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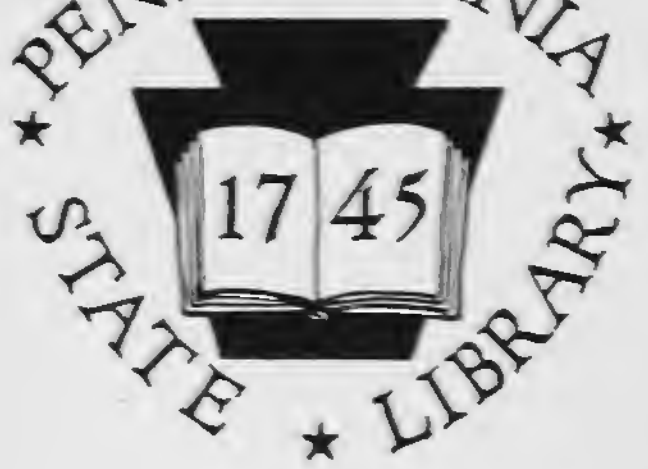


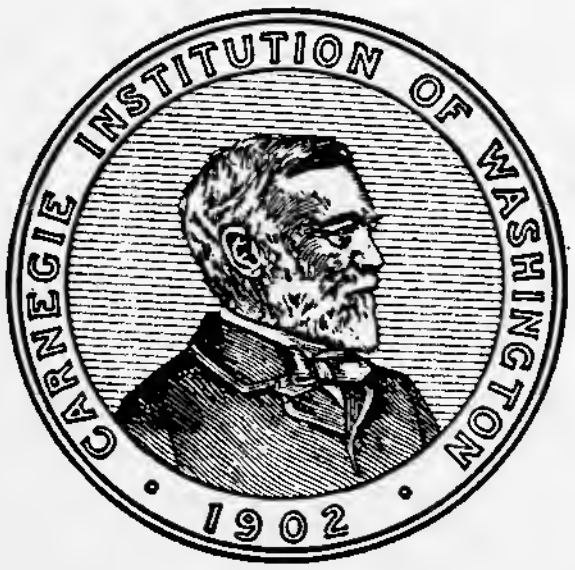

# COLLECTIONS

# Judicial Cases
## concerning
# American Slavery and the Negro

EDITED BY
HELEN TUNNCLIFF CATTERALL
(MRS. RALPH C. H. CATTERALL)

VOLUME III

Cases from the Courts of
Georgia, Florida, Alabama, Mississippi, and Louisiana

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# PAPERS OF THE DIVISION OF HISTORICAL RESEARCH

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# LIST OF ABBREVIATIONS.

Abb. U. S. = Benjamin V. Abbott, *Reports of Decisions rendered in the Circuit and District Courts of the United States.*

Aikin's *Digest* = John G. Aikin, *Digest of the Laws of the State of Alabama* (2d ed.).

Ala. = *Reports of Cases argued and adjudged in the Supreme Court of Alabama.*

Am. Law Reg. = *American Law Register* (Philadelphia).

Bailey = Henry Bailey, *Reports of Cases argued and determined in the Court of Appeals of South-Carolina, on Appeal from the Courts of Law.*

B. and C. = Henry A. Bullard and Thomas Curry, *A New Digest of the Statute Laws of the State of Louisiana from the Change of Government to the Year 1841 inclusive.*

Black. Com. = Sir William Blackstone, *Commentaries on the Laws of England.*

C. C. = *Civil Code of the State of Louisiana. By Authority, New-Orleans* (1825).

Civ. Code = *A Digest of the Civil Laws now in force in the Territory of Orleans, with Alterations and Amendments adapted to its Present System of Government. By Authority, New-Orleans* (1808).

Clay's *Digest* = C. C. Clay, *Digest of the Laws of the State of Alabama* (1843).

Clayton's *Digest* = Augustin S. Clayton, *A Compilation of the Laws of the State of Georgia.*

Cobb = Thomas R. R. Cobb, *Reports of Cases in Law and Equity argued and determined in the Supreme Court of the State of Georgia.*

Cobb's *Digest* = Howell Cobb, *Compilation of the General and Public Statutes of the State of Georgia.*

Code (of Ala.) = *The Code of Alabama.* Prepared by John J. Ormond, Arthur P. Bagby, George Goldthwaite (1852).

Code (of Ga.) = William A. Hotchkiss, *A Codefication of the Statute Law of Georgia, including the English Statutes of Force* (1845).

Col. Rec. of Ga. = *Colonial Records of Georgia.*

Cranch = William Cranch, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*

Ct. Cl. = *Cases decided in the Court of Claims of the United States.*

Digest of City Laws = Donatien Augustin, *A General Digest of the Ordinances and Resolutions passed by the City Council of New Orleans* (French and English, 1831).

Dudl. Ga. = G. M. Dudley, *Reports of Decisions made by the Judges of the Superior Courts of Law and Chancery of the State of Georgia.*

Duval's *Compilation* = John P. Duval, *Compilation of the Public Acts of the Legislative Council of the Territory of Florida, passed prior to 1840.*

Fed. Cas. = *The Federal Cases, comprising Cases argued and determined in the Circuit and District Courts of the United States to 1880.*

Fla. = *Reports of Cases argued and determined in the Supreme Court of Florida.*

Fr. Miss. Ch. = John D. Freeman, *Reports of Cases decided in the Superior Court of Chancery of the State of Mississippi.*

Ga. = *Reports of Cases in Law and Equity argued and determined in the Supreme Court of the State of Georgia.*

Ga. Dec. = *Georgia Decisions, Superior Courts* (1841-1843).

Grat. = Peachy R. Grattan, *Reports of Cases decided in the Supreme Court of Appeals and in the General Court of Virginia.*

Har. and J. = Thomas Harris, jr., and Reverdy Johnson, *Reports of Cases argued and determined in the General Court and Court of Appeals of the State of Maryland from 1800 to 1805, inclusive.*

Har. and McH. = Thomas Harris, jr., and John McHenry, *Maryland Reports, being a Series of the Most Important Law Cases argued and determined in the Provincial Court and Court of Appeals of the then Province of Maryland, from the year 1700 down to the American Revolution.* [Later volumes refer to the General Court and Court of Appeals of the State of Maryland.]

Hen. and M. = William W. Hening and William Munford, *Reports of Cases argued and determined in the Supreme Court of Appeals of Virginia.*
Howard = Benjamin C. Howard, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
How. and Hutch. = Volney E. Howard and A. Hutchinson, *Statutes of the State of Mississippi of a public and General Nature . . .*
How, Miss. = Volney E. Howard, *Reports of Cases argued and determined in the High Court of Errors and Appeals of the State of Mississippi.*
Hutch. Code = A. Hutchinson, *Code of Mississippi: being an Analytical Compilation of the Public and General Statutes of the Territory and State* (1798-1848).
La. = *Louisiana Term Reports or Cases argued and determined in the Supreme Court of the State of Louisiana.*
La. An. = *Reports of Cases argued and determined in the Supreme Court of Louisiana.*
La. Hist. Q. = *Louisiana Historical Quarterly.*
Law Rep. = *Monthly Law Reporter.*
Leigh = Benjamin W. Leigh, *Reports of Cases argued and determined in the Court of Appeals and in the General Court of Virginia.*
McNutt's Code = *Laws of the State of Mississippi embracing all Acts of a Public Nature from . . . 1824 to . . . 1838 inclusive* (1838).
Mart. La. = François X. Martin, vols. I., II. *Orleans Term Reports or Cases argued and determined in the Superior Court of the Territory of Orleans;* III.-XII. *Louisiana Term Reports or Cases argued and determined in the Supreme Court of that State.*
Mart. N. S. = François X. Martin, *Louisiana Term Reports or Cases argued and determined in the Supreme Court of that State* (1823-1830).
Martin's *Digest* = François X. Martin, *Digest of Acts, Territory of Orleans and State of Louisiana* (English and French, 3 vols.).
Meigs = Return J. Meigs, *Reports of Cases argued and determined in the Supreme. Court of Tennessee.*
Minor = Henry Minor, *Reports of Cases argued and determined in the Supreme Court of Alabama.*
Miss. = *Reports of Cases decided by the Supreme Court of Mississippi.*
Mo. = *Reports of Cases argued and determined in the Supreme Court of the State of Missouri.*
Moreau's *Digest* = Louis Moreau Lislet, *The General Digest of the Acts of the Legislature of Louisiana* (1804-1827).
Newberry = John S. Newberry, *Reports of Admiralty Cases argued and adjudged in the District Courts of the United States.*
New Code = *The Revised Code of the Statute Laws of the State of Mississippi* (1857).
Otto = William T. Otto, *Cases argued and adjudged in the Supreme Court of the United States.*
Partid. = *The Laws of las Siete Partidas, which are still in force in the State of Louisiana.* By Moreau Lislet and Carleton (1820).
Penal Code (of Ala.) = See Clay's *Digest.*
Phila. = Henry E. Wallace, *Philadelphia Reports: or, Legal Intelligencer condensed, containing the Decisions published in the Legal Intelligencer, from 1850 to 1855 inclusive* (3d ed., 1870).
Pickering = Octavius Pickering, *Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts.*
Porter = Benjamin F. Porter, *Reports of Cases argued and adjudged in the Supreme Court of Alabama.*
Prince's *Digest* = Oliver H. Prince, *Digest of the Laws of the State of Georgia.*
Rev. Code = *The Revised Code of the Laws of Mississippi, in which are comprised all such Acts of the General Assembly, of a Public Nature, as were in force at the End of the Year 1823.*
Rev. St. = *The Consolidation and Revision of the Statutes of the State* [*of Louisiana*] *of a General Nature.* Prepared by Levi Peirce, Miles Taylor, William W. King (New Orleans, 1852).
R. M. C. = Robert M. Charlton, *Reports of Decisions made in the Superior Courts of the Eastern District of Georgia.*
Rob. La. = Merritt M .Robinson, *Reports of Cases argued and determined in the Supreme Court of Louisiana.*
S. and M. = W. C. Smedes and T. A. Marshall, *Reports of Cases argued and determined in the High Court of Errors and Appeals for the State of Mississippi.*

S. and M. Ch. = W. C. Smedes and T. A. Marshall, *Reports of Cases argued and determined in the Superior Court of Chancery of the State of Mississippi.*
S. and R. = Thomas Sergeant and William Rawle, jr., *Reports of Cases adjudged in the Supreme Court of Pennsylvania.*
Stat. at L. = *Statutes at Large of the United States.*
Stewart = George N. Stewart, *Reports of Cases argued and determined in the Supreme Court of Alabama.*
Stew. and P. = George N. Stewart and Benjamin F. Porter, *Reports of Cases at Law and in Equity argued and determined in the Supreme Court of Alabama.*
Thompson's *Digest* = Leslie A. Thompson, *A Manual or Digest of Statute Law of the State of Florida, in force at the end of the Second Session of the General Assembly of the State, January 6, 1847.*
Toulmin's *Digest* = Harry Toulmin, *Digest of the Laws of the State of Alabama.*
T. U. P. C. = Thomas U. P. Charlton, *Reports of Cases argued and determined in the Superior Courts of the Eastern District of the State of Georgia.*
U. S. = *Cases argued and adjudged in the Supreme Court of the United States.*
Walk, Miss. = R. J. Walker, *Reports of Cases adjudged in the Supreme Court of Mississippi.*
Wallace = John W. Wallace, *Cases argued and adjudged in the Supreme Court of the United States.*
Wheaton = Henry Wheaton, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
Winston = P. H. Winston, *Cases argued and determined in the Supreme Court of North Carolina.*

# JUDICIAL CASES CONCERNING SLAVERY

## GEORGIA

### INTRODUCTION

### I.

Judge Lumpkin states in 1853 [1] that "the condition of the African race is different in every slave state;[2] and is less favorable in the extreme Southern, than in the more Northern slave States." This condition became still less favorable after that date through certain decisions of the Supreme Court of Georgia in regard to emancipation.

The act of 1801 [3] forbade emancipation except by act of the legislature, and made it unlawful to record "any deed of manumission, or other paper which shall have for object the manumitting . . any slave." The act of 1818 [4] increased the penalties, but provided that the act of 1801 should be "construed . . to inhibit the recording only of so much of any instrument . . as shall relate to the manumitting . . of . . slaves." In a long series of decisions from 1830 to 1871 [5] the court held that wills directing emancipation outside the state did not violate either "the letter or spirit" [6] of those acts. The Supreme Court was "strongly urged in 1854 [7] . . to lean to that interpretation [of Waters's will] most unfavorable to manumission," but the extra-territorial emancipation of his slaves was upheld. Judge Lumpkin contended that, even down to 1824, [514] "the true character of . . slavery had not been fully understood . . at the South; and that she looked to emancipation . . in the uncertain future, as the only cure for the supposed evil;" for in that year the senate of Georgia, though censuring as "indelicate" a resolution of the legislature of Ohio on the subject of abolition, concluded its own resolution in response: "Georgia claims the right . . of moving this question when an enlarged system of . . philanthropic exertions, in consistency with her rights and interest, shall render it practicable." But the situation changed. "Thanks to the blind zealots of the North, for their unwarrantable interference . . the public mind [was 'roused'] to a thorough investigation . . [resulting in] a settled conviction that it was wisely ordained by a forecast high as heaven above

[1] Bryan *v.* Walton, p. 33, *infra.*

[2] "Slave-holding state" is the usual expression employed in "the more Northern slave States."

[3] Prince's *Digest* (ed. 1837), p. 787.

[4] *Ibid.*, p. 794.

[5] Jordan *v.* Bradley, p. 12, Roser *v.* Marlow, p. 14, Vance *v.* Crawford, p. 19, Cooper *v.* Blakey, p. 28, Cleland *v.* Waters, pp. 38, 46, Sanders *v.* Ward, p. 61, Myrick *v.* Vineburgh, p. 75, Green *v.* Anderson, p. 98, and Hargroves *v.* Redd, p. 102, *infra.*

[6] Sanders *v.* Ward, p. 61, *infra.*

[7] Cleland *v.* Waters, p. 38, *infra.*

man's, for the good of both races, and a calm and fixed determination to . . defend it, at any and all hazards." Nevertheless, extra-territorial emancipation had uniformly been upheld by the courts of Georgia. [520] "Whatever change is made, *if any,* should be by the law-making, rather than by the law-administering department of the government." In 1858[8] he thinks the [118] "change in circumstances demands a new policy;" but if it does, "let it . . be inaugurated by the Legislature. . . [124] I have no partiality for foreign any more than domestic manumission. . . Shall I therefore undertake . . to dictate to . . my fellow-citizens, what shall be the law, by wresting these ancient statutes from what I believe to be their true and only meaning?" He holds that [121] "exterior manumission [does not] depend upon domestic emancipation as a condition precedent." In fact attempted domestic emancipation to last even for one moment was fatal to subsequent foreign emancipation.[9] Some testators unwarily provided that their slaves should be "manumitted and sent to a free state," instead of directing that they be "sent and manumitted." This transposition of the verbs made all the difference between slavery and freedom. Beall's will, employing the former phraseology, was held void because [43] "the emancipation . . was to take effect in Georgia," though it "was intended to be *enjoyed* in Liberia, California, or some other free State or Territory."[10]

Beall's will had also violated the law by providing that [28] "those negroes that I have . . emancipated, shall be kept on my plantation . . four years after my death, for the purpose of raising funds" which were to be divided among the negroes after "defraying all expenses." As Judge Benning had observed the year before, in Thornton *v.* Chisholm,[11] "Every successive moment . . would have brought the negroes nearer and nearer to the confines of freedom. . . Is it not plain that evils would result . . the same in kind as . . from putting them in a condition of entire freedom?" On this principle McCoy's will was held void in 1857.[12] The testator had conformed with the legal order, directing that his slaves "be conveyed" to a free state and "there left;" but the removal was postponed till his debts were paid, by their hire if necessary, and till a fund of eighteen hundred dollars had been raised.

The will of Bivens avoided the pitfalls of General Bledsoe's will,[13] which did not mention manumission, but simply directed the removal of his negroes to Illinois or Indiana, and which was held impossible to

[8] Sanders *v.* Ward, p. 61, *infra.*

[9] "the mistake he [Beall] committed was in supposing that a gift of freedom, *in praesenti,* . . to vest after his death, although it be but for a moment of time, was not unlawful." Drane *v.* Beall, 21 Ga. 21 (43). "If the Will gives the slave his freedom to be enjoyed but for one hour within the limits of Georgia, it is void; but if, with an honest intent to put him out of our way and keep him there, *it carries him over the State line as a slave,* it may make what it pleases of him afterwards." Myrick *v.* Vineburgh, 30 Ga. 161 (163).

[10] Drane *v.* Beall, p. 52, *infra.*

[11] P. 50, *infra.*

[12] Pinckard *v.* McCoy, p. 54, *infra.*

[13] Hunter *v.* Bass, p. 42, *infra.*

execute because both states had prohibited the introduction of negroes.[14] Bivens provided [15] that his slaves should be taken to some state or territory "which will admit them, where slavery is not tolerated; to the end that my . . slaves be free," but the removal was not to take place till after the death of his wife. This will was held void because the instant after Mrs. Bivens's death they would be "freemen in this State."

The Gordian knot was cut as to deeds and wills executed after December 14, 1859, for on that day the legislature acted on the suggestion of Judge Lumpkin, made in 1858 and published in 1859,[16] and passed "An Act to prohibit the post mortem manumission of slaves." [17]

The Supreme Court of Georgia in 1855 [18] refused to enforce the law of Maryland to free Margaret, who by a Maryland will of 1828 was to be free at the age of thirty, but had been sent to Georgia "and sold from one to another," and was about to be sold again with her children and removed beyond the state. Judge Lumpkin asks [263] "Can the laws of a sister State . . allowing freedom . . be executed by the Courts of Georgia? [19] Dare we say, in the face of the Acts of 1801 and 1818, that these foreign laws are not prejudicial to our own rights and interests? . . No one pretends that negroes can be carried to New York . . and held there in perpetual bondage . . With what more propriety can slaves be brought here and emancipated?"

The decision of Curry *v.* Curry in 1860 [20] tightened the bonds of slavery in two different ways by overruling two different decisions which had favored emancipation. Dugger's will had provided an alternative: emancipation of his negroes in Georgia if possible; if not, "send them where it can be done out of the state." The court had held in 1837 [21] that the executors should execute "the alternative command" if the legislature refused to emancipate. But in 1860 the direction by Curry, to carry his slaves to a non-slaveholding state, when the alternative, "to elect a master in this State," was held void, was declared void also because the latter showed "the intention of the testator in his entire scheme . . that being to violate . . the manumission laws." In holding the slaves incapable of electing or selecting a master the court overruled the decision in Cleland *v.* Waters [22] in which Judge Lumpkin says:

[14] "the monstrous doctrine of Cypres [*sic*] is not to have given it one inch of ground beyond the *possessio pedis.*" [Benning, J.]

[15] Bivens *v.* Crawford, p. 65, *infra.*

[16] Sanders *v.* Ward, p. 61, *infra.*

[17] Laws of 1859, p. 68: "any and every clause in any deed, will, or other instrument made for the purpose of conferring freedom . . directly or indirectly, within or without the State, to take effect after the death of the owner, shall be absolutely null and void."

[18] Knight *v.* Hardeman, p. 40, *infra.*

[19] The Supreme Court of Missouri was of a like opinion in Dred Scott *v.* Emerson (15 Mo. 176), decided in 1852: [584] "It is a humiliating spectacle, to see the courts of a State confiscating the property of her own citizens by the command of a foreign law." [Scott, J.]

[20] P. 76, *infra.*

[21] Roser *v.* Marlow, p. 14, *infra.*

[22] P. 46, *infra.*

[40] " The reasoning which seeks to invalidate this will upon the ground that slaves, as such, are incapable of choosing, is too technical to commend itself to my approval. . . [It is] [41] at war with the whole train of decisions in this and our sister States,[23] as well as of every other civilized country."

The charter of the American Colonization Society was scrutinized in 1857 [24] and a bequest of slaves to the society was held void, as they could not own slaves under their charter; [451] " neither could they take . . them in trust . . to transport them, as slaves," their purpose being to colonize only " free people of color." Judge Lumpkin even inquires if it is not [459] " repugnant to our State policy . . to allow the American Colonization Society to sue in our Courts? " Though " organized with the approbation . . of the wisest and best men of the South from Maryland to Louisiana," the general assembly of Georgia in 1827 protested against the appropriation of money to the society by Congress: [461] " they . . strongly feel the advantages of the Federal Union; . . they will ever defend it from foes, internal as well as external; but they will not, even in the preservation of that Union, permit their rights to be assailed; . . their property to be rendered useless . . by those who come among us under the cloak of a . . hypocritical benevolence." In 1828 they " view with . . distrust, all associations having for their object the abolition of slavery." In 1829 the committee of the legislature refers to the "dangerous movements of the Colonization Society."

The case of Bryan *v.* Walton [25] sheds light on the position of free persons of color, and interprets the acts of 1818 [26] and 1819 [27] in regard to their capacity to hold property.

The Supreme Court in 1846 "cordially, confidently and unanimously agreed " that the fellow-servant rule " cannot be extended to slaves, *ex necessitate rei.*" [28]

## II

Judge Robert M. Charlton, in the preface to his " Reports of Decisions made in the Superior Courts of the Eastern District of Georgia," says: [iii] " There are [in 1838] ten judicial districts in . . Georgia. For each, a ' Judge of the Superior Courts ' is appointed. To this judicial functionary, powers are entrusted . . of no ordinary character. . . [He is] presiding officer of a common law tribunal, . . also acts as a Chancellor, . . [iv] His fiat is conclusive. . . The Constitution of the State . . declares, that there shall be ' a Supreme Court for the correc-

[23] Alabama in 1848 (13 Ala. 102) and Virginia in 1858 (vol. I. of this series, pp. 73, 74) repudiated the doctrine that slaves have capacity to select their master.
[24] American Colonization Society *v.* Gartrell, p. 58, *infra.*
[25] Pp. 33, 50, *infra.*
[26] Cobb 993.
[27] *Ibid.* 995.
[28] Scudder *v.* Woodbridge, p. 16, *infra*.. So held in 1856 in Kentucky. Railroad Co. *v.* Yandell, vol. I. of this series, p. 427.

tion of errors,' but the Legislature . . have hitherto disregarded the solemn mandate." In 1845 the mandate was complied with and a " Court for the Correction of Errors, to be called the Supreme Court," was established. " In the constitution of the Court, there was made by law no titular distinction among its [three] members. . . The elective Body assigned to Colonel Lumpkin the longest term, . . whilst, in the course of time, the seats on either side of him repeatedly changed occupants, the same venerable form steadily holding the centre, came to be regarded as the impersonation of the Court. So entirely did this idea pervade the public mind that the Legislature, at length, made him by title, as he had ever been in fact, Chief Justice of the Supreme Court." [29]

[29] Memorial to Chief Justice Lumpkin, 36 Ga. 23.

*Re Negro,* 10 Col. Rec. of Ga. 246, July 1767. A petition from Mackenzie "concerning a Negroe of his under Sentence of Death for Robbery . . The Board [1] . . were Unanimous in Opinion that the Sentence of Death . . ought to be executed"

*Re Negro Dickson,* 10 Col. Rec. of Ga. 631, October 1768. "report of the Justices who sat at the Tryal of a Negro . . Dickson . . found Guilty of the Murder of a free Negroe . . and Sentenced to be Executed . . but . . recommended by the Jury for Mercy . . The Board were unanimous . . that the Sentence . . ought to be executed"

*Re Negro,* 11 Col. Rec. of Ga. 305, March 1771. "a Report . . by . . Justices . . Concerning the Trial of . . Man Slave Convicted of breaking a Shop and Stealing Sundry goods thereout and also a Memorial of John Glen the Owner of . . Slave praying that . . Slave might be Transported and not executed . . the Board . . were of Opinion the Sentence of the Justices should be carried into Execution"

*Re Slaves,* 12 Col. Rec. of Ga. 214, February 1772. Presentments of the grand jury in December 1771 before the chief justice and assistant judges: "5th That Slaves are permitted to Rent houses in the lands and Invirons . . of Savannah in said houses meetings of Slaves are very frequent, Spirits and other liquors are sold, and Stolen goods often Concealed . . 6th Peter Randon . . for refusing to deliver up to Justice . . Male Slave . . property of . . Randon said to be Guilty of Felony, . . 7th Peter Randon . . for keeping a Cow pen on great Ogechee River under the directions of Negroes and Indians"

*Re Fugitive Slaves,* 12 Col. Rec. of Ga. 325, July 1772. "The Presentments of the Grand Jury . . was read and it appearing thereby That a Number of fugitive Slaves have Assembled . . on or near the borders of the River Savannah and are frequently committing Depredations . . with Impunity"

*State v. Monaquas,* T. U. P. C. 16, January 1805. "that the deceased was one of the crew of a privateer, . . that he left . . vessel in company with three Spaniards, a Portuguese, and a black man;"

*Telfair v. Stead,* 2 Cranch (6 U. S.) 407, February 1805. "copartners in merchandise, were, . . 1775, indebted to . . a British creditor . . [They] drew out considerable proportions of the partnership funds . . before payment of their debts, and . . invested part . . in . . negroes as their own separate property." In 1796 and in 1799 it was decreed [412] "that . . negroes . . be sold at public sale by the marshal . . and that the proceeds be applied to the discharge of the . . debt."

[1] The Council.

*State v. Roberts,* T. U. P. C. 26, May 1805. "Indictment for a misdemeanor in receiving stolen goods. . . [28] in the present case, the court cannot take judicial cognizance of the conviction of the principal felon, he being a negro, and not amenable to this jurisdiction, and over that court, (the justices' court) before which he has been tried and convicted, this court [Superior Court] has no control as to criminal charges exhibited against that class of people."

*Ex parte George,* T. U. P. C. 80, May 1806. "Upon the petition of . . Borroughs and . . Sturges, on . . behalf of George, a free man of colour, . . now in confinement, in the common jail . . under sentence founded upon a conviction for inveigling, or attempting to inveigle a negro; . . stating . . conviction and sentence are illegal and void; . . praying, that a *certiorari* may be granted to remove the said proceedings" [81] "grounds of exceptions to the proceedings . . Because, the justices did not suspend the execution of the sentence, and lay a statement thereof before the governor after security tendered, but proceeded to execute the same. . . Because, the sentence is not warranted by the 12th sect. of the act . . passed 10th May, 1770, . . or of any other act in force in . . Georgia. . . [82] Because, justices of the peace have no jurisdiction in the trial of criminal cases."

Jones, J.: [92] "a *certiorari* ought to issue." [93] "On the return of the *certiorari* the court delivered the following opinion: January Term, 1807. . . George, whether he be a free man or a slave, is equally entitled to the benefit of an appeal to the executive, . . And if it appeared to the court . . that the act under which the prisoner was convicted is deficient in not describing the punishment to be inflicted for the crimes specified in the 12th section, when committed by a free man of colour, it is unnecessary to decide upon the last ground. . . ordered, that the . . conviction and sentence be reversed, and set aside, and that . . George, be discharged from his confinement."

*State v. Asselin,* T. U. P. C. 184, November 1808. [185] "he took possession of the negroes [[184] 'Sophia, and her son, a child; Benjamin, Delphine, and her son; Muttpuin, Dublin, Antonia'] . . in pursuance of a letter of attorney from . . an inhabitant of the island of Cuba, . . dated . . 1808. . . the wife of the proprietor [when in Georgia had been] . . delegated . . 1806, . . to sell or otherwise to dispose of them for his advantage."

*Bank v. Marchand,* T. U. P. C. 247, June 1809. [248] "1807, in consideration of a marriage to be solemnized . . Reingeard settles upon Miss Coquillon and her future issue" "three negro slaves, all the merchandise which he then possessed, . . [251] argued . . object . . frustrated by the . . transitory nature of such chattels;" Held: [252] "there is no distinction in this State between one species of chattel and another," [Charlton, J.]

*State v. Caswell,* T. U. P. C. 280, December 1809. "to answer to a bill of indictment for . . carrying away six negroes"

*Hopkins v. Bolton,* T. U. P. C. 294, April 1810. "A levy was made by the sheriff, the property sold, and he has presented . . bill of fees . . 201 days' subsistence, from 15th September, 1809, to 3d April, 1810, of fifty negroes, at 12½ cents per day [1] . . $1256 25 . . [295] conceded . . that the negroes had not been removed from the plantation . . that he had not furnished provisions . . It was urged, that if the sheriff had discharged his duty *with rigour,* the consequence would have been, a confinement of the slaves in the common prison . . [296] from the depositions submitted by the purchasers, it appeared that no responsibility was considered as attached to the sheriff, either for the delivery of the negroes on the day of sale, or for any losses . . in the mean time." Held: [299] "the fee for subsistence under the particular circumstances of *this case,* ought to be deducted." [T. U. P. Charlton, J.]

*State v. Couper,* T. U. P. C. 306, June 14, 1810. "1799, . . Couper . . acknowledged himself indebted to the governor . . £5000 sterling, the condition of which is . . 'Whereas fifty-two negro slaves have been imported . . in the schooner *Liberty* . . from North Carolina, the property of persons emigrating from thence and addressed to the care of . . Couper: . . if . . Couper, or the proprietors of the . . negroes shall produce such documents as the law requires . . or . . deliver up the . . negroes . . then . . this obligation to be void,' . . Upon the non-performance, or the supposed non-performance, of the terms stipulated . . a *scire facias* [2] was brought"

*Carnochan v. Abrahams,* T. U. P. C. 196, June 16, 1810. [201] "a power of attorney from Lydia Haven, . . England, . . to obtain administration on the estates of her husbands, . . Haven, and . . M'Kinnon; . . the latter died . . in Nassau, New-Providence, . .to dispose of negroes and other property in Georgia, . . [203] Mrs. Haven . . calls her father 'formerly of Antigua.'"

*Forbes v. Morel,* R. M. C. 23, January 1816. Berrien, J.: "it is contended, that for as much as these negroes were not actually in the custody of the Sheriff during the period intervening between the levy and the sale, but were by him permitted to remain in the possession of the defendant, that the Sheriff has therefore no right to subsistence money. . . [24] I shall depart with extreme reluctance from a precedent [3] . . supported by so many considerations of humanity and of equity. . . [25] It cannot be required that the Sheriff should be subject to the responsibility . . without security against the risk, or compensation for incurring it. If the latter be with-held, the former will be enforced, and . . our jails would be crowded with the miserable victims of the principle which this motion is calculated to establish."

[1] Act of Dec. 18, 1792. Prince's *Digest* (1822), p. 175.

[2] [307] "founded upon the infraction of the second section of the act to prohibit the farther importation of slaves . . 'if any person . . shall bring into this state, from any other state in the United States, any . . slave, . . or make sale . . to any of the inhabitants of this state, . . [he] shall forfeit . . for the first offense . . five hundred dollars, and for . . every subsequent offence, one thousand dollars, for every . . slave, brought."

[3] Hopkins *v.* Bolton, *supra.*

*Spencer v. Negroes Amy and Thomas,* R. M. C. 178, May 1822. "will of the elder Spencer, directing the manumission of these slaves, and the deed of the heirs carrying the wishes of the testator into effect, dated . . 1808," Held: [179] "under the operation of the Act of 1801,[1] these slaves remained the property of William Spencer, . . they must now be considered the property of that estate; and that interest can only be divested by an Act of the Legislature,"

*State v. Abbot,* R. M. C. 244, December 1822. "application to bail a prisoner . . committed for homicide, . . [247] The inquest states that . . Ezekiel . . came to his death by a shot . . from a gun by his master . . depositions . . contain the voluntary confession of the prisoner to the physician who was called to attend the deceased, narrating at length the causes which impelled him to the deed." [249] "The application . . for bail is refused, and the prisoner must be remanded."

*The Antelope,* 10 Wheaton (U. S.) 66, February 1825. [67] "A privateer, called the *Columbia,* sailing under a Venezuelan commission, entered the port of Baltimore in . . 1819; clandestinely shipped a crew of thirty or forty men; proceeded to sea, and hoisted the Artegan flag, assuming the name of the *Arraganta,* and prosecuted a voyage along the coast of Africa; her officers and the greater part of her crew being citizens of the United States. Off the coast of Africa she captured an American vessel, from Bristol, in Rhode Island, from which she took twenty-five Africans; she captured several Portuguese vessels, from which she also took Africans; and she captured a Spanish vessel, called the *Antelope,* in which she also took a considerable number of Africans. The two vessels then sailed in company to the coast of Brazil, where the *Arraganta* was wrecked, and her master, Metcalf, and a great part of his crew, made prisoners; the rest of the crew, with the armament of the *Arraganta,* were transferred to the *Antelope,* which . . [68] assumed the name of the *General Ramirez,* under the command of John Smith, a citizen of the United States; and on board this vessel were all the Africans, which had been captured by the privateer in the course of her voyage. This vessel, thus freighted, was found hovering near the coast of the United States, by the revenue cutter, *Dallas,* . . and finally brought into the port of Savannah for adjudication. The Africans, at the time of her capture, amounted to upwards of two hundred and eighty. . . [69] about one-third of them [had] died,"

Decreed: [132] "restitution to be made to the Spanish claimant, shall be according to the ratio which ninety-three . . bears to the whole number, comprehending as well those originally on board the *Antelope,* as those which were put on board that vessel by the Captain of the *Arraganta.* . . deducting from the number the rateable loss . . [133] and all the remaining Africans are to be delivered to the United States, to be disposed of according to law;" [114] "the United States assert no property in themselves. They appear in the character of guardians, or next friends, of these Africans, who are brought, without any act of their

[1] Prince's *Digest* (1822), pp. 456, 457.

own, into the bosom of our country, insist on their right to freedom, and submit their claim to the laws of the land, and to the tribunals of the nation. . . [122] this traffic remains lawful to those whose governments have not forbidden it. If it is consistent with the law of nations, it cannot in itself be piracy. It can be made so only by statute; and the obligation of the statute cannot transcend the legislative power of the state which may enact it. . . the right of bringing in for adjudication in time of peace, even where the vessel belongs to a nation which has prohibited the trade, cannot exist. . . [130] no subject of the crown of Portugal has appeared to assert his title to this property, . . That Americans, and others, who cannot use the flag of their own nation, carry on this criminal and inhuman traffic under the flags of other countries, is a fact of such general notoriety, that Courts of admiralty may act upon it. . . This long, and otherwise unaccountable absence, of any Portuguese claimant, furnishes irresistible testimony, that no such claimant exists, and that the real owner belongs to some other nation, and feels the necessity of concealment." [Marshall, C. J.]

*The Antelope,* 11 Wheaton (U. S.) 413, 1826. "A mandate having issued to the Circuit Court for the District of Georgia, to carry into execution the decree of this Court [*supra*] . . [414] ordered . . that in executing the . . mandate, the Africans to be delivered ['to the Spanish consul for Spanish claimants'] must be designated by proof made to the satisfaction of that Court." See *infra.*

*The Antelope,* 12 Wheaton (U. S.) 546, March 1827. [548] "sixteen cents *per diem* was allowed the marshal for the custody, maintenance, etc. of the Africans; and the Spanish claimants were charged . . after this rate, . . [552] in the original cause it had been established . . that ninety-three of the Africans . . were the property of the Spanish claimants; but, as many of the Africans had died, it was the opinion of this Court, that number should be reduced according to the whole number living. The Circuit Court . . fixed the whole number to which the Spanish claimants were entitled at fifty, and then proceeded to inquire as to their identity. . . [553] It appears, that the Africans captured, and brought in with the *Antelope,* were put into the possession of Mr. William Richardson; and that he had about fifty of them employed at work upon the fortifications at Savannah; that while there, Grondona ['second officer on board the *Antelope* when the Spanish Africans were purchased . . on the coast of Africa'] came out with the marshal for the purpose of identifying the Spanish Africans; that the fifty Africans were drawn up in a line; that Grondona made signs, and spoke to the negroes, and they to him, and they generally appeared to recognize him as an acquaintance. . . The Africans of the *Antelope* being paraded in front of the court house, Mr. Richardson was directed by the Court to point out . . individually, the Africans who had worked on the fortifications, and he designated thirty-four. . . that Grondona recognized five others, who were with other persons, and that they appeared to recognize Grondona as an acquaintance. . . Grondona, and the Africans, both spoke languages

not understood by the witnesses; yet . . understood each other; . . [554] We think this evidence was sufficient . . reasonably to satisfy the mind of the identity of thirty-nine . . as belonging to the Spanish claimants." [Trimble, J.]

