrs. Emerson the wife of an abolitionist Congressman from Massachusetts." Ibid., p. 301.
91"Whatever its decision might have been, it became inevitable, under the circumstances, that one political party or another, according to the views or prejudices of its members, was destined to be dissatisfied with the result." National Intelligencer, May 29, 1857.
majority of the Court would declare the Missouri Compromise un-constitutional. Therefore, if the silence of the court would quiet the tempest, it would be wisest to render judgment upon the barest points, as the lower court had done. When the two members of the bench refused to listen to the majority, but heed ed the words of politicians, Taney with the majority, agreed to decide the case upon its broadest aspects. Thus, the Supreme Court of the United States employed one of its most important functions when it judged the Missouri Compromise as unconstitutional.

The paroxysm of passion into which the country has suddenly been thrown, appears to me to amount almost to delirium. I hope that it is too violent to last long, and that calmer and more sober thoughts will soon take its place; and that the North, as well as the South, will see that a peaceful separation with free institutions in each section, is far the better than the union of all present states under a military government and a reign of terror preceded too by a civil war with all its horrors,...But at present I grieve to say passion and hate sweep everything before them." Chief Justice R.B. Taney to Franklin Pierce, Washington, June 17, 1861, American Historical Review, Vol. 10, p. 368.

In several instances Warren indicates that the loss of confidence of the Court was due to the "false and malignant criticism of the body by the Northern press. Had the country been influenced by editorials not as "hysterical and false" as those contained in the Tribune and the Independent, the courts action would have had less effect upon history." pp. 315-17.
CHAPTER V

Two Other Slave Cases And Conclusions

The year following the Dred Scott Case, in 1858, Taney rendered what he considered "one of the most satisfactory opinions" in the case of Ableman v. Booth. This case concerned the fugitive slave, Joshua Glover, who was owned by a farmer, Benammi S. Garland. Joshua, who was forty-five years old and of dissipated habits, was employed as a farmhand on the Garland farm about four miles from St. Louis. In the spring of 1852 the negro ran away into Wisconsin and was employed in a mill a few miles north of Racine. Garland learned of the whereabouts of the slave and in March, 1854, accompanied the United States marshall, Charles C. Cotton, to a cabin where Glover was playing cards and seized him. Glover who was severely beaten in the struggle which ensued during his capture, was taken to Milwaukee, Wisconsin, and confined in the county jail. The negro was held in custody under a warrant issued by the United States District Judge, in accordance

1. Tyler, p. 392. Warren points out that the appeals of this case and the Dred Scott case were both docketed in the Supreme Court in December, 1854. The Booth case aroused the greatest attention and excitement at the time they were pending, but the Dred Scott received attention from the jurists and historians. Vol. II
3. 3 Wis., 1; 3 Wis. 157 and 11 Wis., 517.
with the provisions of the Fugitive Slave Law of 1850.

Sherman M. Booth, a rabid abolitionist and the editor of the Wisconsin Free Democrat, rode on horseback up and down the streets of the town calling all the people who were opposed to "slave catchers" to assemble at two o'clock, the same afternoon, March 11. The mob that gathered at the designated spot was led by Booth to the jail where Glover was held. Here they battered in the door, overpowered the marshall and aided the negro to escape to Canada. Booth was accused of having aided the escape of a fugitive slave from the deputy marshall. On May 26, Booth was arrested and committed to jail under the care of a federal marshall. On the following day Booth applied to a judge of the Wisconsin Supreme Court for a writ of habeas corpus, on the grounds that Stephen V. R. Ableman the marshall retained him illegally from his liberty because the arrest was made under the Fugitive Slave Law of 1850 which was unconstitutional. When Booth was brought before this associate Justice of the Supreme Court of Wisconsin, A.D. Smith, as directed by the habeas corpus, the "abolitionist state judge" maintained that Booth's imprisonment

4 That law, a part of Clay's last compromise, so far from settling the slave question, had greatly exacerbated conditions and by its questionable provisions, had aroused the wrath of the people of the Free States. In several of the Northern States, so-called Personal Liberty Laws were passed, in the effort to nullify the Federal Statute." Steiner, p. 425.
5 Swisher, p. 526.
was unlawful and freed him. Ableman then appealed to the State Supreme Court, as a body. The Court affirmed the decision of the judge that Booth be released. The federal marshall, Ableman, then sued out a writ of error to the Supreme Court of the United States.

