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Chief Justice Roger Brooke Taney

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It must be an honor to any lawyer to be asked to address the South Carolina Bar Association, and I know of the distinguished jurists that have had that honor in former years. It is more than an honor to me, one of the native born, and a member of the Bar of this State, but whose lot it has been to serve away from home. I think I can say "serve" honestly, for surely that profession serves whose business it is to settle the private quarrels of the world and most of the public quarrels after the slaughter is done. It was said of old time that a prophet is not without honor save in his own country and among his own kin. My presence here tonight proves that this depends more on the country and the kin than it does on the prophet. If one choose South Carolina for his country and South Carolinians for his kin, he need not be even a minor prophet to receive honor at their hand.

I have chosen as the subject of my address Chief Justice Taney of the Supreme Court of the United States.

"The History of the United States," says Warren in his recent History of the Supreme Court, "has been written—to a great extent in the chamber of the Supreme Court of the United States, and it is this history that the court made under Marshall from 1801 to 1835, and under Taney from 1836 to 1864."

Born in 1777, seven months after the promulgation of the Declaration of Independence, and twelve years before the adoption of the Constitution of the United States, Roger Brooke Taney was of the second generation of great Americans. In the year of Taney's birth, Jefferson, the Great Commoner, he of the aristocratic taste and democratic impulse, then a member of the Virginia House of Deputies, was engaged in drafting his bill for religious freedom and the act for the abolition of primogeniture.
by which, he declared, "every fibre would be eradicated of ancient or future aristocracy in Virginia."

Twenty years younger than the ardent Hamilton, and five years the senior of Calhoun and Webster, he had reached manhood's estate the year before Washington had joined the goodly company of "those who lived and loved, and ruled and made our world."

Dying in 1864, at the age of eighty-seven, he lived in all three of the great periods of American history—the colonial, the constitutional, and the period of disunion. The span of his life stretched from King George III to the death of Abraham Lincoln. He had the good fortune to die before the only disgraceful epoch in American history set in, the period of Reconstruction.

Taney, on the paternal side was probably of Irish descent; on his mother's side, certainly of English. The Taney's came to Maryland in the seventeenth century and settled on the beautiful Patuxent River, and there, in Calvert County, the future Chief Justice was born.

Richard Brooke, the first of Taney's maternal ancestors of whom we have any record, was of Whitchurch, Hampshire, and was a man of landed estates in England; Robert Brooke, the first of the family to come to America, arrived from England with his wife, ten children, and twenty-eight servants, "all," it is recorded, "transported at his own cost and charge." His grandson, Taney's grand-father, owned a large landed estate on Battle Creek, directly opposite the estate of the Taney's. A law in force in Maryland at that time forbade Roman Catholics teaching in the province, and the Taney's being of that faith, Michael Taney, Taney's father, was sent abroad for his education. On his return he cast his eye once too often across Battle Creek, where the fair Monica Brooke lived, and in 1770 they were married.

Seven children were the outcome of this marriage, of whom our Taney, named for his maternal grand-father, was the third. Taney's father was a typical country gentleman of the time, and had greater pleasure in teaching his sons to ride, shoot, swim, and sail, than in teaching them from books. It was upon his mother that Taney lavished his affections. It is of her that he speaks so lovingly in his autobiography, and it was by her side that he arranged to be buried "whenever and wherever he should die."