*Williamson v. Daniel,* 12 Wheaton (U. S.) 568, March 1827. Will of James Daniel: "I lend my wife [Nancy Daniel] twenty-one negroes, . . during her natural life." [569] "Some of the slaves, to wit, Sally and her children, were born in the lifetime of Nancy Daniel. The Court below . . decreed that the slaves, Sally and her children, did not belong to the estate of the tenant for life."

Decree affirmed: [570] "The . . point is, we believe, well settled. The issue is, we believe, universally [1] considered as following the mother, unless they be separated from each other by the terms of the instrument which disposes of the mother." [Marshall, C. J.]

*Governor of Georgia v. Madrazo,* 1 Peters (U. S.) 110, January 1828. "The schooner *Isabelita,* a Spanish vessel, owned by Juan Madrazo, . . domiciliated at Havana, was despatched by him . . in . . 1817, on a voyage to the coast of Africa, where she took in a cargo of [one hundred and twelve] [2] slaves. On her return voyage she was captured by a cruiser . . under the piratical flag of Commodore Aury . . commanded by one Moore, an American citizen; . . The *Isabelita* and the slaves . . were carried to Fernandina, in Amelia Island, and there condemned by a pretended Court of Admiralty, exercising jurisdiction under Commodore Aury; and sold . . [111] to . . Bowen. The negroes . . were conveyed to the Creek nation,[3] in consequence, as it was alleged, of the disturbed state of East Florida, the insecurity of property there, and with a view to their settlement in West Florida; then a province of the Spanish monarchy. Being found within the limits of the state of Georgia, they were seized [early in January 1818] by an officer of the customs of the United States, and delivered to an agent appointed by the governor of Georgia, under . . the Act of the Legislature [4] . . passed in conformity to . . the Act of Congress of March 1807, prohibiting the importation of slaves into the United States; . . Some of the negroes were sold by an order of the governor, . . and the proceeds [$38,000] paid over to the treasurer of Georgia." [119] "The Colonization Society [5] applied for those remaining unsold, amounting to rather more than twenty, and offered to comply with the conditions prescribed in the Act

[1] Not in Maryland. Scott *v.* Dobson, 1 Har. and McH. 160.

[2] *Ex parte* Madrazzo, 7 Peters 627 (628).

[3] "where, at a place called 'the United States Agency,' they were, to the number of ninety-five, seized . . by an officer of the United States, and brought within the limits . . of Georgia." *Ibid.* 629.

[4] Act of Dec. 19, 1817. Prince's *Digest* (1837), p. 793.

[5] Johnson, J., in his dissenting opinion, says: [125] "the actual *promovent contestatio litis,* was the colonizing society; . . and had not the decision below been against their claim, . . it is fair to conjecture, that the exception here taken to the jurisdiction, would never have been suggested; nor, had that society possessed a legal existence, so as to prosecute a suit, in its own name, is there the least reason to believe, that the governor of Georgia would ever have presented himself, in the Courts of the United States, upon this subject."

of December 1817. In May, 1820, the governor . . filed an information in the District Court of Georgia, . . In November 1820, . . Bowen filed his claim to the said Africans, . . [120] In February 1821, Juan Madrazo filed his libel, . . the District Court dismissed" both claims and libel. On appeal to the circuit court, "the sentence, dismissing the claim of Bowen, was affirmed. That dismissing the libel of Madrazo was reversed, and a decree was made, that the slaves remaining unsold, should be delivered to him; on his giving security to transport them out of the United States—and farther, that the proceeds of those which were sold, should be paid to him. From this decree, the governor . . and . . Bowen have appealed"

[135] "the Circuit Court not having jurisdiction of a cause, in which the plaintiff asserts a claim upon the state . . the libel of . . Madrazo is ordered to be dismissed." [124] "no error in so much of . . decree as dismisses the information of the governor . . and the claim of . . Bowen." [Marshall, C. J.]

*Jordan v. Bradley,* Dudl. Ga. 170, October 1830. "Bill in Equity filed by the executor of James A. Bradley . . praying the direction of the court . . The will . . directs that if any of his slaves should desire to go to the African colony, they should be permitted to go, and their expenses to the port of embarkation should be paid."

Held: [171] "neither the letter nor intention of the several statutes of this State, are in opposition to the provisions of the will . . If there be a deficiency of funds to defray their expenses to a port of embarkation, those desiring to emigrate might be hired out, till the requisite sum should be obtained."

*Evans v. Lampkin,* Dudl. Ga. 193, January 1831. [194] "she . . directed him to sell two of the negroes . . and pay the purchase money to two . . neices [*sic*], and two other negroes and her household furniture for the payment of her debts,"

*Harris v. Williams,* Dudl. Ga. 199, January 1831. "In . . 1809, . . an attachment against . . a resident of South Carolina . . was levied upon two negro men and one woman; . . one man and the woman sold for the rise [price ?] of $900; the other negro escaped."

*Hunter v. Shaffer,* Dudl. Ga. 224, January 1831. "Plaintiff's title to the slave is a deed from Judith Ann Lehiffe to him, . . 1812, . . registered in the Secretary of State's Office, South Carolina, . . 1812, and in Edgefield district . . 1826. . . Mrs. Lehiffe was the daughter of Mrs. Holmes, who was the daughter of . . Galphin by a black woman, and a recovery was resisted on the ground that the deed . . is void, having been executed by the descendants of an African, presumed by law to be a slave, . . of the condition of . . the grand-mother of Mrs. Lehiffe, there was no evidence; but there was evidence that Mrs. Holmes and Mrs. Lehiffe were always considered free, and were the wives of free white citizens of South Carolina."

Held: [226] " the fact that those persons have been considered free, and enjoyed their liberty and property for nearly half a century in a neighboring State, that they have formed contracts of marriage with free white citizens, . . will require this court to presume them free,"

*Flournoy v. Coxe,* Dudl. Ga. 5, July 1831. " That the negroes . . were originally the property of . . Coxe of . . Virginia—that about . . 1798, his daughter . . brought said negroes to . . this State,"

*State v. Fraser, Jailor,* Dudl. Ga. 42, July 1831. " *Habeas Corpus* on Petition of Winney Stephens. . . The jailor having brought up . . Winney, returns the following order of the Inferior Court, as the cause of her detention . . ' it appearing to the court, that . . Winney . . is probably a free woman of color, and . . probable that if left in the custody of Dr. William Savage, or any other person, she might be removed from the State. . . [43] ordered that . . Winney . . be removed for protection . . to the . . jail, . . until the person who claims property in her, *viz.* John N. Philpot shall give bond . . that he . . shall produce . . Winney . . when required . . and also that . . Winney . . shall be . . humanely treated . . until the decision of her claims to freedom,' . . counsel for Winney . . reads several letters and affidavits representing her to have been born of free parents in . . Maryland. . . The counsel for . . Philpot . . contends that . . the court must remit her to her legal remedy, and in the mean time leave her at the disposal of her alleged master. A bill of sale of Winney . . to Philpot is produced."

[45] " All that the court can do is to discharge the petitioner from her present imprisonment, and permit her to return to Dr. William Savage from whose possession she was taken by virtue of the order for her imprisonment, and to leave both Philpot and Winney to their legal remedies. Let Winney be discharged."

*State v. John N. Philpot,* Dudl. Ga. 46, July 1831. Philpot [48] " had in his custody, power or control, the boy James, averred to be free," [46] " The writ before the court is a *habeas corpus ad subjiciendum*; . . [48] The first step taken by Philpot is his appearance [October 17, 1829] in obedience to the writ, and moving to adjourn the return to a future day, to enable him to produce the boy, . . [55] followed by his evasive return [November 2]," [54] " very material facts are suppressed; . . admission . . by Philpot himself since the service of the writ . . that he had the boy." [48] " the return . . was adjudged evasive and insufficient, and an attachment ordered. And lastly, a motion for discharge from the attachment, . . [58] Judge Crawford . . declared that . . ' Philpot ought to remain attached, until he produces the boy James, or shows that it is impossible to produce him.' " [46] " The court is again moved . . upon grounds not then assumed, and is prayed to reconsider its decision . . [49] The 2d ground . . it was contended that *free* negroes or persons of color, were not, under the constitution and laws of Georgia, entitled to the benefit of the writ, . . [54] The 6th ground ' Because, if any contempt was committed, it was purged by the affidavits ' . . [55] Carey's affidavit shows his purchase of the boy from Philpot

between the 6th and 13th October, 1829," " That of Turley . . that on the 28th May, 1830, he purchased the boy from Carey, and the next day removed him to the western country, where he sold him."

Motion overruled: II. [49] " with but a single exception known to the court, the decisions and practice throughout the State . . have been uniform, to extend to this class of persons the benefit of the writ of *habeas corpus*. . . [52] A right of the benefits of a *habeas corpus* does not . . belong to a slave, as it would be inconsistent with the rights of the master. . . But . . the free person of color enjoying personal liberty has the benefit of the *habeas corpus* secured to him by a constitutional guaranty. . . [VI.] [55] Philpot is manifestly in contempt, . . Not an act of his has been shown, nor an effort . . to obey, although six months elapsed from the return of the writ until the removal of the boy, during all which time he was kept within a few miles of Philpot's residence, . . and was for sale,"

*Jane Irwin v. Morell,* Dudl. Ga. 72, July 1831. " an uncle of the plaintiff, about the time the line was run between . . Georgia and the Indians, . . gave to the plaintiff a negro girl, three or four years old, . . Hannah; . . put the hand of the girl into that of the plaintiff [' about the age of . . Hannah '], and told her that he gave her that negro girl."

*Habersham v. Huguenin,* R. M. C. 376, May 1832. " that the complainant, as a practicing physician . . attended upon the negroes on the plantation of the late Gen. Jacob Read, prescribing for them in sickness and furnishing medicines for several years, commencing in 1825, and ending in October, 1830; . . services . . performed at the . . request of the executor," Held: [379] " as the estate has had the benefit . . it should respond to his claim."

*Hogg v. Odom,* Dudl. Ga. 185, December 1832. Bill of Sale: " I, . . of . . South Carolina, . . have . . sold in . . open market, unto the children of Nancy Jones, at the death of Leonard Nobles three negroes and their increase, to wit, Silva, Jim and Luce, for . . three hundred pounds sterling of the State aforesaid, . . set my hand and seal this 25th . . December, 1786."

*Ex parte Madrazzo,* 7 Peters (U. S.) 627, January 1833. See Governor of Georgia *v.* Madrazo, p. 11, *supra.* " libel, in the admiralty, against the state of Georgia, . . [631] by the sale and dispersion of the slaves, the libellant is prevented seizing or identifying his property; he is without remedy . . unless this court will cause the state of Georgia to do him right " Held: [632] " no private person has a right to commence an original suit in this court against a state." [Marshall, C. J.]

*Shellman v. Scott,* R. M. C. 380, May 1833. [381] " two of the negroes . . are so diseased as greatly to impair the real value; . . the defendant's . . opinion in one case, that derangement was feigned, and the omission wholly in the other to communicate the existence of a disease which could not be detected, which greatly reduces the value,"

*Roser, next friend of negro woman Antoinette, her two children, and negro man Jack, v. Marlow,* R. M. C. 542, May 1837. " The applica-

tion for *certiorari* . . sets forth, that John Dugger, jr. . . a short time before his death, made his last will . . ' that my negro woman Antoinette, and her two children, together with my negro man Jack, should be emancipated . . if that can be done in any manner, either by the Legislature or otherwise, and if it cannot. . I direct my executors . . to send them where it can be done out of the state;' . . presented for probate at the March term of the Court of Ordinary . . [543] but that said court, . . ' determined that such clause was . . absolutely void,' "

[550] " ordered, that the writ of *certiorari* do issue . . and that in the meantime, . . all proceedings be stayed." [548] " The intent of the statutes [relating to manumission] is expressed in the preamble to the Act of December 19th, 1818,[1] . . The object . . was, to prevent a horde of free persons of color, from ravaging the morals, and corrupting the feelings of our slaves. . . The Legislature is then the proper tribunal, (if I may use that term,) to determine whether the case . . is one in which none of these dangers exist, one, for which reason and humanity plead. To them, the executors . . should make the application, and if . . refused, then they should fulfil the alternative command, by sending these slaves out of the State." [R. M. Charlton, J.]

*State v. a Negro Man* (*Peter*), Ga. Dec. (Part I.) 46, January 1842. " Indictment, Murder.—Verdict, Guilty. *Certiorari.*"

New trial ordered: [48] " in order to give the Inferior Court jurisdiction of a capital offence against a slave, . . [the fact] must be established . . that the defendant has been brought before a Court of Magistrates, and his case examined: and that the Justices have decided, that the offence is of a capital nature, and turned the prisoner over to the Inferior Court for trial. . . In this case, . . no such evidence before the Inferior Court," [Shly, J.]

*Crewes v. Davie,* Ga. Dec. (Part I.) 66, March 1842. " that the defendants are now . . preparing to remove . . into . . Kentucky, and to carry with them . . negro slaves "

*Brown v. Lester,* Ga. Dec. (Part I.) 77, May 1842. " an action founded upon a . . note given for a negro woman. The defence set up was a . . failure of consideration, . . that the negro was unsound, . . a witness . . [78] states . . ' I frequently saw the girl at my house, with my black people, . . and I infer that she was healthy, as I knew she grew fast, and had every appearance of health.' . . the negro was sold by Brown to Lester . . March, 1839; and the [two] physicians . . were first called . . in Sept. 1839—that they found her . . labouring under remittent fever, with very strong asthmatic symptoms, also symptoms of dysmenorrhaea, which they found, on enquiry, to have existed ever since she had been in the possession of Lester, and the negro stated, sometime previous to his purchasing her . . [79] That portion of the testimony, which consisted of the sayings of the negro as to the commencement of her disease . . was rejected " Verdict for the plaintiff. New trial refused.



[1] Prince's *Digest* (1822), p. 465.

*Bagshaw v. Dorsett,* Ga. Dec. (Part II.) 42, May 1842. " the following account: . . For wages of Edward, 8 weeks and 3 days, $4.50 pr. week, $38.50 . . [44] The negro had a ticket from his mistress, to work out and receive his wages."

*Davis, Guardian of Erasmus, claiming his freedom, v. Hale,* Ga. Dec. (Part II.) 82, January 1843. "Trespass, in Nature of Ravishment of Ward. . . there have been two concurring verdicts, in favor of the plaintiff, establishing his freedom; . . The proofs . . were of a contrary character. According to one set of witnesses, the boy . . was said to be the son of a white woman; and from other evidence . . that he was the son of a white man, who left him free at twenty-one years of age. . . the boy had been left in the care of some person in South Carolina, not in the character of a slave, but more in the character of a free person of color. . . next we hear of him . . in this State, in possession of . . Sims, . . as a slave, . . who sold him as such . . But whilst the boy was held by Sims . . Sims said, he had no right to hold the boy, after he arrived at . . twenty-one " New trial refused.

*Pendleton v. Mills,* Ga. Dec. (Part II.) 166, March 1843. [167] " 1838 . . she was sent . . to wait on his wife, who was sick,"

*Bulloch v. the Lamar,* 4 Fed. Cas. 654 (1 West. Law J. 444), May 1844. " two negroes [Mary and Andrew] were drowned, the canoe in which they were, having been run under by the steamer *Lamar,* in tide water, in the Savannah river. . . [655] they were worth one thousand dollars." They were going from Savannah to their owner's plantation. Decree [658] " directing that the libellant shall recover one thousand dollars, and that the respondents shall pay all costs."

*Scudder v. Woodbridge,* 1 Ga. 195, June 1846. [198] "Woodbridge brought an action . . to recover the value of a negro boy, . . hired as a carpenter, to make the trip from Savannah to St. Mary's, and becoming entangled in the water-wheel, in getting the boat off, he was drowned. . . [199] The engineer on the *Ivanhoe* was a colored man." [198] " Judge Fleming . . charged the jury, that if . . death . . was occasioned by the negligence or want of skill in the officers . . in the employment of . . Scudder [the owner of the boat], . . *he* was liable . . The jury returned a verdict for five hundred dollars."

Judgment thereon affirmed: " interest to the owner, and humanity to the slave, forbid . . application [of the fellow-servant rule] to any other than *free white agents.*[1] . . it cannot be extended to slaves, *ex necessitate rei.* . . [199] Once let it be promulgated that the owner of negroes hired to the numerous navigation, railroad, mining and manufacturing companies . . must look for compensation to the *co-servant* who occasioned the mischief," " that the *employer* is not liable, . . [200] and I hesitate not to affirm, that the life of no *hired* slave would be safe. . . We are . . confidently and unanimously agreed," [Lumpkin, J.]

[1] See Railroad Co. *v.* Yandell, vol. I. of this series, p. 427.

*Johnson v. Watson,* 1 Ga. 348, August 1846. [350] " action of trover, brought by . . Watson . . agreed . . that Watson should go to . . Macon, and bring home to Mrs. Johnson some slaves of hers . . and also to Columbus, and catch and bring home to her a fellow of hers, which was lurking about the city. . . [351] likewise to attend to her business for two years; and for these services she agreed to let him have Jerusha . . valued at five hundred dollars. . . At the expiration of the year 1840, Watson went after Jerusha [who had been hired out in Columbus], . . Within a few days thereafter, at the request of Mrs. Johnson, he exchanged the girl with her for . . Lucy, . . a temporary swap only, made on account of Lucy's bad habits, and with a view to their correction by Watson. Mrs. Johnson, after . . obtaining the possession of Jerusha, refused to return her," Nonsuit refused. Affirmed.

*Robinson v. State,* 1 Ga. 563, November 1846. " indictment . . for the larceny of a slave named George . . resulted in the conviction of the prisoner. . . [564] George, with Edy, his mother, . . was sold at Sheriff's sale, as the property of the prisoner, . . 1842, . . George was worth about $500. . . missing from the prosecutor's plantation . . 1846. . . proven . . by . . Searcy, that prosecutor's son went for him to go with his dogs and catch two boys, Edward and . . George, that had run away . . caught . . Edward, and struck another track . . to the river, and down the river . . The counsel for the prisoner . . offered to prove the admission of the prosecutor, that . . George, in all likelihood, was drowned . . [565] not permitted "

*Badgett v. Broughton,* 1 Ga. 591, November 1846. " Dec. 12, 1843. . . Received of . . Broughton, two hundred and seventy-five dollars . . for . . Lucinda; the . . title . . I will warrant . . I also warrant her sound in body and mind." " Lucinda . . was then unsound, by a disease of her lungs . . 25th . . January, 1844, the defendant in error sold [her] . . to . . Attaway, and instead of executing a separate bill of sale, endorsed over the original bill of sale . . ' I hereby transfer the within bill of sale,' . . [592] August following . . she died. . . verdict for [Broughton] . . for $275." Judgment thereon affirmed.

*Jones v. State,* 1 Ga. 610, November 1846. [611] " that the slave, Mariah, the subject of the alleged larceny, was the property of . . the prosecutor, who resided in Florida, and who had . . left her in charge of . . Paul . . until . . Paul should himself remove to Florida."

*Hicks v. Moore,* 2 Ga. 240, February 1847. The sheriff claimed $807.62 [242] " for dieting the negroes, . . [243] The jury . . found that the Sheriff has received, from the . . labour of the defendant's negroes while in his possession, sufficient to indemnify him for keeping them; . . he hired some of them out, and received the money for their hire"

*Aycock v. Buffington,* 2 Ga. 268, March 1847. [269] "he levied upon and sold a negro woman and an infant child, which brought the sum of six hundred dollars."

*Paschal v. Davis,* 3 Ga. 256, August 1847. "Received . . [257] six hundred dollars . . for . . Jim, about twenty-eight years of age . . 1834."

*Thurmond v. Reese,* 3 Ga. 449, November 1847. "levied on the whole of the property . . except five negroes, which were run off."

*Carter v. Buchannon,* 3 Ga. 513, November 1847. [514] "that she had heard . . Bull . . show how, he made the gift [in 1814], by placing the hand of the girl . . in the hand of his grand-daughter [[513] 'when she was quite a child'] . . and tell her that was her negro."

*Taylor v. State,* 4 Ga. 14, January 1848. [17] "descendants of a negro, given her when a few years old, on the occasion of her baptism;"

*Cooper and Worsham, by their next friend, v. Mayor and Aldermen,* 4 Ga. 68, January 1848. "application for discharge under a writ of *Habeas Corpus,*" [72] "the prisoners were arrested and imprisoned by virtue of a warrant issued from under the hand of the Mayor of . . Savannah, . . 1847, for a violation of the 5th Section of an ordinance passed by the Mayor and Aldermen . . 27th . . August, 1839,"[1] [69] "his Honor [Judge Fleming] decided . . 'So far from the ordinance conflicting with the laws of the State, it has carried out the very letter . . they are not citizens, and God forbid they ever should be. . . ordered that the prisoners be remanded to jail.'"

[75] "Let the judgment . . be reversed, and the petitioners discharged." I. "Free persons of color have never been recognized here as citizens;[2] . . They have always . . been regarded as our wards, and . . we should be extremely careful to guard . . all the rights secured to them by our municipal regulations. They have no *political* rights, but they have *personal* rights, one of which is personal liberty. . . [74] When we take into consideration the *object* of the ordinance, . . our minds are irresistibly forced to the conclusion that the section which imposed the payment of one hundred dollars . . is . . nothing else but a tax, and being a tax, its collection cannot be enforced, by the imprisonment of the petitioners. The mode for collecting . . is pointed out by the act of 1815,[3] which provides the petitioners shall be hired out . . and that portion of the ordinance which declares the prisoners shall be imprisoned for the

[1] [72] "An ordinance to amend and consolidate the various ordinances of . . Savannah; for raising a fund for the support of a watch, and to prescribe the mode of . . collecting taxes." "Each free person of color who may remove to this city to reside herein, from any other part of the State, shall pay to the Treasurer . . one hundred dollars, within thirty days . . in addition to any . . other tax, . . and if . . not paid . . such free person of color shall be confined [in the common jail] . . until . . paid, or he . . shall be discharged by order of council or due course of law."

[2] "Note.—By a joint resolution of the Legislature of Georgia, in 1842, it was *unanimously* Resolved, that free negroes are not citizens of the U. S., 'and that Georgia will never recognize such citizenship.' *Pam.* Acts, 1842, p. 182. [REP.]" "further Resolved, That . . the Governor, transmit a copy of the . . Resolutions to the Governors of the several States of this Confederacy." *Ibid.*

[3] Prince's *Digest* (1837), p. 859.

non-payment . . is repugnant to the laws of the State and void." [Warner, J.]

*Spalding v. Grigg,* 4 Ga. 75, January 1848. [77] " Know all men by these presents, that I, Ann Cunningham, . . do . . sell and deliver unto . . Ann Grigg . . [78] Judy, Bella, and John her son, . . with the future issue . . Provided, that . . Ann Grigg, after the . . slaves shall come into her possession, will pay to each . . two dollars per month during their . . lives. . . eighteen hundred and thirty-eight." Ann Grigg " claimed title . . tendered in evidence the instrument . . which was demurred to . . The court admitted the evidence, determining that the paper was . . not against the policy of the laws against manumission, and not in conflict with the Act of 1818." [1]

Judgment affirmed: [91] " The Act of 1801 made . . void all acts of manumission. . . The Act of 1818, labors to prohibit . . not only manumission, but all attempts at it. . . [93] it is the custom . . to permit slaves to enjoy such little sums as are given to them, or as they may earn with the consent of their owners. It is the habit of some planters to give annually to their slaves a limited sum of money, or the use of a modicum of land to till for their own advantage, or to make and vend certain articles . . not prohibited by law. . . [94] with such charities . . [the law] does not interfere; nor are they adverse to the anti-manumission policy of the State." [Nisbet, J.]

*Neal v. Kerrs,* 4 Ga. 161, February 1848. In 1845 a man slave was sold for $890.

*Nisbet v. Walker,* 4 Ga. 221, February 1848. [229] "all of the negroes, except Dan, were sold [in 1842] at the Court House door in . . Macon, at high prices. That Dan was privately sold the same day, for $1150, . . that all . . including Dan, brought . . $20,600, . . $19,712 . . in Central [Bank] money, and $888 in specie funds,"

*Vance v. Crawford,* 4 Ga. 445, May 1848. Marshall Keith's will, executed in 1839, probated in 1842: [452] " It is my desire, that my servant Ishmael should be freed; but if that cannot be accomplished, I give him to my Executors . . in trust, for his own use, to go wherever he may please, and if it suits him to take with him, sell or dispose of, the property hereinafter devised . . in trust for . . Ishmael; he making in writing, application . . in which case, I do authorize my . . Executors to sell all or any part . . the proceeds to be paid to . . Ishmael. . . I give to my Executors in trust, for the use of . . Ishmael, one hundred and fifty shares of the Mechanics' Bank of Augusta. I also give . . in trust, as a home for . . Ishmael, and his sisters Minny and Elizabeth . . all my land on the east side . . to be under the sole . . control of . . Ishmael; but should . . land be sold . . that Minny should receive one third of the amount of the sale. I also give to my Executors in trust, for the use of Ishmael, the following, *viz*: Hannibal, Delila and her two children, also, the blacksmith's tools; choice of one cart and oxen; choice of my horses,

[1] *Ibid.,* pp. 794-796.

and choice of three mules; also, corn, fodder and pork for one year; also stock of cattle, sheep and hogs, as many as my Executors may deem necessary; also, one bed and furniture; . . in trust, for . . Ishmael and his heirs forever, with power to will the same. I also give . . in trust for Ishmael . . Boling, Robert and Green, children of yellow Agg, . . [453] what I leave to Minny and Elizabeth, I leave in the same manner . . and I leave them . . in trust for their own use. . . in trust, for Minny and her heirs, one hundred shares of Mechanic's Bank . . a girl named Blanche, also Minta, also one bed and furniture, spinning wheel, and loom. . . in trust for Elizabeth, fifteen shares . . and one bed and furniture. . . I give to the Secretary of the Colonization Society . . Alfred, Daniel and Thornton, for the purpose of being sent to Liberia, and also five shares of the . . Bank . . for each—the proceeds to be paid to them or the survivor, on their arrival in Liberia, . . optional with them to go . . should . . either . . refuse, I give him or them as follows: Alfred and Daniel . . in trust, for the use of Ishmael—and also, the shares . . should Thornton refuse . . I give him and the . . five shares, to Wm. Jones, . . I give my servant Nancy in trust to my Executors for her own use, charging her maintenance on her son Ishmael. . . I give my servant Ned, blacksmith, . . in trust, for his own use, and also five shares . . for his maintenance, and at his death, I give the same to Ishmael. . . I give in trust . . for the use of . . Ishmael and Minny, the residue of my furniture, . . It is my will . . that the servants I have freed or left in trust . . should not be appraised. . . that my Executors should not suffer those servants . . to live in, or within three miles of any town or village in Georgia or South Carolina." [458] "after standing by for five years, and seeing the Executors . . distribute the estate, by the payment of legacies, and the removal of the negroes, who were freed . . to . . Ohio, . . [the next of kin] now . . undertake to set aside the will" [456] "The Special Jury found a verdict for the Executors."

Judgment thereon affirmed: [458] "As to . . such parts of the will as authorize the emancipation of three . . in Liberia, . . it was entirely competent for him to make such post mortem disposition . . *Foreign* emancipation . . [459] is in accordance with our declared policy.[1] The colored population in the U. States in 1790, was 697,697. It is now nearly 3,000,000. . . It has been the constant effort of our State . . to prevent the increase . . Neither humanity, nor religion, nor common justice, requires of us to sanction . . domestic emancipation;" [Lumpkin, J.]

*Simmons v. State,* 4 Ga. 465, May 1848. "indictment for 'receiving stolen goods from a slave.' . . the watch was stolen . . 1843. . . [466] the negro, Bob, made a fire in his room the day the watch was stolen." [465] "arrested, . . tried and acquitted by the magistrates."

*Graybill v. Warren,* 4 Ga. 528, May 1848. Will of Jeremiah Warren, who died in 1832: "I give to [my executors] . . negroes, Coleman, Mary and her three children, and Pat and John, . . and four thousand dollars . . to be loaned out at interest for the support of the negroes,

[1] Act of 1817, sect. 3. Prince's *Digest* (1837), pp. 793, 794.

and if they can at any time be freed by the laws of the country, it is my will it shall be done. All the remainder of my property, I will to be managed by my executors for five years . . having regard to humanity in their treatment, not hiring them to any persons who will abuse them. If they cannot have them freed by the laws of our country in that time, they are to be equally divided between my brothers and sisters "

*Wynn v. Lee,* 5 Ga. 217, July 1848. [226] " Lewis bought him in Georgia, . . removed to Mississippi, taking the slave with him." " Wynn . . having bought the slave . . brought him back to Georgia "

*Hicks v. Ayer,* 5 Ga. 298, July. 1848. "January, 1847, four negroes . . were bid off by Hicks . . Jenny and child, at $530; Amelia, at $650; and Charles, at $405. Hicks failed to comply . . and delivered . . engagement, that . . slaves might be re-sold [a week after the first sale] . . and that he would pay the loss . . re-sold, at a loss of two hundred and seventy-eight dollars. Charles being again knocked off to Hicks, at $235."

*Beall v. Mann,* 5 Ga. 456, September 1848. Will of Stallings, 1847: [461] " that all the rest . . be sold . . my negroes choosing their owners, to be approved by my executor," [467] " said he would not have sent her up but on account of her son . . whom he could not do without, and he was unwilling to part him from his mother;"

*Martin v. Broach,* 6 Ga. 21, January 1849. [22] " 1836. Dec. 2. To cash received for sale of negro man . . $1700 "

*Scranton v. Rose Demere and John Demere, by prochein ami,* 6 Ga. 92, January 1849. [93] " In 1828, Raymond Demere made his will . . 'Whereas, from the fidelity of my negro man Joy, and my negro woman Rose, who not only saved and protected a great part of my property during the time the British occupied St. Simons, but actually buried and saved a large sum of money, with which they might have absconded and obtained their freedom; it is therefore my will, and I direct my executors to petition the Legislature to pass an Act for the manumission of my said negroes, and their two children, Jim and John, and any other children Rose may have, setting forth their meritorious behavior and faithful conduct during a period of invasion, when nearly all the negroes on St. Simons deserted and joined the British. . . also . . I direct if . . Joy, Rose and her children are freed by law, and remain in Georgia, that the said Joy, Rose and her son Jim, shall each receive two cows and calves from my stock on St. Simons.' After making a devise of land to said negroes, testator further provides: 'And also, that said Joy, Rose and her children, shall receive from my estate, one year's provision, from the time they take possession of their land; and also, that my executors shall pay . . to . . Rose, during her lifetime, an annuity of seventy-five dollars; and also, the further sum of seventy-five dollars, for the support of her son John, until he arrives at the age of twenty-one years; and then, my executors are directed to pay unto . . [94] John, from my estate, the sum of $1000 lawful money.' After making provision for the education of John, and the protection of their rights, the testator divides his estate . . one half to . . his son, and

one half to . . grandsons. The Legislature of Georgia manumitted the said slaves, . . The executors failed to pay the legacies and annuities to Joy, Rose and her children, but distributed the whole estate to the residuary legatees. In 1843, (Joy and Jim being dead,) Rose Demere and John Demere, by their next friend, . . filed their bill against the executors, praying an account of their annuities and legacies; and . . at April Term, 1845, a decree was rendered in favor of the complainant, . . in behalf of Rose Demere, . . ' $3,000, the amount due her 31st December, 1842, $150 for her annuity for 1843, and $75 for every year as long as she lives;' and . . in behalf of John Demere, ' the sum of $1024.' ' And we further decree, that this decree shall be a lien upon, and bind the whole estate of . . Raymond Demere.' "

*Nelson v. Biggers,* 6 Ga. 205, January 1849. Bill of sale: " 1844, received . . five hundred dollars, for . . Betty, and her child, Anonicat—the said woman about 27 . . and the child about seventeen months old; which . . negroes I warrant . . to be healthy," " The defendants pleaded . . that . . negro was imbecile . . so as to be incapable of performing the ordinary duties . . of a slave;"

Held: [206] " The usual term ' sound,' being omitted . . and . . [207] ' healthy ' only inserted, . . it may fairly be presumed that it was the intention of the . . parties, that the warranty should only extend to the body of the slave," [Warner, J.]

*Mayor v. Howard,* 6 Ga. 213, January 1849. [214] " agent of Mrs. Howard . . [215] hired the negro to the Council, to work on the streets; the negro was worth $600 or $650; . . he and seven or eight others were at work on the sewer, grading the . . ravine . . suddenly a piece broke loose from above, . . negro was killed . . [216] The Jury returned a verdict for [Mrs. Howard] . . for $800." Judgment thereon affirmed.

*Thompson v. Mapp,* 6 Ga. 260, February 1849. [261] "levied . . on . . a boy about eight years of age, . . [and] a girl, about six years old, . . not produced on the day of sale " as they had been sold privately.

*Potts v. House,* 6 Ga. 324, February 1849. [327] " the testator . . was about ninety . . almost speechless by age and the loss of his health; . . [363] Potts' negroes did pretty much as they pleased, and his principal house woman appeared to exercise a controlling influence over him—she was his interpreter;" [326] " the subscribing witness . . wrote the will . . could not understand the testator distinctly, and relied entirely on the interpretation of the negro woman Charity and James Potts, jr. who alternately interpreted for him." " Charity and her two children were bequeathed to the propounder, . . Lucy, the mother of Charity, was manumitted . . as far as the laws of the State would permit."

Held: [348] " if a negro interpreter, incapable . . of being sworn, is the *only* channel of communication . . the will cannot be executed. But if the will be written in the presence of the testator, . . is read over to him, and his dictation and approval . . are interpreted by a negro in his hearing, and in the hearing of others interested . . and he . . is

understood to express himself satisfied, the will may be established;" [Lumpkin, J.]

*Alfred (a slave) v. State*, 6 Ga. 483, March 1849. [484] "Alfred . . was placed upon his trial before the Justices of the Inferior Court . . for the offence of an assault with intent to commit a rape, upon the person of a white girl of about four years of age. *Twenty-three* [1] Jurors were impannelled, and the farther impannelling was waived by the owner [James W. M. Berrien] . . acting as counsel for the slave. . . the Court being of the opinion that the testimony was insufficient to find . . guilty, charged . . that there would be no impropriety in a verdict of guilty of an assault and battery, . . the Jury returned a verdict of guilty of the crime charged."

New trial refused: I. [485] "the owner . . had the legal right . . to make such waiver." "Not only the interest which the owner has in his slave, but his personal attachment . . will always prompt him to be vigilant . . and, as is too often the case, as we all know, the just penalty of the law is defeated in consequence of such interest and attachment. . . [II.] Had we been the Jurors . . we might have . . felt it to have been our duty to have found the slave not guilty; but there was *some* evidence of which the Jury were the *exclusive* judges," [Warner, J.]

*Robinson v. King,* 6 Ga. 539, May 1849. Will of Elisha King: [540] "that my old servant, Writ, and her five children . . and her husband . . may be made to live comfortable under the superintendence of my friends, . . Robinson and . . Wood, into whose care . . I do hereby give and place the negroes, in view of their being treated with humanity and justice, subject to the laws made . . in such cases." Bangs testified that [541] "Robinson, after the death of King, asked the advice of witness what to do; that King, by his will, intended to free his negroes, and said he was afraid the community would think hard of him;" Held: [546] "void, because it is in conflict with the Act of 1818." [Nisbet, J.]

*Dye v. Wall,* 6 Ga. 584, May 1849. "Received [in 1842] . . six hundred and eighty dollars . . for two negroes, . . a girl, about twelve . . a boy, about eleven . . warrant to be sound as far as I know." The boy was alleged to be unsound.

