

which, except in *Smith vs. Collyer*, an injunction had been granted. Notwithstanding the discrepancy of the decisions, the constant tendency of the court had been to break down the unreasonable distinction between trespass and waste, and under all the circumstances he considered that the present was a case in which the injunction ought to be granted. He had gone into this case at great length, because of the extreme difficulty there was in finding any principle upon which to act in the matter of injunctions, but he should say it was this: that where the defendant was in possession, and the plaintiff, claiming under an adverse title, sought to restrain him from doing certain acts, such as cutting down trees, &c., the court would not interfere, unless, as in *Neale vs. Cripps, supra*, it was an act of such flagrant spoliation as to justify it in departing from the general principle; but where the plaintiff was in possession, and the defendant was a stranger, then, unless there were special circumstances, the tendency of the court was not to grant an injunction unless the acts complained of were serious. Where, however, the plaintiff was in possession, and the acts complained of were committed by a person claiming under title adverse to that of the plaintiff, then the tendency was to grant the injunction, unless there were special reasons why it should not be done; that, at all events, was the case where the acts either did or might tend to the injury or destruction of the estate. The injunction must be made perpetual, with costs.

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## LEGAL MISCELLANY.

ROGER B. TANEY.

Upon the occasion of the death of Chief Justice TANEY, in vacation, the members of the bar of the Supreme Court of the United States, and other officers of the court, having assembled in the court-room, at the Capitol, at noon on Tuesday, December 6, 1864, the following proceedings took place:—

The meeting was called to order by Jas. M. Carlisle, Esq., of Washington, and on his motion Jonathan Meredith, Esq., of Maryland, was called to the Chair, and D. W. Middleton, Clerk of the Court, was appointed Secretary.

On motion, the Chair appointed the following members of the bar a committee to report and recommend such resolutions and other proceedings as may be appropriate.

Ohio—Hon. Thomas Ewing, Henry Stanbery, Esq.

Maryland—Hon. Reverdy Johnson, Wm. Schley, Esq.

Pennsylvania—Hon. J. S. Black, Hon. Wm. B. Reed.

New York—Charles O'Connor, Esq., Hon. J. V. L. Pruyn.

New Jersey—Hon. J. C. Ten Eyck, C. Parker, Esq.

Illinois—Hon. O. H. Browning, S. W. Fuller, Esq.

Wisconsin—Hon. J. R. Doolittle, Hon. J. S. Brown.

Missouri—Hon. J. S. Green, T. T. Gantt, Esq.

California—Hon. Cornelius Cole, John B. Williams, Esq.

District of Columbia—P. R. Fendall, Esq., J. M. Carlisle, Esq.

Massachusetts—Hon. Caleb Cushing, Sidney Bartlett, Esq.

Kansas—Hon. Samuel A. Stinson.

The committee then retired, and, conferring, returned and reported, by their Chairman, Mr. Ewing, the following preamble and resolutions, which were, by request, read by Mr. Carlisle :—

ROGER BROOKE TANEY, of Maryland, fifth Chief Justice of the Supreme Court of the United States, having departed this life on the evening of Wednesday, the 12th of October last, at his residence in the city of Washington, in vacation of the Court, the members of the bar and other officers of the court desire, at the earliest moment and in advance of the business of the term, to place upon record their profound sense of this national calamity, and a testimonial, individually and collectively, of their affectionate veneration for his memory.

A man of spotless and benevolent life, he must, alike in the humblest as in the highest sphere, have everywhere and always commanded the sympathy, respect, and homage of all good men who knew him or felt his influence. To see him and to speak with him was enough to give assurance of this. To know him intimately was to make this assurance doubly sure.

But his was not the destiny of private life, where virtue, benevolence, and religion pursue the noiseless tenor of their way; and yet, upon the broad and lofty theatre to which he was called, and where, for more than a quarter of a century, he sat in judgment, between sovereign states as between private litigants, "without fear and without reproach," there was ever apparent this deep undercurrent which marked him as the model of a good man and a Christian gentleman.

Ever unambitious of political distinction or political office, he nevertheless served his native state as member of the House of Delegates, as Senator, and as Attorney-General of Maryland, when the interests of the state and people summoned him from his chosen quiet and thoughtful path of the jurist. He first extended his sphere of professional usefulness to the national councils when he had become the acknowledged head of the Maryland bar, which, among the names of those who had preceded him, boasted of Martin, Dulaney, Pinkney, Wirt, and Harper.

It was a notable tribute to his distinction as a lawyer and his worth as a private gentleman, that he was called by President Jackson to the office of Attorney-General at a time of great party strife, when a new order of things was about to be inaugurated, and when he was known to belong to the constitutional school, of which Chief Justice MARSHALL was the living type, as he remains the enduring monument.

The brief period during which Mr. TANNEY held the office of Secretary of the Treasury, from which he was called to preside in this Court, was marked by the same firm, steady, and conscientious discharge of duty, which characterized him in every situation of life, public or private. His convictions were ever the result of patient deliberation upon the whole matter before him, truth and right being his constant end and aim.

Profoundly learned in the law, and naturally gifted with a clear, direct, and logical mind, he nevertheless listened for instruction from the humblest advocate who appeared before him in any case. With all the qualities of a great judge, and with the natural consciousness of his superiority to ordinary men, he was ever attentive and respectful to those whose duty brought them before him to attempt to influence his determination as a judge, and none who knew him could doubt that his conclusions were always the result of conscientious and enlightened study and reflection.

The bar of this Court, as a body, heartily unite in this tribute to the memory of this great and good magistrate. His enduring record is perpetuated in the official reports of this Court. His judgments, like those of his illustrious predecessors, will be studied by successive generations of judges as long as American jurisprudence shall exist; therefore,

*Resolved*, That the members of this bar, and officers of this court, deeply impressed by the great and good qualities and ac-