Taney's early essays at education were not propitious. First, at the age of eight, he trudged three miles to a school kept in a log cabin by an ignorant old man, where the only books were Dilworth's speller and the Bible, the latter used also for a speller;
then to a school ten miles distant, for three months, until the master became insane; next a private tutor who died within a year; then two other tutors guided him toward the Pierian spring; and then, at the ripe age of fifteen, on his teacher's very favorable account of the boy's progress, he was sent to Dickinson, at Carlisle, Pa., where he arrived after a two weeks' journey, having carried enough money, in *specie*, to pay all expenses until the vacation. Dr. Nisbet, the President of the College, was a true teacher, for Taney has recorded of him: "His object was to teach the pupil to think, to reason, to form an opinion, and not to depend upon memory. He undoubtedly succeeded in fastening our attention upon the subject on which he was lecturing, and induced us to think upon it, and discuss it, and form opinions for ourselves." What a training for a future lawyer and Chief Justice, and what a boon it would be to the law and the lawyers of our own day, and of the future if, while at college, instead of being regarded as chosen vessels in which to pour pre-digested information, the which they are expected to yield back at examination time in as near as possible the same form in which it was administered, they too were taught "to learn to think, to reason, to form an opinion" for these are the necessary equipment of the great lawyer; and Taney was more fortunate in having for a teacher one who recognized this than many of the college youth of our time. But there was another, not too common characteristic, of this same college president and professor. He not only taught his young students to form and express their opinions, but he formed and expressed his own. Nor was he afraid to express them even when they were not—to use that abominable phrase that smacks of the market place—and "Main Street," 100% American. For the old gentleman was a stout Royalist in that year of grace, 1792, and did not hesitate to express the view, even in his class of young Republicans that there was no stability in this new Republic their fathers had set up. More than one teacher has lost his position in recent years because he dared hold and express opinions at variance with the majority, and there exist today a number of officials and self-constituted bodies who claim the right to tell men, you and me, what they shall think and say. It is not encouraging to the lovers of the Republic to think that we are perhaps more intolerant of the free expression of opinion now than were our ancestors of 130 years ago.

As a South Carolinian one of the many things in which I take pride is the fact that in the midst of all the enthusiasm and passion of patriotism to the State that swept over South Carolina in
December, 1860, James L. Petigru, an uncompromising Union man, could walk not only unmolested, but honored, on the streets of Columbia and Charleston.

And when his friend and biographer in his love of him writes "Had he moved with the current and espoused the popular side, what a splendid figure he would have presented as a senator in the American Congress," I answer what a far nobler figure he does present in having openly avowed his own unpopular opinions, and in refusing "to move with the current and espousing the popular side."

Perhaps it was the object lesson given the impressionable youth of fifteen by his professor that helped to strengthen the same youth—years later when he delivered the opinion in the Dred Scott Case knowing, as he did, the storm of abuse it would bring down upon him from a large section of his fellow-citizens.

Taney graduated at the age of eighteen, and a year later entered the law office, in Annapolis, of Jeremiah T. Chase, judge of the General Court. Here he entered with all the vigor of his ardent nature into the study of law—studying for weeks together, twelve hours in the twenty-four. The General Court sat twice a year at Annapolis, and there the youthful Taney listened to some of the greatest legal orators of his, or any other time; for the Maryland bar was then justly famous; Luther Martin, who defended Aaron Burr in his trial for treason, William Pinkney, the Beau Brummell of the law, whom Marshall "stood in a niche by himself"; who wore amber-colored doe skin gloves while arguing his cases, and like the flapper of today, rouged his cheeks, but unlike her, wore corsets; and of whom Taney said that so great was the power of his periods that under their influence "the usual simplicity of the language of C. J. Marshall's opinions took on an ornate and embellished style." Philip Barton Key, John Thompson Mason, John Johnson and James Winchester were among other distinguished lawyers Taney was privileged to hear and study. He tells us that he gazed with deep interest upon the array of talent and learning of these masters, and dreamed of the day when he might occupy a like position in the profession. Three years after he began his novitiate, in 1799, he was admitted to the Maryland bar. He suffered then, as he had suffered while at college, from a kind of chronic stage fright. His first appearance at the bar was in defense of a man who had been indicted for assault and battery. Taney recalled years afterward that he could take no notes of the testimony as his hand shook so much that he could not have written
a word legibly if his life had depended upon it, and that when he arose to speak his knees trembled so that he was obliged to press them against the table to keep steady on his feet. This "morbid susceptibility" even after many years of active practice, he never entirely overcame, but though the flesh was weak, the spirit was not only willing, but resolute, and this spirit nerved him to the encounter with the greatest advocates of his time.

The picture we have of Taney at this time is that of a tall, ungainly youth of delicate frame, but strong mind, ambitious to lead in a profession in which the leaders were men of great oratorical power, but who was himself timid to the verge of morbidity; awkward, in a society in which grace and social ease were accounted for righteousness; one who preferred the light of the moon to the flame of the midnight lamp; a fiery temper when the practiced coolness of the fencer was needed to win the battles. There would seem to be little augury of success for such a man in the profession he had chosen. But that were to reckon without the soul of the man.