*Tooke v. Hardeman,* 7 Ga. 20, June 1849. Tooke's will, 1837: [22] "that my faithful old servant man, Brit, shall not be put under any overseer, but remain on my plantation, to take care of my stock, and that he be favored by my executor as far as may be expedient."

*Mayor v. Goetchius,* 7 Ga. 139, July 1849. "in 1843 the small pox broke out in the white family of Dr. Chipley, the City Physician . . The City authorities placed a guard around the lot, . . Crawford, a negro . . mechanic, the property of Goetchius, had a wife on the lot, and being there was retained by the guard. . . attacked with confluent small pox . . and there died. During his sickness he was in a small house, sixteen by twenty feet, with one door and one window, but no chimney. The

[1] Act of 1816, sect. 9.

witness saw no one paying any attention to Crawford. Dr. Boswell . . [140] notified the City Physician that the house was too small, and not well ventilated. The negro was lying on blankets, and the pustules breaking, . . There are twenty chances to one that the negro, if vaccinated, would have recovered." [139] "Goetchius commenced an action of trover . . against the City Council . . for the value of . . Crawford." Verdict for the plaintiff. New trial refused. Affirmed.

*Thomas v. Brinsfield,* 7 Ga. 154, July 1849. In 1829 Polly Thomas removed from North Carolina to Georgia "together with the property of which she was possessed, consisting of a horse and four negroes,"

*Stroud v. Mays,* 7 Ga. 269, August 1849. "January, 1846, Beersheba Stroud . . and . . Mays . . jointly sold the slave to James Stroud, a relative from . . Ala. for $550, and gave a bill of sale without warranty. . . May, 1846, the slave died, and James Stroud brought an action . . for deceit, . . [270] Dr. . . Low attended on the negro, from 6th May to 27th, when he died. . . Smith had the negro to roll logs with him a few days after his purchase. He was deficient in strength in his ankles. . . Mrs. Stroud told . . that Dr. Webb said he could not cure the negro, but if she would stop him from work, he could patch him up so that she could sell him. Dr. Webb . . attended on him from . . Nov. 1844, to . . April, 1845. His disease was chronic pneumonia. . . He informed defendant . . who told witness the boy had been attacked while working in a gold mine . . [271] Witness is of the Botanic, or Thompsonian school of doctors. . . a short time before the sale, [the negro] was at a house-raising, and carried up his corner. . . Verdict for the plaintiff, for $675; . . The Court granted a new trial," Judgment reversed.

*Watts v. Kilburn,* 7 Ga. 356, August 1849. [357] "clandestinely removed his property, consisting of negroes, to . . Alabama, . . to avoid the payment of his debts. . . [Three were] subsequently brought . . back to . . Georgia" and levied upon.

*Dicken v. Johnson,* 7 Ga. 484, November 1849. [485] "He was repeatedly deranged—so much so that he appeared to be afraid that his own negroes would kill him,"

*Jordan v. Thornton,* 7 Ga. 517, November 1849. [519] "in 1836, mortgaged him to the Georgia Rail Road and Banking Co. He was shortly afterwards taken to Florida, and there sold under the mortgage. In 1845, he was brought back"

*Papot v. Gibson,* 7 Ga. 530, November 1849. [531] "a marriage settlement, whereby she reserved to herself a life estate in the slaves, then in her possession, with remainder in fee to the offspring of the intended nuptials."

*Davis v. Irwin,* 8 Ga. 153, February 1850. [155] "Polly, was bid off by . . Chappell, and was delivered to him by the Sheriff, . . that Chappell directed the slave . . to procure a dray, and take her things to Dr. Lamar's residence, and that he would send for her next morning

. . informed the Sheriff that he would leave a check for the purchase money . . with . . Munroe . . that when the Sheriff called for the check the next morning, Munroe refused it, under Chappell's instructions, upon the ground that said negro ran away, or was carried off, during the previous night."

*Railroad Co. v. Holt,* 8 Ga. 157, February 1850. "A slave . . property of . . Holt, having an ordinary 'pass' to go from Macon to his owner's place, some eight or ten miles out, was received by the officers of the plaintiff in error, on board its freight train . . for the usual passage money for slaves [[163] 'twenty-five cents'] . . The negro, in getting from the cars, within 250 or 300 yards of the station to which he had paid, (the cars being still in motion,) had his leg broken. The master had no knowledge that the negro was going to ride on the cars, . . no negligence by the company; . . the negro jumped off, of his own accord, . . Holt recovered [damages] below,"

Judgment affirmed: [159] "A general pass . . conveys no authority to the slave to place himself on the cars . . [165] The company . . are *tort feasors,* and . . liable for all injuries,"

*Dean v. Traylor,* 8 Ga. 169, February 1850. "Dean, . . May, 1847, sold, with warranty, . . Sofa, and her three children, for $1350 [$600 being the price of Sofa]. . . April, 1848, Sofa died of consumption; the opinion of physicians was unhesitating . . that she was 'diseased in that way, previous to . . May, 1847' . . The plaintiff below declared for damages, not only for the unsoundness and loss of Sofa, but for the unsoundness of the children. The proof . . was, that 'the disease is hereditary, and, of course, the children cannot be as valuable as if born of a healthy mother,' . . [170] witness values the children at half price, on said account. Another witness thinks two of the children have 'consumptive marks about them' . . about $150 of the finding ['$750, with costs'] was on account of the children." Held: [171]"the verdict, as to the woman, was justified by the proof; but . . wholly insufficient as to the children."

*Judge (a slave) v. State,* 8 Ga. 173, February 1850. "Judge . . was . . tried, convicted and sentenced for the crime of murder. On the trial, prisoner's counsel objected—1st. To the array, because a former Jury had been regularly drawn and summoned to try said negro, on the same charge, which Jury had been discharged, (and, so far as now *appears,* capriciously discharged.) . . [174] 4th. . . prisoner's counsel asked the Court to charge the Jury, that they must acquit . . because the . . preliminary proceedings before the Magistrates, had not been offered in evidence . . refused, and the State allowed them to introduce said evidence; . . *certiorari* . . refused." Judgment reversed.

*Rogers v. Parham,* 8 Ga. 190, February 1850. [191] "overseer . . for the year 1847, . . to receive a certain portion of the corn, cotton, fodder and wheat made on the farm."

*Buckner v. Lee,* 8 Ga. 285, February 1850. [286] "that Everitt was to put in with Lee, some negroes to work with him in his [blacksmith] shop; that Lee was to 'furnish all supplies, pay all expenses, and give Everitt one-half the net proceeds, for the use of the negroes.'"

*McWhorter v. Beevers,* 8 Ga. 300, March 1850. [301] "a negro woman and child . . sold at Sheriff's sale . . at . . $450"

*Malone v. State,* 8 Ga. 408, May 1850. [411] "it looked bad to see a man walking and having a negro;"

*Johnson v. State,* 8 Ga. 453, July 1850. [454] "The defendant requested the Court to charge, that the bare fact of playing at cards with a negro, without betting . . was not an offence under the Act of 1847, . . The Court refused" Judgment affirmed.

*Anthony (a slave) v. State,* 9 Ga. 264, January 1851. "Anthony . . was indicted in . . Superior Court, for the murder of . . a free man of color. . . the preliminary proceedings had before the committing magistrates, were not set forth in the indictment," Verdict of voluntary manslaughter.

Held: I. [271] "The Act of 1811 . . was . . wisely and constitutionally repealed by the Act of 1850." [268] "the Act of 1850, giving to slaves and free persons of color the same rights of trial, when charged with capital offences, which the laws accord to white persons, reflects distinguished honor upon the State, and exhibits, in clear and strong lights, the humanity of our laws towards them. . . [II.] [274] the Act of 1821 . . [275] provides punishment for this case."[1] [Nisbet, J.]

*Brooks v. Ashburn,* 9 Ga. 297, January 1851. [298] "Ashburn and . . Drawhorn went to the house of . . Lockett, on the Sabbath day, in search of a runaway negro of Drawhorn's. Seeing some negroes collected, they approached . . the negroes ran in different directions. . . Drawhorn struck the negro of plaintiff, and killed him. The value . . $800. . . Defendant proved that he was commissioned as a Captain of Patrols, in the first of the year, 1846, (in which . . the negro was killed,) . . The negro was killed within his patrol district."

*Tyler v. Gray,* 9 Ga. 408, February 1851. [409] "Disbursed during three months . . Paid . . Collins for the hire of his negroes [[408] 'upon the . . Railroad'] . . $662.00 . . Gray's negroes . . $431.12 . . Martin's negroes . . $201.53."

*Allen (a slave) v. State,* 9 Ga. 492, February 1851. "1850, . . Allen . . was put on his trial for the alleged murder . . of Sam, a slave, . . The Court . . admitted" "the opinion in writing of the Magistrates before whom the defendant was tried," [494] "that the prisoner is guilty" Held: [495] "it was error to admit this evidence, we send this case back," [494] "By the Act [of 1850], the slave is to be indicted and tried, as in cases of white persons." [Nisbet, J.]

[1] "the punishment shall be by whipping, at the discretion of the court, and branded on the cheek with the letter M." Prince's *Digest* (1837), p. 799.

*Yancy v. Harris,* 9 Ga. 535, April 1851. " writ of *habeas corpus* sued out by Jacob Yancy, alleging that he was illegally confined . . defendant returned that the plaintiff had been brought before the Inferior Court . . as a free person of color, charged with violating the laws . . on the subject of registration of such persons; . . pleaded guilty . . sentenced to pay a fine of one hundred dollars, and in default thereof had been hired, by order of the Court, to defendant . . [536] it was admitted that plaintiff was of dark complexion; that he was the son of a white woman, and that after he was fourteen . . but before . . twenty-one, he had applied . . to the Inferior Court . . to have a guardian . . and had applied to the Clerk to be registered as [a free person of color.] . . Plaintiff contended that, as the child of a white woman, he was presumed to be . . white . . until found otherwise by two Juries . . The Court . . remanded plaintiff into the custody of defendant;"

Judgment affirmed: [537] " Their judgment is a valid, subsisting judgment—if irregular in any particular, it can be set aside, and until that is done, we have no power to discharge the petitioner. The question made by his counsel might have been made before the Inferior Court, and . . thence brought . . before this Court, but it was not made." [Nisbet, J.]

*Neal v. Farmer,* 9 Ga. 555, May 1851. An action of trespass "brought by Nancy Farmer . . to recover damages for the killing of a . . slave, . . the plaintiff proved the killing and closed. The defendant introduced no testimony. The jury found a verdict for plaintiff for $825. The defendant moved for a new trial, . . there was no evidence that the plaintiff had prosecuted the defendant either to conviction or acquittal for the killing. . . [556] The Court refused . . upon the ground that the killing of a slave was not a felony at Common Law, . . not necessary . . to prosecute . . criminally, before . . civil action."

Judgment affirmed: [578] " We hold it . . settled, upon authority, that *African slavery* does not, and never did exist in England. . . that such a thing as killing a negro slave in England, is a legal impossibility, and could not be a felony under the Common Law. . . [580] The faculty of holding slaves [in Georgia] was derived from the Trustees of the Colony, acting under authority of the British Crown, as a *civil* right, in 1751, . . The property in the slave in the [Georgia] planter, became . . just the property of the original captor. In the absence of any statutory limitation . . he holds it as unqualifiedly as the first proprietor held it; . . [582] Christ . . recognizing the relation of master and servant . . ordained it an *institution* of *christianity.* It is the crowning glory of this age and of this land, that our legislation has responded to the requirements of the New Testament in great part, and if let alone, the time is not distant when we, the slaveholders, will come fully up to our obligations as such, under the christian dispensation. . . public sentiment, in conformity with indispensable legal restraints, extends to the slave the . . blessings of our Holy Religion. . . [583] Moreover, the Act of 1770, . . the first Colonial Act providing for the punishment of white men for killing slaves, is perfectly conclusive, that prior to that time it

was not an offence against the law—of course the Common Law—to kill a slave," [Nisbet, J.]

*Cooper v. Blakey,* 10 Ga. 263, July 1851. Patterson's will: [264] "that Sophy, a colored girl, (now three years old since . . 1848,) the daughter of my woman Margaret, be not considered as a part . . of my estate; that my executor deliver . . Sophy, to my friend . . Blakey, . . of Kentucky, who I hereby . . appoint guardian . . desire that . . Blakey shall take . . Sophy to his residence, and as soon as she can be manumitted by the laws of said State, to have it done; but should the laws of Kentucky be adverse to manumission . . take her to such a State where she may be manumitted . . I also wish . . that . . Blakey shall superintend the education . . and that she remain under his care and control until . . sixteen . . unless (with his consent) she marries. . . I . . bequeath to Sophy . . two thousand dollars in cash, . . to be on interest from . . my death; . . the interest . . to be applied to the education and support of . . Sophy. . . should . . Sophy marry, that . . Blakey purchase a homestead (in some State where the laws will permit) for the use of . . Sophy and her heirs . . and such other property as may be necessary for the . . comfort of herself and family. . . that in case . . Sophy should die without issue (except in case of her marriage) . . the said . . money to go to . . Blakey. . . [265] I also desire . . that . . Sophy be carried free of charge . . to the residence of . . Blakey,"

Held: "that it is not against the *policy* of . . Georgia, for the owner of slaves to remove them *out of the State* for manumission, and that he may direct it to be done by will."

*Fowler v. Waldrip,* 10 Ga. 350, August 1851. [351] "swore, that the woman in . . 1848, was worth $600.00, and the child $150 or $200, . . thinks he is now [1851] worth $350 or $400,"

*Clifford v. State,* 10 Ga. 422, August 1851. "Clifford was put on his trial for stealing a negro boy, the property of . . [423] Armstrong. . . letters written by . . defendant . . [November 23, 1850] 'Dear Sir and Chum: . . there is another dodge, . . I have four negroes whom I have promised to carry North, agreeing that they will consent to be sold once on the way. . . stout carpenters, worth from ten to fifteen hundred dollars each. Well, we could sell them and *cut* thus, with four or five thousand we could *burst* it for two years, and then play the same game again. These negroes meet me at their father's who is *free,* at Christmas, 25th next month, their father furnishes a couple of horses and wagon to start on. The horses will sell for grog money. . . Unless I make the negro business work, I am dead broke at present. . . I think the best thing is, to go home till christmas, or about a week before, and then come on, and we'll raise a storm on these negroes. The business might be carried on gloriously for some time.' . . 'December 19, 1850. . . I . . will put this thing through. . . Don't fear, for there is no danger *here.*' . . [424] they were received by Crawford and taken from him by the officers, who arrested him in . . Virginia. . . Mrs. Carver . . testified 'that she was acquainted with two men slaves, who are the reputed sons of free

George; these two boys came frequently to her house to buy horses,' . . It appeared . . that a free negro, . . George, lived in the neighborhood of the place where the defendant, Clifford, taught school, and that he had four sons who were carpenters, and belonged to citizens of Bibb County; that one of them . . the property of . . Armstrong . . was missing about the 1st of May, 1851, and that he is still absent." [426] "The Jury . . found [Clifford] . . guilty of an *attempt* to commit the offence charged." Judgment thereon affirmed.

*Arrington v. Cherry,* 10 Ga. 429, August 1851. Marriage settlement, 1827: [430] "sixteen slaves were conveyed . . for the . . separate use of . . Rhoda, reserving to . . Richard the use . . during his . . life,"

*Yarborough v. West,* 10 Ga. 471, August 1851. "1818, . . Wingo, of . . South Carolina, made a parol gift of . . Peter, about five years of age, to his daughter, Jincy West, . . [472] West removed to Georgia in 1835 or 1836, and about that time sold . . negro . . for . . nine hundred dollars."

*Carlton v. Price,* 10 Ga. 495, October 1851. Will of Mrs. Lucy Carlton of Alabama: [496] "I . . bequeath to my son . . Aggy . . and . . her children, . . and all their increase . . Nevertheless, if . . [my son] shall die without an heir, . . it is my desire that the . . negroes and their increase be set free at his death."

*Berry v. State,* 10 Ga. 511, October 1851. [513] "an indictment for larceny . . 'seven thousand dollars, . . in . . coin, . . [514] and three thousand dollars in . . notes' . . the proof went to show that the felony had been committed by two negroes . . Phil and Tom, and the State sought to convict the defendant, by showing that he procured the negroes to commit it, . . proved that . . Phil was whipped for the purpose of forcing him to disclose . . that defendant and several others were present and all agreed that the negro should tell all . . that the negro then accused defendant of being concerned in it, . . defendant . . enraged . . approached the negro with a knife . . threatening to kill him, but was prevented . . said . . that he knew from the negro's countenance, that he was going to accuse him. . . verdict of guilty."

Held: I. [519] "the Court was right in overruling the motion to arrest the judgment." [518] "The law institutes him in the place of the slave, and treats him as the . . principal in the first degree." [1] II. New trial denied: the testimony of Phil [519] "was admitted for the purpose of explaining the reply and conduct of Berry, when thus impeached. . . It is immaterial from what source . . the accusation was made, . . from a talking ass, or a talking snake, . . [520] it is admissible as a key to . . what was said and done by the prisoner." [Lumpkin, J.]

*Coyle v. Campbell,* 10 Ga. 570, November 1851. The defendant, Coyle, offered to prove his account: [571] "1846. March 14. To 499 days' Hydropathic treatment of servant, Henrietta—3 baths a day—1497 baths, at 12½ a bath, . . 1847. July 14. To 499 days' nursing,

[1] Cobb's *Digest,* p. 780.

at 25 cents, . . 499 days' board, at 25, . . 1 outfit for Henrietta of linen, cotton cloth and woolen blankets . . $18.00 . . 499 days' professional fees I do not charge for, $311 87½, it being . . understood . . gratuitous." " Plaintiff's counsel objected, . . that defendant was not licensed, . . and was not allowed to charge for the cure of diseases. . . sustained " Affirmed.

*Aven v. Beckom,* 11 Ga. 1, January 1852. [2] " he was satisfied about the negro, as he knew him better than Aven, for he had a wife near his house."

*Lennard v. Boynton,* 11 Ga. 109, January 1852. "Boynton brought suit . . on a note for $100, given for the hire of a negro, for the year 1850, . . the negro died on the 1st May,"

Held: [112] " He hired the negro for the year, *unconditionally.* He must comply with his engagement." [1] [111] " the maxim of the Common Law, *actus Dei nemini facit injuriam,* is invoked . . I beg leave to demur . . Negroes were hired at the beginning of last year [1851], owing to the high price of cotton and other produce, at the most extravagant rates, throughout the State. Owing to the unparalleled drought in the middle counties, the failure in the crops was almost entire. . . If the death of the negro would entitle him to relief, why should not this other Providential visitation? . . neither should. . . [II.] [113] Humanity to this dependent . . class . . requires, that we should remove from the hirer . . all temptation to neglect them . . or to expose them to situations of unusual peril " [Lumpkin, J.]

*Whaley v. State,* 11 Ga. 123, January 1852. [125] " after the arrest, witness . . said, from his manner and appearance, he must be the man who had stolen Mr. Peake's negroes, and sold them in Alabama; . . witness said he could tell, as the negroes were on Mr. Peake's plantation, and that he would send for them,"

*Mangham v. Reed,* 11 Ga. 137, February 1852. " action of trespass . . for the beating of a slave belonging to the plaintiff." [140] " the finding of the Jury, was, in legal contemplation, a finding for the defendant,"

*Wyche v. Greene,* 11 Ga. 159, February 1852. Deed of gift, 1817: [161] " give . . unto . . Greene . . Sally, now runaway, Moses, Ellick and Sealy, . . with all their increase " [162] "Sally and Sealy, had issue, twenty-nine negroes, all of which Greene had in his possession . . 1850."

*Stephen (a slave) v. State,* 11 Ga. 225, February 1852. [227] " The Grand Jurors . . charge . . Stephen . . with the offence of rape . . upon . . [228] a free white female " There was also a count for " an attempt to commit a rape." [231] " the State elected to try on the first count. . . [233] the prisoner [confessed] . . [234] that, ' he was very sorry that he had done as he had, and that had it not been for Anthony (another slave) he should not have acted so. . . he did not succeed . . the devil had

[1] Contrary to the decisions in Virginia (2 Hen. and M. 5), South Carolina (2 Bailey 424), and Missouri (9 Mo. 867).

induced him to do it.' . . The boy was chained at the time [of the confession]. He stated further, 'he sent for the girl to bring him a pin, making out that he had a splinter in his finger, . . She was picking cotton on one side of the fence, and he at work on the other.'" The girl was over ten years of age, but [238] "poorly grown. . . nothing but a child; . . 'weak-minded' creature, . . on which account partly, she was not brought as a witness" [228] "the mother . . testified that immediately after the commission of the act . . [233] her daughter . . said 'it was Stephen that hurt her,' . . [241] The verdict is, . . 'guilty of an attempt to commit a rape.'" Motions in arrest of judgment and for a new trial overruled.

Affirmed: [230] "The very helplessness of the accused . . appeals to our sympathy. And a controversy between the State of Georgia and a *slave* is so unequal, as of itself to divest the mind of all . . prejudice, . . [242] the Act of February, 1850, . . makes it the duty of the Solicitor General, *to frame* and send before the Grand Jury, bills of indictment against colored persons charging them with capital crimes, in the same manner as in cases of free white persons . . obviously designing to place both in all respects upon the same footing. Under the Code, a free white person could be indicted for a rape and convicted of the attempt," [Lumpkin, J.]

*Grady v. State,* 11 Ga. 253, February 1852. "Indictment . . for 'attempt to procure a slave to commit a crime.' . . On the night . . 1851, . . the defendant was heard . . advising a negro slave, named James, the property of . . Moreland," [257] "it was agreed . . that for twenty dollars, Jim was to induce the other two negroes [also the property of Moreland] to escape and accompany Grady to Boston or some free State. . . directions were communicated to them, 'to get their master's money, and cut the damned old rascal's throat, if they could not obtain it otherwise.'" [256] "Moreland . . testified that the negro told him that he was to meet a white man . . that night . . and it seems . . that it was this information which induced the prosecutor, in company with others, to waylay the prisoner." [254] "The Jury found the defendant guilty, and the Court sentenced him to four years' imprisonment in the penitentiary."

Affirmed: [256] "the crimes or misdemeanors spoken of in the Act of 1850, are such as may be committed only by a free white citizen." [255] "The design of the Legislature in the passage of this law, and the previous Act of 1838, . . was to make the white man responsible directly, for crimes committed or attempted, through the agency of negroes," [Lumpkin, J.]

*Murphy v. Justices,* 11 Ga. 331, May 1852. [332] "The Inferior Court . . ordered the sale of a runaway negro . . after a due advertisement"[1] He was sold for $451. [334] "No claim [to the slave] whatever was established at any time."

[1] Cobb's *Digest,* pp. 1003, 1004.

*Ligon v. Rogers,* 12 Ga. 281, October 1852. "In 1838 . . action . . for the loss of a negro man, a team of horses, and a wagon . . by the sinking of a ferry-boat"

*Railroad v. Davis,* 13 Ga. 68, February 1853. [77] "arbitrators . . to assess damages for the killing of a negro man . . about 38 or 40 years old, and destroying a rockaway carriage, . . 1851, . . award of $800 for the killing of the man . . [80] The 1st section of the Act of 1847, makes the Railroads liable for damage done to live stock, or *other property,* . . It is argued . . that the Legislature did not mean to place . . property of the dignity and importance of slaves, who are reasoning . . agents, upon the same footing with live stock," Held: "The words . . embrace *all* property, and of course include slaves."

*McBain v. Smith,* 13 Ga. 315, May 1853. [316] "the negro was stolen from Smith in Alabama, brought to Georgia and sold to McBain."

*Laughlin v. Greene,* 13 Ga. 359, June 1853. [861] "Laughlin died . . 1796; . . left three negroes, Sambo, Sucky and Alcy, . . the girls hired at one dollar per week each, and the man at ten dollars per month." "old Sambo . . sold . . to pay the debts"

*Warner v. Robertson,* 13 Ga. 370, June 1853. On April 15, 1842, by a bill of sale, [371] "absolute on its face," Warner sold Betsey and all her children, six in number, to Robertson for $1750. On the next day, Robertson signed the following instrument: [375] "The said bargain between . . Warner and . . Robertson, is to certify that whenever . . Warner pays all demands that . . Robertson holds against . . Warner, the property is to be refunded back" Robertson took possession of the four older children "from the time of the sale to the present time. . . [376] Before the suit commenced, . . Miller, under authority of complainant, called on R. . . proposing to pay what was due; . . R. declined going into any account . . contending that he held . . under an absolute bill of sale." Depositions in 1851: the negroes still in Warner's possession are [376] "Betsey, about 40 or 50 years of age, valued at $650. Julia, about 13 or 14 . . $650. Billy, about 10 or 11 . . $650. Jim, about 8 or 9 . . $400. John, about 6 . . $300. Harriet, about 3 or 4 . . $200. Boy child, 1 or little more . . $100. Annual hire . . [377] Betsey, with all her children with her till last year, nothing. Something ought to have been paid for keeping them, say $35 or $40—last year, (1850), and now, per annum, all about $100. . . Those [children of Betsey] in possession of Robertson . . Charles, about 27 . . worth . . $1200. Maria (and child,) she about 22 . . $900. Ben, about 19 . . $900. Eliza, about 16 . . $600. Hire . . Charles, per annum, . . $150. Maria and child, if living . . $70. If child not living . . $90. Ben . . $120. Eliza . . $60." [371] "The bill prayed that the contract . . might be decreed a mortgage, . . the jury found for the complainant; an appeal . . the jury found" as before. New trial granted. Judgment of the court below, granting a new trial, reversed.

*Gorman v. Campbell,* 14 Ga. 137, August 1853. [139] "1852, [Gorman] hired his boy London to . . Campbell . . at . . fifteen dollars per month, to go upon the . . rivers, as a boat-hand. . . the Captain and white hands were engaged in clearing a new passage . . it not being the custom for negroes hired as boat-hands to engage in removing obstructions . . London, of his own accord, in the presence of the Captain, went into the river and commenced cutting a log. . . about half an hour in cutting . . *and the Captain was present during that time.* . . [140] to save himself from being carried down stream, he jumped upon another log . . drowned . . That when the Captain saw that the log which London was cutting was about to be carried down stream, he called to him several times to desist." Held: [142] "the defendant should be made liable, because the Captain did not arrest the work *immediately,* and before it was too late."

*Bryan v. Walton,* 14 Ga. 185, August 1853. [187] "action [of trover] brought [in 1851] by . . Walton . . administrator of Joseph Nunez, a free person of color, who died without descendants, to recover possession of certain negroes . . [188] [which] had belonged to James Nunez, the father of Joseph, who died in 1809, . . the defendant introduced a deed of gift . . by Joseph Nunez to [his guardian] . . dated . . 1846,"

Held: [205] " It is by virtue of . . Act of 1819,[1] . . that Joseph Nunez held these slaves. But this Act will be analyzed in vain, for authority in either father or son, to give these negroes by will or deed." [198] "the *status* of the African in Georgia, whether bond or free, is such that he has no civil, social or political rights or capacity, whatever, except such as are bestowed on him by Statute; . . the act of manumission confers no other right but . . freedom from the dominion of the master, and the limited liberty of locomotion; . . [199] the condition of the African race is different in every slave state; and is less favorable in the extreme Southern, than in the more Northern slave States; . . [201] to become a citizen of the body politic, capable of contracting, of marrying, of voting, requires something more than the mere act of enfranchisement. . . A white man is liable to a fine of five hundred dollars and imprisonment . . [203] for teaching a *free* negro to read and write; and if one *free* negro teach another, he is punishable by fine and whipping, or fine or whipping, . . these severe restrictions . . have my hearty and cordial approval. . . Everything must be interdicted which is calculated to render the slave discontented " [Lumpkin, J.]. See same *v.* same, p. 50, *infra.*

*Latimer v. Alexander,* 14 Ga. 259, August 1853. Latimer "had hired a negro man to . . Thompson . . for a year." [266] "bid off . . at public outcry at $91. He is employed as a waiter in the hotel of Dr. Thompson . . [267] A guest is attacked with small pox, and the boy is put to wait on him, and contracts the disease;" [260] "Thompson immediately called in Dr. Alexander . . to attend the negro, without previously notifying his owner that he was sick. Dr. Alexander . . on the refusal of the owner to pay his bill [$100] . . brought this action " Verdict for the plaintiff

[1] Cobb 995.

Judgment thereon reversed: [267] "Mr. Latimer had by the contract of hiring, lost all control over this slave."

*Williamson v. Nabers,* 14 Ga. 286, October 1853. [289] "Mrs. W. wanted to send for [her son] . . to help her attend to [her daughter] . . and the negroes, who were sick; . . [304] [A witness] heard the old man say . . his negroes were spoiling his children;"

*Simmons v. Blackman,* 14 Ga. 318, October 1853. "the defendant, in support of his plea of partial failure of consideration, offered testimony that one of the women was, at the time of the hiring, in a state of pregnancy."

*Carr v. State,* 14 Ga. 358, November 1853. [360] "you talk to me worse than if I was a negro."

*Mealing v. Pace,* 14 Ga. 596, January 1854. [600] "Chany was born in August, 1847; . . Susan . . in . . May, 1849. I know these facts from a private record kept by my late husband, of the births of his negroes;" Will, 1847: [611] " desire that Lany, after the death of my wife, live amongst my children, when she thinks proper."

*Marchman v. Todd,* 15 Ga. 25, February 1854. [35] "that he sent his servant and ox-cart . . for the negroes; . . that the negroes . . stated that they were going back to old masters, not to return any more;"

*Robert v. West,* 15 Ga. 122, February 1854. Jacob Wood's will, 1840: [127] " dispose of all my real and personal estate, (my negro slaves and all their issue expressly excepted,) . . all investments . . shall be made on . . real estate in . . Boston, . . Massachusetts: . . [128] positively direct, that all my negro slaves . . and increase . . be shipped . . to the north east side of the Island of Hayti, (San Domingo,) to occupy, cultivate, and plant for my use, land that I have bought . . and . . devise . . five thousand dollars, to pay the expenses of their removal;"

*Bennett v. Woolfolk,* 15 Ga. 213, February 1854. "Bennett . . alleged that in September, 1843, he entered into an agreement with D. and W. Gunn, to pursue the business of buying and selling negroes as partners, . . D. and W. Gunn were to furnish all the funds, and Bennett to attend to the purchases and sales, and the nett profits . . equally divided between the firm and Bennett; that he proceeded to Virginia, and elsewhere, and purchased . . [one hundred and forty-one] negroes, . . until May, 1846, . . [214] The profits . . amounted to $15,940 50/100." [220] " the Act of 22d December, 1843,[1] . . declares ' That the Act . . to repeal all laws prohibiting the free introduction of slaves into this State, assented to December 27th, 1842,[2] . . is hereby repealed.' . . It appears from the bill of particulars . . that a very large proportion of the negroes were brought in . . 1843; of this proportion a large part was, it is to be presumed, bought before the 27th [22d?] of December, 1843,"

[1] Acts of 1843, p. 167.
[2] Acts of 1842, p. 165.

Held: "at the time when the contract was made, the contract was legal. It remained so . . several months. . . As to [negroes purchased during that time] . . Bennett . . is most certainly entitled to his suit."

*Ray v. State,* 15 Ga. 223, February 1854. [233] "the negro is fond of liquor, but witness never saw him drunk, though he has seen him drink a good deal,"

*Hately v. State,* 15 Ga. 346, April 1854. [347] "Turner was the Clerk of Hately, and . . furnished the liquor to a slave, in the absence of Hately."

*Dunn v. State,* 15 Ga. 419, June 1854. "The only question . . was, whether an indictment for trading with a slave, was such a case as could be settled under the Act of 1850,[1] without the consent of the prosecuting officer of the State. The Court below held, that it was not"

Affirmed: [221] "the community have too deep a stake in suppressing this evil. . . While the actual owner is damaged by corrupting his slave, every inhabitant in the neighborhood is made to suffer, by the stimulation given by this traffic, to acts of pilfering" [Lumpkin, J.]

*Baker v. State,* 15 Ga. 498, July 1854. Indictment "for aiding a prisoner, a negro slave, to escape from jail; . . [499] the negro was in jail, upon a charge for an assault, with intent to commit a rape; . . pushed through the door and over the jailer, . . fell and the jailer . . got on him, . . A man came up . . drew a pistol and placed it to the jailer's head, with a threat to fire if he did not release the negro; the negro was loosed and escaped." The prisoners [506] "came to town . . to aid Sam to escape, . . [One] held the horses, upon one of which the negro escaped,"

Held: [504] "it is not true that slaves are only chattels, . . and therefore, it is not true that it is not possible for them to be prisoners. . . [505] the Penal Code . . has them in contemplation . . in the first division[2] . . as persons capable of committing crimes; and as a . . consequence . . as capable of becoming prisoners" [Benning, J.]

*Jim (a slave) v. State,* 15 Ga. 535, July 1854. [536] "Jim . . stood indicted for the murder of a white man, his overseer. A motion was made for a continuance, on the ground that the excitement and prejudice . . were so great . . the . . offence being committed in January, 1854. . . refused . . The State offered . . the confessions [[541] 'not extracted by promises or threats'] . . the prisoner was . . tied . . at the time the confessions were made, . . The Court over-ruled the objection" "that they were made under duress. . . The confessions were, that the deceased, a youth weighing about 100 lbs. raised a maul and attempted to strike the prisoner, a stout man; that the prisoner then knocked him with an axe, and struck him more than once; said that deceased ran from him, and begged him to desist, but that he would not, because he was mad." The court refused to charge [537] "that if a master or overseer, in-

[1] Cobb 814.
[2] Cobb 778-781.

flicts unmerciful . . punishment . . such as would amount to a crime, under our Penal Code, and the slave, in a moment of passion, . . kills him, it is manslaughter and not murder." Jim was convicted and a new trial was refused.

Judgment affirmed: I. [539] "a continuance . . would have been fruitless. Speaking for myself, alone, . . I was strongly stimulated . . to grant . . a continuance (and would . . have favored it, if . . it would have availed him anything,) by the consideration that his master had failed or refused to give him assistance. . . this prisoner found able and zealous assistance at Court. But my idea of the master's duty . . [540] is, that he should, if able, (and . . ability was not wanting in this case,) see to it, that his slave has the benefit of counsel . . at the earliest convenient moment . . that this duty . . is in return for the profits of the bondman's labor . . is as binding . . as the obligation to procure . . medical attendance . . or food and clothing . . that the conduct of the master who shrinks from this duty, whatever . . *his* opinion of the slave's guilt, or whatever the public excitement . . is highly reprehensible. . . [II.] [542] the homicide of his master, overseer, or employer . . by a slave, in resistance to an assault made upon him by that master, overseer, or employer, must, in all cases, be either justifiable homicide or murder." [541] "The legal principles which we . . deem it necessary to assert, and some of the sentiments . . may shock those who are prejudiced against . . slavery . . who are blind to the difficulties in dealing with the subject, on the part of those whose interests are involved . . and *their right* to deal with it for themselves, . . in view of the solemn responsibilities, under which they rest to their Maker. . . [543] If the master exceed the bounds of reason . . in his chastisement, the slave must submit, as the child submits . . and trust to the law for his vindication. He cannot, himself, undertake to redress his wrong, unless the attack . . be calculated to produce death. . . our laws refuse . . indulgence to the passion of the slave . . [544] because, to allow it, would be to make him the judge . . as to the . . unreasonableness of the extent . . of that patriarchal discipline which the master is permitted to exercise—would be . . to encourage servile insurrection and bloodshed." [Starnes, J.]

