

# THE ALABAMA HISTORICAL QUARTERLY



---

Vol. XXXIV

SUMMER, 1972

No. 2

---

*Published by the*

ALABAMA STATE DEPARTMENT

OF

ARCHIVES AND HISTORY

SKINNER PRINTING COMPANY

LLOYD STREET

MONTGOMERY, ALABAMA

# THE ALABAMA HISTORICAL QUARTERLY

---

Vol. XXXIV

SUMMER, 1972

No. 2

---

## CONTENTS

- Jose De Evia and His Activities in Mobile, 1780-1784,  
*by Jack D. L. Holmes* ..... 105
- Bank of Augusta v. Earle: Corporate Growth v. States' Rights*  
*by Eric Monkkonen* ..... 113
- Fusion, Confusion, Defeat, and Disfranchisement: The  
"Fadeout of Populism" in Alabama *by Karl Louis Rodabaugh* ..... 131
- The Origin of the Alabama Department of Archives and  
History, *by Robert R. Simpson* ..... 155
- Book Reviews:
- Rogers and Pruitt, *Stephen S. Renfroe, Alabama's Outlaw Sheriff*,  
*by Sarah W. Wiggins* ..... 171
- Tindall, *The Disruption of the Solid South*, *by Sarah W. Wiggins* ..... 172
- Hamilton, *Hugo Black: The Alabama Years*, *by Hugh D. Reagan* ..... 174

Notes

---

Milo B. Howard, Jr., Editor

---

Published by the  
ALABAMA STATE DEPARTMENT  
OF ARCHIVES AND HISTORY  
Montgomery, Alabama

## CONTRIBUTORS

JACK D. L. HOLMES is a professor of history at the University of Alabama in Birmingham.

ERIC MONKKONEN is a student of legal history and resides in Minneapolis, Minnesota.

KARL LOUIS RODABAUGH is an instructor in history at East Carolina University, Greenville, N. C.

ROBERT R. SIMPSON is an associate professor of history and social science at Coker College, Hartsville, S. C.



## JOSE DE EVIA AND HIS ACTIVITIES IN MOBILE, 1780-1784

by

Jack D. L. Holmes\*

The outstanding Spanish explorer of the Gulf of Mexico in the eighteenth century may well have been Jose de Evia.<sup>1</sup> Born in the small fishing village of La Grana on the northwestern shore of Spanish Galicia in July, 1740, he was the son of Simon de Evia and Felipa de Gantes y Pravio de Evia. This was a family which had been closely connected with the sea for generations, and Jose's father had charted the Gulf coast of Louisiana as early as 1736. But it was Jose de Evia who was the outstanding explorer and whose accurate charts and soundings for the Gulf of Mexico virtually re-wrote the naval charts at the Spanish naval academies.<sup>2</sup>

The youth studied at the Royal Naval Academy of El Ferrol in Galicia and began his career as a pilot's assistant in 1755. While only a lad of eighteen he once took second-in-command of a ship when the officer became ill. For a number of years Evia cruised aboard ships in the Spanish squadrons plying the seas between Cadiz and the Gulf of Mexico. He tasted the fruits of naval victory in an engagement of 1760 against a British warship while serving in the coast guard of Cartagena de Indias.

Evia first arrived at New Orleans in 1771 aboard the

---

\*This paper was read at the 49th Annual Meeting of the Alabama Academy of Science, Jacksonville, Alabama, April 14, 1972.

<sup>1</sup>He was baptized Joseph Antonio de Evia. After he came to New Orleans in 1787, he changed the spelling of his name and was known henceforth as José de Hevia. His two sons, Francisco Hemeterio de Hevia and José Bernardo de Hevia, were both career officers in the Louisiana Infantry Regiment. Jack D. L. Holmes (ed.), *José de Evia y sus reconocimientos del Golfo de México, 1783-1796* (Madrid, 1968), 13, 21-22.

<sup>2</sup>Biographical data on Evia is based on *ibid.*, and this writer's following articles: "Gallegos notables en la Luisiana," *Cuadernos de Estudios Gallegos* (Santiago de Compostela, Spain), Fasciculo LVII (1964), 110-113; "Two Spanish Expeditions to Southwest Florida, 1783-1793," *Tequesta*, XXV (1965); and "Dramatis Personae in Spanish Louisiana," *Louisiana Studies*, VI (Summer, 1967), 177-180.

frigate *Volante*, a ship which would see action at Mobile nine years later. Louisiana's governor, Luis de Unzaga y Amezaga, sent Evia to the mouth of the Mississippi River to chart the several passes into that estuary and to check English corsairs which preyed on Spanish shipping. Naval historians have not emphasized the role of the Spanish-English disputes of the 1770's, but the "cold war" soon developed into hot combat when Spain declared war on England in 1779. Although much emphasis is given to the French fleet's contribution to American Independence during the Revolution, the only remark made by one study of the United States and world sea power regarding the campaigns of West Florida is the erroneous statement, "The Spanish were interested in strengthening their colonial posts, such as New Orleans, whose commander had daringly led an expedition against the British in the region of northern Lake Michigan. . . ."<sup>3</sup>

As a matter of fact, Spanish naval control of the lakes in Louisiana and West Florida—Pontchartrain, Maurepas and Borgne—was a key factor in allowing the land forces to capture the major British posts of Baton Rouge, Mobile, and Pensacola. Jose de Evia played an important role in these events. He had already demonstrated his bravery when an English sloop attacked the Spanish mail ship descending the Mississippi River. With a small boat and only sixteen men, Evia attacked and captured an English boat at the mouth of the Mississippi.<sup>4</sup>

Another English schooner had been sent in September, 1779, from Pensacola to reinforce the British Fort Bute de Manchac. Sixteen soldiers from the British 16th Regiment guarded the provisions, but Evia's launch had a crew of eleven marines and eleven sailors, and he successfully boarded and captured the enemy craft.<sup>5</sup>

<sup>3</sup>E. B. Potter (ed.), *The United States and World Sea Power* (Englewood Cliffs, N. J., 1955), 111.