It is related of a Southern cavalry officer who on the eve of a desperate charge noting that his knees were trembling, was heard to say to them—"if you knew where I am about to take you, you would tremble a damned sight more than you do." Such a soul was Taney's. The same resolute will that mastered the trembling of the young collegian in his first forensic effort, enabled him to meet in equal legal battle such doughty antagonists as Wirt and Webster, Luther Martin and Pinkney.

An eminent lawyer says of him in after years: "His arguments and his manner made a deep impression on me. He sought no aid from rules of rhetoric, none from the supposed graces of elocution. I do not remember to have heard him, at any time, make a single quotation from the poets (this was at a time when florid eloquence was the vogue, when the halls of Congress emptied to hear Pinkney's flowery periods in the Court room, and Webster's impassioned oratory was drawing tears from the eyes of Chief Justice Marshall.) "Yet," continues our informant, "his language was always chaste and classical, and his eloquence undoubtedly was great, sometimes persuasive and gentle, sometimes impetuous and over-whelming. He spoke, when excited from the feelings of his heart, and as his heart was right, he spoke with prodigious effect." Pinkney, after meeting him in one case says, "I can answer his arguments, I am not afraid of his logic, but that infernal apostolic manner of his there is no replying to." Writing
in 1838 a writer in the Southern Literary Messenger, says of him, "He showed that he possessed a mind of the highest order, judgment, acuteness, penetration, accurate learning, steady perseverance in the discharge of his duty, a lofty integrity, united with a grave and winning elocation."

The great Wirt spoke of him as a man of "moon-light mind—the moon-light of the arctics, with all the light of day without its glare," and Reverdy Johnson, who as an advocate had few peers, speaking of men of "dazzling eloquence," said: "In this galaxy of talent, Mr. Taney shone with a splendor that challenged admiration, and made him, in the opinion of all, their equal"; and added: "He was especially dear to his juniors." It is typical of the man that those who wrote from personal knowledge of him almost always coupled with praise of his abilities and rectitude, testimony of his sincerity and kindliness.

Soon after his admission to the bar, Taney at the solicitation of his father, returned to Calvert County and became a candidate for the state legislature. He was elected, but being defeated for re-election, he entered the practice of the law in Frederick. In 1806 at the age of twenty-nine his practice had grown sufficiently to justify him in marrying. His wife was Phoebe Key, the sister of Francis Scott Key, the author of the Star Spangled Banner. The marriage was in every way a happy one. Having attained a leading position at the bar of Frederick, he decided in 1823 to remove to Baltimore, where Reverdy Johnson later wrote "the leading lawyers at that time were as able as any members of the profession in the country." Here he soon rose to share the leadership of the bar with Wirt not only in that city but in the State of Maryland.

The only position that Taney was ambitious to hold was, he declared in after years, the Attorney-Generalship of Maryland. To this position Governor Kent, of the opposite political party from Taney, on the unanimous recommendation of the Baltimore bar, appointed him in 1827. He filled this office acceptably for three years when he resigned to become Attorney-General of the United States, to which position he was appointed by Andrew Jackson.

Taney argued his first case before the Supreme Court of the United States in 1825. The next year with Webster, he argued the case of Etting v. The Bank against Wirt and Emmett. Story wrote to a friend in New England, of this case: "The court has been engaged in its hard, dry duties with uninterrupted diligence. Hitherto we have had but little of the refreshing eloquence which makes the labors of the law light, but a case is just rising which
bids fair to engage us all in the best manner. Webster, Wirt, Taney (a man of fine talents, whom you have probably not heard of) and Emmett are the combatants, and a bevy of ladies are the promised and brilliant distributors of the prize." At the same term he argued another case this time with Wirt and against Webster. The next year, pitted against Wirt he argued the celebrated case of Brown v. Maryland.

Taney occupied the post of Attorney-General of the United States for two years—until 1833, during which time he appeared in the Supreme Court—on behalf of the government in thirty-one cases. In 1833 Jackson appointed him Secretary of the Treasury.