On January 4, 1855, while the case was pending in Washington, Booth was brought on trial before the United District Court of Milwaukee. Here Booth was tried by a jury, found guilty, and on January 23, 1855, sentenced to prison for one month and fined one thousand dollars. Booth was to be incarcerated in a local prison until the fine was paid. Three days later, Booth applied to the Wisconsin Supreme Court for a writ of habeas corpus, contending that the federal sentence was illegal because the Fugitive Slave Law was unconstitutional. On February 3, after a hearing, the court held that the Fugitive Slave Law was unconstitutional, and ordered that Booth be released. The jailer, therefore, complied with the orders of the court and once more Booth was set at liberty. The Attorney General of the United States, J.S. Black,

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6 The case was argued by Byron Paine for Booth and Edward G. Ryan for Ableman. The arguments were long and able. Both men later became judges of the Wisconsin Supreme Court. 3 Wis., 1, 49.
7 John Rycraft of Milwaukee who was also held in custody for having "with force of arms" willingly assisted Glover to escape was sentenced to ten days in jail and fined $200, to remain until the fine was paid. This case was also taken to the Supreme Court of the United States by writ of error and was considered at the same time as the Booth case. One opinion disposed of the two cases.
then sent a petition to the Chief Justice of the Supreme Court of the United States, stating the facts in the case. Accordingly, a writ of error was served on the clerk of the Supreme Court of Wisconsin on May 30, 1855. The clerk of this court was advised by the court to make no returns on the writ. When the clerk refused to make returns on the writ, even after the United States Supreme Court had laid rule of the clerk, the Attorney General was given permission to file a certified copy of the record of the State Court. Attorney General Black was assured that this certified copy would have the same effect and force as if the writ had been filed by the clerk of the Wisconsin Court. When the case came up for argument before the Supreme Court of the United States, the State of Wisconsin did not appear.

The two Booth cases were argued and decided together by the Supreme Court of the United States. One case dealt with the state court's release of Booth when he was being held for trial by order of the federal commissioner, and the other concerned his release by the state court after his trial and conviction. On March 7, 1859, Taney, who delivered the unanimous judgment of the

8"The Wisconsin judges behaved as badly as possible for men who had taken an oath to support the Constitution of the United States, and their court was as contumacious as the South Carolinians were a few months later, while the defendant was so indifferent that he was not represented by counsel." Steiner, p. 427. Legislative proposals were made by men of the North who denounced the encroachments of the federal judiciary on the sovereignty of the state. Warren, p. 332-336.
Court, reversed the action of the Supreme Court of Wisconsin. This opinion of Taney's is considered "the most powerful of his notable opinions."9

In this opinion Taney stated that "the supremacy of the state courts over the courts of the United States, in cases arising under the constitutional laws of the United States, is now for the first time arrested and acted upon in the Supreme Court of a State." He pointed out that the "commentaries" of the judges of the state court upon the Fugitive Slave Law "were out of place." If the position of the Wisconsin court were correct then, Taney asserts,

No offense against the laws of the United States can be punished by their own courts, without the permission, and according to the judgment, of the Courts of the State in which the party happens to be imprisoned; for, if the Supreme Court of Wisconsin possessed the power it has exercised in relation to any other law of the United States; and extent to offense against our revenue laws, or any law intended to guard the different departments of the general government from crimes, from the highest to the lowest; including felonies which are punished by death as well as misdemeanors, which are punished by imprisonment. And, moreover, if the power is possessed by every other State, when the prisoner is within its territorial limits; and it is very certain that the State courts

Ibid., p. 336. The Court had learned a "lesson from the bitter experience of the Dred Scott Case," and it kept from the public, evidences of any disagreements that arose among the members of the Court. Swisher, p. 528.
would not always agree in opinion; and it would often happen that an act, which was admitted to be an offense, and justly punished in one State, would be regarded as innocent, and, indeed, as praiseworthy in another.