<sup>4</sup>Service sheet (*Hoja de Servicios*) of Evia, March 30, 1793, Archivo-Museo Alvaro de Bazán Marina de Guerra (El Viso del Marqués, Spain), Seccion de Indiferente, *Expediente* (dossier) on Evia. Printed in the appendix of Holmes, *José de Evia* (hereafter cited as Evia's Service record), appendix.

<sup>5</sup>José de Evia to Luis Lorenzo de Terrazas, Goleta Inglesa at the German Coast, September 3, 1779, Archivo General de Indias (Sevilla), Papeles procedentes de la Isla de Cuba, legajo 12; Holmes, *José de Evia*, 7, 246.

The captured vessel was in poor condition, however, and it shipped water badly. The pumps were broken, but Evia directed one of his men to repair one of them and he ordered the prisoners to take turns at the single pump. In addition to the captain of the schooner, four sailors, seven soldiers and a sergeant had been captured. As he set sail for the German Coast of the Mississippi above New Orleans with his prisoners, the captured schooner leaked so badly that Evia ordered it ashore on Lake Pontchartrain. From several Tory plantations he rounded up eight old Negro slaves and added them to his prisoners-of-war. With three Spanish sentries guarding the prisoners at work on the pump, the schooner limped badly, but Evia directed it to the German Coast and turned over his prisoners to the commandant on September 3, 1779.<sup>6</sup>

Less than three weeks later, Louisiana governor, General Bernardo de Galvez, accepted the surrender of Baton Rouge and transfer of Natchez from the English commander.<sup>7</sup> The next step was the capture of Mobile's formidable "Castillo," which was ably defended by Captain Elias Durnford. Galvez left New Orleans on January 14, 1780, but bad weather kept him near the mouth of the Mississippi until February 6. Hurricane-strength winds almost destroyed the Galvez squadron before he landed on Mobile Bay.<sup>8</sup>

In his naval squadron, Galvez had a motley fleet which included a merchant frigate, 4 settees, one packet-boat, two brigantines, the galliot *Valenzeula*, the brigantines *Galvez-Town* and *Kaulican*, and the war frigate *Volante*, whose commander was Jose de Evia.<sup>9</sup> On February 9, 1780, as the Spanish squadron drew near the entrance to Mobile Bay, look-

<sup>6</sup>*Ibid.*

<sup>7</sup>Jack D. L. Holmes, *Honor and Fidelity, The Louisiana Infantry Regiment and the Louisiana Militia Companies, 1766-1821* (Birmingham, Alabama, 1965), 30-31.

<sup>8</sup>Bernardo de Gálvez to Diego Joseph Navarro, No. 234, confidential, Dog River (Rio de los Perros), February 27, 1780, and No. 247, Mobile camp, March 4, 1780, both in Archivo General de Indias, Papeles procedentes de la Isla de Cuba, legajo 1232, and translated in the *Despatches of the Spanish Governors of Louisiana* (W. P. A. translations and typescripts; Louisiana State Museum Library, New Orleans), Book 2, Vol. X, pp. 26-26A, 38.

<sup>9</sup>John Walton Caughey, *Bernardo de Gálvez in Louisiana, 1776-1783* (Berkeley, California, 1934), 174-175.

outs spotted a frigate about the same size as the *Volante*. It was an English frigate, and the Spaniards immediately gave chase. In the meantime, another English ship, a two-masted coaster or *quairo*, had been captured inside Mobile Bay by a well-armed Spanish cannon launch under the command of Ensign Juan de Riano. The prisoners revealed that the English merchant frigate which the Spaniards were chasing had sailed for Mobile from Pensacola five days earlier with provisions. It had only sixteen mounted cannon and a twenty-man-crew.<sup>10</sup>

On the morning of February 10th, the wind picked up sharply from the southwest, whipping the sea into large swells. The Spanish fleet moved toward the shelter inside Mobile Bay, and Evia's *Volante* was the first to cross the bar, following which was Galvez's brigantine. Once across the bar, the two ships gave chase to the English frigate, whose crew had already left it abandoned on a sandbar in the channel. Evia failed to notice this because his prow was to the wind, and he had the misfortune of seeing his own frigate crunch into the sandbar. The catastrophe was compounded as the *Galvez* and four smaller vessels likewise ran aground on the sandbar.

The storm continued, thus making rescue attempts virtually impossible. The *Galvez* was finally removed from the bar after a thirteen-hour struggle at one A.M., but so damaged that she shipped nine inches of water an hour. Two of the other smaller vessels were also freed, and the disgruntled Spaniards struggled to remove the frigate and two of the boats. For several days sailors, troops and workers struggled to free the *Volante*, but without success. Finally, on February 15th, Galvez gave orders that the 800 Spaniards should try to salvage as much from the wrecked and grounded boats as possible.