In 1832 Congress, under the leadership of Clay and his friends, to embarrass Jackson, and further Clay's candidacy for the presidency, passed an act re-chartering the United States Bank. When the bill went to the President, Taney, fervently believing that the Bank, representing the moneyed interests of the country, was a menace to our institutions, was the only member of the Cabinet who advised Jackson to veto it, this Jackson did. In the presidential campaign immediately following, this action of Jackson was the principal issue of the campaign. The Bank, with its powerful connection, opposed Jackson and the result was the re-election of Jackson by an overwhelming majority. Taney next advised the President to remove the United States funds then on deposit in the Bank. In doing this Taney was alive to the storm that would result from the opposition of the powerful political friends of the Bank. In a letter to the President he wrote: "I rely at all times with confidence on the intelligence and virtue of the people of the United States; and believing it right to remove the deposits, I think they will sustain this decision. Entertaining these opinions, I am prepared to hazard much in order to save the people from the shackles which a combined moneyed aristocracy is seeking to fasten on them. But although it is my duty frankly to state to you the opinion I hold on the subject, yet I do not desire to press this measure on you—after a life of so many hazards in the public service, and after achieving so much for the cause of freedom in the field and the Cabinet, I have doubted whether your friends or the country have a right to ask you to bear the brunt of such a conflict as the removal of the deposits is likely to produce."

Jackson acted on Taney's advice; and Duane, the Secretary of the Treasury, having refused to order the withdrawal, he was removed and Taney was appointed in his stead. Nothing shows bet-
ter the high, unselfish patriotism of Taney than this act in exchanging his position of Attorney-General for that of Secretary of the Treasury. He was a lawyer, and held the highest law office in the Government; he was asked to relinquish this and accept the position of a financier for which he had no predilection and no training. He wrote Jackson: "You will do me the justice to believe that I have no desire for the station you suggested.—But I shall not shirk the responsibility, if in your judgment, the public exigency should require me to undertake it." Moreover he well knew of the storm that would burst upon his head on the first act he would be called upon to perform. Yet, believing that public duty demanded of him this sacrifice, he did not hesitate to make it. Two days after his appointment Taney gave the order for the removal of the deposits. Immediately the friends of the Bank and the foes of Jackson in the Senate rushed to the assault, as he well knew they would. In a speech lasting two days Clay assailed Taney, Webster made a report condemning his action, and John Quincy Adams went further and accused Taney of personal motives for his act. The Senate even went so far as to pass a resolution of censure on the president. Taney, however, had powerful support both in and out of Congress and his action was approved by the House, and resolutions of approval were adopted in many parts of the country.

On June 23rd Jackson sent Taney's nomination as Secretary of the Treasury to the Senate. It was promptly rejected the next day. This was the first such rejection in our history. The day after, Taney resigned, and returned to the practice of law in Baltimore. On his return to Baltimore he was met and escorted by a cavalcade of two hundred gentlemen and seated in a barouche drawn by four grey horses. A few days later a great public dinner was given him and Vice President Van Buren, who was unable to be present, sent the toast. "Roger B. Taney—He has in his last, but brilliant career passed through the severest ordeal to which a public officer can be subjected and he has come out of it with unperishable claims upon the favor and confidence of his countrymen." Their work in a common cause had made these two, Jackson, the soldier and man of action, and Taney, the lawyer and scholar, the warmest personal friends.

Taney argued his first case as a young lawyer before Gabriel Duvall, who now, in 1835, sat on the Supreme Court of the United States. Duvall hated Jackson and all his ways, but being informed that if he resigned Jackson would appoint Taney to his place
he sent in his resignation. Jackson immediately nominated Taney for the position. Chief Justice Marshall, who like Duvall, liked not Jackson nor his policies, privately advocated Taney’s confirmation, but, the majority of the Senate still harbored its enmity against Jackson and Taney, and voted to indefinitely postpone action on the nomination. It is reported that when on the night of March 3rd, the clerk of the Senate announced to Jackson the rejection of Taney, Jackson replied: “It is past twelve o’clock and I will receive no message from the damned scoundrels.” Less than a year later, John Marshall died, and Jackson again sent to the Senate the name of the man that body, for political reasons, had twice rejected. At this time however, the political complexion of the Senate had changed, and Taney, against the violent opposition of Clay and Webster, was confirmed on March 15, 1836 as Chief Justice of the United States.