*Long v. Lewis,* 16 Ga. 154, August 1854. "action brought by . . Lewis . . on a contract . . December 1st, 1850, . . agreed that Lewis should serve Long, as overseer, . . 13 months . . [for] One Hundred and Fifty Dollars. . . [155] quit . . in March, 1851. . . [157] [Long told a witness] he had told one of the negroes to tell plaintiff, if he did not do better he might leave. . . He said plaintiff had gone to sleep in the new ground." One witness [155] "thought that Mr. Lewis was a very hard-working man; frequently heard the hands working late after night and before day, while they were under Mr. Lewis. . . [156] [Another] says: . . Plaintiff appeared to be controlling the hands; saw him whipping a little negro in the field. . . [159] He said the reason he left . . the old lady complained of him for . . waking up the negroes before day, and going to work before day. . . the [five] hands, besides building a chim-

ney, were chiefly employed in clearing land" [163] "non-suit . . should have been granted."

*John (a slave) v. State,* 16 Ga. 200, August 1854. "indicted for the murder of Mark Swinney. . . [201] the deceased had died from wounds with a knife, . . verdict of guilty."

*Dacy v. Gay,* 16 Ga. 203, August 1854. [204] "action brought by Gay against Dacy, for harboring a slave named Joe, . . and for the value of his services during the time . . The plaintiff proved that he was run away from him, from April 1st, 1851, until November 8th, 1852; that the defendant . . hired him out to work, with . . Henderson and Carlisle for nine months on a rail road contract; that . . Lindsay, for two months hired him out and received money for his hire . . Henderson and Carlisle paid . . twenty dollars a month, and that his labor was worth from 20 to 30 dollars per month. . . that defendant had, some years previously, known . . Joe as the property of Mr. Gay; that he had worked with him a year or two. Also, that he called the slave at one time Dave, at another Pompey. . . [205] The Jury found for the plaintiff, Three Hundred and Eighty dollars." Judgment thereon affirmed.

*Albertson v. Halloway,* 16 Ga. 377, August 1854. Ann was [378] "valued at the time of the sale [in 1847] . . at $450 . . . from the time Albertson purchased her . . she has been . . afflicted with rheumatism—unable to work, and worth nothing; at the time of the trade, Halloway said her feet were sore from traveling."

*Mosely v. Gordon,* 16 Ga. 384, August 1854. [385] "action . . brought by Gordon . . to recover the value of a negro sold by defendant . . with warranty of soundness. . . [391] [The agent of the firm of which Mosely was a member testified:] Travelling in company . . [with] Allen, and he a trader also, we made a joint trade [in January 1848] with Gordon, swapping two negroes for one" Dr. Calhoun deposed that he [387] "first gave medicine [to Daniel] . . May . . 1848. . . General dropsy . . accompanied with a painful affection of the joints . . The liver was . . materially enlarged, as also the mesenteric glands, spleen, etc. . . I took Daniel to my own house . . and kept him there, under treatment, until he died, . . August, 1848. . . I think . . diseased long anterior to the December or January preceding. . . the amount charged by me . . was twenty-four dollars and seventy-five cents. . . [388] Defendant . . introduced Dr. . . Ridley . . [389] He believed the case . . was produced by exposure, neglect, etc. . . Defendant was very careful with his negroes, and frequently sent for witness, professionally, when it was really not necessary. Had never been called to see Daniel. . . [390] Duprey . . raised him . . 9 years old in 1847, when I sold him to [the firm] . . at Charlotte C. H. Va., . . carried to Georgia in that fall . . as healthy a boy as I ever knew . . [392] The defendant . . proposed to prove [by three witnesses] the general . . reputation of . . Gordon . . for his . . cruel treatment of his slaves, generally; and . . that . . [he] had been indicted for cruel treatment . . rejected . . [393] verdict for the plaintiff" Affirmed.

*Collins v. Lester,* 16 Ga. 410, August 1854. [411] "That . . [January 2,] 1852, at the request of defendant, he hired for defendant, two . . negroes [at $125 and $150, [412] 'time of hire to expire . . 24th December next'] . . before they were delivered . . he exchanged one of them with the plaintiff, for a boy named Tom, who, she said, was hard to manage. . . *distinct understanding* that the negroes were to work . . on . . Rail-road. In August or September . . defendant informed witness . . grading . . was completed; . . asked . . that he might take Tom to Brunswick [two or three hundred miles away]; . . refused . . [Nevertheless, Tom was sent there] and in a few days . . was taken sick and died." Judgment for plaintiff affirmed.

*Drumright v. Philpot,* 16 Ga. 424, August 1854. [425] "inherited Becky . . and owned her for twenty-four years, when he sold her and her [two] children . . to Drumright, who . . bought for Drumright and Nixon as partners—received $300 for the children, with the understanding that Drumright was to take Becky for nothing—she being diseased with scrofula; the children were sound and healthy, at that time." The firm sold them in a lot with two others to Philpot, [426] "warranting that they were sound and healthy," [424] "physician—called . . to examine . . thinks Becky . . had been diseased several years . . can't be cured . . the children . . had unusual glandular swellings about their throats" Judgment for Philpot affirmed.

*Sweeny v. State,* 16 Ga. 467, August 1854. "The presentment charged, 'that . . defendant did . . furnish a . . [468] man slave . . with spirituous liquors for his . . own use, . . Sweeney not being . . the owner, overseer or employer' . . found guilty;"

*Lyon v. Howard,* 16 Ga. 481, August 1854. [482] "1818, . . Howard of . . South Carolina . . bequeathed to his wife . . a negro woman . . Jinney, and her increase; . . in 1823 . . [the widow] removed to [Georgia] . . and there . . Jinney bore . . [fourteen] children . . in 1838 . . [the widow] gave up [to her children] all . . except a girl . . and a man named Lindsey, . . the . . negroes were sold . . thirteen in number, including Lindsey, by . . Howard, as executor . . who then lived in . . Mississippi;"

*Cleland v. Waters,* 16 Ga. 496, October 1854. Will of Thomas J. Waters: "Thirdly. Whereas, I own . . the [forty-four] undernamed slaves, . . [497] On account of the faithful services of my body servant, William (the husband of Peggy) I will . . his emancipation . . with the future issue . . of all the females mentioned . . If it is incompatible with the humanity, etc. of the authorities . . of Georgia, I direct my . . executors to send . . slaves out of the State . . to such place as they [the slaves] may select; and . . expenses . . paid . . and that the whole . . proceeding be conducted according to the laws . . of Georgia, I having no desire . . to violate the spirit . . or policy of such laws; . . [498] Eighth. I direct . . executors, in the division of my [other] negroes among my children, to divide . . in families, so that the principles of humanity may be ob-

served, and the separation from each other be as free from pain as possible." [499] "The testator possessed . . a large number of negroes not mentioned in the third item . . A number of those mentioned were lineal descendants of testator. . . The Court below . . [held] that the negroes . . enumerated, were all emancipated."

Affirmed. [508] "We have been strongly urged . . to lean to that interpretation most unfavorable to manumission, on the ground that the favor shown to liberty by the Common Law . . does not apply to negroes in Georgia—the granting of freedom being against the express provisions of our Statutes, and opposed to the public policy of our laws. [Review of the statutes concerning slaves and free negroes, *ibid.* 509-513.] . . [513] While public opinion has never wavered in this State, for the past fifty years, so far as *domestic* manumission was concerned, the same steadfastness of purpose has not been manifested, as to extra-territorial and foreign colonization. The policy of transporting our free blacks to Liberia, received at its commencement in 1816, the . . approbation of our greatest and best men. . . [514] In 1824, a resolution from . . Ohio, on the subject of . . abolition . . having been laid . . before the Legislature, . . the report . . adopted thereon, after expressing regret 'at this unnecessary interference' . . concludes . . 'Georgia claims the right . . of moving this question when an enlarged system of . . philanthropic exertions, in consistency with her rights and interest, shall render it practicable.'[1] Is it not apparent, that up to this period, the true character of . . slavery had not been fully understood . . at the South; and that she looked to emancipation . . in the uncertain future, as the only cure for the supposed evil? Thanks to the blind zealots of the North, for their unwarrantable interference . . It has roused the public mind to a thorough investigation . . The result is, a settled conviction that it was wisely ordained by a forecast high as heaven above man's, for the good of both races, and a calm and fixed determination to preserve and defend it, at any and all hazards. . . [516] in 1828, the Legislature having under consideration resolutions from . . South Carolina and Ohio, . . say . . 'The Colonization Society is considered . . as one of a dangerous character in . . respect [to abolition]. Its schemes of colonization are . . visionary.' . . So much for our legislation" But the decisions of the court in Jordan *v.* Bradley[2] and in Roser *v.* Marlow[3] uphold foreign emancipation. [520] "Whatever change is made, *if any,* should be by the law-making, rather than by the law-administering department of the government." [Lumpkin, J.] See same *v.* same, p. 46, *infra.*

[1] "In Senate, Nov. 19, 1824. . . [159] Your committee are . . constrained to view the resolution of the legislature of . . Ohio as calculated to infringe the rights . . of Georgia, in common with other states similarly situated, and as indelicate in those from whom it emanates. . . Your committee . .'consider the resolution as violative of the true dictates of humanity—and this idea is supported by a contrast of the slave population of the south with the wretched . . condition of the free people of color who crowd the houses of punishment . . in some of our sister states. . . Your committee . . recommend . . resolution: . . [160] That the resolutions . . of Ohio, proposing the emancipation of slaves, . . be and the same is hereby disapproved . . and that . . the Governor be . . requested to transmit a copy . . to the executive of each of the United States." Acts of 1824, pp. 158-160.

[2] P. 12, *supra.*

[3] P. 14, *supra.*

*Freeman v. Flood,* 16 Ga. 528, October 1854. The father said: [530] "here is this girl; you can take her home with you; she is not worth much, but may do you some good; she will do to pick up chips;"

*Ricks v. State,* 16 Ga. 600. January 1855. [601] "indictment for buying cotton from a slave, without permission.[1] . . Walthour . . having reason to suspect . . had furnished one of [his father's slaves] . . with . . cotton and sent him to defendant's house, while he went to watch . . defendant bought . . paying . . in liquor and tobacco; witness heard them also talk of a former transaction of the same kind, and made an arrangement for a future one." Verdict of guilty. Judgment thereon affirmed.

*Dudley v. Porter,* 16 Ga. 613, January 1855. Indenture, dated 1821, "witnesseth" the sale to grantor's sister-in-law of [614] "a negro girl . . about three months of age," the consideration being $100.

*Curry v. Gaulden,* 17 Ga. 72, January 1855. [73] "bond given . . at the time of hiring . . that the obligors 'shall cause Allen . . to be forthcoming . . 25th day of December, 1845.' . . the negro ran away" Held: the hirer is not excused.

*Hannahan v. Nichols,* 17 Ga. 77, January 1855. "in 1853, . . he sold . . a negro for $1100,"

*Tompkins v. Tigner,* 17 Ga. 103, January 1855. "hire . . for the year 1852—[of] a man at one hundred dollars—a woman at seventy-five dollars;"

*Mercer v. State,* 17 Ga. 146, January 1855. [149] "had gone out of the house, as humble as any negro or dog, . . [160] Witness was jailor . . Prisoner [under charge of murder], with . . Hogan and . . Lester, and two negroes, at the time of making his escape, was confined in the dungeon; all got out except Lester, . . [161] when witness went to the dungeon, a negro . . confined within, asked witness to take a piece of money and get him some tobacco; witness paying no attention . . the prisoner at the bar remarked that the negro had but a short time to live, and thought he ought to have all the luxuries he could procure, whereupon he went into the dungeon, to get the money, supposing the negroes were chained."

*McGlawn v. McGlawn,* 17 Ga. 234, January 1855. "in consideration of . . Five Hundred Dollars, . . paid, by my son, David . . sold [in 1836] . . to . . David . . negro girl about 13 years old, of black complexion, named Liz; . . to be delivered . . at my death,"

*Knight, as pro. ami of Margaret (a free woman of color) and others, v. Hardeman,* 17 Ga. 253, February 1855. "In 1822, Henry Duvall . . of Maryland, made his . . will . . 'that my black woman Rebecca shall be free on the 1st . . [254] January, 1828; and all her issue to be free as they arrive at the age of 30 . . and all . . of my young blacks that are not manumitted, shall be free as they arrive at . . thirty years.' Mar-

[1] Cobb 827.

garet, (one of the complainants and the mother of the others,) was the daughter of Rebecca, and 'a young black' at . . testator's death. She arrived at 30 . . in 1835. . . before reaching that age, she was sent . . into Georgia, and sold from one to another until bought [[255] 'in . . 1840, or thereabouts'] by . . Healey. . . [His] executors were about to sell . . Margaret and her children. . . Knight . . applied to . . Hardeman [executor], the Judge of the Circuit where Margaret was domiciled, to be appointed guardian . . refused . . appealed to the Supreme Court . . but the negroes would be sold before a decision could be had; that a suit at Law would not protect them—1st. Because all the witnesses are resident in Maryland, and their testimony could not be procured before the sale. 2d. Because they would be sold and removed from the State before a hearing could be had. The prayer was for an injunction and a decree, declaring complainants free. . . demurrer . . bill dismissed."

Affirmed: [260] " do . . not [the acts of 1770, 1835, and 1837], singly or combined, afford the most . . complete remedy, . . [261] As to the complaint against Judge Hardeman, . . why call upon him to prejudice the estate of his testator, . . why was not the application . . made to the Judge of the Macon . . Circuit [within which another executor resided]? . . under each of the Acts . . cited, abundant provision is made for protecting persons of color from being eloined . . beyond the jurisdiction of the State before a trial can be had. . . Decisions have been read from Virginia, Tennessee and several other of the slave or quasi slave States, . . [262] that in suits for freedom, the jurisdiction of Chancery is not ousted by the enactment of Statutes for this purpose. . . questions involving slavery, have not, heretofore, been discussed, even in the slave States, with that thoroughness which either principle or their intrinsic importance demanded. . . we are strongly inclined to hold the very converse of the doctrine referred to from our sister States to be true, . . This whole question is one of State policy, and should not be put upon these principles of *meum et tuum,* which regulate individual rights. . . to my mind, there lies . . a much stronger objection to this whole proceeding . . because neither Courts of Law nor of Equity have any right to grant the relief . . [263] Can the laws of a sister State . . allowing freedom . . be executed by the Courts of Georgia? Dare we say, in the face of the Acts of 1801 and 1818, that these foreign laws are not prejudicial to our own rights and interests? . . No one pretends that negroes can be carried to New York . . and held there in perpetual bondage . . With what more propriety can slaves be brought here and emancipated?" [Lumpkin, J.]

*Wellborn v. Weaver,* 17 Ga. 267, February 1855. [68] " he sent the negro woman to defendant's, to wait on his . . wife; and the boy [son of the negro] afterwards ran away and went to defendant's who refused to give him up."

*Hollifield v. Stell,* 17 Ga. 280, February 1855. Will, 1801: " I . . give to my son . . Kate, and in case . . Kate shall bear a child to live to the age of two . . that my daughter, Christina . . may be possessed of it;

and in case . . Christina should die without an heir of her body . . the said child to be sold"

*Walker v. Hunter,* 17 Ga. 364, February 1855. [374] "Hunter . . replied, that it was terrifying to him to have his negroes scattered all over the world. . . [To] prevent that . . he had [by his will] given the negroes to Charles Walker's child, and that by the time that child would die, the negroes would die with old age. . . [384] he had never bought a negro, and he never wanted them divided" [380] "as they all came from one family, . . [383] Hunter's mind was between the two extremes of an idiot and a strong mind;"

*Wright v. Greenwood,* 17 Ga. 418, February 1855. "Greenwood and Co. sued . . Wright on a note for $816 . . given for . . a negro girl . . March, 1851, . . in the summer and fall of 1852, and in . . 1853, the negro had white swelling in her left arm. . . proven by neighbors who had known the negro in North Carolina, that she was sound, and did the ordinary work of negroes, up to the time of her sale. . . verdict for Greenwood and Co." Judgment thereon affirmed.

*Dacy v. State,* 17 Ga. 439, February 1855. "indictment for receiving corn from a slave, . . 1852. . . [440] verdict of guilty. . . Afterwards, the defendant's Counsel moved in arrest of judgment, and for a new trial, and produced an order of Court, . . 1853, granting an acquittal . . predicated on two successive demands for trial under the Penal Code. . . The Court refused . . holding the proof of identity . . not sufficient, and sentenced the defendant to thirty day's [*sic*] imprisonment, and payment of costs." Judgment reversed and new trial awarded, [444] "odious as the crime may be . . and notwithstanding he escaped through a loop in the Statute,"

*McGuffie v. State,* 17 Ga. 497, April 1855. [500] "Prisoner . . raised his gun . . deceased [who [503] 'had control of the yard'] was engaged, with others, . . [501] packing brick; and he said boys, go and take the gun away from him; some of the boys said, Mr. McGuffie, don't shoot here; . . [504] generally had some white man to take charge of the hands in the yard;"

*Hunter v. Bass; American Colonization Society v. Bass,* 18 Ga. 127, May 1855. Will of General Robert Bledsoe, dated August 17, 1846: "I will . . that there shall be a sufficiency of good, arable land, purchased either in . . Indiana or Illinois, for all my negroes to locate upon and cultivate, with a sufficiency of land for timber and firewood included—to be done within a reasonable time after my death, by my executors . . and to remove all of said negroes to said tract . . but would recommend for the title to . . [128] land to be made to my executors, for fear they might be defrauded . . or squander it . . I will . . after the removal and location . . west of the Ohio river, that they be furnished an outfit of farming utensils, including the wagons and teams used in their removal . . that there be also purchased . . the first year's provisions" "After the making of the will, and before the death of Bledsoe, . .

Indiana prohibited the introduction of negroes[1] . . After his death . . Illinois passed a similar Act.[2] . . Bass, the executor . . filed a bill for direction, . . Hunter moved to be made a party . . as guardian *ad litem* for the negroes, . . The American Colonization Society also moved . . to be made a party, calling the attention of the Court to the Colony of Liberia as a proper location for the slaves, and tendering their organization as a proper scheme for carrying out the . . bequests . . The Court below refused both applications,"

Affirmed: [129] "it cannot be said, with any degree of confidence, that he wished them to be free in Ohio or Massachusetts, Canada or Congo, Liberia or wherever else his executor or some Court might say. . . the monstrous doctrine of *Cypres* [*sic*] is not to have given it one inch of ground beyond the *possessio pedis.*" "if the will cannot be executed . . And if the slaves take no rights under it, then none on behalf of the slaves do, or on behalf of the slaves can appear in Court" [Benning, J.]

*Adams v. Bass,* 18 Ga. 130, May 1855. See Hunter *v.* Bass, *supra.* Held: I. the bequests of the will as to the negroes cannot be executed under the "cy pres" doctrine [136] "without manifesting, by a single syllable, any general intent to manumit . . his sole and definite proposition is to have his negroes removed to Indiana or Illinois, . . [138] as a man, I do not regret the failure of this bequest. . . [139] what friend of the African or of humanity, would desire to see these children of the sun, who . . perish with cold in higher latitudes, brought into close contact and competition with the hardy and industrious population . . northwest of the Ohio, and who loathe negroes as they would so many lepers?" II. [138] "the slaves must descend to . . the heirs at law of the decedent." [Lumpkin, J.]

Judge Starnes concurred: [145] "it cannot correctly be said, that the policy of . . Acts [ of 1801 and of 1818] is opposed to the manumission of slaves, by sending them out of the State. . . [146] As to what may be considered the truly sound policy *of the State* . . is . . a question for the legislator. . . I, myself, doubt the policy of permitting free persons of color to be sent into the Northern and Western States of this Union, to increase the number of paupers and aid in swelling the abolition chorus . . Yet, several . . cogent reasons can be assigned, why it would not be for the best interests of the slave holding citizens of the State to prohibit the removal of slaves from the State to any place whatever." Judge Benning dissented in twenty-three pages. [166] "These Acts . . testify that every sort of emancipation is forbidden by the *policy* of the State."

*Jones v. Railroad Co.,* 18 Ga. 247, June 1855. "action . . for the killing of a slave, by the negligent running of their cars."

*Manes v. Kenyon,* 18 Ga. 291, July 1855. "Manes . . warranted the negro to be 'sound in body and mind, except some deficiency about

[1] Constitution of 1851, sect. 1: "No Negro or Mulatto shall come into, or settle in this State, after the adoption of this Constitution."
[2] Act of Feb. 12, 1853.

her feet or ankles.' Kenyon brought an action for deceit . . alleging, that from some disease of the feet and ankles, she was utterly worthless"

*William (a slave) v. State,* 18 Ga. 356, July 1855. "Bill . . was indicted for the murder of Caesar, . . both were employed about a livery stable . . Bill was just grown . . Caesar . . weighed 188 pounds. . . Bill 'devilled' Caesar . . dared Caesar 'to make a riffle towards him, and he would cut his heart out of him.' Caesar would not hit him . . Bill . . slapped Caesar . . on the shoulder. Caesar showed no fight. Bill then stabbed him."

Judgment affirmed: [359] "the definition of murder and manslaughter, as contained in the Penal Code of 1833," is applicable to the trial of a slave. He is [360] "punished, under the discretionary power vested in the Inferior Court, by the Act of 1816."[1]

*Bartee v. Andrews,* 18 Ga. 407, July 1855. "overseer . . was to have one-fifth of the crop made."

*Harden v. Mangham,* 18 Ga. 563, August 1855. Will of Mrs. Christiana Hall: [564] "As manumission is, by the laws of the State, forbidden, (which I could have wished otherwise) I . . bequeath unto . . Mangham, my trusty and faithful servants, Charity and Starling, . . unto him and his executors forever, in fee, with the very urgent request that he and they will treat said negroes kindly and affectionately, and watch over and protect them—finding them a comfortable home, and allowing them as many privileges . . as the laws of the State will permit negro slaves to . . enjoy." The will was upheld.

*Poole v. State,* 18 Ga. 567, August 1855. Indictment for stealing a slave.

*Dawson v. Callaway,* 18 Ga. 573, August 1855. [574] "a bill of sale [in 1815] . . for a negro girl . . [for] $375."

*Hart v. Powell,* 18 Ga. 635, August 1855. "action of trespass . . against . . Powell" [637] "Bill, a negro fellow about twenty-five . . worth $1,000, had runaway . . in 1852. . . he was a negro of violent character, and considered a dangerous man . . had knocked several negroes in the head; had been absent for some time; . . some one . . had tried to catch him, and [he] had 'made fight upon his pursuer with a stick.' Being found lurking about a plantation . . having been run from the fodder-house . . a little before day . . application was made to the defendant to track him with his dogs, which were trained for that purpose. . . informed, that Bill had a knife and a stick, which induced him to get his pistol." [635] "came up with him; a contest ensued" [638] "The account that the defendant gave . . was, that the negro had killed one of the dogs and disabled the balance, . . that refusing to submit, he shot, at first, to disable him, . . the negro advancing upon him, a conflict ensued, and he discharged the third load" He blew his horn and called out [640] "for a physician to be sent for, for that he

[1] Prince's *Digest* (1837), p. 792.

fears he has killed Bill, and that he would not have done so for all the negroes above the earth;" Verdict for Powell. No error.

*Collier v. Lyons,* 18 Ga. 648, August 1855. Trover. [649] "the plaintiff sent his negro man . . to the [defendant's] mill, with corn to be ground. While there, the water-wheel got out of order; while assisting in . . prizing up the wheel, the negro . . received a blow by the lever falling, that killed him. The defendant . . was present . . though it does not appear . . that he requested . . the boy to render assistance" [650] "the Jury . . added interest to the value, from the death to the time of trial. . . Let it stand."

*Durand v. Grimes,* 18 Ga. 693, August 1855. "assumpsit . . on an open account for sixty-five dollars, for medical services and medicine rendered and furnished a slave . . [694] house-girl . . property of defendant . . was left with Mr. King and [his wife, the mother-in-law of defendant,] . . without any instructions about calling a physician. Witness did not call Dr. Grimes to the girl as the property of the defendant" Judgment affirmed.

*Harrell v. Green,* 18 Ga. 711, August 1855. Will of Mrs. Harrell, 1833: [714] "hire . . negro ['about thirteen'] . . into hands that will treat her well, until . . [my grandson] comes of age . . and apply . . portion of . . hire to the purchase of necessaries for my daughter, . . I wish . . Ellick, about eleven years old, to be sold, and the money . . divided . . I wish my negro woman, Esther, to be sold;"

*Moran v. Davis,* 18 Ga. 722, August 1855. "action on the case . . for the recovery of the value of a negro boy . . alleged to have been worth $1200. . . hired . . to the defendant, for the year 1852. . . the negro run away, and . . the defendant employed . . Hamblin to chase him with dogs. The negro was found drowned in a creek, into which he had plunged during the pursuit . . the Court charged . . the owner, the hirer or overseer . . has the right to pursue . . with such dogs as may track him . . provided it be done with such . . as cannot lacerate . . and if in doing so, harm should befall . . the hirer or overseer will not be responsible"

Judgment for defendant affirmed: [723] "if a capture . . could not be accomplished but by . . dogs, . . a pursuit in this mode would be justifiable, provided . . made with such . . as would not lacerate or otherwise materially injure the slave. . . the Amendatory Act of 1851—'2,[1] . . [724] to the other acts of cruelty . . specified [in [723] 'the XIIth section of the 13th division of the Penal Code'][2] . . adds . . '*unnecessarily* biting or tearing with dogs.' Is not the inference irresistible, that dogs may be employed, prudently . . The South has lost, already, upwards of 60,000 slaves, worth between 25 and 30 millions of dollars. Instead . . of relaxing the means allowed by law for the security and enjoyment of this species of property, the facilities afforded for its escape and the . . encouragement held out to induce it, constrain us, willingly or other-

[1] Acts of 1851-1852, p. 268.
[2] Cobb's *Digest,* p. 827.

wise, . . to tighten the chords [*sic*] which bind the negro to his condition of servitude—a condition which is to last, if the Apocalypse be inspired, until the end of time; . . every *bondman* . . and every *freeman,* hid themselves . . (*Rev.* 6 *ch.* 12 *to* 17 *verses, inclusive.*)" [Lumpkin, J.]

*Cleland v. Waters,* 19 Ga. 35, September 1855. See same *v.* same, p. 38, *supra.* [36] "1854, we held, unanimously, that it was the *intention* of the testator, to manumit *all* the slaves mentioned in the third item . . can that intention be executed? . . [I.] [40] The reasoning which seeks to invalidate this will upon the ground that slaves, as such, are incapable of choosing, is too technical to commend itself to my approval. . . It would go to the full extent of maintaining that freedom could not be conferred . . *at all,* . . because . . he would be incapable to consenting to be free! . . [41] at war with the whole train of adjudications in this and our sister States,[1] as well as of every other civilized country. . . [II.] I utterly repudiate the whole current of decisions . . from Somerset's case [2] down . . which hold that the bare removal . . to a free country, either by way of transit . . or . . temporary sojourn, will give freedom . . [42] Prior to 1836, the Courts even in Massachusetts [3] had made no such decision. This fungus has been engrafted upon their Codes by the foul . . spirit of modern fanaticism. . . Still . . whenever . . removed to a free country . . to remain there permanently, they cease to be slaves, . . The right of removal . . was all that was needed to bestow freedom upon these slaves. . . [III.] [53] we see nothing [in the acts of 1801 and 1818] . . limiting the power of the testator to send his slaves to Africa [4] or elsewhere, in his lifetime, there to remain free; or to direct it to be done . . after his death. And . . nothing in the policy of the State, *as declared in these Acts* . . opposed . . [IV.] [54] if it be assumed that a trust is void because of the legal incapacity of the slave to enforce it, then I deny the doctrine." [Lumpkin, J.] Judge Starnes concurred. Judge Benning dissented.

*Pressley (a slave) v. State,* 19 Ga. 192, November 1855. The court charged: [193] "If you believe, from the evidence, that prisoner killed Boston (the dec'd [slave]) because Boston called him a d——d white-eyed son of a b——h, this is no considerable provocation," New trial refused.

*Akin v. Anderson,* 19 Ga. 229, January 1856. Special verdict: "that Fanny Williams, a free woman of color, departed this life . . eighteen hundred and forty-three; that from . . eighteen hundred and twenty-five . . she was the owner of . . lot . . in . . Savannah; . . left two children, . . Susan, the ward of the plaintiff, and William . . William . . departed this life . . 1850, without leaving a child . . Margaret . . the ward of the defendant, was recognized by . . William . . as his wife, . . Margaret kept possession of one half of said lot" Susan claimed it. The Judge

[1] Overruled by Curry *v.* Curry, p. 76, *infra.*
[2] Vol. I. of this series, p. 14.
[3] Commonwealth *v.* Aves, 18 Pickering 193.
[4] In 1858, in Sanders *v.* Ward (25 Ga. 109 (129)), Judge Benning says: "Already one or more of the negroes manumitted by the Waters Will have returned from Liberia."

below held [233] " that Margaret, as the wife . . is entitled . . to the said premises " " Marriage . . among free persons of color, is recognized by the Act of 1819,[1] so far as to determine the question of descent. In the table of descents, the wife stands in the first degree along with children." Affirmed.

*Smith v. Dunwoody,* 19 Ga. 237, January 1856. Will of James Smith, dated 1853: [240] " to . . wife . . the choice of any of my house servants, to the number of five, . . she owned a negro woman . . finding her a supernumerary . . as well as naughty . . in the sale of her . . four hundred and fifty . . dollars could only be obtained for her . . which sum . . shall be paid over to [wife] . . [241] all the lands . . within three miles of . . the Sidon estate . . to be considered as an appendage of said estate, with all the negroes . . shall be considered as my general estate, to be kept in perpetuity, . . [242] my mind revolting in the separation of their families, for a division . . annual income . . to be divided . . (reserving . . amounts . . hereafter . . named,) . . between my . . children, grand and great grand do. . . [243] give each of my servants or slaves, annually, . . over the age of seventeen years, (remembering the superannuated among them,) as a small testimony of my regard . . this for their little comfort: to say, five . . dollars each; as well as in remembrance of their spiritual relations . . one hundred dollars . . annually . . in aid of the ministry, . . one . . of the Baptist denomination . . shall give his labors at least twice in the month. The chapel on the estate, to be kept in good repair. As my mind has long been exercised, not from any view that slavery is to be considered a sin, but otherwise, fully justified from the oracles of truth, . . I, . . for their gradual emancipation, the following provision . . do hereby make . . that . . an annual register will be kept of all the births . . on said estate, the same being recorded in the annals of the county, . . [244] and that every tenth . . birth, at the age of eigh(18)teen . . shall have faithfully made known to him or her . . this arrangement . . and in the event of such accepting of it, such shall be . . reported to . . the Colonization Society of the United States of America, for the purpose of providing . . for their freedom, . . and should such reject this provision . . shall continue in slavery; if a female, it shall not . . deprive her issues "

Held: [256] " inasmuch as . . the annual payment of $5 to each slave, of $100 to a preacher and the repairs . . to the church, required *a perpetuity* to support them, they are illegal . . [256] the emancipation clause . . [260] is void, because dependent upon the perpetuity section, . . void for another reason. This testator having given these slaves absolutely to his grand-children and great grand-child, this direction for the emancipation of one tenth . . is repugnant to the rights of property in the legatees. . . And what confusion would spring up, should . . the property [be] saddled with this condition!" [Lumpkin, J.]

*Callaway v. Jones,* 19 Ga. 277, January 1856. [278] " alleging that Jones and Quattlebum, . . 1850, sold . . Tenah and Rachel, for . . $1100,

[1] Cobb 995.

and gave a written warranty of soundness; . . that both . . were unsound, Tenah having a disease of the womb, and Rachel . . a defect in one of her eyes; and that the amount already paid [$425] was the full value"

*McDaniel v. Strohecker,* 19 Ga. 432, January 1856. Action of deceit. [434] "that the negro, during the negotiation [in February 1854], was sent by defendant [a physician] to plaintiff, that he might examine her; that plaintiff was a negro dealer;" [433] "no marks then on her breast; the negro had a vial of cherry pectoral" [434] "that plaintiff then requested witness to . . offer $700, if the defendant would warrant the health, or $600 without any warranty; . . but defendant refused to change his terms . . $700 without warranty of health; . . plaintiff . . [said] I will take her and risk it, . . Witness . . thought the plaintiff, who knew her, having sold her . . [435] some . . two years before, to defendant, would have given $800 for her if . . no suspicion of unsoundness," [433] "Dr. Ricks saw the negro . . May, 1854 . . in second stage of pulmonary consumption . . now dead; saw marks of blistering and cupping on her breast; . . Bunn . . saw the negro shortly after her arrival in North Carolina; she was then sick and feeble." Held: no deceit.

*Railroad Co. v. Winn,* 19 Ga. 440, January 1856. "hearing the cars, Mrs. Winn directed the negro to wait till the train passed. He said he could cross before it reached the spot, [[26 Ga. 267] 'said it would not do to stop where we were'] . . on the track, the mules . . refused to move. The engine . . killed the driver, the mules, three of the children," [447] "temerity was, in all probability, produced by the bottle, which was found upon his person." He was, when [26 Ga. 252] "sober, . . a highly trustworthy servant,"

*Rafe (a slave) v. State,* 20 Ga. 60, June 1856. The sheriff asked the prisoner [62] "if he had killed his master; prisoner said he did not; . . Witness told him . . that the people of Liberty were so satisfied he did it they would hang him any how. . . asked him what made him kill his master. Prisoner said the devil had got into him. Witness asked . . how he did it. Prisoner said his master allowed him to carry a stick, to carry carpet bag on his shoulder; . . Witness asked how he struck . . Prisoner said he held the stick in both hands, and knocked him off the horse; . . [63] When witness put the questions, he was not under the impression that he was using threats" Held: [68] "the confessions . . were voluntarily made, and are admissible,"

*Bennett v. Terrill,* 20 Ga. 83, June 1856. Two negroes were hired for the year 1852 for $160.

*Brooks v. Cook,* 20 Ga. 87, June 1856. "action . . for the recovery of $170, . . A plea of set-off, exhibiting an account . . against plaintiff, . . $24 50, for attending and nursing George, a slave, the property of plaintiff, eighteen days; . . [88] $8, for furnishing coffin and burial expenses . . Another plea of set-off . . 'For that the note sued on was given for the hire of . . George; that at the time of hiring, the plaintiff

informed defendant the life . . was insured for $11.50 [$1150?], two-thirds of which he was entitled to recover, if the slave died; that . . slave was attacked by disease . . August, and died . . September, 1852. . . defendant called in . . physician, who constantly attended upon him . . bill . . was one hundred and seven dollars. The defendant used his best efforts to notify . . plaintiff of the illness . . that plaintiff did not receive . . notice, in consequence of his absence from home; . . plaintiff recovered of . . insurance company . . seven hundred and sixty-six dollars;' " Held: strike out " pleas of set-off, with exception of . . [89] items . . for the coffin, and . . burial expenses "

*Jackson v. Stewart,* 20 Ga. 120, June 1856. [121] " The second Jury decreed . . 'that instead of . . three hundred and twenty-five, . . defendant (she) shall receive . . a girl now about seven years old, and . . a boy about six . . with the limitation that the title . . shall vest in . . the infant child of the parties, after the decease of defendant,' "

*Justices v. Moreland,* 20 Ga. 145, June 1856. [146] " the negro levied on [in 1848] was worth some $1200,"

*Bailey v. Brockett,* 20 Ga. 148, June 1856. In 1841 Dixon bought Nancy and her three children, Armstead, Tom, and Sam, in Florida. Brockett [149] " held the negroes by deed of gift from . . Dixon [his father-in-law] to Brockett's wife and children. . . [151] Brockett came to Georgia . . in 1841, and brought Armstead and Tom with him." [149] " Armsted [*sic*] was seven or eight years of age; Tom about five . . both stout built and quite dark. . . [April] 1845 . . defendant swapped Tom for . . Reddick and . . Margaret. Tom was considered . . worth some three hundred and fifty or four hundred dollars." [148] " September . . 1845 . . a *fi. fa.* . . . was levied on . . 'Reddick, about six years old, and . . Margaret, about four years old,' "

*Jesse (a slave) v. State,* 20 Ga. 156, June 1856. [159] " My wife assigned two reasons for threatening to run Jes off: one was, that his owner did not furnish . . sufficient clothing, and it took up too much of . . [her] time in patching and washing for him; the other . . was, that he was of an impudent family . . and he believes his former owners were afraid of him. She had some fears, and believed her own negro woman was more indolent on account of him." She testified: [160] " When he (prisoner) left my bedroom, four of my children ['in the room'] were awake . . two lying on my bed . . commenced crying . . which caused him to leave the bed. . . I followed close behind . . into the shed-room . . and he pushed me back. . . When the negro man jumped out of the window, my little girl said, 'that looks like Jes.' " [161] " the prisoner did not try to get out of the way; . . was then (at the house of . . [prosecutor]) with his wife," [170] " the count in the bill of indictment for rape had been abandoned, . . they went to trial on the count for attempt to commit rape, exclusively;" [160] " the Solicitor . . in his . . comments to the Jury, . . [remarked] 'I call on you . . this night to make a mark on the slave population, that will curb them in the commission of this dastardly crime . . make an example of this

wretch . . to protect . . the honor . . of the County of Decatur,' " The prisoner, by his counsel, excepted to certain charges and refusals to charge. No error.

