change that intention, and to determine to write out my opinion. It is already written; but I find it longer than I like, and I retain it for the purpose of condensing my argument. As soon as it is brought within proper dimensions, I will send it to you with Judge Baldwin's. You know my settled dislike to long opinions, when justice to the case can be done by a short one. Yet I fear I sin in unnecessary length as often as any of my brethren.

With best wishes, I am, dear sir,

Your friend and obedient servant,

R. B. TANEY.

RICHARD PETERS, ESQ.,
Philadelphia.

I must now speak of Chief-Justice Taney as a Judge at Circuit. His opinions from April Term, 1836, to April Term, 1861, have been reported by his son-in-law, the late James Mason Campbell, of the Baltimore bar. They embrace cases at common law, equity, and admiralty. If the reader will look at the first two opinions in the volume, they will be evidence of the ability of all the rest. The ability of a Judge at Circuit cannot be fully seen in his opinions. The matters which are not reported manifest much more the capacity of the Judge. The supreme excellence of the Chief Justice at Circuit will go down to other generations as a tradition of the Baltimore bar. My honored friend, the late J. V. L. McMahon, of the Baltimore bar, in a letter to me, dated December 11,

1865, written while he was ill, thus speaks of the Chief Justice at Circuit:

"Thus situated, I cannot now undertake [says Mr. McMahon] to furnish you with such a statement of the case of Budd *vs.* Brooke's Lessee as you would desire to have or I would be willing to give.

"I will refer you, however, on the subject, to my old friend Thomas S. Alexander, Esq., my associate in that case, who must still have a vivid recollection of all the circumstances of that intricate and most perplexing case, which was on trial before C. J. Taney and J. Heath for nearly a month. He will remember that this case was prosecuted on what was called the old title, for about three weeks, during which we had prepared, with great care, and after much reflection and consultation, a great number of prayers embodying all our views upon the novel and perplexing questions involved in that title, but which were never presented to the Court, because the old title was ruled out for the want of proper location. He will also recollect that the plaintiffs then threw themselves upon their later title, under the escheat warrant which they sought in the first instance to repudiate, by setting up the old title. And that the case was decided in our favor, as to the escheat title, upon a single prayer of the plaintiffs. He will also recollect that after thus disposing of this new title, the Chief Justice remarked that as the old title might come up again in the case

on amended locations, he deemed it due to the cause of justice to avoid, as far as possible, further delay and expense to the parties, by giving them his views as to the old title also, which had been fully and completely exhibited before the objection as to location had been taken.

"Then it was that he delivered the verbal opinion as to the old title, which gave us such a display of intellect and judicial ability as has seldom, if ever before, been displayed in any case under the same circumstances. The questions involved in that title, many of which were very novel, and even perplexing to ourselves after much reflection, had not only never been argued, but had not even been presented for the cause before stated. The facts as to the old title, extending over a period of nearly or quite a century, and through several generations, were such as required the closest attention to obtain even a mastery of these.

"It was expected by all parties that at the close of the case, all these complicated facts, and the difficult questions growing out of them, would have been fully presented to the Court by the prayers and arguments of the counsel on both sides. For it could not reasonably be expected that the Court, whilst its attention was engrossed by the reception of the evidence, and the decisions of the questions arising in the course of its reception, could have mastered the whole case, so as to have rendered prayers or arguments unne-

cessary. When, then, the old title was unexpectedly ruled out, without a prayer or argument on either side, I was entirely unprepared for the display of intellect by the Chief Justice in his opinion disposing of it. And accustomed as I had been to the manifestations of his forensic and judicial ability on many previous occasions, I confess that, in my judgment, this outstripped them all. His opinion not only showed a perfect acquaintance with all the complicated facts of the case, but it also referred to and covered all the numerous questions of law which were to have been presented by our carefully prepared prayers. It is to be remarked also, that when this occurred there were other circumstances calculated to distract the attention of the Chief Justice. The case, at its close, was hurried through to enable him to attend the Supreme Court, and the opinion was delivered after the session had commenced. What I have said will serve to refresh the recollection of my friend, Mr. Alexander; although I am sure he will need no such refresher. I think I cannot be mistaken when I say that his surprise and admiration were equal to my own. Should there be any favorable turn in my disease which will enable me to say more, you will hear from me; and let me add, I shall always be glad to hear from you."