It would seem to be hardly necessary to do more than to state the result to which these decisions of the state courts must inevitably lead. It is, of itself, a sufficient and conclusive answer, for no one will suppose that a government which has now lasted nearly seventy years, enforcing its own laws by its own tribunals, and preserving the union of the states, could have lasted a single year, or fulfilled the high trusts committed to it, if offenses against its laws could not have been punished without the consent of the state in which the culprit was found. 10

Taney continued his argument by showing that the constitution was formed for protection against dangers from abroad and to secure unity at home. That the constitution guaranteed certain rights to the federal government that had formerly belonged to the sovereignty of the states. So that,

in the sphere of action assigned it the federal government should be supreme and strong enough to execute its own laws, by its own tribunals, without interruption from a State, or State authorities. And it is evident that anything short of this would be inadequate to the main objects for which that Government was established and that local interest, local passions, or prejudices, incited and fostered by individuals for sinister purposes, would lead to acts of aggression and injustice by one State upon the rights of another, which would ultimately terminate invio-

1021 Howard pp. 514-515.
lence and force, unless there was a com-
mon arbiter between them, armed with power
enough to protect and guard the rights of
all, by appropriate laws, to be carried
into execution peacefully by its judicial
tribunals.1

Taney showed that a system of federal courts had been nec-
essary with a Supreme Court for final appeal. That this tribun-
al was considered so important by the framers of the Constitu-
tion "that it had been ingrafted upon the Constitution itself."
At this point in his argument, Taney pointed out how the Supreme
Court of Wisconsin continued to defy the Supreme Court of the
United States. "It has not only reversed and annulled the judg-
ment of the District Court of the United States, but it has re-
versed and annulled the provisions of the Constitution itself
and the Act of 1789, and made the superior and appellate tribunal
the inferior and insubordinate one."12 In stronger words Taney,
claimed that "no State Judge of Court, after they are judicially
informed that the party is imprisoned under the authority of the
United States, has any right to interfere with him, or to re-
quire him to be brought before them. And if the authority of a
State, in the form of judicial process, or otherwise, should at-

11Ibid., p. 517.
12This act was passed by the first Congress providing for the is-
suance of writs of error from the Supreme Court to a state
court "whenever a right had been claimed under the Constitu-
tion or laws of the United States, and the decisions of the
State Courts was against it. Ibid., 523.
tempt to control the marshall, or other authorized officer, or agent of the United States, in any respect, in the custody of his prisoner, it would be his duty to resist it, and to call to his aid any force that might be necessary to maintain the authority of the law against illegal interferences.\textsuperscript{13}

Taney concluded his argument by viewing the question from the side of the States. He showed that all the powers that were vested in the federal government were given voluntarily by the people of the several states. "So long, therefore, as this Constitution shall endure, this tribunal must exist with it, deciding in the peaceful forms of judicial proceeding, the angry and irritating controversies between sovereignties which in other countries would have been determined by the arbitrament of force. Nor can it be inconsistent with the dignity of a sovereign State, to observe faithfully, and in the spirit of sincerity and truth, the compact into which it voluntarily entered when it became a State of this Union. On the contrary, the highest honor of sovereignty is untarnished faith."\textsuperscript{14} Then to let it be known that the Court had no doubts on the subject, Chief Justice Taney stated that the Fugitive Slave Law was "in all its provisions fully authorized by the Constitution."\textsuperscript{15}

After the Supreme Court had rendered its decision, it be-

\textsuperscript{13}Ibid., p. 534.
\textsuperscript{14}Ibid., p. 525
\textsuperscript{15}Ibid., p. 526
came necessary for Attorney General Black to have Booth imprisoned. Because of the political storm which resulted from the decision in Wisconsin, Black waited for five months before he ordered the arrest of Booth. The prisoner was to be kept where he could not be released by force nor by an order from any state judge. When Booth was imprisoned he was confined in a room in the federal building in Milwaukee. He served his period here and when it was time for his release, refused to pay the fine because of lack of funds. When advised by the Federal District Attorney at Milwaukee that he might apply to the President for remission of the fine, the prisoner refused to ask any favor of the administration. The President refused to grant Booth's release when the Federal District Attorney applied, because it was necessary that Booth apply directly. The stubborn prisoner remained in custody about five months beyond the expiration of his sentence. Finally, Booth was liberated by a band of abolitionists and toured the state, making speeches about his former captors.