Driftwood from the floatsam found along the shore was collected, and Galvez directed the manufacture of scaling lad-

---

<sup>10</sup>Details on the loss of the *Volante* at the entrance to Mobile Bay are based on the diary of Gálvez's siege of Mobile, dated Mobile, March 18, 1780, Archivo General de Simancas, Seccion Guerra Moderna, legajo 6912. A very poor, incomplete translation with innumerable errors, is in the Mississippi Department of Archives and History (Jackson), Mississippi Provincial Archives, Spanish Dominion, and has been transcribed in Mrs. Corinne McN. Lee in *Deep South Genealogical Quarterly*, V (February, 1968), 163-176.

ders to be used against Fort Charlotte. The eight guns from the *Volante* were removed and placed in a small battery erected on the eastern tip of Mobile Point near the present-day site of Fort Morgan State Park. Evia, who had been named captain of the port of Mobile for the duration of the siege, took command of this small post with forty men of the line and sixty sailors. He also reported on the defenses he had set on Dauphin Island, which guarded the western approaches to Mobile Bay.<sup>11</sup>

Captain Durnford agreed to the terms of capitulation drawn up by Galvez on March 12, 1780, and Mobile became Spanish.<sup>12</sup> The British prisoners of war were loaded aboard the brigantine *Kaulican* and sent under guard to Havana. "The Captain of the frigate," wrote Galvez, obviously referring to Jose de Evia, "will give you an account of these men."<sup>13</sup>

Evia also served as a courier between Galvez and the Spanish squadron in the Gulf under the command of Juan Bautista Bonet. He sailed the packetboat *San Pio* as far as the 29th parallel North Latitude, delivered the dispatches, and was returning to Mobile with the answers. As he neared Pensacola, Evia was pursued by two British launches and a brigantine. Realizing his slow-moving craft would soon be captured, Evia ordered it to lower a ship's boat or canoe and took to the shore, landing near the mouth of Perdido River. Here he left the boat and moved on land through hostile Indian territory until he reached safety at Mobile as the sun set.<sup>14</sup>

In writing of the officers he felt had served during the Mobile campaign with particular distinction, Galvez wrote of Evia that he "was intelligent and active," and he considered him worthy of promotion to the rank of frigate ensign.<sup>15</sup> Evia's

<sup>11</sup>José de Evia to Bernardo de Gálvez, Dauphin Island, March 22, 1780, Archivo General de Indias, Papeles procedentes de la Isla de Cuba, legajo 12; Holmes, *José de Evia*, 7, 243-244.

<sup>12</sup>Caughey, *Bernardo de Gálvez*, 181-182. The surrender document also appears in Archivo General de Simancas, Guerra Moderna, legajo 6912.

<sup>13</sup>Bernardo de Gálvez to Diego Josef Navarro, No. 252, Mobile, March 20, 1780, Archivo General de Indias, Papeles procedentes de la Isla de Cuba, legajo 1232.

<sup>14</sup>Evia's Service Record; Holmes, *José de Evia*, 244.

<sup>15</sup>Bernardo de Gálvez, "Account of the Officers which have been involved in the conquest of Mobile . . . and Promotions to which I consider them Entitled," n.p., n.d. (New Orleans, June, 1780?), Archivo General de Indias, Papeles procedentes de la Isla de Cuba, legajo 113.

promotion was approved on August 13, 1783, and he continued to hold the post of pilot first-class.<sup>16</sup>

Following the conquest of Mobile in 1780 and the glorious siege and capture of Pensacola the following year, Evia was transferred to the Royal Arsenal of Havana, but he did not find challenge in shore duty. Galvez realized that the British naval charts of the Gulf coast were inaccurate, and in order to draw up a new set of accurate charts, indicating the land-marks for mariners to follow in navigating the Gulf Coast, he named Evia to head a reconnaissance of the coast line from the Florida Keys to Tampico, Mexico.<sup>17</sup>

Aboard the small ship *El Comendador de Marsella*, Evia explored Tampa Bay and the west coast of Florida until forced by a seasonable hurricane in 1783 to return to Havana. The following year he resumed his voyage along the coast of Florida, Alabama, Mississippi and by 1786 he had charted the entire coast from Cape San Blas to Tampico.<sup>18</sup>

His description of Mobile Bay is far superior to that provided by the English mariner, George Gauld, who had traced the Gulf in 1769 and the early 1770's.<sup>19</sup> Evia wrote of Mobile Bay in 1784:

The greatest depth of water over the Mobile bar, or rather Mobile Bay (because there is another bar at the entrance of the river next to the city), is only from fifteen to sixteen feet. The surest landmark for entering at the highest tide is to set the easternmost point of Dauphin Island on a course North by Northwest 4° West, and continue in this direction until Mobile Point lies a distance of four miles to the North, which shall be over the bar in seven or eight fathoms, but it soon drops to three, and at an-

<sup>16</sup>Evia's Service Record; Holmes, *José de Evia*, 239.

<sup>17</sup>*Ibid.*, 9-12.

<sup>18</sup>*Ibid.*, 29-190.