In the March following, as Chief Justice, he administered the oath of office to President Van Buren. Jackson, who witnessed the ceremony exclaimed, “there is my defeated minister to England sworn in as President of the United States, by my defeated judge of the Supreme Court.”

In mental equipment Taney brought to the service of the Republic, as head of one of the greatest, and certainly the most powerful courts in the world, a mind clear, logical and subtly analytical, well stored with the learning of the law; a purity of motive that shines out serene as the storm clouds of partisan passion pass away. Yet no man who gave his best to his country, not even Washington or Wilson, ever aroused such bitter enmity or suffered from such a whirlwind of abuse as Taney. His heart was not broken, his was not the kind of heart that breaks; but he suffered under the unjust aspersions of his political enemies as only he can suffer who has that high sense of honor that feels a stain like a wound.

Coming events cast their shadows before, and the first case upon which the new Chief Justice delivered an opinion was a case involving slavery. The U. S. v. Garonne.

A negro woman, a slave, was taken by her mistress to France, on a visit, but becoming homesick was sent back to New Orleans on the ship Garonne. The ship was libelled at New Orleans under the Act of 1818 prohibiting the importation of slaves into the United States. The Chief Justice held that the intent of the Act of 1818 was to put an end to the slave trade, and the return of the slave
to her home was not the importation of a slave within the meaning of the Act.

It is impossible to review even a small number of the many important cases decided by the court during the twenty-eight years that Taney presided over its deliberations. The most I can do is to review a few of the most significant ones—those that have most profoundly affected the structure of our government and the course of our history.

To do this a comparison with the trend of decisions of the court under Chief Justice Marshall who presided over the Court for the thirty-five years immediately preceding Taney, is necessary. Both of these great men were Federalists (therefore politically both believed in a strong federal Government.) Marshall in his thirty-four years as Chief Justice had shown an ever growing tendency toward centralization. In the language of Sparks in his History of the United States, "The formative decisions of Marshall—maintained constantly the rights of the Federal Courts, and added to the prerogatives of the central government against the States." "Ploughing in fresh ground," says Magruder, in his life of Marshall, "He could run his furrows in what direction he thought best—He made Federalist law in nine cases out of ten and he made it in strong and shapely fashion."

Henry Adams in his history of the United States says "Marshall had won a slow certain victory over States' Rights and had thrust powers in the National Government, which if Jefferson was right, must end in completely destroying it." "Ever since 1815," says McDonald "The trend of decisions in the Supreme Court—had given the Federal authority a scope such as even the earliest Federalists had not claimed." Marshall had not done this without vigorous protests from all parts of the country and the antagonism caused in many states by his decisions infringing the rights of the states had been a potent factor in the political upheaval that caused the defeat of the Federalist party in 1828. In these years Marshall in the words of Adams, "had won a slow victory over States' Rights, and had thrust powers in the National Government." That was good Federal doctrine whether good judicial doctrine or not. Taney was also a Federalist. Marshall had recommended him for a place on the Supreme Court bench.

Was Taney to push further the victory over States' Rights and to thrust still new powers in the National Government? That was the question men were asking. Remember this doctrine of States' Rights was not then and is not now monopolized by the South. In 1808 after the embargo acts, "New England had become the seat
of the most extreme States' Rights Doctrine” and these states were openly threatening to secede from the Union. In 1798 the Chief Justice of the Supreme Court of Pennsylvania had refused to allow a case to be removed from the state to a federal court though it was of the class of cases so provided by the Federal Judiciary Act, and in his opinion announced that each state had the right to give its own interpretation to the Federal Constitution; thus announcing the nullification Doctrine thirty-five years before Calhoun. In 1807, the legislature of the same state defied the Supreme Court of the United States. In 1809 when Marshall rendered the decision in U. S. v. Peters, the Governor of Pennsylvania sent a message to the legislature stating that he intended to call out the militia to prevent the enforcement of the court’s decree.

In 1815 the Virginia Supreme Court refused to obey the mandate of the Supreme Court of the United States and the latter was finally obliged to issue the mandate to the inferior court in which suit had been originally instituted. So far had the court gone by 1832, toward centralization under Marshall that the outcry over the country, North and South, led Marshall to write to Story: “If the prospects of our country inspire you with gloom, how do you think a man must be affected who partakes of all your opinions and whose geographical position enables him to see a great deal that is concealed from you. I yield slowly and reluctantly to the conviction that our Constitution cannot last. I had supposed that North of the Potomac a firm and solid government competent to the security of rational liberty might be preserved. Even that now seems doubtful. The case of the South seems to me desperate. Our opinions are incompatible with a united government even among ourselves. The Union has been prolonged thus far by miracles. I fear they cannot continue.”