This decision of the Supreme Court did not escape the

16Swisher, p. 531.
17Wisconsin was in the midst of an exciting political campaign and an administration adviser urged the postponement of the arrest by federal authorities lest it be "converted into a firebrand of trouble and excitement." Ibid., p. 352
18The Republicans assiduously persuaded the people that Booth was illegally and maliciously held prisoner by the administration and made political capital for the coming election." Ibid., p. 533
criticism of the New York Tribune. This paper advised the people of Wisconsin not to submit to the decision. The Wisconsin legislature threatened resistance by adopting resolutions that declared that the Supreme Court has assumed powers that were not granted by the Constitution. That the federal government was not the final and exclusive judge of its own powers, "therefore the states had the right to judge of its own infractions of the Constitution and should meet all unauthorized acts with positive defiance." 19

Taney was using the same powers of a Supreme Court judge, in rendering the constitutionality of the Fugitive Slave Law, as he was in declaring the Missouri Compromise unconstitutional. The opinion delivered by Taney in the Booth Case did not receive the criticism of either the press or politicians, as his Dred Scott opinion did. McLean and other anti-slavery agitators were satisfied with the publicity and condemnation heaped upon those members who favored the Supreme Court decision in the Dred Scott Case, and were perhaps, content to ignore the decision rendered in the Booth Case.

Chief Justice Taney was called upon to make the last of his important Supreme Court decisions on March 13, 1861. This was the decision that was rendered by Taney, for the Court, in

19 New York Tribune, April 1, 1859.
another slave case, that of Kentucky v. Denison. This case concerned a free negro, living in Kentucky, who had aided a slave to escape into Ohio. This was in violation of a Kentucky Law that was passed in July, 1852, and was still in force in that State. On February 10, 1860, Beriah Magoffin, Governor of Kentucky, made demand upon William Dennison, the Governor of Ohio, for the return of the fugitive, Willis Large. William S. was appointed the executive authority of Kentucky to receive the fugitive.

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20 Kentucky v. Dennison, 24 Howard, 66 (1861).
21 The sections of the law under which Willis Large was indicted are as follows:

Section 1. If any free person, not having lawful or in good faith a color of claim thereto, shall steal or shall seduce or entice a slave to have his owner or possessor, or if he shall make, or furnish, or aid, or advise in the making or furnishing a forged or false pass or deed of emancipation or other writing purporting to liberate a slave, or if in any manner he aid or assist from such owner or possessor, he shall be confined in the penitentiary for a period of not less than two nor more than twenty years.

Section 2. A free person convicted of an attempt to persuade or entice away a slave from the service of his master or owner or the person in possession of the slave, or if convicted of the attempt to persuade or induce by any means a slave to run away from his master or owner or person in possession of him, shall be confined in the penitentiary for a period not less than two nor more than twenty-five years.

Maryland Historical Magazine, Vol. 32, p. 3.
Governor Dennison, who referred the matter to the Attorney General of Ohio, accepted the advice received from this official and refused to deliver Largo. He sent the opinion of the Attorney General to the Governor of Kentucky as his reason for not complying with the demands. The opinion pointed out that the offence was not treason nor a felony, but a crime under the law of Kentucky, but not in Ohio. It further pointed out that the Executive of a State need only deliver a fugitive when demanded by the Executive of another state, when "such as constitute either treason or felony by the common law, as that stood when the Constitution was adopted, or which are regarded as crime by the usage and law of all civilized nations." 22

In a return letter, Governor Magoffin criticized this reply of the Governor of Ohio, by stating that it was for each State to determine for itself what were or were not crimes "within the meaning of the Constitution" and the acts of Congress. Furthermore, the Executive of the State called upon to deliver up the fugitive had no alternative in the matter. The Governor of Ohio made no reply to the letter nor did he deliver up the fugitive. In due time the case came up before the Supreme Court of the United States and Chief Justice Taney delivered the unanimous opinion of the Court,"sensible of the importance of this

22, 24 Howard, 66
case and of the great interest and gravity of the question involved in it."23 Taney continued the opinion by giving a careful historical account of cases to show that "It has been settled by our predecessors on great deliberations that, this court may exercise its original jurisdiction in suits against a State, under the authority conferred by the constitution and existing Acts of Congress."24 That the Governor is the proper magistrate to bring suit for a state as well as to be notified when the State is the defendant. Then he proceeded to discuss the points raised by the Governor of Ohio in his interpretation of the clause of the Constitution which states, "A person charged in any state treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."25