<sup>19</sup>Gauld's "A General Description of the Sea-Coast, Harbours, Lakes, & c.<sup>a</sup> Of the Province of West Florida, 1769," is in the manuscript collection of the American Philosophical Society (Philadelphia), Vol. 917.59/G23. It is included in the full-length study of Gauld being written for the University of Florida Press by Captain John Ware of Tampa.

other sounding, it falls off again to seven fathoms on the inner side. You should always use caution because the difference in depth is of such a short distance, and the continually changing tides make it imprudent, especially in bad weather, for a ship drawing more than ten feet to seek its entrance. . . ."<sup>20</sup>

Evia continued his description by pointing out the several streams flowing into Mobile Bay:

From Mobile Point to the fort and town it is eleven leagues to the North; the width of the Bay is generally from three to four leagues. From Mobile Point there is a creek which flows six leagues to the East, thus forming a narrow peninsula between this point and the sea. The River of Good Help (Rio de Buen Socorro or Bon Secour) flows into the bottom of this Bay, and Fish River and the Falls (El Salto), are along the northern perimeter of it, along which there are a large number of settlers.

On the western part of Mobile Bay there are also some rivers, but none of much consideration, with the exception of Fowl River (Gallinas), by which there is a small internal communication to the West and to that of Dog River (Los Perros), which flows into the bay about nine miles below the fort and town where the Spanish troops under the command of His Excellency the Count of Galvez, disembarked in the year 1780 and began the siege of that town.

Evia noted that Dauphin Island and Massacre Island were once joined and he observed that Pierre Le Moyne, Sieur d'Iberville, has named the latter for a "large mound of human bones found there on his first landing, but later it was called Dauphin Island in honor of the Dauphin of France in order to erase the unsavory idea of the name Massacre."<sup>21</sup>

---

<sup>20</sup>Holmes, *José de Evia*, 67-71.

<sup>21</sup>On the early history of Dauphin Island see Jack D. L. Holmes, "Dauphin Island's Critical Years: 1701-1722," *Alabama Historical Quarterly*, XXIX, Nos. 1-2 (Spring and Summer, 1967), 39-63.

When he completed his reconnaissance of the Gulf of Mexico in 1786, Evia was rewarded with the appointment as captain of the port of New Orleans and commander of the Louisiana Coast Guard. He brought his wife and two sons—all natives of Havana—to New Orleans with him in 1787 and remained there, a zealous guardian of the Royal Treasury and a dedicated naval officer, until the 1803 transfer of Louisiana to the United States. He then returned to Havana, where he spent his declining years, happy in the knowledge that his excellent descriptions and charts were avidly studied by a new generation of pilots and mariners studying at the Royal Naval Academies of Spain.<sup>22</sup>

The brief sketch of Evia's activities in and around Mobile Bay is indicative of what must be done by historians of early Alabama if they are to tell the complete story of the colonial period. Galvez's capture of Mobile in 1780 has hardly been given the emphasis it merits, and who among you has ever heard the name of Jose de Evia?

---

<sup>22</sup>Holmes, *José de Evia*, 13-26.

*BANK OF AUGUSTA v. EARLE:*  
CORPORATE GROWTH v. STATES' RIGHTS

by

Eric Monkkonen

Part I

Summary

The three cases known as the Alabama or Comity Cases have had a continuing, though changing, significance in American constitutional and economic history. The decision handed down by Taney marked the end of a legal conflict which had begun early in the Panic of 1837; the decision marked the beginning of the Court's stand on foreign corporations, the beginning of economic nationalism, and the beginning of the peculiar American attitude towards control of economic forces.

The case arose out of Joseph Earle's refusal in Mobile to pay a bill of exchange to the Bank of Augusta, Earle contending that out-of-state banking corporations were forbidden by Alabama's constitution, which gave the state bank a monopoly. Earle also tried the same trick on the New Orleans and Carrollton Railroad Company, a banking corporation. The Bank of Augusta brought suit in Circuit Court, and newly appointed Justice John McKinley of Huntsville decided in favor of Earle. His decision was based on two points: first, he agreed with Earle that the Alabama constitution prohibited out-of-state banks from doing business within the state; second, he argued that the international legal theory of comity did not apply and that corporations cannot operate outside the jurisdiction of the legislative body which created them (now known as the "restrictive theory" of corporations).

Not too surprisingly, after McKinley's decision, a William Primrose refused to honor a bill of exchange on the Bank of the United States, operating under a charter from the state of Pennsylvania. As most banks, including the Bank of Augusta, suspended payment during the Panic of 1837, a legal basis for refusing to pay on bills of exchange would have been

a boon to cotton factors and merchants. The Panic ended quickly, however; "flush times" returned; and Earle's device was no longer needed. The case went up to the Supreme Court on a writ of error, Justice Story noting that McKinley's decision had "frightened half of the lawyers and all the corporations of the country out of their proprieties."

