# **Dickinson College Archives & Special Collections**

http://archives.dickinson.edu/

# **Documents Online**

Title: Letter from Roger B. Taney to Unknown Recipient

**Date:** November 30, 1832

Location: I-SpahrB-1965-17

# **Contact:**

Archives & Special Collections Waidner-Spahr Library Dickinson College P.O. Box 1773 Carlisle, PA 17013

717-245-1399

archives@dickinson.edu

My bear fir

The last week I alais of amofolis, I how sich I unable to attend to lusings with the exception of one day when I made myself worse hope attempting on agreement in land - and the same laure has provented me from refolying Looner to your letter directed to me here . I how however today examined the case to which you referred me in 2. Har. a give . - That wase is abundantly sheet & admine to the princis -Bus of justice. But the lount of appeals will without doubt where to it . They will not however I hope he disposed to extend its him -What - & I think are use may be distinguished

In the case referred to, the judgment was I presume against the adout in his representative character 2 was therefore only a judgment for aprils - and

not a judgment in personam. In our case the the decre against mes Daw son is a deares in personam for money found to be due from her in the character of Ey.7., and whom that decree he should not have been abliged to proceed against The aports of the security, nor to have suggested a donastorist, but might have proceeded her-Lowelly against her as for a delet found to be Dear from her. although thurson the hour states the decree against her without naming her as exacuting - it get states it truly a closs hat very from the drever actually made. The hand States a Dieres against her personally - and the decree was against her parsonally, for a dall for which she had became liable by noson of the aprets found to la in him hours. If I am right in this position has can maintin on action on the bows. - and I should dearn it the sofrest made to write all the blointips I Defendants in one suit. - as to the form of spigning the busches, you may consult your own lovuenione & wither atata them in the Declaration - or userne Them for the upheation

as you proper. The ligal results will be the some withen way . - and if I am sight in the notions about states as to the character of the decree against me bourgon, we shall never in wither form of pleasing. -But if the bout about how that the beene against mrs bougan, is not against her fer -Sonally, then there is no form of heading in which we shall be able to maintain an action against her on the appeal how amording to the doction in 2. how. Ifile. and there is no made of pleading by which the defendant could be presented from availing herself of the reasioner if it he a dules toutied - Upon looking again at your statement of find that in one . To give you me the language of the decree your state it to be the 11th July 1820. - you much I known the decree of the land of appeals 1832 as it is whose the decree in that laurt that the breach is to be aprigned. What is the language of the Chancellors Decree? for it is his Decree that is recited in the bond - and if that is truly resited Then the is liable by the condition for the Justonname of any decrea which the locus of sphield may make in the promises, whethere

it orders her to pay individually a certain fun or to fray it out of the expets of the Secretion. For The stipe lation in the hour individually linds her to perform any dreve that the court of appeals may make on that appeal. The difficulty in the case of Birckhad & Sounders was that the bond wisted a defferent judyment in the launty launt from the one offered in emoure. - Is the Chancellars decrea against her Insomally & is it correctly weited in the hous? If it is - the I think has have nothing to apprehend from the form in which the Court of appress how decreed in the primities. I'm sensible that I have not atoled my notions to you in very build order, - but you will I hope be able to comprehend there of wice aucht as are apology for the monner in which it is done, my present atale of health which is by no means quited for close head disquisitions . - Whow you ivery my hopers I am martiped to find that I have mistoid your note to me at annapolis - 22 my houth for mits I shall when to annapolis on monday next - and if you will take the trouble to represe what you atuted in Bat note I will promise

to take better con of it. I hope to be able to on - swee is without so much delay. - I so not at this time remember its contents were enough to say whether it contained any sugaines not included in your lost letter.

L'am Dr. pi very respectances

2 truly zus

B. B. Taney

No. M. 16. Janey Washington 30 chr: My Dear sir,

The last week I staid at Annapolis, I was sick & unable to attend to business with the exception of one day when I made myself worse by attempting an argument in court, and the same cause has prevented me from replying sooner to your letter directed to me here. I have however today examined the case to which you referred me in 2. Har. & Gill. That case is abundantly strict & adverse to the principles of justice. But the court of appeals will without doubt adhere to it. They will not however I hope be disposed to extend its principles, & I think our case my be distinguished from it.

In the case referred to, the judgement was I presume against the admr. in his representative character & was therefore only a judgement for assets, and

# [page 2]

not a judgement *in personam*. In our case then the decree against Mrs. Davison is a decree *in personam* for money found to be due from her in the character of Ex. T., and upon that decree we should not have been obliged to proceed against the assets of the Deceased, nor to have suggested a devastavit, but might have proceeded personally against her as for a debt found to be due from her. Although therefore the bond states the decree against her without naming her as executrix, it yet states it truly & does not vary from the decree actually made. The bond states a decree against her personally, and the decree <u>was</u> against her personally, for a debt for which she became liable by reason of the assets found to be in her hands.

If I am right in this position we can maintain an action on the bond, and I should deem it the safest mode to unite all the plaintiffs & Defendants in one suit. As to the form of assigning the breaches, you may consult your own convenience & either state them in the Declaration, or reserve them for the replication

# [page 3]

as you prefer. The legal results will be the same either way. And if I am right in the notions above stated as to the character of the decree against Mrs. Davison, we shall recover in either form of pleading.

But if the Court should hold that the Decree against Mrs. Davison, is not against her personally, then there is no form of pleading in which we shall be able to maintain an action against her on the appeal bond according to the doctrine in 2. Har. & Gill. And there is no form of pleading by which the defendant could be precluded from availing herself of the variance if it be a substantial one. Upon looking again at your statement I find that in giving me the language of the decree you state it to be the 11<sup>th</sup> July 1820. You mean I presume the decree of the Court of Appeals 1832 as it is upon the decree in that court that the breach is to be assigned. What is the language of the Chancellors decree? For it is his decree that is recited in the bond, and if that is truly recited then she is liable by the conditions for the performance of any decree which the Court of Appeals may make in the premises whether

# [page 4]

it orders her to pay individually a certain sum or to pay it out of the assets of the deceased. For the stipulation in the bond individually binds her to perform any decree that the Court of Appeals may make on that appeal. The difficulty in the case of Birckhead & Saunders was that the bond recited a different judgment in the County Court from the one offered in evidence. Is the chancellors decree against her personally & is it correctly recited in the bond? If it is, then I think we have nothing to apprehend from the form in which the Court of Appeals have decreed in the "principus."

I am sensible that I have not stated my notions to you in very lucid order, but you will I hope be able to comprehend them & will accept as an apology for the manner in which it is done, my present state of health which is by no means suited for close legal disquisitions. Upon examining my papers I am mortified to find that I have mislaid your note to me at Annapolis. If my health permits I shall return to Annapolis on Monday next, and if you will take the trouble to repeat which you stated in that note I will promise

# [page 5]

to take better care of it, & hope to be able to remember its contents well enough to say whether it contained any enquiries not contained in your last letter.

I am Dr. sir very respectfully & truly yours
R. B. Taney