Taney defined treason, felony, and crimes as employed in this clause of the Constitution. "Looking to the language of the clause, it is difficult to comprehend how any doubt could have arisen as to its meaning and construction. The words, "treason, felony or crime," in their plain and obvious import,
as well as in their legal and technical sense, embrace every act forbidden and made punishable by a law of the State. The word "crime" of itself includes every offense, from the highest to the lowest in the grade of offenses and includes what are called "misdemeans," as well as treason and felony."

The Chief Justice continued the court opinion by showing that in early days the Constitution "relied with confidence" upon the cooperation and support of the States when exercising powers of the General Government. That the States aided each other in "excluding their laws," and supported each other in preserving "order and law within its confines not regarded as obligatory by the Constitution. Acts of Congress conferring jurisdiction merely give the power to the State tribunal, but do not purport to regard it as a duty, and they leave it to the State to exercise it or not, as might best comport with their own sense of justice, and their own interest and convenience."

He then discussed the Act of 1793. The language of this act implies that an obligation rests upon the State Executive for the arrest and deliverence of a fugitive. "The performance of this duty, however, is left to depend on the fidelity of the State Executive." At the time that the Constitution was adopted and when the Act of Congress of 1793 was passed it was "confi-
dently believed that a sense of justice and of mutual interest would issue a faithful execution of this constitutional provi-
sion by the Executive of every State..."

"But if the Governor of Ohio refused to discharge this duty, there is no power delegated to the General Government, either through the Judicial Department or any other department, to use any coercive means to compel him. And upon this ground the motion for mandamus must be overruled."28

The abolitionists of the North resented the reprimand that the abolitionist Governor of Ohio had received from the Chief Justice. The New York Evening Journal stated, "A good part of Judge Taney's opinion is therefore extra-judicial - the individual opinion of an old lawyer, who is either too conceited or endowed with too little discrimination to perceive what part of his views of a particular subject are pertinent..."29 This seemed to be the cry of the abolitionists in all the cases that were delivered by the Court just prior to the Civil War. When the judgment rendered in the case did not suit their policies completely, the criticism of "extra-judicial" arose.

This case of Kentucky v. Dennison was the last opinion concerning slavery that was rendered by Chief Justice Taney.

28Ibid.
Since the important slave cases with which Taney was concerned during his lifetime, have been discussed, a presentation will be made of Taney's treatment of the slaves as revealed by his actions, his letters and the recordings of his associates. One trait of the Chief Justice that is evident is his extreme kindness as can be seen from the following extract of Judge Giles upon the announcement of Taney's death on October 12, 1864: "For eleven years I have been associated in the Federal Court in this State with this great man. I went on the bench in 1853, comparatively a stranger to him; but in all our intercourse I have received from him the greatest kindness and consideration, and a cordiality which won for him my warmest veneration and esteem." Not only was Taney kind to his struggling fellow workers, but evidences of the same trait are found in his treatment of all classes of men. An illustration of his kindness can be shown when on November 29, 1817, a free negro bound himself as a slave to Taney and Frederick A. Schley, who was reading law in Taney's office. The conditions of the indenture were that they provide shelter and food for him, and that the negro pay to Woodward Evitt the $360 note that was signed by the negro as principal and by Taney and Schley as securities.

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30 Proceedings of Bench and Bar upon the death of Hon. Roger B. Taney, Baltimore, John Murphy, 1864, p. 7.
31 Maryland Historical Magazine, Vol. 13, p. 131
also sold the wife of the indentured negro to Taney on this same day for $350. Before long both Taney and Schley manumitted the negro. Certainly this action of Taney's was in accordance with the teachings of the Roman Catholic Church. There is nothing wrong with one person becoming a slave of another providing the person is not enslaved against his will. This negro was willing to become the slave of Taney and Schley and they in return were to furnish adequate food and clothing to the servant. The further action of purchasing the negro and liberating her would undoubtedly receive the sanction of the Church.