The Court considered all three cases together and, although all involved touched on McKinley's first point, the Alabama constitution, the major center of the arguments and Taney's decision was the question of comity and the related problem of the "restrictive" and "liberal" theories of corporations. Briefly, the "restrictive" theory of corporations holds that the corporation has no extraterritorial existence; created as a legal entity, it cannot exist beyond the jurisdiction of its creating authority. This theory evolved in the seventeenth and eighteenth centuries as a corollary to the special, privileged nature of corporations. The "liberal" theory of corporations, on the other hand, holds that once chartered, the corporation may move from the area of jurisdiction in which it was created. Proponents of this theory, which is implicitly accepted today, admit its somewhat illogical basis—for it amounts to extraterritorial legislation—but point to its practicality. In 1839, the terms, "liberal" and "restrictive," were not applied this way, but the arguments before the court accepted and even defined these concepts.

Daniel Webster, arguing for the Second Bank of the United States, took the "liberal" point of view, contending that once created a corporation was free to move about and was in fact a citizen under the Constitution. This entitled corporations to the privileges and immunities clause, Art. IV, Sec. 2: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Charles Jared Ingersoll argued, for James Earle, the "restrictive" theory:

Corporations are creations of municipal law, having no existence or power to contract whatever, until enabled so to do by a law, or other legitimate permission of the sovereignty wherever acting. Especially is this conservative principle indispensable as an undelegated right of these

United States. Otherwise the smallest member of this union may legislate for and govern all the rest.<sup>1</sup>

The other arguments before the Court ran along the same lines, the major variation being the argument of D. B. Ogden which claimed comity was an implicit binding principle between states. The principle of comity (that one sovereignty honor another's laws if possible), though used in conjunction with the "liberal" theory of corporations, was really an independent argument which did not consider corporate law.

In his decision, Taney took advantage of the principle of comity to avoid confronting a choice between the "restrictive" and "liberal" theories. He denied that corporations were citizens and agreed that laws, including corporate charters, did not have extraterritoriality. But he held that comity was implicitly accepted by every state and, unless it was explicitly repudiated, the Court had to assume its existence.

Interpretations of the meaning of his decision have varied greatly due to its avoidance of issues and inherent ambiguity. After all, he rejected the "liberal" theory of corporations but accepted the "liberal" practice. This has led one recent commentator to plead for a revision of the theory and for an end to the deplorable difference between theory and practice. Other commentators see Taney's decision as a brilliant acceptance of the "liberal" theory of corporations and his conceding states the right to repudiate comity as a sensible approach to corporate regulation. At the time of his decision, Alabamians saw it as an encroachment upon their rights; Justice McKinley, in his dissenting opinion, saw the Court as imputing national power to the states. The old Federalists saw the decision as a boon to corporations; Justice Story congratulated Taney on the decision and said it did "honor" to Taney and the Court—no doubt thinking of the Federalist Marshall Court. Other recent writers have seen the case as laying the foundations for the non-regulatory state after the Civil War, while some see it as a causal factor in the growth of corporate capitalism. Finally, some see it as a concession, neither retarding nor creating institutional, economic, or legal change.

---

<sup>1</sup>*Bank of Augusta v. Earle*, 13 Peters 580 (1839).

But the most significant import of the case is in its legitimizing and institutionalizing the concept of positive regulation. This position was hinted at by McKinley in his dissenting opinion:

. . . [the] Court having . . . conceded that Alabama might make laws to prohibit foreign banks to make contracts, thereby admitted, by implication, that she could make laws to permit such contracts. I think it would have been proper to have left the power there, to be exercised or not, as Alabama, in her sovereign discretion, might judge best for her interest or comity.<sup>2</sup>

In other words, McKinley is saying that there are two approaches to regulating corporations, one giving the state the power to forbid, the other giving the state the power to permit; or one requiring positive effort on the part of the state to regulate, the other having implied regulation, requiring positive effort to allow corporate action. I call the first the concept of positive regulation, the other, negative regulation. By approving the concept of positive regulation, Taney set the stage for continuing efforts of the state to police corporations, with laxness on the part of the state allowing often dangerous corporate freedom. Had the negative regulation concept been sanctioned, the corporation would be required to ask permission for all actions, a change which would put the state automatically in control of corporate action.

It can be seen, then, that the implications and long-range effects of this case are still with us, even though these effects change with the economy. And what was once a regulatory and egalitarian point of view has become an anti-regulatory and privileged position.

## Part II

### Cultural Context

There are three levels of cultural context within which to view *Bank of Augusta v. Earle*: the integrated commercial-

<sup>2</sup>*Ibid.*, p. 601.

political structure of Alabama as the participants themselves viewed it; the nature of institutional growth and change in the period from our perspective; and, finally, the broader patterns of economic growth and change, again seen from our point of view. The best, and most entertaining, way to find how the actors perceived their own environment may be to review the writings of the southwestern humorist, lawyer, and legislator, Joseph G. Baldwin.<sup>3</sup> Widely known and appreciated by his fellow Alabamians for his wit and insight, Baldwin sees the economic world as one of "humbug" and deception, with paper money and corporations at its false base. Although William Garrett, the secretary of state of Alabama, is dead serious in his *Reminiscences*, his vocabulary inconsistency ("pecuniary revulsion" or "disruption" for panic) and his description of the carnival atmosphere connected with bank affairs convincingly demonstrate Baldwin's accuracy.<sup>4</sup>

There is, of course, much more literature available on the second level of explanation, which describes, from a modern point of view, the institutions of the period, especially those of corporations. C. G. Summersell points out the lack of banking facilities in Mobile (there were two), and one can infer the difficulties this created for the merchants and factors in the busy cotton-exporting port.<sup>5</sup> Although there is an excellent study of Alabama bank history, there are no studies of Alabama's economy in this period; however, recent work done on other states can be of use in understanding the general patterns of local economies.<sup>6</sup> For Missouri, James N. Primm has shown, in a short, well-written book, how, until 1836, corporations, as government agencies, were chartered mainly for public services, schools, and hospitals, "to facilitate the growth, prosperity, and welfare of the community."<sup>7</sup> The pace of incorporation speeded

<sup>3</sup>Joseph G. Baldwin, *The Flush Times of Alabama and Mississippi* (Americus, Georgia: Americus Book Co., 1851).