Napoleon’s favorite maxim was “divide and conquer.” It is by analogy to this principle that the Supreme Court under Marshall captured the State powers for the Federal Government. In each case in which the question of power arose, a single state only was directly interested. If the decision went against it it was impotent to resist successfully, and hence single victories were won from time to time which in the aggregate won the great war for centralization; until today serious minded men, regardless of party, are troubled as to what is to be the end of this march toward power in the Federal Government and in the Supreme Court. It is a symptom of this fear that two bills have been introduced into the
present Congress to limit the power of the Supreme Court, and both by Republicans.

One of these bills would take away from the court the power to declare an act of Congress unconstitutional, the other would limit this power to cases in which at least seven of the nine judges concur in holding the act unconstitutional. Another bill being contemplated is one to require more than a bare majority of the Supreme Court to declare unconstitutional State statutes that have been held constitutional by the State courts. The United States Chamber of Commerce has just protested against the establishment of a Federal Department of Education because of its centralizing effect in a new field.

And where stood Taney on this great issue? It is his glory that with untrembling hand he held the scales even, and so interpreted the grants and reservations of power in the Constitution as to preserve to the States, unimpaired, the rights reserved to them and at the same time give full effect to the powers granted by the states to the Federal Government.

When Taney took his seat on the bench there were pending two cases of great importance involving the question of states' rights. They were *The City of N. Y. v. Miln*, and *Briscoe v. The Bank of Kentucky*. These cases had been previously argued before Marshall. The first involved the constitutionality of a statute of New York; which required the master of any vessel entering the port to report the names, ages and last settlement of all passengers. The object of the statute was to prevent the state being burdened with pauper immigrants. Story tells us that Marshall's deliberate opinion was that the state statute of New York was unconstitutional as in conflict with the provisions of the Federal Constitution giving Congress the power to regulate commerce.

The court now, however, upheld the right of the state and pronounced the act to be not a regulation of commerce, but a police regulation and therefore valid. Story, J., dissented.

The second case, *Briscoe v. The Bank* raised the question of the constitutionality of a statute of Kentucky establishing a state bank. Henry Clay, who had fought Taney's appointment so fiercely, appeared for the Bank, and argued for the constitutionality of the statute. The court held that the power to incorporate the Bank was an incident of sovereignty, and therefore within the inherent power of the State of Kentucky. Again Mr. Justice Story dissents stating that on the previous argument of the case a majority of the Court were of the opinion that the state
law was unconstitutional. The decision in these two cases showed that the reserved rights of the states were to be re-vitalized under the new Chief Justice after their long coma.

The third case was the famous Charles River Bridge Case. The question involved was whether the Legislature of Massachusetts, having in 1785 incorporated and granted a charter to the proprietors of the Charles River Bridge to erect a bridge over the Charles River from Boston to Charlestown, and charge tolls thereon, could in 1828 charter another corporation to erect another bridge over the same river near the first bridge. It was contended that the granting of the second charter impaired the obligation of the contract implied in the grant of the first charter. The case was of vast importance to the development of the country, as railroads paralleling previously chartered canals were rapidly increasing, and if it were held that the charter of the second bridge was void, it would mean that the charters of these railroads were also void, and that they must cease business. Daniel Webster and Dutton appeared for the plaintiff and Greenleaf and Davis for the defendant. A press correspondent wrote "Today the Supreme Court was a great scene of attraction. Mr. Webster was expected to speak and at an early hour all the seats within and without the bar, except those occupied by the counsel engaged in the cause, were filled with ladies whose beauty and splendid attire and waving plumes gave to the court room an animated and brilliant appearance.—I envied the dashing young belles of the metropolis their privilege of hearing Mr. Webster throughout, though I doubt not their looks distracted the attention of many a man who went to listen to him."