A story was told which further illustrates Taney's kindness toward the negroes. At an early hour, one very cold morning while hurrying to his office, Taney encountered a small negro girl vainly attempting to pump water into a bucket. Upon seeing the plight of the child, he filled the bucket, placed it upon her head and sent her on her way, saying, "Tell whoever

32"The natural law does not prohibit a man from bartering his liberty and his services to save his life, to provide his sustenance to secure other enjoyments which he prefers to that of freedom and to that right of his own labor, which he gives in exchange for life and protection. Nor does the natural law prohibit another man from procuring and bestowing upon him these advantages in return for which he has agreed to bind himself to that other man's service, provided he takes no just advantage in the bargain...All our theologians have from the earliest epoch sustained, that though in a state of pure nature all men are equal, yet the natural law does not prohibit one man from having domain over the useful actions of another as his slave; provided this domain be obtained by a just title. That one man may voluntarily give this title to another, is plain from the principle exhibited, and from the divine sane-
sent you to pump water that it is too cold a morning to send such a little girl."33 Another characteristic of Taney's that was commendable, was his deep respect for the position he held in the Judicial Department of the Federal Government.34 Tyler relates several incidents which illustrate Taney's appreciation of the obligation of his high office.35 Maddison, his body servant, was drafted during the Civil War as a soldier in the Union Army. Maddison, who was a free colored man, had served Taney so long that in his extreme old age the Chief Justice felt that the servant was indispensable. Maddison was disqualified for service, because as was known to the Chief Justice and the family physician, the negro had organic heart disease. The physician proposed to make an affidavit to that effect, but Taney refused and paid for a substitute in Maddison's place.

This servant went to Washington with the Chief Justice each time the court was in session and remained there until Taney was ready to leave the city at the close of the term. During one of these stays, on December 17, 1856,36 Maddison was

"...ation to which I have alluded." From second letter of Bishop England to Hon. John Forsyth, Secretary of State.

33 Tyler, p. 190.
34 "No man ever realized more entirely the grandeur of high judicial functions, and felt more profoundly its responsibilities!" Ibid., p. 225.
35 Ibid., p. 482.
arrested for violating an act of the town that required every free negro to record his name within five days after his arrival and each year thereafter on the tenth of December. Upon registering, the negro had to pay fifty dollars before being granted a permit of residence. Any negro failing to comply with the law was subject to fine. A provision of this act declared "Nothing in this act contained shall be so construed as to apply to or affect the condition of any free negroes or mulatto, who may come into the city in the service of any transient person or member of Congress, while in such employment, or who may have been sent to the city by his or her employer on temporary business."37 Consequently, the Chief Justice wrote a letter to the Corporation Attorney stating the particulars in the case and assuring him that whatever the decision would be, that he would abide by it cheerfully.38 Thus, Taney showed the deep ap-

37 This arrest took place during the time the Dred Scott Case was being argued by the Supreme Court.

38 Washington, Dec. 17, 1856.

My dear Sir.

My servant Maddison Franklin a free colored man was arrested today by two corporation officers for coming into the District - & remaining here more than five days - which they said was an offense against the laws of this corporation. I became security for his appearance before Justice Hollingshead tomorrow at four o'clock. Maddison has been in my service many years. After the death of Mrs. Taney it was impossible to leave my daughters who lived with me in Baltimore alone during the winter when I am obliged to be here - and determined to bring them with me, & to live at a boarding house while my official duties required me to be in Washington. I did so last winter, bringing all my household servants
preciation of courtesy that he felt was due from one department
of the government to another. Father McElroy, in response to a

with me - & spent the summer & part of the autumn at the
Springs - still taking my servants with me. But finding that
from my infirm state of health, as well as the delicate health
of one of my daughters that we unavoidably suffered so much
discomfort in a boarding house, I endeavored to procure a
ready furnished house for the winter. But after search I was
unable to procure suitable ones - & was finally obliged to
take the one now in for a year - or to return again to board.
Yet although I have taken the house for a year I have never
intended or expected to remain in it, except in the winter
when my official duties require me to be here. I have not
taken it with any intention of becoming a resident-or of aban-
doning my residence in Maryland. I am staying here merely be-
cause my public duties compel me to be here - and have brought
with me my household servants to be with me while I remain.
And I have always regarded myself as a sojourner in Washingt-
ton & my servants sojourning with me while public duties de-
tain me.