<sup>4</sup>William Garrett, *Reminiscences of Public Men in Alabama, for Thirty Years* (Atlanta: Plantation Publishing Co. Press, 1872).

<sup>5</sup>Charles G. Summersell, *Mobile: History of a Seaport Town* (University of Alabama: University of Alabama Press, 1949).

<sup>6</sup>William H. Brantley, *Banking in Alabama, 1816-1860*, 2 vols. (Birmingham, Alabama: by the author, 1961-1967).

<sup>7</sup>James N. Primm, *Economic Policy in the Development of a Western State, Missouri, 1820-1860* (Cambridge: Harvard University Press, 1954), p. 35.

up in 1836, and a state bank was finally chartered in hopes of stopping currency drain and loss of profits to other states. The bank's key role in public policy indicates its political, economic, and public importance, a role approximated by that of Alabama's state-owned bank. It is small wonder, then, why Alabama felt threatened by out-of-state banks. The Bank of Augusta, with one-sixth of its stock reserved for the state, was a good source of income for Georgia, although even it had to suspend payments in the Panic of 1837.<sup>8</sup> Louis Hartz' study of Pennsylvania provides an important example of a state losing control of its investments due to its consistent policy of creating a corporation and funding it but providing as little administrative help as possible.<sup>9</sup> Those who were delegated to control the vast state enterprises were hopelessly overworked and without power; thus, even the state control implicit in charter grants was often unenforced.

Although these three state studies are helpful in getting an idea of the ways states interacted in their economies, there are other studies which describe institutional patterns. Guy S. Callender has established two reasons for the key functions of southwestern state banks.<sup>10</sup> The economic growth of the "flush times" created a demand for capital; since there were no savings banks, taxation and state investment served this function. Further, the Southwest had the greatest demand and the most difficulty finding capital; only through state banks (which backed their credit with the prestige of the state) could northern and European capital be attracted. "Thus in the Southwest, where nature already provided an adequate system of transportation, the State banking enterprises formed the counterpart of the internal improvement movement of the North and East." Bray Hammond points out that this pattern was not completely consistent: Missouri, Iowa, Texas, Oregon, Arkansas, and California prohibited banking, while Michigan, Wisconsin, Illinois,

<sup>8</sup>Milton S. Heath, *Constructive Liberalism: The Role of the State in Economic Development in Georgia to 1860* (Cambridge: Harvard University Press, 1954).

<sup>9</sup>Louis Hartz, *Economic Policy and Democratic Thought: Pennsylvania, 1776-1860* (Cambridge: Harvard University Press, 1948).

<sup>10</sup>Guy S. Callender, "The Early Transportation and Banking Enterprises of States in Relation to the Growth of Corporations," *Quarterly Journal of Economics*, XVII (1902) 111-162.

<sup>11</sup>*Ibid.*, p. 162.

and Indiana had free banking.<sup>12</sup> Though he is prejudiced in favor of the National Bank, Hammond's point does serve a corrective to the easily created rationality of the actor's understanding of banking—when the depression came, state legislatures often did the opposite of whatever they had been doing.

Besides the local studies of the mixed state economies and the banking studies, there are few good studies of corporations and the "Ameican system" of the public-private economic interface. John P. Davis traces the evolution of European and early nineteenth-century corporations from institutions " 'for the advantage of the public' as in 'the advancement of religion, or learning, and of commerce' " to private business institutions.<sup>13</sup> In an interesting aside, Davis notes how "the system of law lingers behind society" in dealing with corporations, a partial explanation of the Court's difficulty in limiting corporate expansion. Economic efficiency, limited liability, and freedom from state interference were not characteristics of the colonial business corporation, according to Oscar and Mary Handlin.<sup>14</sup> They were conceived of as an agency of government with privileges and power for serving a social function for the state—a partial reason, no doubt, for the fears of those who began to perceive the changing nature of corporations. Robert Lively best summarizes the recent work done on governmental interaction in the economy. King *laissez faire* is not only dead, he concludes, but "the hallowed report of his reign had all been a mistake."<sup>15</sup> Lively points out the one major shortcoming of this work, a problem not easily solved—its failure to measure quantitatively the impact of government in the economy.

There has been one study on the third level of explanation, the description of broad movements in the economy which attempts to measure the effects of government intervention. Henry W. Broude found that quantitatively little money was

<sup>12</sup>Bray Hammond, *Banks and Politics in America: From the Revolution to the Civil War* (Princeton: Princeton University Press, 1957).

<sup>13</sup>John P. Davis, *Corporations: A Study in the Origin and Development of Great Business Combinations* (New York: G. P. Putnam's Sons, 1905), p. 211.

<sup>14</sup>Oscar and Mary Handlin, "Origins of the American Business Corporation," *Journal of Economic History*, V (1945), 1-23.