Taney delivered the opinion of the court upholding the validity of the statute chartering the second bridge. Said the Chief Justice: "We cannot deal thus with the rights reserved to the states, and by legal intendments and mere technical reasoning take away from them any portion of that power over their own internal police and improvement which is so necessary to their well being and prosperity." In this case Webster first tasted defeat before this court on a constitutional question. Judge Story again dissented, and stated that Marshall had concurred with his views; and in despair wrote to a friend. "There will not, I fear ever in our day, be any case in which a law of a state or of Congress will be declared unconstitutional; for the old constitutional doctrines are fast fading away."

Shortly after this case the court decided the important series
of cases known as the Corporation Cases. These cases presented a question of immense consequence to the commercial development of the country. The question involved was whether a corporation chartered in one state has the right to enter into a contract in another state. The Circuit Court had held that it did not, and that such contracts were void. Taney delivered the opinion of the court, holding that such contracts were valid, but refused to go the whole length of Mr. Webster's argument, which was that not only could a corporation of one state do business in another state if so permitted by the law of the second state, but that the second state could not constitutionally forbid such corporation to do business therein. This limitation of the right of the states, Taney denied, and held that this argument would result in depriving a state of all control of corporations doing business within its borders. While, however, Taney in these cases definitely checked the march of the court toward the centralization to which Marshall in his later years was leading it, and while he was thus successfully bringing the court back to a recognition of the rights of the states under the Constitution; he was equally prepared to give full effect to all the powers granted by the States to the Federal Government. Taney's decisions in these cases justify, at least in part, the observations of Mr. Warren of the Boston Bar in his just published History of the Supreme Court. He says: "Taney differed from Marshall in one respect very fundamentally, and this difference was very clearly shown in the decisions of the Court. Marshall's interests were largely in the constitutional aspect of the cases before him, Taney's were largely economic and social—Marshall was, as his latest biographer has said: "The Supreme Conservative." Taney was a Democrat in the broadest sense, in his belief and sympathies. Under Marshall "the leading doctrine of constitutional law was the doctrine of 'vested rights'—Under Taney, however, there took place a rapid development of the doctrine of the police power, the right of the State Legislature to take such action as it saw fit in the furtherance of the security, morality and general welfare of the community, save only as it was prevented from exercising its discretion by very specific restrictions in the written constitution. Holding views like these it is evident that Taney would approach a case from the human rather than the juristic standpoint, and that he would regard as of higher importance, the state power which touched the individual and the community more closely, than the National power." In this sympathetic insight into the social forces Taney truly injected a new force
into constitutional law, a force that has not yet spent itself, indeed which has probably not yet reached its zenith. The next year after the decision in the Corporation Cases, the court denied the right of a State, under an insolvency statute, to discharge debts contracted in another State. Within the next three years, the court declared unconstitutional and void two statutes of the State of Pennsylvania and two of Illinois.

A series of three celebrated cases came before the court in 1847, known as the License Cases. They involved the constitutionality of the State laws of Massachusetts, Rhode Island and New Hampshire. The principal question involved in these cases was whether the power granted by the Constitution to Congress to regulate commerce was exclusive. This question had been debated ever since the case of *Gibbons v. Ogden*, and that case had been cited on both sides of the question. Two of the judges who sat with Marshall when *Gibbons v. Ogden* was decided, and who concurred in Marshall's opinion in that case, disagreed as to what Marshall intended to hold in that case. Story said Marshall decided that the power of Congress was exclusive, McLean said not. The court held that the power of Congress over commerce was not exclusive, but that the States might act on the subject if Congress had not already acted.

Time does not serve to review many other important opinions such as the famous Passenger Cases, The Genesee Chief, and others.