This letter, written by a lawyer of the greatest power and resources of any I have ever heard in a

court of justice, will furnish the reader some idea of Chief-Justice Taney as a *nisi prius* judge.

In Campbell's Reports will be found the case of Reed *vs.* Carusi, relating to copyright for a musical composition. What took place on the trial before Chief-Justice Taney, at Circuit Court in Baltimore, is given in a letter to Mr. Campbell, written, by one of the counsel in the case, for my use.

BALTIMORE, February 8, 1867.

J. MASON CAMPBELL, ESQ.

DEAR SIR: — I can only comply, in a very general way, with your request that I should furnish you with a narrative of the proceedings in the case of George P. Reed *vs.* Samuel Carusi, tried before C. J. Taney, at November Term, 1845, in the Circuit Court United States, in Baltimore.

The papers I have been able to find present a very meagre record of the case; and, after the lapse of more than twenty years, I cannot pretend to recall with accuracy the special circumstances of the trial. But I furnish you with such as I can recollect.

Reed was a music seller in Boston, and had published and copyrighted an air set to the words of a popular ballad of the day, composed by Miss Eliza Cook and called "The Old Arm-Chair." The authorship of the music was claimed by Mr. Henry Russell, a famous singer; and the piece was in great demand. Carusi was a music publisher in Baltimore, who, availing himself of the popularity of the song, had adapted to the words another somewhat similar air, which he claimed to be a different composition, and published

and sold it; and he was sued by Reed, in the Circuit Court before Chief-Justice Taney, for an infringement of his copyright. The case was entirely novel in its features, and presented some very perplexing questions as to what constituted "originality" in musical composition, and as to the right of Mr. Russell to be considered the "author" of the air which had been copyrighted. There was a great deal of learned musical testimony and forensic discussion on these very important points, the particulars of which, and the Chief Justice's ruling thereon, I do not remember.

But I recall very distinctly one circumstance in the case which was so peculiar that it could not easily be forgotten. There was a question of fact, whether the air adapted by Carusi to the words was substantially the same as that which had been used by Mr. Russell. On this point, the musical experts, proverbially discordant among themselves, differed widely in their testimony. Some insisted that the airs were identical; others, that there was a marked and easily to be recognized difference between them. To reconcile this conflict of opinion, it was proposed by Mr. Latrobe, who was the plaintiff's counsel, that Mr. John Cole, an old professional singer, should be sworn as a witness, and required to sing the two songs to the jury, that they might judge for themselves whether the two airs were similar or not. I remember resisting most strenuously, on behalf of the defendant, the introduction of this novel species of evidence; but the Chief Justice overruled the objection, stating that he would make a rule for the case, which he considered a reasonable one, however novel and peculiar it might be;

and that as the jury were to determine whether the two airs were substantially the same, the best evidence with which they could be furnished, would be the singing of them by an expert witness. Mr. Cole accordingly proceeded in the gravest manner, under the direction of the Chief Justice, to intone the two songs successively in open court; and the appearance of the singer, the lamentable, monotonous cadence of both airs, the bathos of the words, which, as nearly as I recollect, ran somewhat in this way,

> "I love it! I love it! And who shall dare
> To chide me for loving that old arm-chair," etc.,

together with the singular and varied expressions of pleasure or disapprobation on the faces of the musical *dilettanti* present, produced by Mr. Cole's emphatic rendering of the songs, would, under any other circumstances, have created in the crowd of bystanders irresistible laughter and confusion. But the Chief Justice, with that power peculiarly his own, of restraining almost by a glance the slightest breach of decorum in his Court, overawed and repressed every demonstration of disrespect by the placid and dignified attention which he bestowed throughout upon Mr. Cole's musical efforts. I doubt if the same scene could have been enacted in any other Court without inducing some, at least, of the listeners to forget and violate the customary rules of judicial decorum.