<sup>15</sup>Robert Lively, "The American System: A Review Article," *Business History Review*, XXIX (1955), p. 82.

spent by government agencies in the nineteenth century (about 2.4% of GNP in 1939).<sup>16</sup> He feels that this small amount was highly significant in causing economic growth because of the way in which it was spent—in specific and direct support to selected industry; in risk taking, innovation, and bottleneck removing; and in creating a favorable economic climate and thereby raising the expectations of the private sector.

Two other studies on this third level of explanation help us establish the economic context of *Bank of Augusta v. Earle* and show how the case came at a critical point in the nineteenth-century's economic development. Anna J. Schwartz has computed the rates of corporate profit growth.<sup>17</sup> She found that the period 1835 to 1859 had a higher growth rate than either that of 1859 to 1871 or 1871 to 1890 (which tends to support Douglass North's contention that the Civil War was an interruption to economic growth). This indicates the crucial importance of Taney's decision sanctioning interstate corporate expansion and growth. Douglass North emphasizes the key importance of the cotton export trade until the 1839-1843 depression.<sup>18</sup> Because cotton was the major export, fluctuations in its price caused fluctuations in the American economy and, when the fall of cotton prices from 1837 on was joined by the drop in western land sales, a major depression set in. North's emphasis on interregional and international trade implies the crucial economic significance of foreign (or out-of-state) corporations and money transfer through bills of exchange. Because of all of these factors, we can see how Taney's decision could have easily wrecked the economy had it been against the plaintiff. We cannot claim Taney's decision caused the corporate and economic growth of the nineteenth century, but certainly it provided the foundation of federal policy and legitimized the basis of the American economy.

---

<sup>16</sup>Henry W. Broude, "The Role of the State in American Economic Development, 1820-1890," *The State and Economic Growth* (New York: Social Science Research Council, 1959), pp. 4-25.

<sup>17</sup>Anna J. Schwartz, "Growth Dividend and Interest Payments by Corporations at Selected Dates in the Nineteenth Century," *Trends in the American Economy in the Nineteenth Century* (Princeton: National Bureau of Economic Research, 1960).

<sup>18</sup>Douglass North, *The Economic Growth of the United States, 1790-1860* (New York: W. W. Norton and Co., 1966).

## Part III

## Specific Causes

Unfortunately, there is little material in which are discussed the issues of this case on a local and specific level. We shall never know if Earle was just trying to pull a slippery maneuver during the Panic of 1837 or whether the case represented the result of a long struggle in Alabama; the national importance of the case has obscured its origins and, if it were not for the broader patterns described above, the case would seem almost like a random occurrence. Garrett's *Reminiscences* and Baldwin's *Flush Times* make clear that the Panic of 1837 was perceived as a result of Jackson's specie circular. Perhaps Earle's maneuver was viewed as another attempt to fight back against the false paper corporations. Clearly, the Panic and the following depression caused some desperate economic behavior in the West; as Hammond has shown, the Westerners were not reluctant to try any expedient. Possibly the most important aspect of this case which has been neglected is in the attempt of Alabama to control corporations in its local economy, from the state bank chartered by the constitution in 1822 to the state's obvious lack of control over various external factors in 1848. If the experience of Pennsylvania, as described by Hartz, is at all typical, most states lost control of their quasi-public corporations; this loss of control needs more careful examination to see what kind of patterns were developing. And the image that emerges is of the states holding a tigerish economy by the tail.

Perhaps one of the most significant elements in this case is the newly appointed justice, John McKinley. His only biographer, Thomas Speed, notes that McKinley, a native of Culpepper County, Virginia, was a Huntsville resident who distinguished himself first in the United States Senate and later in the House. "He was," says Speed, "a man of high and noble aims, possessed of remarkable force and energy. In appearance he was tall and commanding, with a countenance that exhibited great strength of character, and wore an habitual benevolent expression. . . ."<sup>19</sup> His dissent in *Bank of Augusta v. Earle*, which is,

<sup>19</sup>Thomas Speed, "United States Courts in Kentucky," *The Lawyers and Lawmakers of Kentucky*, ed., H. Levin (Chicago: Lewis Publishing Co., 1897), p. 150.

according to Charles Warren, a recasting of his Circuit Court opinion, remains a fitting monument to his life. (*Federal Cases* does not contain McKinley's Circuit Court decision.) Upholding the restrictive theory of foreign corporations, and the rights of Alabama, McKinley's decision radically ignored the dependence of the national economy on bills of exchange. He perceived a difference between Jacksonian principles and contemporary practice and opted in favor of principles; like Thoreau or Ann Hutchinson, he did so at a crucial moment, such that his decision threatened society; like Thoreau's or Hutchinson's, his decision could not have been allowed to stand.

## Part IV

### Case, Ruling, Court

All of the lawyers who argued this case before the Court were well known in their day, but, with the exception of Daniel Webster, their significance seems to have faded. The name of Charles Jared Ingersoll, Philadelphia poet, playwright, historian, and lawyer, was once a rallying standard for the enemies of large corporations, money powers, and other unpopular causes. Described to his grandson as "sharp and incisive as a hatchet," he was noted for his enmity towards John Sergeant and his eccentric penchant for wearing costumes of the revolution.<sup>20</sup> Little fame remains of this once controversial and eccentric character, possibly because lawyers are no longer our society's culture heroes.