*Thornton v. Chisholm,* 20 Ga. 338, June 1856. Deed executed by Thornton in 1855, a few days before his death: " I . . from motives of benevolence . . hereby manumit . . Jane, . . about twenty-seven . . of dark complexion . . and . . [339] her daughter, about thirteen . . of yellow complexion; and . . son . . about one year and six months old; and Amanda . . about nineteen . . of yellow complexion; and her daughter . . about five . . of yellow complexion; and her son . . about three and a half . . and her daughter, Mary Elizabeth, very white complexion, about one year and six months old; all . . to remain, during my . . life, subject to my control . . after which I . . grant . . unto my trusty friends, . . trustees . . All of said slaves, with . . increase . . to remove said slaves to some free State or to . . Liberia . . pay the expenses . . and all monies or effects of mine . . remaining . . to be given . . to said . . slaves, for their . . maintenance." Chisholm " took the property in hand with a view to perform . . trusts, his co-trustee refusing to act;" He filed his bill in equity, alleging that " Thornton died, leaving neither wife nor lawful children, . . [340] that he was the father of the children mentioned in the deed; that . . [his brother] John . . claimed said property as next of kin, . . The answer . . denied that the deceased was the father of said children,"

Held: " The instrument . . was void by the Acts of 1801 [1] and 1818,[2] . . Every successive moment after the execution of the deed, would have brought the negroes nearer and nearer to the confines of freedom. . . [341] And during the whole term of this condition . . they would or might have been residents of the State, . . this deed, conferring . . partial freedom, must be considered as at least within the reason of the Acts." [Benning, J.]

*Brown v. Harris,* 20 Ga. 403, June 1856. [404] " Brown and Harris, hired the negro [in 1850] . . to be employed . . in the ' Washington Hall ' hotel, . . ' hire . . per year, one hundred and thirty dollars, and clothe him;' "

*Clayton v. Tucker,* 20 Ga. 452, June 1856. Bill of sale, 1851: [453] " Received . . eight hundred dollars for a . . brown girl . . about twenty-five "

*Bryan v. Walton,* 20 Ga. 480, June 1856. See same *v.* same, p. 33, *supra.* [481] " Plaintiff [Nunez's administrator] . . tendered in evidence . . testimony . . [which] went to prove that Joseph Nunez was a free person of color, . . Counsel [for defendant who had bought the negroes in question from Nunez's guardian, to whom Nunez had deeded them,] objected . . over-ruled . . excepted; . . [483] James Nunez, they say, was also a free person of color; . . the negroes . . were . . children

[1] Cobb 983.
[2] *Ibid.* 989.

[of Joseph Nunez], by Patience . . his slave; . . [488] The value . . will depend rather upon their health and quality than upon their looks and size. . . Negro boys and girls should be ten or twelve years of age before they are put to work. . . [491] Defendant . . read to the Jury . . answers . . to . . interrogatories . . Lucy Anderson [Joseph Nunez's mother] . . was a free white woman and a very pretty one too. James Nunez was an American; his father was a Portuguese; he passed as a white man. Witness has frequently seen him writing and acting as a clerk in the counting room . . Jim Nunez . . was of mixed Indian and white blood; . . [492] had a straight, long nose, thin lips, straight . . hair, . . red complexion; . . kept as good company as any body in the neighborhood. . . Free negroes . . associated in the family of Joseph Nunez, but witness thinks it was because Joe had a negro for his wife. . . [496] Jim Nunez's dancing . . was very graceful . . was never regarded . . by . . any of the neighborhood as a negro, . . was often at their balls and parties . . where no free negro was allowed . . and dined with the whites . . [497] deed from Joseph Nunez to . . Urquhart [his guardian] for Patience and her children . . [498] 1846, . . bill of sale . . from . . Urquhart to . . Bryan . . 1847, . . contained the following admission: . . ' that Joseph Nunez never enrolled himself as a free person of color, in the Clerk's Office . . 1855. (Signed) . . Plaintiff's Att'y.' . . plaintiff offered in rebuttal . . they passed . . as free colored persons; . . [502] tendered an exemplification from the Inferior Court . . [503] Upon the petition [in 1843] of Joseph Nunez, a free person of color, . . Urquhart . . appointed guardian . . [504] Defendant, by his Counsel, . . requested the Court to charge . . [506] 11. That if the Jury shall be of opinion that Joseph Nunez was not registered . . as a free person of color . . he was not such a free person of color as is disabled from . . selling . . [507] In refusing the eleventh request . . [the Court] charged, that if a person had any negro blood, he was disabled from conveying slaves; and in answer to a question propounded by a Juror, ' what is a free person of color? ' he replied, . . one who has some negro blood; . . to . . charges and refusals to charge, defendant . . excepted;"

Held: [511] " under the Act of 1819, property can be transmitted by descent to the illegitimate offspring of the father, provided they be free persons of color, whether the mother be a free white woman, an Indian or a free person of color. . . [512] The fact that Joseph Nunez did not register himself as a free person of color . . was . . a circumstance . . which the Jury had a right to weigh, . . we are not prepared to indorse the doctrine enunciated in the instructions . . that ' if a person has any negro blood, he is disabled from conveying slaves.' . . we should say that to put him under such a disability, he must have one-eighth of African blood in his veins. If he is descended from one who stands further off than the third degree or generation to him or her who was or is not a free white citizen of . . any . . State whose . . Laws tolerate involuntary servitude, he may exercise all the rights and privileges of a free man:" [1] [Lumpkin, J.] See same *v.* same, p. 87, *infra.*

[1] Cobb 531.

*Averett v. Brady,* 20 Ga. 523, June 1856. [524] "He had a negro cabin ['worth $15 or $20'] . . that his ferryman lived in said cabin."

*Roberts v. Prior,* 20 Ga. 561, August 1856. "hire of negro boy Jim for 1848, $220 . . for 1849, $225 . . for 1850, $225 . . for 1851, $225"

*Goodwyn v. Goodwyn,* 20 Ga. 600, August 1856. [612] "Plaintiff . . would frequently find fault with defendant [his mother] for whipping his negroes. Defendant would tell him the negroes were not his. . . They came from Virginia to Georgia in . . 1843."

*Bullock v. Cannon,* 20 Ga. 652, August 1856. A negro man was sold in 1842 for $800.

*Crook v. Garrett,* 20 Ga. 664, August 1856. "1850, . . Garret hired from . . Crook, guardian for . . Thompson, . . a negro man, for the . . year, . . [665] for $120 50. . . In a short time, he began to show signs of ill health . . Crook, or his ward under his direction, removed him home and kept him until the latter part of the year, when he died of consumption. . . Suit on the note against Garrett, who pleaded failure of consideration, . . verdict for the plaintiff, . . prayer . . for an injunction against the judgment"

[666] "Judgment . . must be affirmed . . because, it is no where alleged that the contract . . was rescinded by the consent of . . Thompson. . . the inference is, that the slave was taken from . . Garrett to relieve him from the trouble and expense of nursing him."

*Reid v. State,* 20 Ga. 681, August 1856. [686] "the negro was stolen . . 1855. The . . co-operation in the larceny of the four brothers, Reids, is distinctly established" [684] "proof . . [685] from which the Jury might infer that this slave departed from the service of his owner, in consequence of a concerted plan between the Reids and himself; for one of the witnesses . . heard them say that . . 'they would keep him runaway, and Reveire would whip him severely; when they would report, that Reveire had killed him, and made the other negroes bury him after night.'"

*Bailey v. State,* 20 Ga. 742, November 1856. See same *v.* same, p. 67, *infra.*

*Pope v. Toombs,* 20 Ga. 762, November 1856. [764] "Mr. Pope was buying negroes [in 1852] to carry on rail road work; . . the negroes were not sold separately. The object I had being to place family negroes together, in the hands of a friend; and hence, the prices I set . . were lower than the market prices of similar negroes."

*Willingham v. Bentley,* 20 Ga. 783, November 1856. Garrett's will: [784] "it shall be left to the discretion of my executors whether . . the negroes shall be hired out, or land purchased, and they be kept thereon so as to be treated with humanity, and raised so as to benefit the heirs"

*Drane v. Beall,* 21 Ga. 21, January 1857. Will of Thomas E. Beall, dated 1853: [24] "to my two cousins . . each an amount . . sufficient to

purchase . . one negro girl a piece, . . [25] *Item Ninth*: I reserve . . one hundred acres . . for the use . . of Nancy Goings, a free person of color, (it being the place whereon she now resides,) during her . . life, . . [26] *Item Twelfth*: I . . bequeath to . . Satterwhite, *in trust,* my house servant Mariah . . to take charge of her . . and that . . Mariah shall be as free as the laws of the State will allow her to be, and in the event that she shall become dissatisfied with . . Satterwhite, she . . shall have the right to choose any other person . . as her trustee, and she may continue to choose any other . . from time to time, as she may become dissatisfied . . *Item Thirteenth*: Whereas . . Mariah . . is liable to severe spells of sickness, and will shortly become superannuated, I . . bequeath, in trust, to . . Satterwhite, the income of my twenty shares . . shall be paid over to her . . as the same may be received, to be disposed of as she may think proper. *Item Fourteenth*: I . . [27] bequeath to . . Satterwhite . . a portion of the tract . . And, whereas . . I design this tract . . as a home for . . Mariah, . . [it] shall not be liable to the debts of . . Satterwhite until after the death of . . Mariah. *Item Fifteenth*: I will that all my negroes shall receive their freedom . . except those hereinafter mentioned. And such negroes so freed . . shall be sent to Liberia, California, or any free State or Territory . . as they choose to elect. *Item Sixteenth*: If . . my negroes . . shall choose . . Liberia, I will to the Colonization Society . . fifteen hundred dollars, to be expended in transporting them there; and if they choose . . California, or any other free State or Territory . . their passage shall be paid . . [28] *Item Seventeenth*: . . those negroes that I have . . emancipated, shall be kept on my plantation . . four years after my death, for the purpose of raising funds, and after defraying all expenses . . the net proceeds shall be equally divided among . . my negroes freed . . And my executors, out of the . . funds, shall furnish each of the negroes above eight years of age, two good blankets . . and the whole of the negroes freed . . shall receive two good suits of clothes, a hat, a pair of shoes; and those . . under eight . . one good blanket each. . . *Item Nineteenth*: . . if any of my negroes freed, shall elect to go to Liberia or California, . . my executors . . shall see them on board the vessel, and shall pay over the money to my negroes so emancipated . . only on board . . in the presence of the captain . . or owner . . and a certificate of the captain . . or owner . . that they saw my executors . . pay over the money . . and also . . [29] a list of the negroes' names [furnished by the captain or owner] . . for my executors to tender as a voucher in the final settlement of my estate." In 1856 Judge Holt, of the Columbia superior court, declared the twelfth, thirteenth, and fourteenth clauses null, but upheld the fifteenth and subsequent clauses: [35] "It is plain . . that this manumission is to take effect out of the State." The caveator (next of kin) excepted.

Held: The fourteenth clause [39] "should be executed. . . [40] Satterwhite took an absolute fee in the land, subject to the incumbrance only of allowing . . Mariah to live on it . . [43] the bequest of freedom [in the fifteenth clause] . . is void, as it was to take effect in this State, . . we do not find it necessary to dwell at length upon the 17th item, . .

[44] Suppose . . that the hand of the Executor is upon these slaves, as the hand of the master, until they leave Georgia, . . can it be denied, that during this four years, these slaves are working for themselves?" [Lumpkin, J.]

*Hook v. Stovall and Co.*, 21 Ga. 69, January 1857. " 1852. Received . . six hundred and thirty dollars . . for a negro girl . . about fourteen . . dark complected, the right eye smaller than the left . . warrant . . sound in every respect " [70] " Dr. Dixon . . found the left eye much protruded . . result of a diseased tumor . . He would not want her himself at any price. . . [71] jury . . found for the plaintiffs the full amount of the note." New trial refused. Judgment reversed.

*Johnson v. Nelms*, 21 Ga. 192, January 1857. In 1855 a negro woman was hired " at the rate of ten dollars per month."

*Johnson v. Morris*, 21 Ga. 238, January 1857. " ninety dollars for the hire of a negro . . [for] the year 1852."

*Dorsett v. Frith*, 21 Ga. 245, January 1857. [246] " in 1843, . . he sold . . girl [about seventeen] with her only child, Ben, . . [247] for five hundred dollars,"

*Brooks v. Smith*, 21 Ga. 261, January 1857. " action . . upon . . note . . ' By the 25th of December, 1853, we . . promise to pay . . Brooks . . four hundred dollars ' . . The defendant pleaded . . note was given for the hire of a negro fellow . . a blacksmith, and his tools for the year 1853; that the agreement was . . if . . negro died, defendant should only pay for the time he lived. . . [262] did die about the 1st of March, . . [263] The jury found for the plaintiff . . seventy-two dollars and thirty-two cents, and cost of suit." Judgment thereon affirmed.

*Collins v. Hutchins*, 21 Ga. 270, January 1857. [271] " Hutchins, hired the negro to . . Collins, for the year 1853, for . . $180 . . to be worked on the . . Railroad in . . [certain] counties . . In March, defendant moved his hands . . to . . [another] Road, in . . [another] county, . . June, he was sent home sick to his master " [273] " The negro was under the medical treatment of Collins' physician. . . His physician, after he had ceased to visit him, considering him out of danger, saw him near his office [where he had told him to call when he got stronger], eating peaches and water-melons, and rebuked him. . . relapsed " and died. Hutchins brought this action to recover his value. [271] " verdict for the plaintiff for . . twelve hundred dollars, with interest from the 1st of January, 1854;" Judgment thereon affirmed.

*Pace v. Mealing*, 21 Ga. 464, January 1857. Will, 1847: [466] " I want Lany [an old and faithful servant] to live amongst my children;" [481] " the old man had some unruly negroes, . . said he was at a loss to know what disposition to make of them, to do right and to do justice."

*Pinckard v. McCoy*, 22 Ga. 28, March 1857. Thomas McCoy's will, executed in 1854: " I will . . that all my . . personable [*sic*] property, (except my negroes or slaves) be sold, . . if the money arising from the

sale, . . [29] and that on hand at my death . . shall not be sufficient to pay my debts, I . . desire that all my negroes be hired out, and the proceeds . . applied . . and after the payment of my debts . . my will . . is, that all my negroes be hired out until the proceeds . . together with any . . surplus . . from my estate, shall amount to . . eighteen hundred dollars. . . [Thereupon] I will . . to my executor the following negro slaves, and their increase, . . in trust, to be conveyed . . to some one of the free or non-slave-holding States, and there left . . But . . [if] prevented from any cause . . I will . . the whole . . in trust to my executor, to be delivered . . to the Colonization Society. . . that any surplus . . after carrying said negroes . . to a free State or the Colonization Society, be . . paid to said negroes, share and share alike."

Held: [30] "this case does not differ in principle, from the case of Beall's will, decided . . 1857.[1] . . [31] all the emancipation parts of this will are void." [Benning, J.]

*Force v. Leather Co.*, 22 Ga. 86, March 1857. "judgment against . . Leather . . Company, . . *fi. fa.* . . levied upon a negro belonging to . . one of the stockholders"

*Mitchell v. State*, 22 Ga. 211, March 1857. [227] "Another time when witness [jailer] had a runaway negro in the jail, . . [the prisoner] got into a spell, and witness carried them both up stairs in the prison, for fear of some injury;"

*Escheator v. Candler*, 22 Ga. 281, May 1857. "The declaration of forfeiture alleges, that three of said slaves were purchased by Joe Butler, . . a free person of color, since . . the Act of 19th December, 1818; and since the purchase . . one . . a woman, has had eight children; that . . Joe has recently died, and all said slaves . . are forfeited to the State. . . [282] verdict for the escheator."

*Arline v. Miller*, 22 Ga. 330, May 1857. [335] "Abram is worthless at this time from old age; hire has been worth $60 per annum for the last twenty-five years."

*Beale v. Hall*, 22 Ga. 431, June 1857. [442] "Buck aged about 30 years [in 1856], worth . . $1,000; Matt aged 28 or 30 years, worth . . $1,000; Martha aged about 20 years, worth . . $800 . . hired Buck, in 1850 or 1851, for $140, . . [443] Dr. . . Campbell . . Each of them had hernia, which disease impairs the value of a slave one half. . . some 18 months ago, that they were brought to me for treatment."

*Jordan v. State*, 22 Ga. 545, June 1857. Indictment for murder. Lawton's overseer testified that Mariah [551] "was brought in as a runaway." [548] "Mariah was taken and brought to witness by another negro girl, and he gave her up to Jordan [overseer for her owner], . . [550] Cannot say how many licks Jordan gave her . . but thinks there was between four hundred and a thousand." [549] "The strap was a leather one, very thick; commencing at the butt three ply, and after eight

[1] P. 52, *supra*.

or ten inches two ply, and then one ply; the strap had a leather handle; . . [551] He never saw but one before. They are used to keep from drawing blood like a cowhide;" [549] "after he had whipped her a while, [witness] called to him to stop; . . he spoke low, because he did not want the negroes to hear him. Jordan would sometimes turn her on her all fours; . . sometimes had her head down, and sometimes up; . . [550] Jordan was walking beside another negro, who appeared determined to go where the girl was lying, and appeared to be attempting to keep him off, thinks he struck the negro boy with his strap; the boy was named Spencer. . . Spencer was the girl's father as witness thinks." [549] "witness heard some of the negroes who were working in the field hollow out; 'Mr. Jordan has killed Mariah.' . . she was dying, or had fainted, and had a white froth on her lips. Jordan remarked, that he thought she was 'possoming.' Witness said he thought not. Jordan then sent after Dr. Dickinson," Roberts testified: [551] "She . . was the worst whipped girl he ever saw; . . thinks she was about thirteen . . [552] thinks there ought to be a great difference made in the correction of negroes, and would not think of whipping a girl of that size with more than a switch. . . Would not suffer such a strap to be used on his place. . . Any man of common sense ought to know that a negro ought not to be whipped with such a strap, and if whipped with such . . it ought to be . . very lightly. . . [553] The jury found the defendant guilty of voluntary manslaughter, and recommended him to the mercy of the Court."

New trial refused: [557] "no error in admitting the evidence of the prisoner's striking Spencer. . . [558] the prisoner's refusal to allow her father to go to her . . relief . . was certainly evidence of deeply seated malice against the girl he had beaten. . . although the jury have found . . some circumstances which . .they thought justified them in reducing the crime to manslaughter, . . it is difficult for us . . to come to the same conclusion. . . [559] I have looked in vain through the evidence for a single mitigating circumstance . . to reduce the crime below the grade of murder. The prisoner had power over the slave. He exercised it most cruelly, inflicting . . a beating . . which showed . .' an abandoned and malignant heart.' " [McDonald, J.]

*Feagin v. Beasley,* 23 Ga. 17, June 1857. "Received . . Seven Hundred Dollars for negro man . . about 28 years old, which I warrant sound . . 1848." "that the negro was . . laboring under a disease of the heart, . . worthless; and that plaintiff had been put to expense in employing physicians . . and in boarding and taking care of him, amounting to . . two hundred dollars."

*Aiken v. Cato,* 23 Ga. 154, June 1857. [155] "The value of . . girl is now $850. In 1855, her hire was worth $60; in 1856, her hire was worth $75."

*Newell and McHugh v. Smith,* 23 Ga. 170, June 1857. "action . . on . . note, . . 'By the 25th of December next, we promise to pay . . [171] two hundred and eighty dollars, and also to furnish boy Henry,

clothes, shoes and a blanket. . . January 28th, 1854.' . . Defendants . . proved that he was a negro of delicate frame, and 'his health was poor.' . . very far from being a good tanner, . . ruined a great deal of leather for them. Plaintiff . . introduced two witnesses, who testified that Henry when in their employ was a good or fair *negro* Tanner. . . particularly, a good 'finisher,' . . The jury found for the plaintiff the amount of the note." Judgment thereon affirmed.

*Lingo v. Miller,* 23 Ga. 187, June 1857. [188] "1856 . . the grand jury found a true bill against . . slave . . of defendant, for the offence of arson. . . tried . . and acquitted. . . that to defend successfully such a case, was reasonably worth four or five hundred dollars. . . that Lingo . . refused to defend him or employ counsel . . and that plaintiffs, without any contract . . did defend . . that Lingo was not present at the trial, but after he was acquitted, took him off and sold him. . . [189] The jury found for the plaintiffs, two hundred dollars [the amount laid in their declaration]."

New trial granted: "We do not know of any law that imposes such an obligation, upon the master. . . [190] it may be pretty safely assumed, that if . . the master refuses to employ lawyers . . the case is one in which the master ought not to be required to" [Benning, J.]

*Flanders v. Flanders,* 23 Ga. 249, June 1857. [251] "For Complainants: Miss . . Abbott . . [252] thinks . . [Winny and her two children] were worth a thousand dollars [in 1845], and are now [1857] worth from twenty-five hundred to three thousand dollars. . . [253] For Defendant . . witness bid about $650 [for Winny and her two children], thinking . . he could make fifty dollars, the negroes being worth about $700, and he desired to speculate on them; negroes were then [1845] pretty low, . . now pretty high, a girl 17 or 18 . . would bring $900, a girl 13 would bring $700,"

*Wheeler v. State,* 23 Ga. 292, August 1857. "Indictment for negro stealing . . [293] owner of the negro, told him . . that he . . had whipped the negro and he ran away. . . was whipped severely . . between daylight and breakfast" [295] "he had owned the negro for six weeks before the negro left;"

*Walton v. Jordan,* 23 Ga. 420, August 1857. Action on a note for $450 "given [in August 1853] for a negro fellow [about 40 or 45 years old] . . represented to be not entirely sound, but . . able to do good work, . . [421] Mr. Jordan, (def't,) told [plaintiff in March 1854] . . that the boy had done him two or three months good work; and that they had a falling out, and he whipped the boy; and that he had run away, and had never been able to do him any work since; that he considered the boy rather deceitful, . . [422] Jim had a woman of defendant's for a wife; supposes for ten years;" Dr. Steel testified: [423] "negro man . . was brought to my office . . by . . Walton . . February, 1853 . . [424] diseased with a chronic inflammation of the stomach, involving the viscera generally, and particularly the liver. . . under my treatment for a month or six weeks;" Dr. Doss "was called

on by . . Jordan, in the latter part of the summer or fall of 1853, to . . attend upon . . [425] Jim; . . he died in . . May, 1854," when Dr. Westmoreland was attending him. Verdict for the defendant. Judgment thereon reversed: [429] "It is not right that the plaintiff should recover nothing"

*American Colonization Society v. Gartrell,* 23 Ga. 448, August 1857. Francis Gideon's will, executed in 1853, bequeathed to the Colonization Society [451] "for the purpose of sending them to Liberia . . all his slaves," and also bequeathed to the society certain legacies, in trust, [445] "for the use of said slaves, when they shall be delivered over . . and sent to Liberia," [451] "By their constitution, the association is empowered to receive property . . and to use it . . 'for the purpose of colonizing, with their own consent, in Africa, the free people of color residing in the United States, and for no other purpose whatsoever.'"

Held: [454] "The legacy is void," [451] "the unconditional right to them as *slaves,* could not be vested in the Society, under their Act of incorporation; neither could they take . . them in trust, for a purpose not allowed by their charter; that is, to transport them, as slaves, . . with or *without* their consent. . . [458] There is another . . view to take of the main question . . [459] is it repugnant to our State policy . . to allow the American Colonization Society, to sue in our Courts? . . This society was organized with the approbation . . of the wisest and best men in the South from Maryland to Louisiana, . . Hence in 1817, by an Act [of Georgia] . . the Governor . . was directed to deliver to the . . Society, Africans illegally imported . . and 'to aid in promoting the benevolent views'[1] . . [461] in 1827 . . the public mind had been roused . . It grew out of the question as to the right . . of the Congress . . appropriating money . . in aid of the Colonization Society. . . The General Assembly . . say 'they . . strongly feel the advantages of the Federal Union; . . they will ever defend it from foes, internal as well as external; but they . . will not, even in the preservation of that Union, permit their rights to be assailed; . . their property to be rendered worthless . . by those who come among us under the cloak of a . . hypocritical benevolence.' . . [462] Again, in 1828, the Legislature having under consideration a resolution from . . Ohio, say: 'These States must view with . . distrust, all associations having for their object the abolition of slavery. . . The Colonization Society is considered . . one of a dangerous character in this respect.' . . [463] Finally, in 1829, the Legislature having under consideration resolutions from . . Louisiana and Mississippi, say: 'The people of the slaveholding States cannot but be aware that there is in the other States an influence . . which has for its object . . not only to destroy the prosperity of the southern slaveholding States . . but to prostrate their political strength . . In evidence . . your committee will . . refer to . . the open . . operations of abolition societies; and the more secret . . but dangerous movements of the Colonization Society;' . . [464] I was once the friend . . of this enterprise. I now regard it as

[1] Cobb 989.

a failure . . as I do every effort . . for the abolition . . any experiment . . will demonstrate . . that it is a vain thing . . to fight against the Almighty. His ways are higher than ours; . . [465] Let our women and old men, and persons of weak and infirm minds, be disabused of the false . . notion that slavery is sinful, and that they will peril their souls if they do not disinherit their offspring by emancipating their slaves!" [Lumpkin, J.]

*Candler v. Escheator,* 23 Ga. 493, November 1857. See Escheator *v.* Candler, p. 77, *infra.*

*Gaither v. Gaither,* 23 Ga. 521, November 1857. Will, 1853: [522] " that none of the negroes . . be sold unless it shall be found necessary . . to prevent the separation of husband and wife, or except in cases of habitual insubordination."

*Burch v. Burch,* 23 Ga. 536, November 1857. [541] " complainants claim that . . her executor . . should account for the hire or value of the slaves, about one hundred in number, employed in finishing the crop, after the death of the tenant for life, . . July, 1855, to the time of their sale, . . February, 1856."

*Ivey v. State,* 23 Ga. 576, November 1857. [577] " Defendant employed Elmira occasionally . . to cut and make negro clothes;"

*Bailey v. Barnelly,* 23 Ga. 582, November 1857. [583] " defendant . . left the Court in consequence of the dangerous illness of one of his slaves, . . The plaintiff . . stated the books . . were his books of original entries, in his hand-writing, . . That his blacksmith . . was a slave, and that he had no white person in the shop. . . [584] ' some [of the work done] was reported to him by his smith.' "

Held: [589] " We admit these books because it was proven by the customers . . who had had their work done there by the same smith for a quarter of a century, that the accounts were kept correctly. And we fully concur in the . . philosophical views urged by . . counsel for [plaintiff] . . that it was reasonable to rely upon the habits even of the blackman, for honesty, which were . . firmly fixed for such a length of time." " to reject them, is to enact that shops kept by negro smiths cannot collect their accounts—a startling proclamation to make to the country." [Lumpkin, J.]

*Collins v. Barksdale,* 23 Ga. 602, November 1857. [603] " tenant for life . . [placed] two valuable negro men . . in the hands of [the executor] . . who . . sold [them absolutely] . . for $2,150 00."

*Wise v. State,* 24 Ga. 31, January 1858. [35] " slave . . came in with a harness . . which . . he loaned to . . Wise " " was a negro of very bad character, and was sent away on suspicion of burning the stable."

*Roberts v. Boylan,* 24 Ga. 40, January 1858. [41] " We find the value of . . negro woman . . [42] four hundred and sixty dollars, and her annual hire, seventy-two dollars. . . 1857."

*Railroad Co. v. McElmurry,* 24 Ga. 75, January 1858. [76] "killing a negro woman . . of the value of one thousand dollars, and tearing to pieces . . a . . cart"

*Hicks v. Johnston,* 24 Ga. 194, January 1858. [195] "big Milly . . worth from $900 to $1,000 and her annual hire $100."

*Buckholts v. Buckholts,* 24 Ga. 238, January 1858. [243] "he had struck plaintiff [his wife], two or three licks with a negro whip, but he did not hurt her."

*Hughes v. Meredith,* 24 Ga. 325, January 1858. [327] "The jury . . found for the will [of John W. Allen], with the exception of the . . clauses . . attempting the emancipation of slaves contrary to the laws . . of Georgia."

*Smithwick v. Evans,* 24 Ga. 461, January 1858. [464] "The testator . . directs . . Henry, and all other property he might leave at . . his death, to be converted into money, and . . debts to be paid." "his negro woman . . and her four children to be placed under the charge of the American Colonization Society, to be conveyed . . to Liberia . . and there to be set free . . that if his wishes . . cannot be carried out . . his executors shall carry the . . negroes to some State, where . . they can be set free. The expenses . . were to be first paid out of the proceeds of the sale of his property, . . He does not wish [them] . . hired out, provided there is a sufficiency . . from the sale of Henry and his other property, to pay their expenses . . between his death and their departure, his executors are to have the . . negroes in trust for the purposes aforesaid."

Held: [465] "The bequest . . of extra-territorial freedom was inconsistent with their sale under the general direction . . for the sale of all . . property, and being a later clause in the will, it must prevail, unless . . void according to the construction placed by this Court on the statutes of 1801 and 1818." "It is not certain . . that the testator did not intend the negroes . . to remain in Georgia, free, an indefinite . . time. . . the case goes back for a new trial on other grounds."

*Harrison v. Powell,* 24 Ga. 530, January 1858. [531] "Frank . . valued in the trade [in 1855] at $1,100, and worth that . . if sound. . . the disease was gleet,"

*Wellborn v. Rogers,* 24 Ga. 558, January 1858. Will, 1816: [561] "that my negro man . . should be hired out and the hire appropriated to the schooling of my . . five youngest children."

*Sanderlin v. Sanderlin,* 24 Ga. 583, January 1858. [584] "Elias . . worth $1200, annual hire $150."

*Pyron v. Parker,* 25 Ga. 17, March 1858. [20] "Shipp bought Caroline and employed . . Woods to carry her off and sell her; . . he took her up behind him . . as . . [Woods'] mare was unruly; . . witness sold her to a man . . in . . Alabama, for over $500 . . in 1851"

*Walker v. Walker,* 25 Ga. 76, March 1858. [78] "his father . . sent Hannah . . to cook for [Walker] . . until Rebecca got well; . . [McDaniel] was going to whip her, and . . Walker told him not to do so, as if he did his father would . . take her back home."

*Sanders v. Ward,* 25 Ga. 109, March 1858. "Nathaniel T. Myrick . . 1856, executed his last will . . 'I . . require my executors . . to remove my servants Owen [and eight others] . . to some free State, as my executors may choose . . and there to manumit . . them . . My executors . . shall purchase in such . . State . . land sufficient . . with a supply of provisions, household . . [110] furniture, farming utensils, horses or mules, cattle, hogs and sheep, with the money arising from the sale of my estate . . and shall pay over any surplus . . to my servant Owen, . . each one to have . . an equal portion'"

Held: [117] "foreign emancipation is neither within the letter or spirit of the law.[1] . . [118] Had the entire State been polled in 1818, ten men would not have been found opposed to foreign manumission. . . The North and South had not been arrayed . . in hostile antagonism . . touching African slavery. If this change of circumstances demands a new policy . . and for myself I think it does—let it . . be inaugurated by the Legislature . . [119] it is by no means certain that a majority of our people are in favor of depriving themselves of the right of sending their slaves abroad, to be liberated at their death. . . I have been informed by a . . Representative of the House, that [such] a bill was introduced in the other branch . . and voted down by an overwhelming majority . . [121] exterior manumission [does not] depend upon domestic emancipation as a condition precedent" [120] "suppose a testator bequeaths his slaves to Stephen A. Douglass [*sic*] . . or Rufus Choate . . and says no more; does not the bondage . . continue until they set foot on the soil of their new home? . . [124] I have no partiality for foreign any more than domestic manumission. . . Especially do I object to the colonization of our negroes upon our northwestern frontier. They facilitate the escape of our fugitive slaves. In case of civil war, they would become an element of strength to the enemy . . But . . Shall I therefore undertake . . to dictate to . . my fellow-citizens, what shall be the law, by wresting these ancient statutes from what I believe to be their true and only meaning?"[2] [Lumpkin, J.] Judge Benning dissented.

*Hopkins v. Tilman,* 25 Ga. 212, March 1858. "Received . . 1853 . . six hundred and fifty dollars for a negro woman . . about seventeen . . warrant to be sound except being deaf and a small old hurt on the hand." [214] "she has about two fits every month, . . plaintiff . . offered defendant $75, to take her back, . . he refused . . verdict for the defendant;" New trial refused. Affirmed.

*Thornton (a slave) v. State,* 25 Ga. 301, May 1858. "Thornton . . was indicted as accessory before the fact . . in abetting and procuring a

[1] Acts of 1801 and of 1818. Cobb 983, 989.

[2] In 1859 the legislature passed "An Act to prohibit the post mortem manumission of slaves." Laws of 1859, p. 68.

negro slave, John, to commit the murder. . . [302] the State offered as a witness . . John, who had been convicted . . but on whom judgment had not been passed. . . The defendant was found guilty and sentenced to death." Affirmed.

*State, ex rel. Tucker, v. Lavinia (a person of color); same v. Wilkes (a slave),* 25 Ga. 311, May 1858. "A warrant . . was issued against . . Lavinia . . for residing in . . Georgia, without her name being inserted in the book of registry of free persons of color kept by the Clerk of the Inferior Court; enjoying the profit of her labor . . contrary to the 5th and 6th sections of the Act of . . 1818[1] . . Hart . . swore that . . Lavinia lived in a house not belonging to him, nor provided . . by him; that . . Lavinia belonged to him, but did not work for him, nor had she done so for ten or fifteen years, nor did she work for any white person by virtue of any contract for his benefit; witness gave her papers. . . [312] Prosecutor . . moved the Court to declare . . Lavinia forfeited. . . refused . . decided that . . Lavinia was the slave of . . Hart . . the prosecutor appealed by *certiorari* to the Superior Court. . . dismissed" "A warrant was also issued against Wilkes . . for returning to . . Georgia from . . New York . . in contravention of the 5th section of the statute . . 1835,[2] . . the prosecutor proved by . . Hart that . . the prisoner was in . . New York, New Jersey, and Pennsylvania in 1853, and moved the Court to adjudge him forfeited . . The Court . . dismissed the warrant . . the prosecutor appealed by *certiorari* to the Superior Court. . . dismissed . . on the ground 'that as the original proceedings . . was [*sic*] of a criminal nature, and . . decided in favor of the defendant . . [313] the Superior Court had no constitutional power to order a rehearing.'"

Judgments affirmed: "Independent of the Act of 1803,[3] which negatives the idea that slaves can be twice tried for the same offence, . . [314] we see no reason why this great principle of the common law should not be applicable to slaves and free persons of color, as well as to white persons." [Lumpkin, J.]