Taney's great judicial ability was by this time recognized on all sides, even by those who had formerly opposed him. Partisan attacks on the court and political criticisms of its decisions had ceased almost for the first time in its history, and the court had reached a height in the confidence of the country never before attained. The dangerous question of slavery had raised its sinister head in *Groves v. Slaughter*, and *Prigg v. Pennsylvania*, but the impartiality of the decisions in these cases had satisfied all but the extremists on both sides; when Senator Clayton of Delaware introduced a bill by which the question of the power of Congress over slavery in the Territories would be referred to the Supreme Court. This bill brought forth a storm of debate in Congress both on slavery and on the court, which was continued with increasing bitterness over the Compromise Acts of 1850 introduced by Henry Clay to settle the whole issue of slavery in the Territories; the anti-slavery men maintaining a campaign in Congress and in the press for the express purpose of undermining popular confidence in the judges. Added to this campaign of abuse, the press of Ohio,
California and Wisconsin launched bitter attacks against the Court for decisions they regarded as interfering with their state-rights. It was in this surcharged atmosphere that the fateful Dred Scott Case came before the Court, a case fraught with more momentous consequences than ever before came before a judicial tribunal. I can but barely touch upon it tonight. The facts were simple, perhaps the most difficult part of the case was what question under the pleadings, was before the court. That the judges could not agree upon. The facts of the case were: Dred Scott, a slave, was taken from Missouri, a slave State, by his master, to Illinois, a free state, and there held as a slave for two years; his master then removed him to Fort Snelling which was in the territory where slavery was forbidden by Congress by the Missouri Compromise. Two years later the master removed Scott back to Missouri where he resided until the time of the suit. Scott claimed (1) that he became free by virtue of his residence in Illinois, (2) that he became free by virtue of his residence in Fort Snelling, and (3) that being free he was a “citizen” within the meaning of that word as used in the Constitution giving the Supreme Court jurisdiction in cases between citizens of different states. Scott’s suit was dismissed. Seven of the nine judges delivered separate opinions. Four of the judges, including Taney, held (1) that Scott’s ancestors having been brought to this country as slaves, even if he became free by being taken to Illinois, was not a citizen within the meaning of the Constitution, (2) Taney and six other judges held that the Missouri Compromise was unconstitutional, and hence Scott’s removal to Fort Snelling did not make Scott free, and (3) that Scott’s removal to Illinois did not make him free. Taney’s opinion is a masterpiece of judicial reasoning. The inescapable logic of it was not the least part of the offense it gave to the anti-slavery critics.

When the decision was announced the storm broke. A tornado of abuse and hate swept over the North; Kansas had been running blood for three years in the fight between the partisans of slavery and anti-slavery. The Republican party had sprung into being with the avowed object of abolishing slavery. The passions of men were stirred as please God they will never again be stirred in the Republic. Taney met the storm, as he had met others that had swept him, with unbowed head and unbroken courage, in the consciousness that he had done what it became a man and a judge to do.

The last important case decided by Taney was the case known as the Habeas Corpus Case. On the 25th of May, 1861, the Civil
War having begun, one Merriman, a citizen of Maryland, was arrested on a charge of treason under orders from a Major-General of the U. S. Army and was imprisoned at Fort Henry. On the petition of Merriman Taney issued a writ of habeas corpus directing the Commandant of the fort to produce Merriman the following day. The Commandant refused to obey the writ stating that he had been authorized by the President of the United States to suspend the writ in such cases. Taney immediately issued an attachment against the Commandant on the ground that the President had no power to suspend the writ of habeas corpus, that that power lay only in Congress. The marshal was stopped at the gate of the fort and not allowed to enter. Taney, the judge faced thus by the power of the President of the United States buttressed by the military force, excused the marshal for failing to summon the posse committatus to aid him, and two days later filed an opinion in the office of the clerk of the Circuit Court, denying the power claimed by the President. In closing his opinion he writes: "I have exercised all the power which the Constitution and the law confer on me, but that power has been resisted by a force too strong for me to overcome. I shall order all the proceedings in this case with my opinion to be filed—and direct the clerk to transmit a copy under seal to the President of the United States. It will then remain for that high officer, in fulfillment of his constitutional obligations to "take care that the laws be faithfully executed," to determine what measures he will take to cause the civil process of the United States to be respected and enforced." Chief Justice Coke, when the question was put to him by the King as to what Coke would do in a case in which the King's prerogative was concerned, made the answer which has become immortal: "Sire, when the case happens I shall do that which shall be fit for a judge to do." Chief Justice Taney when faced with a case of Presidential prerogative, did that which it was fit for a judge to do.

Chief Justice Taney died on the 12th of October, 1864, in the eighty-eighth year of his age, and was buried as was his wish in Frederick City by the side of the mother whose memory he had so long cherished.

Proud may be the profession that produces and blessed is the country that has, such judges.