I made this statement to the corporation officers who ar-
rested Maddison & told them that I was not acquainted with
the laws of the corporation but did not suppose that what I
had done could have been made an offense by a law of the cor-
poration - & that there must be some mistake in the matter.
But that I knew that you were the corporation Attorney, and
that I should submit the case to you, and cheerfully abide
by your decision whatever it might be.

I inclosed the memorandum made by the officer for Maddison's
appearance tomorrow.

I am with great
respect & regard
R. B. Taney

from an unpublished letter in the Lincoln Historical Collection
at the University of Chicago.
request from Samuel Tyler, wrote the following incident concerning Taney, that further illustrates this trait, "Often I have seen him stand at the outer door leading to the confessional, in a crowd of penitents, majority colored, waiting for his turn for admission. I proposed to introduce him by another door to my confessional, but he would not accept any deviation from the established custom.\textsuperscript{39}

Taney, in a letter to Samuel Nott\textsuperscript{40} shows clearly the deep respect he had for the position he held.

\textldots I hope you will pardon me for requesting that you will not permit this letter to be published in the newspapers or otherwise. Not that I am not perfectly ready on all proper occasions to say publicly everything I said in this letter. But in the judicial position that I have the honor to occupy, I ought not to appear as a volunteer in any political decision; and still less would it become me out of Court and off the bench to discuss a question which has been there determined.\textsuperscript{41}

As has been noted in an earlier chapter, Taney was born and reared on a slave tended plantation, and in due time inherited slaves which he soon manumitted. In 1857, in the letter which

\textsuperscript{39} Tyler, p. 477.

\textsuperscript{40} Taney had never met Samuel Nott, but sent the letter in response to a pamphlet that Nott had published entitled, "Slavery and the Remedy." In this message Nott defended the Court in the opinion delivered in the Dred Scott Case.

he wrote to Samuel Nott, Taney revealed his attitude toward slavery.

...Every intelligent person, whose life has been passed in a slave holding state, and who has carefully observed the character and capacity of the African race, will see that a general and sudden emancipation would be absolute ruin to the negroes as well as to the white people. In Maryland, and Virginia, every facility has been given to emancipation, where the freed person was of an age and condition of health that would enable him to provide for himself by his own labor. And before the present excitement was gotten up, the freed negro was permitted to remain in the State, and to follow any occupation of honest labor and industry that he might himself prefer. And in this state of the law manumissions were frequent and numerous; they sprang from kindness and sympathy of the master for the negroes, from scruples, and were often made without sufficient consideration of his ability and fitness for freedom. And in the greater number of cases that have come under my observation, freedom has been a serious misfortune to the manumitted slave, and he has most commonly brought himself privations and sufferings which he would not have been called upon to endure in a state of slavery. In many cases, however, it had undoubtedly promoted happiness...It is difficult for anyone who has not lived in a slaveholding State to comprehend the relations which practically exist between the slaves and their masters. They are, in general, kind on both sides, unless the slave is tampered with by ill disposed persons, and his life is usually cheerful and contented, and free from distressing wants or anxieties. He is well taken care of in infancy, in sickness, and in old age. There are indeed exceptions, painful exceptions. But this will always be the case, where the power combined with bad passions or a mercenary spirit is on one side, and weakness on the other. It fre-
quently happens when both parties are of the same race, although the weaker and dependent one may not be legally a slave.

Unquestionably it is the duty of every master to watch over the religion and moral culture of his slaves, and to give them every comfort and privilege that is not incompatible with the continued existence of the relations between them. And so far as my knowledge extends, this duty is faithfully performed by the great body of hereditary slaveholders in Virginia and Maryland... And I know it has been the desire of the statesmen of Maryland to secure to the slave every protection from maltreatment by the master that can be safely given...^42

Taney again expressed his feeling toward the negro when he said to a friend, "Thank God that at least in one place all men are equal, in the Church of God. I do not consider it any degradation to kneel side by side with a negro in the House of our Heavenly Father."^43

From the contents of Chief Justice Taney's letter to Rev. Samuel Nott; the fact that a negro bound himself to Taney and the manumission of this negro's wife as well as the negroes he had inherited;^44 the provisions that were made for the mainten-