*Walker v. Walker,* 25 Ga. 420, June 1858. Will of Francis J. Walker, 1856: "*Item* [II.]. I direct my executors . . to send to . . [421] Liberia . . at the expense of my estate, the following named slaves . . Louisa (mulatto) and her [three] children, . . Louisa (light negro) and her [two] children, . . Sue and her son . . and Cecilia and her daughter . . *Item* [III.]. I authorize my executors, in their discretion, to send to Liberia . . any and all [of] my slaves not above named, . . as they may or may not ascertain the balance of my estate to be sufficient for the provision hereinafter made for the children above named. *Item* [IV.]. I authorize my executors . . to sell . . all my property . . and any . . of my slaves, except those specially named . . which they may think it best to sell . . to carry out my wishes . . *Item* [V.]. I direct my executors

[1] Cobb 992.
[2] Cobb 1009.
[3] Clayton's *Digest,* p. 133.

. . to invest the entire proceeds . . and to transfer the whole . . to the American Colonization Society, . . in trust for the . . support of the [seven] children named . . and their descendants." [427] " his Honor . . held, that the second clause . . was valid; . . Counsel for the caveators . . abandoned . . their objections to the decision . . upon the second item "

Held, as to the fourth and fifth items: " the American Colonization Society can not, under its charter [1] execute this trust . . [429] As to the best mode of executing this trust, it will become a matter for the discretion of the Chancellor below. We would suggest . . That the executors be appointed trustees in lieu of the Colonization Society . . As each male *cestui que trust* arrives at age, let his share be given off to him, . . So upon the coming of age of any female *cestui que trust,* or her marriage," [Lumpkin, J.]

*Beall v. Drane,* 25 Ga. 430, June 1858. See Drane *v.* Beall, p. 52, *supra.* Held: [441] " free persons of color in Georgia . . may acquire real estate [except in Savannah, Augusta, and Darien]." [2]

*Stringfield v. State,* 25 Ga. 474, June 1858. " The indictment charged that the defendant . . ' did receive from a . . slave . . jar containing lard . . without written permission from the owner ' . . guilty "

*Martin v. State,* 25 Ga. 494, June 1858. " Green Martin was indicted for the murder of his negro. . . Dr. . . Tucker . . was requested by Mr. Martin to examine the negro boy [[496] ' between twelve and thirteen ']; . . [495] it was at the Coroner's request;" [494] " the boy was disinterred . . [495] [in] a negro grave yard; . . a dislocation of the neck caused the death . . the daughter of Green Martin . . [says:] Alfred . . died . . 1857, at my father's house . . My father, two sisters, and my brother Godfrey and myself were present. . . Godfrey is not [at?] present in the county. I don't know where he is; . . [498] I saw my father throw him down twice and choke him twice." [496] " the boy was on his all fours. My brother put the saddle on him and then got upon it; he remained some quarter of an hour, . . but did not make him carry him. . . [497] The whipping commenced about twelve o'clock, while my father was sitting on the boy. . . [498] The cause of the whipping . . The boy told brother to kiss his backside . . very saucy and uncontrollable. . . [500] The punishment continued three hours . . continually kept up until the boy's death." Verdict of guilty. After the trial, Osborn, one of the jurors, remarked that [506] " the Martins, must be bad men anyhow, for he had heard that they had beat a man pretty nigh to death last spring " [513] " on account of . . gross insult . . to the female members of Martin's family," New trial refused. Judgment reversed: [513] " On the ground of the disqualification of Osborn as a juror,"

*Conner v. State,* 25 Ga. 515, June 1858. [516] " indictment for stealing a . . slave, . . The defendant confessed . . the boy was brought to him

[1] 25 Ga. 423-426.
[2] Act of 1819, sect. 3. Cobb 995.

. . by [two men] . . about the time the boy disappeared [in 1854], and he carried him away to . . Alabama, and was to receive two hundred dollars therefor. . . [517] that the negro had attempted to play him false and he took him to the bluff of Selma, and then that was the end of that damned negro. . . [518] White men . . had conversed with [the slave] . . and thought him a white man from his color. He had long black hair." Verdict of guilty. Judgment thereon affirmed: [522] "If the confessions . . be true, . . guilty . . of murder also."

*Parker v. Johnson,* 25 Ga. 576, June 1858. The plaintiff, administrator of Dorsey, [577] "introduced a bill of sale . . conveying to him for $600 a negro girl . . warranting her to be sound . . dated November 27th, 1855." She died January 29, 1856. "Dr. Boon testified: That at the request of . . Philips [[582] 'a dormant partner of Dorsey in the purchase and sale of negroes'], he made a post mortem examination . . pericordial dropsy . . opinion, she had had it more than three months; . . [578] [A brother of] Philips testified . . She ran away in December 1855, when it was quite cold, and was gone several days; . . Dr. . . Green testified: That the negro . . was in his possession for the two months immediately preceding the sale . . constantly employed in cooking or washing or cleaning up the house . . was not sick a day . . [582] verdict for the plaintiff for the $600 . . with interest" New trial refused. Reversed.

*Camp v. State,* 25 Ga. 689, June 1858. [690] "The grand jurors . . accuse . . Camp . . with . . manslaughter, for that [he] . . a carriage trace . . upon a . . man slave . . property of [another] . . upon the back . . the shoulders, and the loins . . did strike . . giving . . divers wounds of which . . [he] died." Verdict of involuntary manslaughter. Judgment thereon affirmed.

*McLaren v. Long,* 25 Ga. 708, June 1858. [710] "McLaren sold the negro to Latham [in 1850] for $600, and he was to stay in the store until Latham could see if he could sell him. In a few days Long called to enquire . . McLaren . . said he was a good for nothing drunken dog, and Long said if that was all the trouble . . [711] he could manage that, when he got him to his plantation away from liquor; and Long agreed to give Latham his note for $700" Four physicians [710] "believed him dropsical at the time of the purchase"

*Griffin v. Railroad Co.,* 26 Ga. 111, June 1858. Trover. [112] "admission of . . conductor . . that he carried . . Warren, over the road, knowing him to be a negro, and that he belonged to plaintiff; the negro was passing for a white man, and he humored the joke, and charged him full fare."

*Railroad Co. v. Neal,* 26 Ga. 120, June 1858. "proceeding . . for the recovery of damages for killing a negro belonging to plaintiff, upon their road, which negro was in the employ of the company" [122] "by the running of the engines and cars, 'and other machinery;'"

*Tilman v. Stringer,* 26 Ga. 171, June 1858. Action of debt. "The negro woman was left by defendant with plaintiff for a short time before the purchase, on trial; . . [172] apparently a tolerably good looking negro, and quite *pert.* . . bill of sale . . to plaintiff . . 1854, whereby the defendant acknowledged the receipt of nine hundred dollars for said negro, aged thirty years, and warranting her sound" "five or ten days after the purchase . . she . . complained of pains . . The negro was in the field . . but seemed to be lagging behind the other hands. . . physician . . was called in some two years after the sale, . . most of his information was derived from her own statements. . . [173] That his . . opinion was . . that the womb . . was affected, . . [175] The jury found for the plaintiff $900 and cost of suit."

Judgment affirmed: [177] "provided the plaintiff will . . return the woman . . or offer to do so."

*Bivens v. Crawford,* 26 Ga. 225, June 1858. Will of Thomas Bivens: "*Item fifth.* After the death of my wife . . it is my will . . that my executor . . shall take all of my slaves and their increase . . to some State or Territory . . which will admit them, where slavery is not tolerated; to the end that my . . slaves be free; and in the event that no State or territory will admit . . slaves as residents, to be free, then . . transport . . to . . Liberia, in accordance with the advice . . and regulations of the Colonization Society. *Item sixth.* . . that after the death of my wife . . executor shall sell all of my estate, (the slaves excepted,) . . and that the money . . be applied . . in aid of carrying out the provisions in the fifth item; and if . . [226] not . . sufficient . . hire out . . until"

Held void: [227] "These negroes were the property of Mrs. Bivens till . . death. The instant afterwards they were, by the . . will, freemen in this State. But were this not so, we are inclined to think, that policy forbids . . such a construction . . put upon our anti-emancipation laws, as to allow negroes to remain . . who are ultimately, after . . one or more lives, entitled to their freedom." [Lumpkin, J.]

*Calhoun v. Stokes,* 26 Ga. 325, August 1858. [326] "note . . for the hire of a negro for the year 1855 . . was for ninety dollars. The defendant [Dr.] Calhoun, plead as an off-set, an account . . [of] eighty-three dollars . . for medical services . . November and December, 1855, . . while in defendant's service." [327] "He was cured of a malignant attack ['of Typhus *Gravior*']; . . the two months' board, five dollars per month, is quite reasonable."

*Hudgins v. State,* 26 Ga. 350, August 1858. "indicted . . for stealing . . man slave" [351] "The negro had belonged to defendant's father" "the boy came to his house" "he was taken off from his house and sold in Tennessee by a cousin of his, with his consent, and knowing him to be the property of McCowen; he, too, to share the proceeds" Verdict of guilty. Judgment thereon affirmed.

*Ponder v. Cox,* 26 Ga. 485, November 1858. "1856, the complainant Cox . . purchased of . . Ponder . . a valuable blacksmith, named . . Giles Price, for . . eighteen hundred dollars: . . [486] bill of sale . . war-

ranted the soundness and title . . In about twelve months . . [Cox] received information that . . Price was born in . . Maryland, a free person, and that some eighteen years before, for some crime . . he had been sentenced to be sold as a slave for . . fifteen years; . . bought [in 1838] by the defendant, who was . . engaged in buying and selling negroes, . . brought to Georgia, . . and after changing hands several times, had again fallen into the possession of defendant, who sold him . . to complainant. . . [487] Price, by his next friend, has instituted proceedings to . . recover his freedom"

Held: I. [491] "There is no statute bar to suits for freedom. . . [II.] [492] A negro brought to this State as a slave, cannot be presumed to have any intention to violate our law,[1] . . There is no law against the introduction of free persons of color, subject to temporary slavery, . . by the persons having a right to their services . . for a term of years. . . They certainly do not remain in a state of slavery, after the expiration of their term of service," [McDonald, J.]

*Durham v. Broddus,* 26 Ga. 524, November 1858. Action for breach of warranty of soundness. Durham bought Lucy on January 3, 1852, and Dr. Dickerson examined her for insurance on January 22, 1852, and in January 1853. [526] "from the 17th to the 28th of May [1853], . . [he] visited her daily, and generally, twice a day, more for the purpose of mitigating her sufferings, than with a hope of effecting a cure. During most of the time . . Dr. . . Nelson attended Lucy with" him. Dr. Nelson testified that she "must have been diseased before the 3d . . January, 1852." Dr. Durham testified "that the woman was brought under his treatment . . July, 1853. . . cancer of the womb, . . [527] 'diseased, . . in all probability, for some years. . . death . . November, 1853.' . . Dr. Maddux . . family physician of Broddus, (the defendant,) . . never knew her sick at any time." Verdict for the defendant. Judgment thereon affirmed.

*J. C. McDowell v. Preston,* 26 Ga. 528, November 1858. [532] "witness was passing through the Court House [in 1855], plaintiff asked witness to run the negroes for him, when they were exposed to sale. Does not recollect what price he was to run them to;" [529] "Mary and her child Henry, brought $705; . . Whilst Kesiah was being cried, some one asked . . the crier, if . . sound . . the owner Mr. Preston . . called on Daniel McDowell [a former owner] to state . . [He] got upon the stand and stated . . sound" Mrs. Davidson testified that she hired Kesiah from Preston "about six weeks. I paid eight dollars and a quarter for her, for the time . . When I would hurry her about her business, she would excuse herself on account of the pain. I informed . . Preston of the condition . . [530] two hundred dollars a big price for her. . . Baker . . overseed for Daniel McDowell . . Kesiah complained when put to plowing; complained of pains in her legs, knees, etc., at times; had to be taken from the plow and put to the hoe" The present owner [535] "has hired out the woman this year for forty-five dollars, a fair

[1] Cobb 990.

price, considering that she cost only $435. Still it was for a preacher, and possibly for inn-door [*sic*] service."

*Bailey v. State,* 26 Ga. 579, November 1858. "1852, . . Bailey was indicted for the murder of his slave, . . At August Term, 1856, . . trial, and found guilty of voluntary manslaughter. Bailey carried the case to the Supreme Court, and . . Nov. 1856, that Court . . adjudged that [the verdict be set aside and] a new trial be granted, it being the opinion of this Court that the Court below erred in not requiring the questions mentioned in the bill of exceptions to be put to the jurors . . 1858, the defendant . . was again put upon his trial, . . and pleaded specially: . . That the former finding . . of 'voluntary manslaughter,' was an acquittal . . of murder, and he cannot again be put upon trial for said offence. . . [580] The Court [held it] . . no sufficient bar" Judgment affirmed: [581] "the defendant . . must plead and prove a *subsisting* record of acquittal. It is no record if set aside." [McDonald, J.]

*Cook v. State,* 26 Ga. 593, November 1858. [603] "Rogers, the owner of the runaway slave, had offered a reward . . in the newspapers . . ten dollars for the delivery of the slave to him, and 'fifty dollars, if found in the possession of any white man who' was 'attempting to make off with him, with sufficient proofs to convict' . . [604] But the charge against Cook was . . for harboring him." The slave [596] "had been run away three months; . . Sheriff told Cook he had a search warrant. . . Dogs started the negro; . . After catching negro, Sheriff arrested Cook. . . [597] Cook had him for a month or two. Negro hired his own time while Cook had him." [596] "Negro worth $600 to $700 before he ran away. Negro looked [when caught] not very ragged nor dirty. . . his clothes were torn by dogs. Did not look like the same negro he was before he ran away. . . sold [next day] for $500. Looked poor, as if worked hard." Verdict: [598] "guilty of concealing and employing the negro to the injury of the owner." Judgment thereon affirmed.

*Castleberry v. Kelly,* 26 Ga. 606, November 1858. "action . . for words spoken . . Sarah Castleberry 'did . . say' . . 'Your wife's sister . . had a negro child, and . . negroes have been with your wife, and I can prove it.' The jury found for the plaintiffs five hundred dollars. . . [607] The Court . . overruled the motion in arrest of judgment,"

Reversed: [608] "a negro man who commits the act with a white woman, cannot be indicted under the code; . . This view . . is supported by legislative construction; for the General Assembly, in . . 1852, deemed it necessary to enact, that the offence may be committed by a white man with a woman of color. . . it follows, that words charging the act are not slanderous of themselves, because they do not impute an offence punishable by the law, . . I . . reluctantly assent" [McDonald, J.]

*Hines v. State,* 26 Ga. 614, January 1859. "indicted for . . selling or furnishing whisky to a slave, without the knowledge . . of the owner . . [615] convicted, . . sentenced . . to imprisonment for thirty days, and

. . fine of two hundred dollars . . the punishment authorized for a second offence."

*Carpenter v. State,* 26 Ga. 622, January 1859. " indicted for receiving from a slave . . eight hides, . . value of thirty-four dollars, . . [623] Carpenter said that the hides were there, and that he got the hides from a negro about three o'clock in the morning." " The butchers . . give . . [their] negroes permission to sell meat after market hours; and it is usual for them to do so." Verdict of guilty, [624] " but recommended him to the mercy of the Court." New trial refused. Affirmed.

*Dickinson v. Solomons,* 26 Ga. 684, January 1859. [685] " first of January, 1844, I promise to pay . . sixty dollars for the hire of his negro woman and child for one year and four months' hire."

*Carrie v. Cumming,* 26 Ga. 690, January 1859. Will of John Carrie, 1847: [691] " To my friends . . all my estate " [697] " The caveators proposed to prove by general reputation, that . . the testator, and Mary Bouyer, . . a woman of color, lived together in a state of concubinage, . . rejected . . legatee . . was asked . . what was his intention as to the disposition of . . [the] property . . [698] And if he intended to use [it] . . for the benefit of Mary Bouyer, was not that intention based upon . . the known wishes of Mr. Carrie, . . objected . . sustained " Affirmed: " no trust created " by the will.

*Slade v. Street,* 27 Ga. 17, January 1859. The will of William Slade, who died in 1846, " attempted to manumit slaves."

*Everett v. Whitfield,* 27 Ga. 133, January 1859. [143] " Elizabeth Whitfield did bring [from South Carolina] to Georgia . . in . . 1824 . . sixteen negroes, and one more which was born on the road while she was moving to Georgia," [141] " The negroes were sold in a lump [in 1828]. . . It is not usual to put up negroes in families at Sheriff's sales . . [154] he considered young negroes able to earn their vituals [*sic*] and clothes before 14 or 15 . . but not more, and that it is worth two hundred and sixty dollars a head to raise young negroes till they can earn their support;" On page 152 of this report the ages and values of twenty-six slaves are given.

*Hargrove v. Webb and Allen,* 27 Ga. 172, January 1859. " complaint by Webb and Allen, on an account, . . defendant moved an amendment to his plea . . that Allen G. Webb . . was a free person of color, and not entitled to sue, nor to make contracts without the written permission of a guardian."

Held: [173] " the Act of 1833 [1] . . was the *protection* of free persons of color . . [174] must not be made an . . engine of mischief to them. . . The guardian may ratify the contract, and a suit upon it is always sufficient evidence of ratification." [McDonald, J.]

[1] Cobb 1005.

*McNair v. Bateman,* 27 Ga. 181, January 1859. [182] "Both mortgages [dated 1854 and 1857] contained . . George, who was levied upon by the Sheriff . . and sold for $1,500."

*Elmore v. Spear,* 27 Ga. 193, January 1859. [195] "speculates in negroes,"

*Lockett v. Mims,* 27 Ga. 207, January 1859. [209] "asked . . [for] his wagon to move his negroes to Howard's station; . . father replied . . better take them to Macon. Witness replied, no, . . too far to take them through the cold,"

*Marshall v. Drawhorn,* 27 Ga. 275, January 1859. [277] "When Marshall came to the house of Drawhorn, . . he found the boy tied to a tree. He had been severely whipped. A negotiation for the purchase . . was started. Drawhorn called . . attention . . to the flogging, and remarking that he did not wish to cheat him, informed him that the negro had a stiff neck; and . . turned the negro's head about as well as he could." [276] "being sold at a reduced price [$800], was not to be warranted as to his neck or the consequences of the whipping"

*Hardin v. Brown,* 27 Ga. 314, January 1859. In April 1856 Brown, the plaintiff, sold to Hardin [315] "a negro woman . . and her child about one year old, for . . eleven hundred dollars. . . August . . Hardin . . told Brown he must take the negroes back . . 'because when I bought her, I thought she was in the family way, but she was not.' Brown said, if she was not, he would take her back. . . the physician said she was very low, and if she had another fit she would die; . . agreed . . trade . . cancelled; . . [316] she died about twelve hours after . . Dr. Simmons . . 17 or 18 days after . . exhumed the body [[320] 'by torch light'] . . opinion . . no *foetus* . . from 30 to 60 days before the woman's death; . . Hardin procured him to examine . . Brown admitted that if the woman was not pregnant, she was unsound when he sold her. . . Dr. Searcy . . thought she was in the early stages of pregnancy," He and two other physicians [317] "swore, that they did not think such information [as Dr. Simmons swore to] could be obtained" so long after death. Verdict for defendant. New trial refused. Affirmed.

*Flanders v. Meath,* 27 Ga. 358, January 1859. [360] "After running over the plaintiff [[359] 'a very wild . . child, in the habit of running in the streets'] . . the driver . . kept on . . the negroes on the dray were in the habit of driving unusually fast, and were frequently dancing and singing on the dray, as it was in motion. . . [361] The jury found for the plaintiff fifty dollars," New trial granted. Reversed.

*Phillips v. Stewart,* 27 Ga. 402, January 1859. In March 1857 Patty and Martha Stewart sold to Phillips a negro girl, eighteen years old, for $950, warranting her sound. "told Phillips . . that the negro had a cough, . . lately recovered from the measles. . . [403] April . . overseer . . put the girl to sowing cotton seed, but she became perfectly exhausted in an hour or two; . . breathed with much difficulty; . . she did not work in the field any more, but stayed about the house; . . June . . called Dr.

Rice in . . [404] Dr. Hammond . . was called in . . eight or ten days before she died [about July 20]; made a post-mortem examination . . the right lung was hepatized . . thinks the girl ought to have received medical treatment before she got it; . . verdict for the defendants." New trial refused. Affirmed.

*Orr v. Huff,* 27 Ga. 422, January 1859. " 1850. Received from . . Huff, four hundred dollars . . for a negro girl . . about nine years of age. I warrant . . sound in body and mind. . . A. J. Orr." Dr. Saunders [423] " examined the girl in . . 1854; . . affected with . . St. Vitus dance; scarcely able to stand . . idiotic expression " Dr. Harrison examined her a few months later, " found that she was idiotic . . treated her for about eight months, and then took her to his own house, . . fifteen or twenty days, . . [424] seven to eight fits a day; . . she died soon after leaving his . . house . . Huff, a son of plaintiff, swore . . she was put to work immediately [after the purchase], and witness worked with her, . . very dull, . . grew worse . . never grew much after his father bought her . . [425] D. W. Orr . . testified . . he purchased her for A. J. Orr, in Virginia, . . has bought and sold negroes, several hundred; hardly ever made a mistake in the soundness of one; . . [426] she was as smart as other negroes of her age; . . the jury found for the plaintiff four hundred dollars, and interest . . from . . 1850." New trial refused. Affirmed.

*Dukes v. Nelson,* 27 Ga. 457, March 1859. On December 25, 1854, Henry was sold to Dukes for $950, being warranted sound. Dukes sold him to Gilreath January 22, 1855; [459] " Weems bought him from Gilreath in September," "Henry died in Weems' possession " " some time [before May 1856] . . with the dropsy "

*Stanley v. Gilmer,* 27 Ga. 589, March 1859. [590] " levied on . . Martha, eleven or twelve years old,"

*Johnson v. Andrews,* 28 Ga. 17, March 1859. " administrators sold a negro girl about thirteen . . at public outcry, . . complainant became the purchaser at . . nine hundred dollars . . bill of sale . . without warranty of soundness . . [18] she died [of consumption] in one month and twenty days " Bill filed to enjoin collection of note. Injunction refused.

*Sims v. Railroad Co.,* 28 Ga. 93, March 1859. " the negro, about fifty years old, was sitting on the end of a cross-tie, and was struck by the cow-catcher . . and killed . . [94] the presumption is he was asleep . . The court . . ordered a non-suit " Affirmed.

*Jossey v. White,* 28 Ga. 265, March 1859. Will, 1850: [266] " to my daughter . . my old man Jim, 65 years old; she is not to pay anything for him, but clothe him well and feed him;"

*Hunt v. Printup,* 28 Ga. 297, March 1859. [298] " the eleven negroes . . were levied on . . put . . in jail [in 1854] . . detained eight or nine months—they were hired before at $75 per month . . [300] Witness and plaintiff did own said negroes jointly. . . [301] there was one levied on . . a child in my arms at the time ".

*Giles v. State,* 28 Ga. 462, June 1859. [463] " Willis, and about forty other slaves belonging to . . Giles, were arrested and brought before a court of magistrates charged with . . murder. . . the magistrates were of opinion that there was sufficient evidence to warrant the commitment of Willis to the jail . . As to the others . . no evidence at all against them, . . ordered . . discharged . . upon the payment of the jail fees and all the costs of the examination. . . Giles . . excepted "

Held: the act of 1811, section 1, giving justices of the peace a discretion to award costs " when any person . . shall be discharged for want of sufficient cause of commitment " does not apply to slaves.

*Sarah (a slave) v. State,* 28 Ga. 576, June 1859. " Indictment for an attempt to poison " [577] " the victuals had a bitter taste, two were made sick; then a piece of bread . . was given to a dog . . dropped dead . . Sarah . . was the cook . . she did not eat anything; his father asked her if she drew water that morning, she replied she did not, . . [578] she . . confessed that she had white powders . . Dr. Hatchell . . thinks the powders are strychnine, . . Evidence for the defence. William Howell testified that he was at the house of . . Williams the night before his family were poisoned, he drew a bucket of water . . and put strychnine and arsenic in it; . . did not tell Sarah . . [579] He had given Sarah poison before to put in the bucket, but she would not do it; . . the jury found the defendant guilty." Motion for a new trial: " Because the witness . . stated portions of prisoner's confessions after he had stated . . that she had been whipped that morning by her master for the offence, . . [580] Because after . . Howell had . . confessed . . the court suspended the proceedings, and in the presence of the jury, sentenced the witness for the crime ' of attempting to procure a negro to commit the crime of poisoning.' (Howell having been . . convicted, at the same term, of said offence.) The Judge remarking . . that he intended to sentence him to five years . . but after his . . bold confession, he would sentence him for seven . . and if he had the authority he would sentence him for fifty years. The Court when charging the jury, remarked . . ' he has confessed his guilt of the most diabolical crime known . . it is for you to attach such credit to his evidence as you . . think it deserves.' " Motion for new trial overruled.

Judgment affirmed: [582] " It may be that the presiding Judge yielded to the excitement of the moment, elicited by the bare-faced confession of Howell, evidently made to screen his guilty paramour; still he did not violate the statute which forbids the Judge to . . [583] intimate an opinion as to what has . . been proven; . . [584] We are satisfied . . that the defendant is guilty, . . Is the punishment . . disproportioned to the offence, inasmuch as no one was killed? The law has left it discretionary . . to inflict the death penalty . . When we consider the facility with which this crime may be committed, the temptation . . in a clear case of guilt the stroke should not be averted." [Lumpkin, J.]

*Hill (a slave) v. State,* 28 Ga. 604, June 1859. " Hill . . property of . . Perkins, was indicted for the murder of Margaret Saddler " [612]

" He struck no blow upon the deceased, . . He did not *help* the other negro, but was himself engaged with another woman, whom he neither killed nor tried to kill," Verdict of guilty as principal in the first degree. New trial refused. Affirmed. Judge Stephens dissented: " I do not think the proof shows even that the two negroes had any common intent of murder. Their mission was probably one of lust,"

*O'Byrne v. State,* 29 Ga. 36, June 1859. " guilty of . . furnishing a slave with spirituous liquor." New trial refused. Reversed: the judge below had intimated his opinion as to the evidence.

*Martin v. McConnell,* 29 Ga. 204, August 1859. Will, 1840: [205] " To my wife . . during her life, the control of . . all the black people, while she enjoys senses to command them justly. . . At the division . . all the blacks to have liberty to choose their homes among my children,"

*Drumright v. State,* 29 Ga. 430, August 1859. [431] " He was indicted under the Act of 1856 [1] . . for carrying a negro out of the county . . without the consent of the owner "

*Reinhart v. State,* 29 Ga. 522, November 1859. [525] " that the defendant had repeatedly sold liquor to the negro . . and that the negro had drunk [it] . . in his presence. . . attempted to justify . . under a general verbal order from the employer . . to let the negro have spirits in ' reasonable quantity,' whenever he wanted it. . . The law does allow the owner, overseer or employer . . to furnish . . such quantity as . . [526] [he] may deem beneficial . . but . . has not . . put this same discretion in him who sells the spirits, nor can it be put there by delegation "

*Gay v. Gay,* 29 Ga. 549, November 1859. Will of Robert Sims: [551] " After the decease of my . . wife, . . I want the slaves . . freed, if the laws of our country will authorize it."

*Ingram v. Fraley,* 29 Ga. 553, November 1859. Will, 1856: [554] " being desirous of keeping my negroes together, as long as it can be done; and having the utmost confidence in . . Fraley [my brother-in-law] . . and that he will entirely carry out my wishes . . expressed . . either verbally or in writing; and knowing . . [he] will, by this will, be able more effectually to dispose of my estate, as I wish . . than I could at this time do myself, . . I . . give . . Fraley my entire estate " [555] " about . . 1832, purchased jointly the plantation . . and placed their negroes on it; . . purchased jointly . . a family of negroes placed on the farm; their negroes have intermarried, . . Testator was a bachelor; lived on the farm; encouraged this intermarriage, and treated all the negroes with like humanity . . Among the negroes . . were a family of mulattos, to which testator, for reasons not necessary to be repeated, had a strong affection;" Held: [562] " some trust was intended, . . the legatee takes nothing beneficially . . the estate is subject to distribution between the next of kin "

[1] Acts of 1855-1856, p. 264.

*Re Slave Trade,* 30 Fed. Cas. 1026 (3 Phila. 527), November 1859. "Wayne, Circuit Justice[1] (charging the grand jury). A circumstance has recently occurred in this city which impresses the larger portion of its people, I may say all, with few exceptions, that the same vessel has been positively taken from this port [Savannah?] to be engaged again in the same unlawful trade. This incident . . induces me . . to charge you upon the legislation of Congress [for the prohibition of the slave trade.] . . [1028] The acts of 1818,[2] 1819,[3] 1820,[4] severe as they may seem to be, particularly the last, had the active and marked support of the most distinguished representatives in congress from . . South Carolina, and that of the ablest representatives of every other state in the Union. . . [1029] The general pacification in Europe in 1814, and that of the United States with Great Britain, threw out of employment numbers of men who had been accustomed to the violence of war and to the hazards and gains of privateering. . . At first they were pirates without combinations, but afterwards became associated and had places of depot for the sale and division of their spoil. . . At length an adventurer, daring and knowing, conceived an idea and executed it, to make the Island of Fernandina their rendezvous. He seized it, declaring it to be no longer a dependence of Spain, and organized a government there, in conjunction with citizens of the United States who were men of broken fortunes at home. They claimed for themselves the privileges of nationality, invited an accession of numbers from every part of the world, recruited them as soldiers, and employed them on board of cruisers which had commissions of their own, with simulated documentary papers of the United States and the nations of Europe. . . In a short time the little island . . was filled with the stolen products of commerce. The plan was to smuggle them into the adjoining districts of the United States, overland by the way of Florida, and from points on the St. Mary's river into the interior. Our citizens from the north and the south did not resist the temptation; men from the utmost east of the United States and the nearer south to the locality were there for unlawful purposes, just as they had been a few years before, during the war of the United States and England, to smuggle our cotton into Fernandina on English account, and in return, to smuggle into the United States the fabrics of her manufacturers. In a short time this assumed government opened the island as a depot for slaves from Africa. Two cargoes of them arrived there in the year 1818, in such a condition of misery from long confinement, starvation and scourging, that the representation of it caused all over the United States a deep and indignant sympathy. Those, and there were but few of them who survived, were bought by a citizen . . of Pennsylvania, and by a resident merchant of Savannah, and were successfully introduced into the United States. A third cargo arrived under like circumstances and with the same results. . . Mr. Monroe, then president,

[1] Circuit court for the district of Georgia.
[2] 3 St. at L. 450.
[3] *Ibid.* 532.
[4] *Ibid.* 600.

determined to take possession of the island. It was done by a military force. . . Aury's government and forces, after a show of resistance, surrendered. Himself and his officers fled, and thus an end was put to their combination for smuggling and piracy." History of "the legislation of Congress to prohibit the African slave trade, with especial reference to the religious, moral, and political considerations on which it rests, and to the constitutionality of the act of 1820, making the trade piracy, punishable by death. . . [1032] 1853, the United States was called upon to consider the measures for the execution of the treaty of Ghent . . relative to the suppression of the slave trade. These measures will be found in . . the 'Webster-Ashburton Treaty.' . . Vessels of war cruising on the coast of Africa under our act of 1819 [1] have been directed to search our own vessels, to arrest the violators of the law, to bring in the ships for condemnation, and the men for punishment. At this time the government is not unmindful of this treaty obligation, for our next squadron for the coast of Africa will consist, I believe, of four steamers and as many sloops-of-war, and four steam ships will probably cruise off Cuba to intercept slaves that may escape the ships on the African coast."

*Pannell v. State,* 29 Ga. 681, January 1860. [684] "The evidence . . having disclosed . . that the slave went into defendant's shop . . after nine o'clock at night, and before daybreak . . with an empty bottle, and came out with [it] . . filled with whiskey, the presumption of the guilt . . could not be rebutted by the facts, that the . . owner knew . . and permitted . . or that the overseer . . was present . . unless the negro was sent by the owner or overseer for the whiskey;"

*Hobbs v. Davis,* 30 Ga. 423, January 1860. [424] "contract for the hire of the negro woman . . 1858 . . eight dollars per month. She was to take her one month . . on trial, and if she was satisfied with the woman and the woman with her, she was then to keep her at that price. . . hired for the purpose of making a crop"

*Sheftall v. Roberts,* 30 Ga. 453, January 1860. Will, 1808: [459] "It is my particular request . . that my old faithful negro man, London, who has labored hard with me forty years and upwards, be kindly, carefully and well treated as long as he lives."

*Kirkpatrick v. Bank,* 30 Ga. 465, January 1860. [471] "Billy and Joe, Bob and John, have been employed on the steamboats . . [on] the Savannah River; that the owners of . . steamboats are indebted . . [472] $800 00 for services . . by Billy and Joe . . from the 10th of November, 1858, at . . four hundred dollars per annum . . each; . . $400 00 for the services of . . Bob and John . . at . . two hundred dollars each per annum"

*Ingram v. Mitchell,* 30 Ga. 547, January 1860. "1856, . . Simon was committed to jail to await his trial on the charge of attempting to commit a rape on a free white female . . at the October Term . . a true bill . . was found against him. Previous to October Term, Ingram, the owner

[1] 3 St. at L. 532.

. . gave bond for the appearance . . and took charge of him, . . August, 1857, Ingram entered into an agreement with Mitchell . . the latter should take Simon away and sell him . . [548] to enable Mitchell to convey title . . Mitchell gavè Ingram his promissory note for $1,200 . . Mitchell . . sold him in . . Georgia, for $1,200" [549] "not very remote from the place where the alleged offense was committed. The prosecution was quashed ten or twelve days before the negro was sold, the woman herself and every body else being satisfied of his innocence; . . he was immediately re-purchased and brought back by Ingram," [548] "Mitchell being called on to pay over the $1,200, the proceeds of the sale made by him, refused . . insisting that the agreement having been made to screen Simon from trial and punishment, is illegal," Verdict for the defendant. New trial refused.

Reversed: [550] "Why should Mitchell not pay the note? But apart from this . . He must abide by the contract or repudiate it. If he abides by it, he must pay; if he repudiates it, he holds in his hands the price of Ingram's negro, and he must turn it over."

*Mitchell v. Railroad Co.,* 30 Ga. 22, March 1860. "plaintiff, with his wife and children, and about ten of his negroes, took passage . . The negroes were paid for as passengers, and went on the second-class passenger-cars; . . the train stopped . . at a . . water station, and, upon starting, one of . . negroes (a boy about ten or twelve years old) was run over . . and badly hurt." Held: [26] "The doctrine of common carriers, as to goods, does not apply to the carriage of slaves,"

*Glass v. Cook,* 30 Ga. 133, March 1860. "Received . . seven hundred and twenty-five dollars . . for a negro boy . . about 9 years old, of dark complexion, which negro I warrant to be sound . . 1857." The executor [134] "stated publicly at the time . . that the negro was sound . . and 'the best negro of the flock,'" He died shortly after.

*Myrick v. Vineburgh,* 30 Ga. 161, March 1860. The will of Nathaniel T. Myrick [163] "directs certain negroes . . to be removed to some free State, and there manumitted; and that certain property shall be there bought for them." Held: "This does not violate the policy of our Statutes against manumission,"

*Pitts v. Thrower,* 30 Ga. 212, March 1860. [215] "Thrower . . was . . about . . 1802, on a visit to his wife's father, . . White, in . . Louisiana; . . White gave to him, for his wife . . a negro. But when Thrower started on his return . . [216] the negro kept out of his way, so that he came home, leaving her there."

*Williams v. Fambro,* 30 Ga. 232, March 1860. "action brought by . . Fambro . . for the recovery of damage for killing a . . man slave . . worth $1200, . . 1857, the defendant was overseeing for plaintiff; . . None of the witnesses . . was present . . the negro was found dead—stabbed . . The defendant . . left immediately after the killing. . . [233] the defendant offered to read the depositions of . . Walker, . . that . . [Jim's] character in the neighborhood was, that he was hard to manage

. . witness remained on plaintiff's plantation four months, and whipped Jim three times;" " plaintiff . . told witness that if Jim complained of being sick, to give him some medicine, and if he was not sick, to put him to work; witness . . told him if he was well enough, to take his tools and go to work . Jim replied, that when he was sick his master never allowed him to work, and he'd be damned if he would do it; witness struck him with his fist, and went to get his whip, when Jim . . picked up an axe and went back into his house. . . plaintiff said the negro was dangerous, and advised witness to go armed, so as to defend himself. About three weeks after . . witness undertook to whip him for playing cards; he swore he'd be damned if he should . . and picked up a stick and struck at witness; witness then had him tied and whipped him; . . objected . . sustained . . and ruled out the depositions, so far as they went to prove the general character . . [234] unless some act of violence was shown to defendant, . . The Jury found for the plaintiff twelve hundred dollars." New trial refused.