Daniel Webster is, of course, an archetypal lawyer, and there is more material on him than on anyone else involved in this case. There is no modern scholarly edition of his complete works and letters. In his published letters, the only reference Webster makes to the Court before which he argued this case is a blase, "the business before the court is not now great, nor is the court itself what it has been [a reminder of the Marshall court's prestige]."<sup>21</sup> His main concern is over his

<sup>20</sup>William M. Meigs, *The Life of Charles Jared Ingersoll* (Philadelphia: J. B. Lippincott Co., 1897), pp. 307-310.

<sup>21</sup>Daniel Webster, *The Writing and Speeches of Daniel Webster* (Boston: Little, Brown and Co., 1903), Vol. XVIII, p. 42.

upcoming European trip! Maurice G. Baxter claims that this case was one of Webster's "most important banking and corporation cases," a contention which clearly reflects Baxter's, and not Webster's, point of view.<sup>22</sup> Baxter also claims that politically the case represented an extension of Jackson's Bank War, an analysis which is probably incorrect (for several reasons: Taney's decision was for the plaintiffs, including Biddle's bank; Primrose's refusal to honor a bill of exchange came *after* the Circuit Court decision, indicating the potential results of a decision in favor of Earle; the decision effectively made any state bank a national bank; and the anti-nationalist states' rights point of view also argued for comity). Even for Webster, then, a really careful study of his relationship to this case is lacking.

Representing the Second Bank along with Webster was John Sergeant, the Second Bank's chief legal political advisor and Charles J. Ingersoll's enemy. Somewhat surprisingly, David B. Ogden, who represented the Bank of Augusta with a states-sovereignty-comity argument, turns out to be a well-known Federalist! In a famous argument, he once said, "We deny . . . there is any such thing as a sovereign state."<sup>23</sup>

William J. Vande Gruff, who defended Primrose, is unmentioned in the *Dictionary of American Biography*. Probably Garrett refers to the same man in his *Reminiscences* as "William J. Vandegraff, Esq., formerly of Kentucky, a gentleman of profound acquirements."<sup>24</sup> Colonel Vandegraff also chaired an anti-specie suspension meeting in Mobile in 1837, shortly before payments were suspended.<sup>25</sup> Thus, Vandegraff, or Vande Gruff, enjoyed a local reputation even though the Supreme Court reporter couldn't spell his name right.

The composition of the Court in 1839 was truly Jacksonian; only Story, appointed by Madison, and McKinley, appointed by Van Buren, were not Jackson appointees. But the common

<sup>22</sup>Maurice G. Baxter, *Daniel Webster and the Supreme Court* (University of Massachusetts Press, 1966), p. 182.

<sup>23</sup>*Cobens v. Virginia*, 6 Wheaton 346 (1821).

<sup>24</sup>Garrett, p. 191.

<sup>25</sup>Brantley, I, 353.

assumption that Jackson was as anti-court as he was anti-bank is erroneous, according to Richard P. Longaker.<sup>26</sup> Jackson's often-cited "John Marshall has made his decision; now let him enforce it" is not typical of his Court attitude and was specific to the issue. Longaker concludes that Jackson kept the Court in tune with the times by his appointments and "showed guarded but genuine respect for the judiciary."<sup>27</sup> His enemy was John Marshall, not the Court, an important distinction which reminds us of the personal, non-issue oriented nature of early nineteenth-century politics.

The key to understanding the Jackson Court is Chief Justice Roger B. Taney. Although Taney's earliest biographer, Tyler, is obviously biased in favor of his subject, he had access to primary material and personal reminiscences; further, as a contemporary and friend of Taney's, even his style and attitude tell us much.<sup>28</sup> In giving the details of Taney's planter aristocracy upbringing, Tyler misses the point of an interesting pattern: for five generations the younger Taney sons had been purchased plantations by their fathers, but in Roger's generation this was no longer feasible or profitable; thus he went to college and became a lawyer, a sign of changing times and an industrializing economy. As a young Maryland lawyer and bank director, Taney made Luther Martin his model, sided with Burr, and later defended the infamous General Wilkinson for free, establishing his affinities with Jackson. Taney's upbringing and career should make one suspicious of any anti-aristocracy or anti-corporate feelings attributed to Taney, yet Carl Swisher claims that even after 1839 "Taney continued distrustful of corporations. . . ."<sup>29</sup> Swisher's error should instruct us to be more careful to distinguish, as Taney apparently did, between "great moneyed corporations" (bad) and normal, if still large, corporations (good). The ignoring of this dis-

<sup>26</sup>Richard P. Longaker, "Andrew Jackson and the Judiciary," *Political Science Quarterly*, LXXXI (1956), 341-364.

<sup>27</sup>*Ibid.*, p. 364.

<sup>28</sup>Carl B. Swisher, *Roger B. Taney* (New York: Macmillan Co., 1935) is the standard biography of Taney; however, its treatment of Taney's early life and *Bank of Augusta v. Earle* is rather sketchy. More useful is Samuel Tyler, *Memoir of Roger Brooke, L.L.D.: Chief Justice of the Supreme Court of the United States* (Baltimore: John Murphy and Co., 1872).

<sup>29</sup>Swisher, p. 386.