^42Ibid., 445-446
^43Smith, p. 142.
^44"Manumission papers can still be seen upon the white washed walls of the slave quarters in Taney's home in Frederick. Delaplaine, Ed.S., "Visiting The Taney Home," National Republic, Vol. XVIII, Sept., 1930. p.21. Taney freed these slaves at a time when slaves were bringing a good price on the market. He freed some just previous to the abolition of the slave trade by the Constitution and several after."
ance of the slaves that were too old to provide for themselves if they had been manumitted; the views expressed in the Gruber Case, that "slavery is an evil," a blot on our national character," and every lover of freedom confidentially hopes it will effectively, though it must be gradually, wiped away," and "until it shall be accomplished, until the time shall come when we can point without a blush to the language held in the Declaration of Independence, every friend of humanity will seek to lighten the galling chain of slavery, and better, to the utmost of his powers, the wretched condition of the slave;" certainly indicate that Taney's treatment of the slave was consistent as well as highly commendable and definitely reveals the teachings of the Roman Catholic Church.

When considering the opinions rendered by Taney while presiding over the Supreme Court, one might say, at first glance, that he was influenced by his Southern background. In the cases of *Strader v. Graham*, *Groves v. Slaughter*, and *Kentucky v. Dennison*, the decisions favored the States' rights. This theory certainly was concurrent with the Southern idea of slavery. But in two important decisions, those rendered in *Prigg v. Pennsylvania* and *Ableman v. Booth*, this Southern theory was not observed by Taney. In both these cases the delegated power of the

45His devotion to the institutions of Catholicism may have accustomed him to more atherian interference with individual liberties than his fellow men had learned to accept." Swisher.
federal government was considered supreme. Certainly, a generalization cannot be made that Taney expressed the views of the Southern in his opinions. Where there was no constitutional provision nor federal statute, Taney felt that slavery was a matter for each state to deal with as it saw fit. In cases that involved the slave trade or that of a fugitive slave, the federal government was sovereign. Taney's decisions, therefore, do not show any bias for or against slavery, but that he heard and decided cases involving slavery with the same legal attitude as he did other cases. The decisions rendered by Taney were under constant watch of the political opposition leaders. Yet they could not find an unjust decision because they were forced to resort to falsehoods in their efforts to undermine the Court. William Schley, who read law in Taney's office in Baltimore, said in his address before the United States District Court upon the death of Taney, "He was an open and fair practitioner. He never entrapped the opposing counsel, by any of the maneuvers of an artful attorney; and he condemned above all things the low tricks of pettifogger. In taking exceptions to the adverse rulings of the court, he never cloaked a point, but presented it, fairly and distinctly, for adjudication by the court."46 The Hon. Reverdy Johnson, who had known Taney for a

46Bench and Bar, p. 13.
long time, said of the Chief Justice upon this occasion, "There were some persons, however, among those who differed with him politically, (and I am glad to know that I was of the number) who knew him so well as to feel that he would, when on the bench discard, if he ever entertained them, the mere prejudices of party, and be governed solely by justice and law. In this expectation they were not disappointed. During his entire judicial career, no man can say with truth, that his integrity was ever for a moment sullied, or his judgments influenced by any other than the most elevated and legitimate consideration. So unerring was his mind, so discriminating his thoughts, and so full his research, (a research wonderful when we remember his feeble state of health,) that it happened in very few instances that his brethren differed with him, and yet fewer that his judgments in his circuit were reversed."47 Caleb Cushing, who knew Taney personally as well as in official relations, said of him, "His opinion, therefore, as they appear in the six last volumes of Peters, in the twenty-four volumes of Howard, and in the three volumes of Black, compose the great records of his judicial life; and they constitute a monument of usefulness, and a title of fame, deserving to be placed on a level at least

47 Ibid., p. 17.
with the opinions of any of the most renowned magistrates of France, England, or the United States." These evaluations of Taney the Judge, by the lawyers who knew him as a friend as well as a fellow worker together with the mention of similar opinions expressed by Judge Giles, Judge Merrick, Andrew Sterett Ridgely, Esq., B. R. Curtis, Judge Clifford and Mr. Stanberry, will suffice to show that Taney was a Just Judge.

48 Ibid., p. 10.
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