Reversed: " defendant ought . . to have had the benefit of Walker's testimony . . so far as it related to . . [his] own general knowledge of the negro's disposition, or to Mr. Fambro's statements . . but not admissible so far as it related to previous particular acts of violence . . or to general reputation as to his disposition. . . [235] the thing to be proven in this case was . . his character . . especially his aptness for strife . . [I.] to render more probable the evidence which tended to show an act of rebellion at the time he was killed; and this probability is . . not affected in the slightest degree by Williams' previous knowledge of the fact. . . [II.] a negro's bad character . . ought to lessen the damages for killing him." [Stephens, J.]

*Curry v. Curry,* 30 Ga. 253, March 1860. Will of Wiley Curry: " I give my servants, John, a man of yellow complexion, and Betsy, a woman of yellow complexion, to my executor, . . in trust to carry . . immediately after my death, to some one of the non-slaveholding States . . as . . executor may select, or to whomsoever said servants may elect for a master in this State, before . . Stephens. . . [254] pay . . Goodman . . one thousand dollars, the interest on which is to be annually paid to my servants . . after their removal to a free State, . . and at the death of . . John and Betsy, said sum to be equally divided between their children. . . if either die without children his share to go to the other " After the execution of the will " the negroes . . informed . . testator whom they would choose as their master, and testator expressed himself satisfied . . the negroes . . did a few days after testator's death, choose their masters, . . They were not appraised as a part of testator's estate."

Held void: [257] " The intention of testator was that these negroes should be free . . [258] The bequest was in fact, placing a charter of the liberty of these negroes in their hands to go throughout the State and trade . . on it till such person should be found who would give them the largest liberty for the least consideration; . . obnoxious to the provisions of the Act of . . 1818. . . [259] other reasons why this bequest

is void. . . [260] as slaves they could not elect;[1] . . [262] It may be contended that, although this clause . . is void, yet, the direction to convey . . to a non-slave-holding State is not, . . To this, there are two replies: One is, that the clause void serves to demonstrate . . the intention of the testator in his entire scheme . . and that being to violate . . the manumission laws . . the whole scheme is void. The other . . given by Allen, J., in Williamson *vs.* Coulter, 14 *Grat.*, 398. 'No one . . can say, what would have been the disposition of the testator if he had known he could not submit the alternative to the choice of slaves.' . . Of course the bequest of one thousand dollars . . falls with the clause in their favor," [Lyon, J.]

*Escheator v. Candler,* 30 Ga. 275, May 1860. "a proceeding by . . escheator . . to condemn escheat certain negroes, as being the property of a free negro, Joe." [276] "The sole point on which this case turns, is the *status* of . . Joe." [23 Ga. 494] "contract between Joe . . and his master [Holt] for his manumission" [495] "deed of . . Holt . . to . . Butler, in . . 1821" [30 Ga. 277] "Butler's quick succeeding manumission of him in New Jersey" [23 Ga. 499] "by a proceeding under the laws of that State." [30 Ga. 277] "Joe's immediate return thereafter to Georgia," [23 Ga. 495] "the evidence of . . Simpson and the Book of Enrollments of free negroes . . and certificates of registry issued by the Clerk of the Inferior Court . . for thirty-three years, and the tax receipts . . [496] all show that Joe was *prima facie* and presumptively free, . . a farmer with lands . . and household, living without the control or presence of any white man for 35 or 40 years, and having a guardian during all that time."

Held: [30 Ga. 277] "It was a piece of machinery intended to evade our Statute against manumission,[2] . . void from the first step to the last . . But it was contended that he was free from lapse of time, he having been registered as a freeman, and enjoyed the privileges . . ever since 1811. . . Our Law does not allow conveyances, nor contrivances, nor time, to convert a slave into a free man in Georgia, to swell the ranks of a population which the Legislature has carefully guarded from increase from any source whatever, save that of procreation." Being a slave, the Escheat Act of 1817, [276] "against the holding of slaves by free persons of color . . does not apply." [Stephens, J.]

*Black v. Thornton,* 30 Ga. 361, May 1860. [364] "the quarter was seven or eight miles from the home place. . . [365] I have seen Sina and Jacob ploughing;"

*Johnson v. Gorman,* 30 Ga. 612, June 1860. "action . . to recover . . three hundred and fifty dollars . . [613] for overseeing for the year 1858. . . Defendant refused" [614] "to turn over his plantation and

[1] Overruling the decision in Cleland v. Waters (p. 46, *supra*), but following Carroll *v.* Brumby (p. 166, *infra*), and Baily *v.* Poindexter (vol. I. of this series, p. 243), and Williamson *v.* Coalter (*ibid.* p. 247).

[2] Act of 1818.

property into the hands of an overseer drunk at the time." Held justifiable.

*Rutherford v. Newson,* 30 Ga. 728, June 1860. [729] " Rutherford, was a physician, and with a view to purchase, had Joe in his possession some time before the trade was made " He gave his note for $900, dated 1854. "In December, 1855, Joe was attacked, while at work, apparently with his old complaint in the breast, and died in a few minutes "

*Gill v. Wilkinson,* 30 Ga. 760, June 1860. " the Sheriff answered . . that at the time he received . . negro, the jail . . was insecure . . that the weather was extremely cold, and he took . . negro to his home and kept her there, as he thought humanity required. . . that afterwards the woman was stolen . . and that he was subjected to great trouble . . to find and retake her "

*Shine v. Redwine,* 30 Ga. 780, June 1860. [787] " Henry, being a blacksmith, is worth now [1859] $1,800, and $200 per year for hire since 1845 "

*Webb v. Fleming,* 30 Ga. 808, June 1860. Will of Mark Sanders: [811] " selling his boy Henry and with the proceeds purchasing the girl Rose, who was, by . . his executor, to be freed from service to himself or any other person." Held void.

*Bostick v. Hardy,* 30 Ga. 836, June 1860. In 1859 a negro woman was sold for $850.

*Hawkins v. King,* 30 Ga. 909, June 1860. In 1856 a negro woman was sold at auction for $900.

*Smith v. Bell,* 30 Ga. 919, June 1860. [920] " 1855 . . a negro woman . . and her child, was put up to the highest bidder, and bought . . for . . thirteen hundred dollars;"

*Wade v. Powell,* 31 Ga. August 1860. [8] " We, the arbitrators . . 1857 . . award that . . Wade retain . . at the following prices . . an old man, $100.00; . . an old woman, $1.00; . . a man, $1,000.00; . . a young man, 1,100.00; . . a young woman, $900.00;"

*Evans v. Lipscomb,* 31 Ga. 71, August 1860. [74] " Harlan, about 4 years old, worth $350; another child . . walking, about $250; . . [96] her mother had always said that she wanted her negroes to have the privilege of picking their masters."

*Allen v. Hollis,* 31 Ga. 143, August 1860. [144] " he valued . . Rose, at seven hundred dollars [in 1858], she being a number one field hand."

*Johnson v. Lovett,* 31 Ga. 187, August 1860. Action of trespass. " 1858, it being the Sabbath day, the defendant inflicted upon . . Dinah, belonging to . . Wiggins, . . a severe whipping, with a cow-hide, and by kicking her in the abdomen, and knocking out one of her teeth, and otherwise beating . . commenced in the public streets . . and was continued in the kitchen of defendant . . [who] was aided by two other negroes, one . . ordered to take hold of Dinah's feet, and the other . . of her head;

. . the negro . . was confined, in consequence . . for about two weeks, but afterwards . . seemed as sprightly . . as before . . the defendant gave as an excuse . . Dinah . . pursued the business of a washer-woman . . the dresses were sent for by another servant girl, she . . reported a message from Dinah, that she would not send the dresses until she had got them done, and that forty devils and the defendant himself could not make her send them until she got ready; . . Dinah, was, at the time . . hired to . . Johnson . . the physician's bill . . was about fifty dollars, . . verdict for the defendant, with cost of suit. . . plaintiff . . moved for a new trial . . [189] has discovered, since the trial . . Mrs. Thomas heard the message . . and that Dinah did not send the message . . communicated . . overruled"

Affirmed: but [190] "we state, as a Court, that there is much to condemn in the conduct of the defendant. . . [191] It is dangerous, in this hasty way, to act upon the *ex parte* representations of another servant. . . the punishment . . was both indecent and excessive," [Lumpkin, J.]

*Tharp v. Anderson,* 31 Ga. 293, August 1860. "defendant . . employed . . negro boy [twenty years old] without the consent of the [owner] . . the falling tree . . struck . . negro . . so that he died . . was worth fifteen hundred dollars, and . . for hire, one hundred and fifty dollars per annum."

*Hambright v. Stover,* 31 Ga. 300, August 1860. In 1854 a note for $700 was given by defendant for a negro woman. [301] "the negro was pregnant, and was left at Mrs. Brittains, . . a midwife, to be attended to . . during her confinement [[302] 'at the expense of the defendant']; . . Mrs. Brittain had attended the negro two or three times before, . . and the children were either born dead or died a few minutes after birth; . . her last confinement . . was a protracted one, she died . . [302] The plaintiff . . proved by the physician . . called . . in her last sickness, and also by another physician who aided in the post mortem examination, that . . woman failed to give birth . . on account of the unusually large size of the child;" Held: [303] "A warranty of soundness does not extend to the subsequent casualties of parturition."

*Cone v. Force,* 31 Ga. 328, August 1860. "Cone made an affidavit . . 'That, on the 19th of January, 1860, . . Sarah, and her three children . . in . . [his] peaceably acquired possession . . were . . carried away . . by . . Force' . . Force was arrested . . [329] The defendant . . proved that . . Black had seen a small negro girl in the possession of Mrs. Cone, . . said to be the child of a certain white woman, . . also introduced . . Dean, to prove that the negroes were free, according to what . . Cone had said. . . offered in evidence an order of the Superior Court . . 19th of January, 1860, appointing . . Force guardian . . testimony admitted . . adjudged that the negroes . . remain in the possession of . . Force,"

Reversed: [330] "It was not competent for the Magistrate's Court to . . adjudicate the question of freedom . . in this proceeding. The General Assembly has . . provided, both the proceeding . . and the

forum [1] . . before their freedom shall have been established . . the presumption of law is against their freedom."

*Cross v. Payne,* 31 Ga. 342, August 1860. In 1859 [343] "complainant bought . . negro boy [for $1200] . . for the purpose of selling him again, . . sent . . negro . . off for sale, and spent about one hundred dollars for his board, clothing, etc., and failed to sell him, because he was ruptured . . [345] defendant . . proposed . . to . . take the negro back . . complainant refused . . saying that he . . could sell . . for fifteen hundred dollars."

*Palmer v. Clarke,* 31 Ga. 351, August 1860. "1833 . . Baird made a deed of gift to [his granddaughter] . . conveying a negro girl . . about three years old . . [352] [A witness] testified . . that in Christmas holidays, in 1836, he saw her concealed up stairs in the house of . . Cleveland [to whom Baird had later sold the girl] who offered to sell her to witness . . provided the witness would run her to Mississippi and alter her name, . . witness replied . . he would not cheat . . [353] she never brought but one child, which died in a day or two after its birth; . . she is not a good field hand; never saw her splitting rails; has seen her plough and wash sometimes;"

*Congers v. Bowen,* 31 Ga. 382, August 1860 [384] "now has him hired out for $180"

*Hughes v. Allen,* 31 Ga. 483, November 1860. Will of John W. Allen, 1856: [486] "I hereby manumit . . a woman about thirty-five . . a girl about eight . . a boy about five . . a boy about seven months old; allowing her to keep her bed and bed-clothes, and trunk which are strictly hers; and . . two hundred dollars . . and appropriate . . money sufficient . . to be used by my executors . . to . . transport her to any place wheresoever she may wish to go, . . with her children. . . [487] I desire that my faithful old servant, Pleasant, shall go where she pleases, and . . not belong to any one, and that . . one hundred dollars shall be reserved for her . . support." "in relation to . . slaves so attempted to be manumitted . . an intestacy was declared . . [488] sold by an order of the Ordinary"

*Maddox v. Simmons,* 31 Ga. 512, November 1860. "1856 . . Maria, aged fifty . . worth one hundred dollars; Dawson, aged seventeen . . worth eleven hundred . . Nancy, aged thirteen . . worth eight hundred . . John Wesley, aged eight . . worth six hundred . . Raymond, aged five . . worth one hundred . . and Merrill, aged four . . worth three hundred dollars. . . [515] Henry . . was sold by the sheriff . . 1856 . . [for] twelve hundred and fifty dollars"

*Strozier v. Carroll,* 31 Ga. November 1860. [562] "That in the latter part of . . 1856, or . . January, 1857, he bought from Carroll a negro girl . . Silvia [[559] 'about fourteen or fifteen'], at seven hundred dollars . . latter part of February, 1857, he sold her back to Carroll for eight hundred and seventy . . Carroll told him, at the time he bought her . .

[1] Cobb 1007, 1011.

that she was a dirt-eater, as he had been informed, but that during the two months that he (Carroll) had owned her, she seemed . . healthy" On February 28 Carroll sold her to Strozier, who [557], "in the trade, let defendant have a negro man valued at one thousand dollars, and the defendant was to pay him one hundred dollars to boot; the girl . . had a bad cough, and complained of a pain in her side; the defendant represented her as sound, . . said that she had got wet, . . taken a bad cold; . . the girl was sent to the field to work, and plowed about one-half hour, and complained so much of a pain in her side, . . set . . to picking up trash; . . she could not do that . . [558] measles prevailed at the time amongst plaintiff's negroes; . . she was kept in Mrs. Strozier's room, and treated well all the while; . . [559] a negro girl taken from the field to wait on her; . . [561] Dr. . . Bledsoe testified . . she had an abscess of the right lung . . she died . . 31st of March . . [562] must have been diseased at least three or four years; I was called . . 30th of March . . I made the post mortem examination . . Dr. . . Twitty . . was present when the girl died;" Verdict for the defendant. New trial refused. Affirmed: [563] "The case turns upon the fact of warranty. There was none in writing, and but one witness testifies to this point. . . [564] discredited"

*Lynch v. Jackson,* 31 Ga. 668, November 1860. "1850 . . the grandfather of the plaintiff, gave . . the . . girl . . to the plaintiff . . telling the mother of the plaintiff to take charge of the negro and learn her to sew, etc., until the plaintiff married, or became of sufficient age to control and manage the negro herself." [671] "the plaintiff was twenty-one . . [in] 1856,"

*Mapp v. Phillips,* 32 Ga. 72, January 1861. [74] "General . . Armstrong testified: Gilbert, . . professed agent of Mapp, bargained the negro ['twenty-four'] . . to the witness at $1,250 [in 1859]; . . was left in my possession . . ran away; . . [75] finding that the boy was a drunkard and a gambler . . and that the price was raised to $1,300, he delivered the boy to Bishop," agent authorized by Mapp to sell to Armstrong. Bishop then sold him to Cox. Cox testified: [73] "That as the agent of Phillips . . he bought the negro . . put the negro in the guard house, and that Phillips sent the negro to New Orleans, where he was sold." "some time after . . Mapp . . [was] looking for Bishop, to get the money" [79] "fair to infer that he then supposed Bishop had sold to Armstrong, as authorized, and made way with the purchase money,"

*Ball v. Wallace,* 32 Ga. 170, January 1861. "1858 . . the negro boy . . was worth $700.00, and was worth, for hire, $150.00,"

*Howard v. Snelling,* 32 Ga. 195, January 1861. In 1839 a negro girl, about fifteen years of age, was sold for $750.

*Sullivan v. Hugly,* 32 Ga. 316, March 1861. "bill . . brought against . . Sullivan, as administrator of Franklin Hugly, for an account and distribution, by . . next friend of . . [ten] minors, who allege that they are the next of kin, and heirs-at-law of Franklin Hugly, on the paternal side, . . Sullivan . . [317] denies . . further answers that the estate . .

is subject to distribution among the brothers and sisters of Caroline [mother of Franklin Hugly and daughter of Sullivan] . . 'that the estate sought . . was, by the will of Amos Hugly, bequeathed . . to his wife Caroline and . . Franklin, and that . . Franklin being an adulterine bastard, and one-half negro blood, and incapable of holding estate . . the bequest to Franklin became void,' . . Zelner testified . . Amos was very mad because . . Franklin . . was reported to be a negro child, and said . . he believed the child to be his; . . [318] Mrs. Crawford saw the child about fifteen minutes after its birth, . . from the dark color . . his curly black hair and low forehead, she would say he was one-half negro. . . Amos treated Franklin as his son. . . Dr. . . Hammond . . [319] of the opinion . . offspring was a mulatto, . . [320] ' The midwife . . pronounced it to be a mulatto at its birth,' which [last testimony] . . was rejected . . verdict in favor of the complainants for $10,710.00." New trial refused.

Affirmed: [323] " The examinations were made . . before its features were fully developed. . . after the child was removed with its parents . . among strangers . . no one seems to be impressed with the idea . . that it was of negro descent." [Lyon, J.]

*Jackson v. Jackson,* 32 Ga. 325, March 1861. [330] " his sons worked in the field . . [331] like slaves,"

*Mann v. Railroad Co.,* 32 Ga. 345, March 1861. [346] " the negro was fed by [his master] . . and came to his master's every Saturday night, to get his food for the week. . . The hands . . stayed in a shanty, . . the overseer, gave . . orders to Pitts and Smith . . to let the negroes on the railroad have liquor when they wanted it. . . It was a rule for the hands to stay with the overseer. On a moonlight night . . the negro was lying on or very near to the rail track . . The engine . . killed him . . [347] non-suit . . the action being . . for negligently permitting the negro to get drunk, stray off, and get killed, . . no evidence that the negro had drank . . on the night he was killed." Affirmed.

*Ramsey v. Blalock,* 32 Ga. 376, March 1861. In 1857 a negro girl, seven years old, [377] " was knocked off . . at . . $530 00. . . the little negro girl had contracted the habit of eating dirt, . . [378] died of typhoid pneumonia " six months after the sale.

*Wooten v. Calahan,* 32 Ga. 382, March 1861. [383] " 1853, Wooten and Goolsby sold to . . Calahan a negro woman . . about twenty [for $775.] . . died in about one week . . [384] Dr. Saunders attended the negro, and was of opinion that she had fever, complicated with pneumonia;"

*Lewis v. McAfee,* 32 Ga. 465, March 1861. [466] " witness . . states that his recollection is, that the negro was hired to do shop work. . . put to service on a passenger train, as a train hand, to attend the break [*sic*] and wait upon the passengers. . . permitted to ride . . once and sometimes twice a week, to see his wife." [468] " on his return from the car shed, where he had been sent . . the boy . . chose to ride back " [466] " jumped . . died . . [467] verdict for the plaintiff for $1200 00." New trial refused. Affirmed.

*Whidby v. Lewis,* 32 Ga. 472, March 1861. " the negro boy . . [473] was about twenty-two . . stout built, of good character," " upon a wagon . . waiting for the train to move off . . moved off . . suddenly reversed . . struck his wagon . . killed . . the man at the switch . . told him not to come " Verdict for plaintiff for $1250. New Trial granted. Affirmed.

*Wallace and Wallace v. Spullock,* 32 Ga. 488, March 1861. [490] " the boy was . . worth about $1200 00; . . a number of witnesses . . had seen Sam about the store of the plaintiffs . . considered him a white man; . . bought goods from him . . his complexion was light, his hair straight, . . One . . had been in the habit of calling him Mr. Wallace, and regarded him as a member of the firm." [489] " conductor . . left Chattanooga a short time after seeing . . Sam, and on arriving at Atlanta, reported to the plaintiffs . . afterward he saw the boy in Chicago, . . where he passed as a white man, and was taking drinks at the bar with white men; . . the presiding Judge charged . . [491] ' if . . the agents of the road . . could not have detected any of the marks of the negro, . . no such negligence as would make the road liable.' . . verdict in favor of the defendant [superintendent of the railroad]." New trial refused.

Affirmed: [492] " To prescribe any more stringent rules . . would be to enjoin upon . . conductors the duty of questioning . . every white passenger having a dark complexion, and refusing . . conveyance unless he could prove his descent from Caucasian parents." [Jenkins, J.]

*Cox v. State,* 32 Ga. 515, March 1861. [518] " Cox said [to Echols] that he was getting on at Jones' pretty well; that he had all the negroes under subjection except Humphrey; that he owed him a whipping . . had found a rock in a basket of cotton. . . witness asked Cox why he shot the negro, . . Cox answered, that he went up behind the negro, where he was chopping . . and took hold of him, and witness thinks that Cox said the negro . . [519] turned upon him and took him by the throat . . [Cox] called . . another negro . . deceased then . . broke to run, and . . Cox . . fired " Jones, who employed Cox [516] " to work with and control the negroes under witness's direction " " told Cox that he had a great mind to . . shoot his brains out, . . the negro had never resisted anybody; . . [518] two or three weeks before . . the deceased and witness [for defendant] were talking about Cox . . the deceased said that he whipped some of them mighty bad; that he did not want Cox to whip him that way, . . if he did, he . . would have to do something that he did not want to do; that Jones had offered to sell him . . but . . when Bob Jones had offered to give the $1600 . . his master, refused . . [520] The Court charged . . ' if . . negro . . ran, . . [he] was not in revolt at the time when he ran,' . . verdict . . voluntary manslaughter." New trial refused.

Reversed: [521] " in the charge, one view of the case . . was omitted, . . Cox . . said [to Thompson], that ' he went up to the negro, and the negro took hold of him, and he shot him.' . . if the prisoner shot while the negro had hold of him, . . he is not guilty of a crime," [Lyon, J.] Jenkins, J., dissented.

*Word v. Mitchell,* 32 Ga. 623, May 1861. *Sixth item* of the will of William D. Martin: "I desire that my faithful and trusty negroes, Gabe and Willis, also . . [two] sons of Gabe, be free as far as is consistent with the laws of this State, and I give to their use . . as a home during life . . a part of tract on which I now live . . also . . four cows of their choice [and other personal property.] . . appoint . . Mitchell guardian . . to trade for them, and . . control their business . . as compensation . . I give to . . [624] Mitchell . . note which I now hold on him for . . $1200 00." *Eighteenth item*: "All the remainder . . to . . Mitchell," Held: "When a legacy fails . . because it is void . . it . . passes to residuary legatee,"

*Waters v. Cleland,* 32 Ga. 633, May 1861. "1852, complainant . . was engaged in the study of medicine. His all of property . . was a favorite negro boy . . about sixteen . . worth $800 . . the gift of his grandfather, and to whom he had become much attached . . having been partly raised with him," "Finding that he could not prosecute his . . studies . . without a sale or mortgage . . [634] induced to give an absolute bill of sale [to Waters] instead of a mortgage, because . . he did not know the difference . . as to legal effect, . . 1856, tendered the [$500 advanced] . . Waters refused to deliver, saying that he had become attached to the boy," Held: a conditional sale. [636] "the complainant's right to redeem was not . . barred by lapse of time."

*Monday (a slave) v. State,* 32 Ga. 672, June 1861. "Assault with intent to murder, . . Tried . . April Term, 1861. . . [673] October, 1860, . . between daybreak and sunrise . . [674] negro came toward [Bass.] . . Bass asked who it was; the negro replied, Monday McRea; . . a sack lying by the road . . found to contain bacon. Bass told the negro to pick it up, . . go with him to town, . . Bass struck him once or twice . . The negro caught Bass by the throat and choked him severely, . . persons . . came to his relief . . negro ran off. . . In about one-half or three-quarters of an hour after . . Monday was in his mistress' kitchen putting on his shoes. . . [675] The prisoner relied on the proof of an *alibi,*" [679] "much negro testimony was offered in support" [675] "This defence was met . . by the testimony of . . Mrs. Barfield . . early on the morning . . she saw Monday going toward Mrs. McRea's, . . After the testimony had closed, . . counsel for the prisoner learned . . that he could prove by . . Ragan, that Mrs. Barfield was mistaken . . [676] moved the Court to suspend the case until Ragan (who was gone some four or five miles in pursuit of a runaway slave) could be sent for . . refused . . verdict of guilty . . [677] Counsel for defendant . . moved for a new trial . . Because the Court erred in not charging . . 'That prisoner's rights were to be considered with the same care . . as if he were . . white . . and the . . apprehensions of insurrection or irrepressible conflict . . must having [*sic*] nothing to do with this case,' . . [678] counsel for the prosecution, in . . argument to the jury, urging . . the irrepressible conflict as a reason . . [to] convict . . The Court charged in lieu . . 'disregard all outside considerations,' . . The motion . . was overruled."

Judgment reversed: [679] " The Court . . did right to exclude . . all allusion to the irrepressible conflict, . . [680] The testimony of . . Ragan . . was material . . the Court ought . . to have suspended the trial . . or to have continued the trial " [Lyon, J.]

*Redding Evans v. State,* 33 Ga. 1, June 1861. " Motion in arrest of judgment . . a special presentment, charging . . a free person of color, with the offense of murder, . . [2] verdict . . guilty of voluntary manslaughter. Counsel for the defendant then made a motion in arrest . . Because a free person of color cannot be legally convicted of voluntary manslaughter upon a free white person, . . overruled " Affirmed.

*Redding Evans v. State,* 33 Ga. 4, June 1861. " the accused, was the reputed son of . . Dolly Evans . . known . . as a free person of color . . half black and half white; the defendant lived with, and called Dolly Evans mother, when . . a boy, but had been known to deny that she was his mother; . . Smith, the deceased, . . was living separate from his wife; . . Evans and Smith had been unfriendly, on account of Evans' criminal intimacy with Smith's wife; . . [5] Evans had threatened to kill Smith on . . [several] occasions. . . Smith went to the house where his wife and children lived, . . as Evans approached, Smith fired . . with a single-barrelled shot gun, and wounded him . . Evans then fired upon Smith five times . . Smith was walking . . off from Evans, when the latter killed him. . . [6] verdict . . of guilty of voluntary manslaughter," New trial refused. Affirmed.

*McCurdy v. Terry,* 33 Ga. 49, August 1861. [50] " Rawlins . . was a keen, shrewd trader . . sold to Terry [in 1857] a negro man . . about fifty or fifty-five . . and worth, if sound, about $400 00 or $450 00, for . . $800 00. . . The sale . . occurred on Friday . . [51] Rawlins was to send the negro . . on the Friday following . . but in consequence of the negro's affliction with flux, or bloody dysentery . . he concluded to send the negro . . on Monday . . for fear the negro might die. . . very sick on the way . . [54] died in a week after the purchase," Verdict for Terry. New trial refused. Affirmed.

*Stancell v. Kenan,* 33 Ga. 56, August 1861. Kenan's will, 1860: [57] " I give . . to my neices [*sic*] . . a man of yellow complexion . . his wife . . a girl . . a boy, a copper color, . . [two boys] of yellow complexion; . . a man of yellow complexion . . and his wife, . . half Indian, and . . [their] son . . and direct, that out of the proceeds of their labor, they are to be fed and clothed liberally, and as they have been faithful servants . . they are to be kindly . . treated, and not to be worked cruelly . . they are to be kept together in families, unless some one of them should steal or be guilty of some other bad conduct, then . . to be sold. . . [58] at Christmas of each year, I wish a present made of five, ten, fifteen, or twenty dollars, to each . . according to their age and faithful conduct, . . All . . my wearing apparel, bedding, and bed-clothing, as my . . neices may not desire . . is to be . . divided amongst my said faithful servants,"

*Gaulden v. Lawrence,* 33 Ga. 159, January 1862. In 1855 Lawrence sold to Gaulden "a negro girl . . for . . $950 00. . . warranted . .' sound in body and mind, and a number one slave.' . . 1857, Lawrence instituted an action . . to recover the amount due . . Gaulden set up . . that the negro was unsound, . . [160] proved by two witnesses, who first became acquainted with the negro in . . 1858, and . . 1859, that she complained of pains . . was lazy . . and slovenly; . . that, with all attention and driving, the witnesses, who had charge of her, could not make her do more than half the labor of an ordinary hand of the same appearance; . . that they tried her at hoeing, ploughing, picking cotton, and other plantation work; . . unfit for a house servant."

*Cornell v. Fain,* 33 Ga. 219, March 1862. [219] "bought . . 1853, . . for $1,000, cash. Thena . . about thirty-two . . small and unlikely, and of copper color; [and her children] Antona about four . . a very likely mulatto girl, and Jane about eighteen months old and very unlikely. He sold the negroes . . for $1,100."

*John (a slave)* v. *State,* 33 Ga. 257, May 1862. [261] "a slave, testifies: . . John was telling her his troubles; that he had a wife . . that Jackson had gained her affections . . but . . [262] would meet his deserts before he died. . . [263] He said . . I don't want to murder any man, and Buckner [his master] . . would not pay five cents to save him. . . [262] After preaching, I heard John ask Jackson to go home with him." A white witness [258] "met a negro who told me . . a negro . . had been murdered. . . [259] I . . sent word to Haygood . . to meet me . . with his hounds. . . [260] blood . . on . . [John's] clothes;" Verdict: guilty of murder. New trial refused. Affirmed.

*Lamb v. Girtman,* 33 Ga. 289, June 1862. Girtman said [290] "that he gave the negroes the privilege of choosing their owner . . that he once thought of freeing them, but . . Spier told him . . he could not manumit in Georgia, and the negroes did not want to go off;"

*Henry (a slave) v. State,* 33 Ga. 441, January 1863. [446] "Prisoner and deceased belonged to . . Pace; prisoner is a blacksmith, and deceased was a striker under him; . . [447] Henry had accused him of stealing shop keys and stable keys" A slave [446] "asked him if he was going to strike deceased with the axe-handle [in his hand], and prisoner said 'no, he was going to whip him;' prisoner was drunk" [445] "he struck deceased with . . axe-handle." Dr. Gilbert "thinks the blow produced death; . . An ordinary axe-handle, in the hands of a strong man, would produce death. The skulls of negroes are thicker than those of white persons." Verdict: guilty of murder. Motion for a new trial: [443] "Because on the prisoner's asking . . whether he . . was not a blacksmith, and had control of the shop, . . the Court ruled out . . stating that a negro . . could not have control of a shop."

Held: [449] "there was no error in ruling out evidence of this fact; for if the prisoner did control the shop, such control was illegal . . [450] Believing . . that the evidence is insufficient to make out a case of murder, . . the Court . . ought to have granted a new trial"

*Tyson v. Rogers,* 33 Ga. 473, March 1863. [474] " All the able-bodied soldiers on duty, in the hospitals at Dalton, as cooks and nurses, having been ordered to report . . for active duty in the field, . . it became necessary, if the order was enforced . . to hire cooks and nurses . . and as that was impossible, the commandant . . was directed, by the Commander of the Army of Tennessee . . to impress negro slaves . . about sixty . . were impressed . . Among them was the negro of . . Rogers . . Judge Walker . . ordered the negro to be returned . . that such a case of *extreme necessity* was not made out . . as would justify . . At the time . . there was no statutory provision "

Affirmed: [475] " there was no reason why details could not be made from the army. . . It is no answer . . that the public service required that all able-bodied soldiers . . be sent to the field; because it was . . the province, of Congress to declare what was for the good of the public service, and not the commanders " [Lyon, J.]

*Watkins v. Defoor,* 33 Ga. 494, July 1863. [495] " 1857. Received of Watkins and Bullard, one thousand and fifty dollars . . for . . a woman . . twenty years of age, of copper complexion, at eight hundred dollars, . . a negro girl, two years of age, of copper color, at two hundred and fifty dollars. . . I warrant to be sound . . J. N. Defoor." " At the time . . the child had a film over one of its eyes, which destroyed the sight, and both were afflicted with . . a frequent jerking . . of the head, neck, arms and eyelids. . . congenital, and incurable. . . March, 1858, . . sold to . . Bradfield, warranting . . sound . . The child died . . December, 1858."

*Camfield v. Patterson,* 33 Ga. 561, July 1863. [563] " The applicant for the writ of *habeas corpus* . . alleges that the defendant . . enrolling officer . . had arrested him, as a conscript, . . under the Act of Congress [of the Confederate States] approved 16th April, 1862, and that he was not so subject, for . . December, 1862, he became . . overseer of a *feme sole,* on a plantation whereon are more than twenty slaves, and no white person, other than . . *feme sole,* her small children, and the petitioner; which facts entitle him to exemption, under the Act of Congress [passed October 11, 1862.] . . The defendant responds . . that . . April, 1862, . . the applicant was a merchant . . and entered into the employment . . as overseer . . seeking to secure . . exemption " Held: not entitled to exemption.

*Bryan v. Walton,* Suppl. to 33 Ga. 11, March 1864. See same *v.* same, pp. 33, 50 *supra.* [12] " The case was tried [for the third time] . . 1859, . . [16] The plaintiff [administrator of Joseph Nunez] . . introduced in evidence . . copy of . . will of Moses Nunez, the father of James Nunez . . bears date . . 1785," [24] " The old Portuguese ancestor took ' mulatto Rose ' for his concubine, acknowledged her as such in his will, (feeling no degradation by the fact,) in which he styles himself 'gentleman,' and renders thanks to the mercy . . of God ' in preserving to him a sound mind . . by which he is enabled to give freedom to . . Rose and their . . offspring, James [and three other children] . . and, also, negroes and other property, as a reward and acknowledgement of the faithful

conduct . . of . . Rose toward him and his children.' " [23] " James . . emigrated to a then distant part of the country," Witness for the defendant [15] " testified . . that he was never regarded as having negro blood in him; . . of dark complexion, with straight dark or black hair, which he wore in plaits, tied at the end with ribbons; . . that his nose was not flat, or his lips thick, . . that he had the air . . of a gentleman; . . did not associate with negroes, but with whites; . . was a graceful dancer, and attended the . . social gatherings . . from which negroes were excluded " [23] "intermarried with a very pretty white woman, . . Joseph [their son] was lighter than his father," [20 Ga. 509] " James Nunez died in 1809 " and Joseph Nunez inherited Nanny, the mother of Patience. [Suppl. to 33 Ga. 14] " Joseph Nunez left no children by any lawful wife, and the [five] children of Patience were his children, . . [16] ate, associated and slept with negroes—did not vote, serve on juries, muster, . . applied to the Inferior Court [in 1843] to appoint a guardian [Urquhart] for him, and called himself a free person of color," [15] " 20th of December, 1846, . . conveyed the negroes [Patience and her children] . . to . . Urquhart . . with a stipulation that . . [they] should . . remain in . . possession . . of . . Nunez, for . . his . . life;" He died about nine days later. In February 1847 Urquhart [15] " conveyed the negroes to . . Bryan for $1,200 00;" Verdict for the plaintiff [12] " for $6,200 00, the value of the negroes, and $3,820 00 for the hire [[15] ' worth, for hire, $450 00 per annum.'] . . motion for a new trial . . [16] overruled . . [17] 1862, the defendant brought a bill in equity, . . assigning error upon the rulings, decisions and charges . . and praying that the judgment . . be set aside and a new trial . . awarded . . [20] Walton set up a demurrer . . sustained " Bill dismissed.