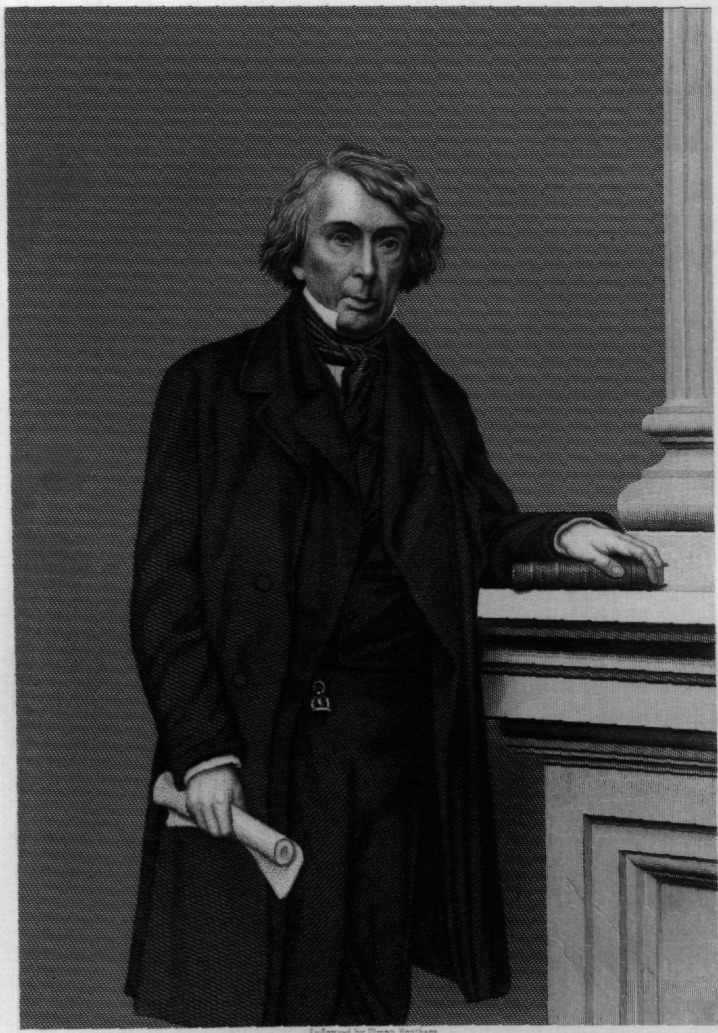
The case was argued to the jury, who made up their minds that there was only a difference in the songs between "Tweedledum and Tweedledee," and there was accordingly a verdict for the plaintiff.

I am, very truly yours, WM. F. FRICK.

There was always in the Court the most perfect order. As a presiding officer, dignity and authority sat upon his brow. His own singular courtesy not only diffused itself through the bar and all the officers of the Court, but it was contagious among the crowd. No officer was permitted to look at a newspaper, but was required to be intent upon the proceedings of the Court. Every one was made to feel that he was where solemn duties were to be performed.

At the beginning of a term, when the list of jurors was called, he attended to every name. And if a juror from Frederick County, where he so long lived, was called, and the name was familiar in his recollection, he always asked the Marshal to tell the juror to come to him after the adjournment. He generally found them the sons or more distant relatives of his old professional acquaintances and friends; and made the kindest inquiries into their family matters. Often have jurors from Frederick County told me, when they returned home, of these friendly talks of the Chief Justice. He was a true citizen, interested in all the affairs of his State. And the reverence and the almost filial affection with which he was regarded, showed that he was the first in the hearts of the people.

I must pause for a moment and open the door, and let the world look in upon the domestic life of the Chief Justice.



Engraved by Illman Brothers.

Ever & truly
your friend
R. B. Taney

From the Original in the possession of David M. Perine, Esq.

JOHN MURPHY & CO. BALTIMORE.

MEMOIR

OF

Roger Brooke Taney, LL.D.

Chief Justice of the Supreme Court of the United States.

By SAMUEL TYLER, LL.D.
OF THE MARYLAND BAR.

Qui nihil in vitâ nisi laudandum, aut fecit, aut dixit, aut sensit.

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