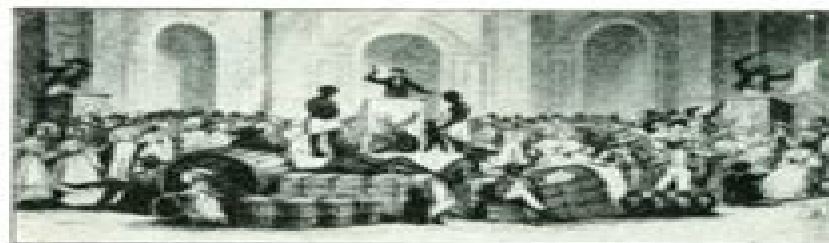


DRED SCOTT



— A CENTURY AFTER

by FRED RODELL

"The Dred Scott case of 1857 is the most famous — or notorious — in all of our judicial history," says FRED RODELL, professor of law at Yale University. Mr. Rodell's latest book, NINE MEN, is a political history of the U.S. Supreme Court,

A RESPONSIBLE if somewhat sectionally slanted journal was commenting on a controversial decision of the Supreme Court of the United States. "The most sacred and binding compacts of former years," it growled, "were annulled to make way for it; and the judicial department of the government was violently hauled from its sacred retreat, into the political arena, to give a gratuitous *coup-de-grâce* to the old opinions and the apparent sanction of law to the new dogma." And in a later issue: "Whatever the . . . judges of the Supreme Court may seek to maintain, they cannot upset the universal logic of the law, nor extinguish the fundamental principles of our political system."

Plus ça change, plus c'est la même chose. This was not a Southern newspaper or magazine protesting the anti-school-segregation decision of 1954. It was New England's own *Atlantic Monthly*, protesting early in 1858 the Dred Scott decision.

The Dred Scott case of 1857 is the most famous — or notorious — in all of our judicial history. It is the only one that every schoolboy knows by name, though rarely by its full name, which was *Dred Scott v. Sandford*. It is the only one that helped bring on a major war. It is one of only three decisions in 168 years of Supreme Court an-

nals that were eventually reversed, not by the Court itself, not even, legally speaking, by war, but by amendment of the Constitution. (The other two were *Chisholm v. Georgia*, a minor insult to state sovereignty reversed by Amendment XI, and the *Puffest* income-tax case of 1895 reversed by Amendment XVI.) And when the anti-segregation ruling of three years ago was called by several commentators "a second Dred Scott case," they did not mean to lump together, ideologically, the Court's greatest anti-Negro and pro-Negro decisions; the metaphor merely put the new case beside the old at the pinnacle of political importance.

Yet, for all the familiarity of its name and of the bare fact that it bestowed judicial blessing on the institution of slavery, the full story of the Dred Scott case is not widely known, even among lawyers. Indeed, the off-stage scenarios did not come to light until well into the twentieth century, when the papers of President Buchanan and, later, of Justice McLean were published. Had that story been contemporarily known, the newborn *Atlantic Monthly* might have used still harsher language than it did when it spoke of "a Court whose members are selected, not for uprightness of character or breadth of mind, but by the inverse test of their capacity for cringing subservience to party."

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Table of Contents Rodell Revisited Selected Writings Of Fred Rodell

1. Understanding the eBook Rodell Revisited Selected Writings Of Fred Rodell
 - The Rise of Digital Reading Rodell Revisited Selected Writings Of Fred Rodell
 - Advantages of eBooks Over Traditional Books
2. Identifying Rodell Revisited Selected Writings Of Fred Rodell
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Rodell Revisited Selected Writings Of Fred Rodell
 - User-Friendly Interface
4. Exploring eBook Recommendations from Rodell Revisited Selected Writings Of Fred Rodell

- Personalized Recommendations
- Rodell Revisited Selected Writings Of Fred Rodell User Reviews and Ratings
- Rodell Revisited Selected Writings Of Fred Rodell and Bestseller Lists
- 5. Accessing Rodell Revisited Selected Writings Of Fred Rodell Free and Paid eBooks
 - Rodell Revisited Selected Writings Of Fred Rodell Public Domain eBooks
 - Rodell Revisited Selected Writings Of Fred Rodell eBook Subscription Services
 - Rodell Revisited Selected Writings Of Fred Rodell Budget-Friendly Options
- 6. Navigating Rodell Revisited Selected Writings Of Fred Rodell eBook Formats
 - ePub, PDF, MOBI, and More
 - Rodell Revisited Selected Writings Of Fred Rodell Compatibility with Devices
 - Rodell Revisited Selected Writings Of Fred Rodell Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Rodell Revisited Selected Writings Of Fred Rodell
 - Highlighting and Note-Taking Rodell Revisited Selected Writings Of Fred Rodell
 - Interactive Elements Rodell Revisited Selected Writings Of Fred Rodell
- 8. Staying Engaged with Rodell Revisited Selected Writings Of Fred Rodell
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Rodell Revisited Selected Writings Of Fred Rodell
- 9. Balancing eBooks and Physical Books Rodell Revisited Selected Writings Of Fred Rodell
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Rodell Revisited Selected Writings Of Fred Rodell
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Rodell Revisited Selected Writings Of Fred Rodell
 - Setting Reading Goals Rodell Revisited Selected Writings Of Fred Rodell
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Rodell Revisited Selected Writings Of Fred Rodell

- Fact-Checking eBook Content of Rodell Revisited Selected Writings Of Fred Rodell
- Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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