Affirmed. Lumpkin, C. J.: [21] " as to the abstract justice of this case, . . [22] there never was a fairer case for doubt on the main point involved, to-wit: the *status* of Joseph Nunez. . . Let in the evidence . . of the will of old man Nunez, and there is moral, if not legal, certainty . . [24] Is it strange that persons should have mistaken the blood of James and Joseph Nunez? It is done daily in our midst. A mistress and her maid recently received Episcopal confirmation . . kneeling side by side at the same altar, boarding at the same hotel, where the latter was . . treated as a white woman by the inn-keeper and his female guests, when the latter turned out to be a mulatto, and was promptly hurled from her position of social equality. A man, at the beginning of this war, dropped into a village of . . Middle Georgia, and becoming rather famous for his pugilism, he was chosen an officer in one of the volunteer companies . . His *status* was never questioned, until, accosted rather familiarly by his *fellow-servant,* who had known him long . . an investigation was had, and Sambo was returned to his owner. Which of us has not narrowly escaped petting one of the pretty little mulattoes belonging to our neighbors as one of the family? "

*Miller v. Lewis,* Suppl. to 33 Ga. 61, March 1864. Will of Benjamin Lewis: [62] " that my place . . containing three hundred and fifty acres

. . shall be kept up by my friend, Dr. . . Miller, . . and that the following . . negroes be . . kept thereon . . Rachel and her . . [four] children, . . also, the sister of Rachel . . and her child, Tina and Tina's [two] children, . . and any other children that Tina may hereafter have. . . that said place and slaves shall belong to Dr. . . Miller, . . that the slaves shall be treated with all kindness . . and that provision shall be made for their support from the proceeds of my other property. . . placed under the exclusive management of . . Dr. . . Miller . . $1,000 00 for his trouble" Held: [66] "utterly null and void, . . [67] it was the intention of the testator . . to confer *quasi* freedom"

*Gates v. McManus,* Suppl. to 33 Ga. 67, March 1864. [68] "the detail was applied for on the ground that the applicant . . had under his control on . . plantation ten negroes, eight of whom were over sixteen . . [69] that he was also . . overseeing a farm for Mrs. . . Bivins . . on which there were eleven . . ten of whom were over sixteen . . that besides himself there was on neither place any white male adult except a very old decrepit man . . a negro foreman on each of the farms"

*Hooks v. Harris,* Suppl. to 33 Ga. 81, March 1864. Hooks [82] "being summoned . . appeared [at Macon] and claimed that he was exempt, because . . the owner of . . about one thousand and two hundred acres . . and of twenty-five . . slaves . . seventeen of whom are full working hands; that he was employed and acting as overseer . . previous to the 16th April, 1862, . . that he is now absent from home in the military service [1] . . and there is no white male adult on his . . farm who is not liable to military duty; that . . no overseer can be procured . . who is not liable to military duty;" [83] "Exemption . . is sought . . under the Act [of Congress of the Confederate States], approved May 1st, 1863, . . 'to repeal certain clauses of . . an Act to exempt . . approved 11th October, 1862.' This Act [of 1863] . . repeals the exemptions given . . to . . owners . . proceeds to grant exemptions in lieu . . 'one person on each farm . . the sole property of a minor, a person of unsound mind, a *feme sole,* or a person absent . . in the military or naval service of the Confederacy, on which there are twenty or more slaves, provided the person exempted was employed and acting as an overseer previous to the 16th April 1862,'" Held: [84] "The Congress meant . . an overseer *hired*"

*William (a slave) v. State,* Suppl. to 33 Ga. 85, March 1864. Paul, a slave, testified: [88] "Bill was foreman on the place; it is common to have them; . . they got along like brothers; so did George till they had a dispute about his wife . . Bill and Ann was never married by the book, only went to mistress and master; Ann was cook for the house. Ann, (a slave,) sworn: . . [89] the night George was killed . . defendant . . asked her if George was gone; she told him yes, . . he went on out . . and picked up . . his axe . . she heard a noise like a screaming, like somebody was getting a whipping" [85] "The jury found the defendant guilty of willful murder, but recommended him to the mercy of the Court."

[1] [83] "he proceeds under the idea that when . . [84] he repaired to Macon, he was absent from home, and in the military service."

Judgment reversed: [93] " the Court below erred in admitting the testimony of . . the wife of the prisoner." " By the 1666th section [of the Code] the marriage relation or what passes with them as that is recognized. By section 4698, the same rules of evidence must obtain in their trial, as in the trial of whites," [Lyon, J.]

*Andrews v. Strong,* Suppl. to 33 Ga. 166, March 1864. [167] " Strong . . was exempted by the Exemption Act of 11th October, 1862, on the ground that he was the owner of a plantation on which he had twenty negroes over sixteen . . and on which there was no white male adult not liable to military duty. This part . . being repealed . . May 1st, 1863, he . . applied [in September] to the president for a special exemption by reason of his being overseer of ten negroes over sixteen . . Instead of granting the exemption he was enrolled . . as a conscript, and then he was detailed as overseer for himself until further orders. . . December, 1863, Strong's detail . . [was] revoked,"

*Fountaine v. Urquhart,* Suppl. to 33 Ga. 184, March 1864. " 1836, . . Ayer and . . Urquhart entered into a . . copartnership for . . buying and selling negroes . . they had on hand twenty-nine negroes, and it was stipulated that Urquhart should render all the services in his power in procuring funds and making the purchases, . . Ayer . . the labor . . of carrying the negroes already purchased, and . . hereafter purchased, to the best market "

*Caldwell v. State,* 34 Ga. 10, November 1864. [12] " about 8 o'clock on the night . . 1864, Collier . . with his family . . was sitting by the fire . . A servant girl was spinning . . in the same room."

*Barber v. Irwin, etc.,* 34 Ga. 27, November 1864. [29] " There being on the plantation over fifteen able bodied male hands, his employer . . procured his exemption [1] as an overseer for twelve months, (not yet expired) . . He was thus exempted as a bonded overseer, and had delivered, during the year, a considerable quantity of produce to the Commissary. . . Brinson . . was, in March, 1864, . . exempted for twelve months, as an overseer upon the plantation of . . testator's minor children. . . [30] Warren . . had been exempted for twelve months . . as the overseer of . . a *feme sole,* and of . . a soldier in service." Held: [41] " subject to the military service exacted of them by the State of Georgia."

*Thornton v. Towns,* 34 Ga. 125, March 1865. Thornton " hired the negroes, and leased the plantation to the defendant for the whole period of his wife's life, . . commencing with . . 1864, . . The contract . . subjected the defendant . . [126] to be divested . . for inhumanity . . to the negroes, or for taking any of them out of the country . . The Bill [filed in January 1865] . . charges the defendant with . . cruelty . . [127] further states, that certain of the negroes having come to the plaintiff's house to spend the Christmas holidays, he . . still holds them, and that the defendant has sued out a possessory warrant to regain the possession. . . prays . . for injunction against the . . warrant; . . for . . cancellation

[1] Act of the Confederate Congress, approved Feb. 17, 1864.

of the contract; . . The Answer denies . . any inhumanity . . It answers the charge respecting . . Chena . . that Dr. Hardwick, after treating her some four or five weeks, advised that she be put to her business . . cooking, . . that she ran away that night, lay out in the woods three or four weeks with her disease [rheumatism] aggravated; and that, after lying up again three or four weeks under the treatment of the same physician, she got well, . . Golding [[129] 'about ten or eleven'] . . was whipped moderately twice, to make him tell . . who had moved him to break into defendant's smoke-house, a deed . . committed under the coercion of another negro, . . In reference to . . [128] Ellen and her child . . when she was in the field, there were, besides defendant's wife, an old negro woman and two little negroes to look after the child. Touching Julia and her child, . . he hired a nurse for it, the one selected by its parents, and after the death of the nurse, its mother had just what time she desired to attend to it; . . how often she should suckle it was left to her own discretion; . . Touching Peter . . sent out of the county, . . an order came to the Sheriff to impress one-fifth of all the able bodied negro men for public work at Anderson, . . [129] that Peter was absent three months; that in that period he ran away and came home, and was taken and sent back; . . [131] affidavits . . when . . Golding was whipped. Defendant gave him about ten or twelve licks with a small cow-hide, and witness, at defendant's request, added a few more. Witness also threatened [[127] 'in a jesting manner'] to hang him if he did not tell who was with him in robbing the smoke-house. . . Julia was allowed to nurse her child, and . . it was cared for by an old man . . hired by defendant to do so. Besides several little negroes, large enough to take care of the child, there was in the house, most of the time, a woman . . who usually kept the children in her house when the grown hands were out at work. . . [132] The child [of Julia] got burnt—witness [overseer] does not know how; . . not very serious, . . witness did not inform defendant . . [133] Dr. Hardwick . . was always sent for promptly to see the sick negroes, several times when it was unnecessary, . . [134] well fed, and not over-worked . . well clothed." Injunction refused. Affirmed.

*Hand v. Armstrong,* 34 Ga. 232, June 1866. [233] "Received, January 9th, 1860, of . . Hand, forty-seven hundred and six 50-100 dollars, . . for . . Richard, about 20 . . Tona, about 23, and Catharine, about 19 . . I warrant . . that they are slaves for life. . . Armstrong." "action . . by Armstrong . . to recover the amount of two promissory notes covering the purchase money . . verdict . . for the whole sum claimed"

Judgment affirmed: [236] "No words implying a future state . . are used; . . [237] the loss occasioned by . . action of the Government . . [must] fall . . upon [Hand] the party who owned the property . . at the time of emancipation."

*Freeman v. Bass,* 34 Ga. 355, June 1866. See Bass *v.* Freeman, p. 95, *infra.*

*Moore v. Colly,* 34 Ga. 375, June 1866. [376] "proved acts of unchastity . . with negro women . . one of them . . resulting in pregnancy."

*Bass v. Ware,* 34 Ga. 386, June 1866. "Received . . forty-four thousand dollars . . for . . negroes . . which . . I do hereby warrant . . to be slaves for life. . . January, 1857." Held: emancipation by the government is no defence to the note.

*Cobb v. Battle,* 34 Ga. 458, June 1866. Bailey's will, 1861: [460] "I will [the residue] . . unto my . . nephew, Lawrence Battle, to be his absolutely. . . As to the following . . negroes, . . my house servant Adeline and her child Tolbert [*sic*] have been good, trusty, and faithful . . it is my wish . . that . . Adeline shall not be separated from her child . . and . . that . . Battle . . shall . . see that they are as comfortably provided for as their condition in life and their conduct . . will justify. I wish him to treat them just as he may . . think I would treat them" [474] "The testator, an old bachelor, under prosecution for killing a negro in 1861 . . [475] disclosed to his attorney his wish to manumit . . Adeline and her child, to leave with her a negro, and to set apart $20,000 for their use . . and for the education of Talbot, and at the death of Adeline the whole to go to Talbot . . the acknowledged child of Bailey . . six to eight years old." His attorney [465] "told him that he could not emancipate . . He then asked if he could not direct in his will for them to be . . settled in another State. I told him . . that an Act of our Legislature [1] . . declared all such clauses void, but that he could settle them in another State before he died." A witness testified: [468] "Adeline staid about the house and superintended the milking, weaving, etc.; had known him [testator] to whip her, . . not her as much as some of the rest;" [475] "In 1863, a short time before his death, he said to another witness, that Lawrence had promised to carry out his wishes." [464] "Battle . . put . . [Adeline] in the possession of the keys, and . . his . . sister did not like it." He [476] "had lived with [the testator] . . for years;"

Held: [477] "Bailey's statements sufficiently established a parol trust, as to placing Adeline and Talbot in a condition at variance with then existing laws, and setting apart $20,000 . . for them. That trust is void; . . [483] Whilst it is true that the recognition by the convention in Georgia, in November, 1865, of the abolition of slavery, *thenceforth* swept away, at a blow, all laws in reference to negroes as slaves, their freedom began then: it did not . . acquire any relation back. . . at the death of Bailey, these slaves had no legal capacity to . . receive property" [Harris, J.]

*Faulkner v. Ware,* 34 Ga. 498, June 1866. "The note bore date January 28th, 1862, . . for the hire of a negro man . . that year; and the maker (the defendant below) stipulated therein to furnish the negro ordinary clothing, shoes, and bed covering. . . the negro revolted, knocked the defendant down with an axe, and ran away, . . April, 1862, and afterwards rendered him no service whatever"

*Middlebrook v. Nelson,* 34 Ga. 506, June 1866. [507] "The note sued on was given for the hire of a negro man, . . dated January . . 1861,

[1] Act of Dec. 14, 1859.

. . in February, 1861, . . he was accused of committing a rape, or attempting to commit a rape, on a white woman. Witness and . . Spence went to the house of defendant to examine . . negro, and tied him. . . defendant . . requested them to allow him to send for the plaintiff, the owner . . Plaintiff took control of him and sent for the magistrates. The negro was put in jail, from which he was forcibly taken ['by a mob'] and burnt to death . . February, 1861. . . [508] the verdict of the jury . . was for the full amount of the note"

Judgment thereon affirmed. Lumpkin, C. J.: "It is a hard case on Mr. Middlebrook [defendant]; and we feel it the more, as, had the Code [1] been in force at the time the negro was put to death, Middlebrook would have been relieved."

*Amos v. State,* 34 Ga. 531, June 1866. "Indictment [in 1864] for Furnishing a Slave with Spirituous Liquors. . . [532] saw a negro . . taking a drink out of a decanter, and saw him hand the defendant a $2 bill, Confederate money. Defendant returned $1 in change, and the negro said he would take another drink," Convicted.

*State v. Berry,* 34 Ga. 546, June 1866. Held: a recognizance given by a master for the appearance of his slave to answer a criminal charge, is not operative since the abolition of slavery.

*Suttle v. Caldwell,* 34 Ga. 551, June 1866. [553] "He . . removed to Texas in . . 1857, and then took off with him eleven of the negroes,"

*Riley v. Martin,* 35 Ga. 136, December 1866. [138] "Riley, as Deputy Marshal . . levied an execution . . upon a negro, as the property of John Martin, . . induced to make this levy by Durham, the security of John Martin, giving him a mortgage [upon negroes] to indemnify him . . James E. Martin [the true owner] . . repurchased the negro at the Deputy Marshal's sale" August 8, 1860, for $1000, and "brought Trover [in 1866] against Riley, to recover the value of his property thus taken" "The jury found for the plaintiff one thousand dollars, with interest from August 8th, 1860."

No error. Lumpkin, C. J.: "The conversion of Riley being previous to emancipation, he . . must pay the value . . James E. Martin, having repurchased . . [139] loses the negro by freedom; and Riley the benefit of his mortgage taken from Durham. So that manumission is not only a *two-edged* sword, but rather like the flaming sword placed at the East of the garden of Eden, at Adam's expulsion, *turning every way* towards the community."

*Comas (a person of color) v. Reddish,* 35 Ga. 236, December 1866. Comas, "while a slave, took for his wife another slave, his owner and hers both consenting, . . she bore five children, one of whom was . . Henry, now thirteen or fourteen . . He then abandoned this woman, and took up with another; after which, the mother of Henry died. Henry became the slave of the defendant in error, and after emancipation, remained with him until about September, 1865, when he left and went to

[1] Sect. 2066.

. . his father . . (a man of good character for honesty, industry and morality, and abundantly able to support his family,) . . In May, 1866, the Ordinary . . without the knowledge of Henry or of his father, bound out Henry to the defendant in error, as an apprentice;[1] and indentures . . were executed . . in which the Ordinary recited . . that it had been made to appear . . that Henry was without any parent residing in that county, and without means for his support and education. . . Henry's father . . [237] September following . . sued out a writ of *habeas corpus* . . Judge Sessions . . awarded the custody . . to the defendant in error."

Judgment reversed: [238] "The testimony . . shows . . the strongest reasons why . . [the Ordinary] should not have yielded to the wish of Reddish" [237] "It should be borne always in mind . . that slavery is with the days beyond the flood; . . [238] and that *its continuance will not by any honest public functionary be tolerated . . directly or indirectly.*" [Harris, J.]

*Railroad Co. v. Pickett,* 36 Ga. 85, June 1867. "Trover. . . Amanda . . was a good cook, washer, ironer, seamstress, and house-woman, worth $2,500.00, and worth for hire $150.00 per annum. In . . 1860, Amanda went away on the . . Railroad, and remained away a year and a day, . . brought back by the agents of the Company. . . Witness [her former owner] went to Macon in pursuit of her, at an expense of fifty dollars. . . [86] that she was as white as himself . . and that no one who did not know her . . would have suspected that she was a slave; . . that she paid . . for the ticket which she had. . . verdict for $207.00, with costs."

No error: [87] "However white . . we have no power to regard that fact as excusatory . . This is . . a hard case on the Railroad Company; but such an one cannot, since the abolition of slavery, occur again." [Harris, J.]

*Floyd v. State,* 36 Ga. 91, June 1867. "Whilden . . asked Floyd if he had been accusing him of collecting money for his (Floyd's) slave and stealing it. Floyd said he did. . . Whilden struck . . Floyd stabbed him"

*Tucker v. Toomer,* 36 Ga. 138, June 1867. [139] "The mortgagor [Tucker] . . showed . . partial failure of consideration . . that . . bond was given for ninety-one . . slaves sold by [Toomer of South Carolina] . . to [Tucker] . . 1857, and [[37 Ga. 442] 'Tucker executed a mortgage on the slaves . . as cumulative security;'] that on the 11th December, 1864, said slaves . . were captured by the military forces of the United States . . and emancipated and set at large . . and . . in . . 1865, by the concurrent action of the Governments of the United States and the State of Georgia, said capture and emancipation . . were legalized," [156] "The negroes were allowed to remain with the mortgagor at his own request," Held: [155] "the legal title vested in the mortgagee by condition broken does not create that absolute ownership which would cost the loss by emancipation on him."

*Adams v. Adams,* 36 Ga. 236, June 1867. *Habeas corpus.* "the petitioner . . swore that he was the father of said minors . . that he, they,

[1] Act of Mar. 17, 1866.

and their mother belonged to . . defendant while in slavery; . . [237] that when the children . . were born, witness had a wife at . . Pearson's . . and . . went to see that wife Saturday nights; that when the two oldest children were born their mother had no husband, but habitually slept with witness . . that after the birth of the two oldest their mother married another man, named Taylor . . but during this marriage witness continued to sleep with said mother as before, and before the youngest . . was born, . . Taylor died; . . that while witness and said mother were cohabiting, witness' wife was sold and carried away, and witness married another woman . . and lived as her husband till she bore a mulatto child; then witness quit her and married the said mother . . and lived with her till her death"

*Rutherford v. Newson,* 36 Ga. 246, June 1867. [250] "hired Joe in 1853 . . as a diseased or unsound negro, was to pay . . ten dollars per month, deducting for all lost time on account of Joe's sickness or from Joe's running away—Joe ran away for one week"

*Odom v. Odom,* 36 Ga. 286, June 1867. "Divorce. . . The libel charged . . [287] that he had been guilty of adultery with his slave Hester. . . [302] she . . told the children [her step-children?] that Hester's child was their sister; . . [305] she accused him . . [306] of adultery with other negroes,"

*Lewis v. Whidber,* 36 Ga. 371, June 1867. "1857, the slave of Mrs. Whidber was killed . . by the cars . . [376] The jury found for the plaintiff $1,200 damages with costs." New trial refused. Affirmed.

*Brown v. Railroad Co.,* 36 Ga. 377, June 1867. [378] "Plaintiff's slave was a valuable painter, worth for hire three dollars per day, was carried . . to Macon . . on defendant's cars, without permission . . of Brown; he stayed away about six weeks; Brown went in pursuit . . and sent . . Atkinson to Memphis for the slave, who paid his jail expenses, and brought back the boy and the white man who stole him."

Held: I. [379] "In the absence of a written permit . . the Road had no right to receive the negro on board its cars,[1] . . [II.] Plaintiff was entitled to recover as damages, not only the hire . . with interest . . but . . also . . the reasonable . . expenses incurred in reclaiming him."

*Bass v. Freeman,* 36 Ga. 435, June 1867. "1858, . . Bass bought in . . Arkansas, from . . Freeman . . land . . and seventy-three slaves. He gave . . his promissory notes . . [436] Freeman gave him a bill of sale to said . . 'slaves for life,' . . Bass plead that the consideration . . had wholly failed . . [437] evidence . . that in 1862 defendant brought said negroes from Arkansas, when the Federal army overrun that State, to Georgia, . . were in defendant's possession 'till they were emancipated by the military authority of the United States in April, 1865,' . . [439] The Court . . charged . . that . . 'such emancipation was the loss of the defendant'" Affirmed.

[1] Act of 1850. Cobb 399-400.

*Martin v. Bartow Iron Works,* 35 Ga. 320, September 1867. Action of debt. On January 6, 1864, Hightower, superintendent of the Bartow Iron Works, promised Ann V. Martin of Mississippi three thousand dollars for [321] "the hire of twenty negro men to work . . at the Iron Works in Bartow county, Georgia, for the year 1864, and that it was agreed . . that if the Federal army approached near said county, defendant [Hightower] was to remove these hired men and their families, at the expense of plaintiff, and that no hire should be paid for the time lost by reason of said removal. . . that the contingency thus provided for happened, and that he removed them to Macon, Georgia, and that there they were taken possession of by the authorities of the so-called Confederate states, and that he received no hire nor other benefit from their services. . . [327] The eighth plea alleges that the consideration for the promise was illegal—being contrary to the public policy of the government of the United States; that it was made for the hire of negroes as slaves, and . . that it was a part of the consideration of the contract, that the defendant was to remove said negroes, and keep them removed from the territory within the lines of the Federal army, with a . . design of preventing their liberation from their former state of servitude,"

Held: [329] "It needs no argument to show that this agreement was in contravention of the previously settled policy of the government, and wicked in itself. . . [330] Judgment. *Nil capiat*" [Erskine, J.]

*Burts v. Duncan,* 36 Ga. 575, December 1867. "Martin . . sold Violet in Mississippi [his residence], and in 1851, brought the others to Georgia, and sold them"

*Haslett v. Harris,* 36 Ga. 632, December 1867. "On the first . . April, 1863, Harris sold to Haslett, a negro . . 'and title of said negro girl, I warrant and forever defend,' and took in payment . . obligation for twelve hundred dollars, . . Haslett plead . . that the girl was only worth $240, that the contract was within the scaling ordinance, . . verdict for plaintiff for $292.66, with interest and costs. . . Haslett also plead that, by virtue of the proclamation of the President . . 1st January, 1863, said negro became free . . no longer subject matter for sale, . . demurrer . . sustained"

Affirmed: [634] "While [Cobb *v.* Battle [1]] . . may not be precisely in point, yet the principle is the same," [Walker, J.]

*Manufacturing Co. v. Dykes,* 36 Ga. 633, December 1867. Bill of sale, April 24, 1865: "I have this day . . sold . . to . . Dykes, nine slaves . . and the title I will warrant and defend" [634] "Defendant . . proved that the federal army reached Macon . . about the 20th April . . and Hawkinsville . . early in May; that he . . was at the date of the obligation, ignorant of the fact that the slaves had been manumitted by the proclamation of the President . . that after said army reached Macon, these negroes were valueless, because they could not be controlled." Ver-

[1] P. 92, *supra.*

dict for the defendant. Error: [635] "We do not hold that negroes were freed in Georgia on the first of January, 1863."

*Whatley v. Slaton,* 36 Ga. 653, December 1867. Will, executed November 1864: [654] "I direct my Executor, in the sale of my negro property, not to divide the families, but to settle families together."

*Markham v. Brown,* 37 Ga. 277, December 1867. "1863 . . made a small-pox hospital of . . [his] premises, . . and that a slave belonging to him . . contracted small-pox and died"

*Wilkes v. Hughes,* 37 Ga. 361, December 1867. [362] "defendant hired Ben . . 28th December, 1864, until the 25th December, 1865, at public outcry, at $301.00, to be paid in Confederate money . . eleven dollars per month in present currency. . . negroes ceased to be used as slaves about the first of June, 1865. . . witnesses . . put the monthly hire at $7.00 or $8.00 per month, in United States currency. . . The jury found for the plaintiff for $40.00 [legal tender paper currency of the United States] and interest."

[364] "we affirm the judgment . . apportioning the hire" [363] "By a force not to be resisted . . the hirer . . lost . . the services . . [364] his defence [is] clearly within the provisions . . of the Code,"[1]

*Holmes v. Railroad Co.,* 37 Ga. 593, June 1868. "sued . . for killing a slave (in July, 1854,)" [596] "evidence . . that the negro was lying down on the track," Held: "The facts . . show the exercise of all ordinary . . care"

*Caruthers v. Corbin,* 38 Ga. 75, June 1868. [82] "In 1834, John J. Saylor, . . of . . South Carolina, made his will, . . provided for the practical emancipation of six . . favorite slaves, and made sundry bequests in their favor. . . the other bequests were made conditional upon all the beneficiaries . . aiding to effectuate this object. . . [85] the specific devises in favor of . . negroes . . [were] strictly carried out . . [86] this portion . . by the laws of that State, . . in 1835, was invalid; . . could not have been enforced, if resisted," [Walker, J.]

*Kimbrough v. Worrill,* 38 Ga. 119, December 1868. "March 14th, 1868[?]. Rec'd of . . Kimbrough eight thousand dollars . . [for] a man about twenty-four . . black, . . a woman about twenty-nine . . dark, copper-color, which . . I . . warrant . . slaves for life, said negroes being now runaway. I also warrant their recovery in six months . . if not . . I am to refund said amount, in the new issue of Confederate notes . . 1st of April next"

Held: [120] "not a suit on a contract, the 'consideration' of which was a slave[2] . . The 'consideration' . . is the money paid . . which Worrill was to pay back . . in a contingency which has happened."

*Lamar v. Glawson,* 38 Ga. 252, December 1868. "complaint by . . Glawson . . upon an account for 'services as an overseer, from January

[1] Sect. 2066.
[2] Constitution of 1868, art. V, sect. 17.

1st, 1860, to January 1st, 1861, $550 00.' . . [253] the highest wages of any person known by witness as overseer in the county; . . Miss . . Lamar . . testified . . During Christmas-week of 1859, the negro man and some of the women came from the plantation, and told her mother, defendant, that they would not stay there, if plaintiff was employed as overseer . . witness' brother came from New York, on the first day of January, 1860, and he, learning the state of matters . . went to the plantation on the second . . paid plaintiff and dismissed him."

*Cutts v. Hardee,* 38 Ga. 350, December 1868. [353] "one hundred negroes, worth $100,000 00, were manumitted, and the property therein destroyed;"

*Green v. Anderson,* 38 Ga. 655, June 1869. The will of Augustus H. Anderson, 1853, [656] "gave to . . two old slaves, $20 00 each, per annum, and provided for their kind treatment. *Item 6th* . . 'I . . direct that my executors cause to be removed to a free State, and there emancipated, John, son of . . Louisa; . . pay the expenses of such removal, and for the reasonable support and schooling of . . John, until he is put to a trade, and . . when, if he do, reach . . twenty-one . . invest . . for his benefit . . three thousand dollars . . [*Item 7th*] that . . Louisa . . shall be kept at my . . plantation till . . 1875, . . kindly treated and provided for, . . employed as a seamstress as heretofore, . . be paid . . annually, until that time, . . fifty dollars, if she choose then (in 1875) to go to a free State and be emancipated, my executors are directed to carry out her determination, and to invest . . for her use . . two thousand dollars . . the interest of which she is to receive during her life, and then . . John . . to have the benefit . . absolutely. If . . Louisa shall determine not to go . . I give her to my son-in-law . . if then in life, or if not, to any one of the . . descendants of my daughters . . that said slave may select' . . $100 00 per annum till . . 1875, to pay a missionary for his slaves. . . [658] Green, alone of . . executors, qualified as such. . . in [November term] 1855 there was a decree . . that Green . . should . . 'make such . . investment for the slaves, . . and such disposition of them as will substantially carry out the provisions of the will' . . sell all the land . . Green . . bought most of it himself . . he paid Louisa nothing. She died in 1858 or 1859. He did not execute the will as to John, but he was kept in Georgia and used as a slave until slavery was abolished. He became of age in [February] 1862. . . [John filed] his bill for account against Green . . in April, 1868, . . [659] Judge Gibson overruled the demurrer as to John's claim under the 6th item,"

Affirmed: [660] "this was a legal bequest, and . . constituted a legal trust, . . [661] It ought to be executed, . . But it is insisted that the changed condition of the country, renders it impossible . . as John has become free in Georgia, and no one has the right to compel him to go to a free State, . . [662] It is true, the will cannot now be literally executed. By the neglect of the executor, to use the very mildest term, John was not permitted to go to a free State while a minor . . But soon after he came of age, the free state, by the results of the late unfortunate

civil war, came to him. . . he now has the right, in a Court of Equity, to call the executor to account, . . and to recover, not only the legacy . . but such reasonable . . compensation for the support and education . . as may be found to be due" [Brown, C. J.] See Anderson *v.* Green, p. 104, *infra.*

*Shorter v. Cobb,* 39 Ga. 285, June 1869. "note . . 1861 . . given for slaves." Held: [286] "the Courts of this State have [no] jurisdiction to enforce the collection . . [296] Soon after the surrender, the President . . required the Conventions . . to insert in their State Constitutions a clause abolishing slavery, without any provision for compensation . . The result . . was the destruction of nearly half the taxable property of the State. . . [298] What solid distinction . . can be drawn between the right of property in a slave, and . . in a note given for the same slave? . . [303] the Constitution under which we now live . . is the Constitution . . approved by the Congress of . . the conquering power . . [304] If then the obligation of the contract . . to pay money for slaves has been impaired, it was done by Congress . . and there is no violation of the tenth section of the first article of the Constitution of the United States, which does not apply to Congress." [Brown, C. J.] Warner, J., dissented. See White *v.* Hart, p. 103, *infra,* overruling this decision.

*White v. Hart,* 39 Ga. 306, June 1869. See same *v.* same, p. 103, *infra.*

*Adams v. Jones,* 39 Ga. 479, June 1869. [488] "that Melinda was a runaway, in chains, when he bought her [in 1849], and that he soon sold her; she was barren."

*Arnold v. Trice,* 39 Ga. 511, June 1869. [515] "Two hundred acres . . are sold in October, 1864, for a negro fellow, within a month before Sherman swept as a besom of destruction through the State . . when a negro fellow was not, in any portion of the State, worth fifty dollars in gold." [514] "he went off with Sherman's army,"

*Berry v. Railroad Co.,* 39 Ga. 554, June 1869. "Berry brought case . . averred that . . Berry's slave . . June, 1862, . . employed . . as a train hand, was, by the carelessness of the defendant's . . employees, killed" Held: [556] "the cause of action . . was a debt, and as the whole consideration was a slave, . . the Courts . . have . . no jurisdiction to enforce it."

*Redd v. Hargroves,* 40 Ga. 18, December 1869. Will of Owen Thomas, which was executed in 1852: [19] "*Item 3d.* I desire that . . Griffin and his wife Esther, and their chlidren . . and such as they may hereafter have, (and others with their children born or to be born, naming them,) . . be conveyed to Liberia, or any other free State . . into which they severally elect to go, and in which they may lawfully reside, and there . . manumitted . . *Item 4th.* I desire all the residue of my negroes, my lands . . and property of every kind sold . . and the proceeds . . disposed of as follows . . payment of debts, the defrayal of the ex-

penses . . and the residue by eventual division among my negroes who shall thus become free. *Item 5th.* . . I give to Griffin ( the father) and Maria, each, . . $2,500 00, . . additional to, what they receive in common . . These . . sums being abstracted . . I wish the remainder divided into as many parts as there are freed negroes . . and one part paid to each person eighteen years of age, on . . arrival in . . new home, . . and the remaining parts divided among the parents . . in the precise proportion the several families of children [bear] to each other." Thomas died in 1868, [21] " without having ever married," The court charged that these items were void.

Reversed: the act of 1859 did not [24] " have a *retroactive* operation so as to defeat the *legal* expressed intention of the testator . . [26] it is the duty of the Court to carry into effect *that intention,* which, under the present . . laws . . can as well be done *here* as in Liberia," [Warner, J.] See Hargroves *v.* Redd, p. 102, *infra.*

*McAffee v. Mulkey,* 40 Ga. 115, December 1869. Action of deceit. Mulkey, the plaintiff, traded a house and lot, worth $1000, for Ann in December 1862. Mrs. McAffee [117] " did not wish McAffee to sell Ann . . [He] was then asked to let [plaintiff] . . have another of . . [three] women [offered for his selection] and consented, but upon that woman saying she would not go with plaintiff, defendant said, ' you see I have done all I can,' and plaintiff said no more." McAffee warranted Ann [116] " sound . . up to that date . . she . . died February, 1863, . . [from] [117] an abcess of the lungs which must have been some time in forming, . . [118] The jury found for plaintiff $1,100 00, with costs." New trial refused: [119] " The Court had jurisdiction "

*King v. State,* 40 Ga. 244, December 1869. [245] " Bigamy. . . that Stephen King and Nancy Moreland [colored persons], in 1864, took each other by the hand, in presence of witnesses, and said they were husband and wife; that at the end of the war he left her, . . January, 1866, . . he went back, and took her with him . . slept with her . . but did not recognize her as his wife more than he did the other women; . . paid her for washing for him . . before he married Henrietta Grubbs, he conferred with a Justice of the Peace, who told him that he did not know that he could be punished if he married again. . . His counsel objected . . [246] to the evidence of cohabitation since the war . . overruled . . found guilty."

Error: the act of March 7, 1866, [248] " legalizes, for all civil purposes, the marriages of persons of color living together at the date of that Act. But if, on the publication of that Act, such persons should immediately have ceased to live together as man and wife, we do not think it . . bigamy . . to contract a subsequent marriage." [McCay, J.]

*White v. Ross,* 40 Ga. 339, December 1869. [340] " Alfred Ross . . averred that he was the illegitimate child of . . a negro . . who died intestate [in July 1866], leaving . . $6,000, and no heir but his wife . . not Alfred's mother . . and himself; that . . [the intestate]' always owned, recognized and treated Alfred as his son ' . . that said property was ac-

cumulated by the labor of [intestate] . . assisted by . . Alfred;" Held: [341] " the right of the complainant to inherit, as the legitimate child . . was . . vested in him under the " act of March 9, 1866. The act of December 12, 1866 [342] " did not defeat . . his right "

*Cobb v. Moriss,* 40 Ga. 671, June 1870. " June 1859, . . became partners as negro-traders. . . June 1860 . . new articles of partnership. . . July 1864 . . a bill . . to compel . . settlement of said business "

*Pascal v. Jones,* 41 Ga. 220, June 1870. " Dinah and Hector . . had been slaves, lived together as man and wife and had . . a boy, now ten or eleven . . After the birth . . they separated . . though belonging to the same master and living at the same place [near Columbus.] . . About the time of the surrender . . without Dinah's consent, Hector carried . . boy to Dougherty county. . . 1870 . . he went into Dinah's possession. Hector privately and violently took him away . . Since emancipation Hector has taken another wife, and Dinah another husband "

Held: [221] " the child . . is, under the Acts of 1865,[1] and the Act of 1866,[2] the legitimate child of Hector Jones. . . Both the parents stand unimpeached as to their industry and morality,"

*Thornton v. McLendon,* 41 Ga. 263, June 1870. " 1861, to the 1st of January, 1865, . . [264] he . . charged work as it was reported to him by his blacksmith,"

*Washington v. Barnes,* 41 Ga. 307, June 1870. [309] " The negro . . was never a slave. He was kidnapped when a boy, and brought from the District of Columbia to Richmond county, and forcibly held as a slave by . . intestate [Walton], who annually received large sums for his hire. At length he raised $1,200 00 and procured . . Moore . . to pay this to intestate, and take a bill of sale . . In 1853 he was adjudged free (because free-born) in the District Court of said District, returned to Richmond county, was registered as a freeman of color ". In 1867 he filed his action against Walton's administrator [367] " upon . . open account . . 1849. . . For twelve hundred dollars . . [308] Work . . done, and money . . paid to . . Walton . . $4,000 00 . . Walton died between September, 1849 and the 14th of January, 1850," The administrator " filed no defense. . . 1868 . . [the negro's] attorney took a verdict against . . administrator, for . . $5,200 00 and entered a judgment for that amount . . against him . . Barnes [surety for the administrator] filed his bill for an injunction . . [309] This judgment was taken . . in violation of General Order No. 37,[3] of Major General Meade . . [310] The injunction was granted,"

Affirmed. McCay, J.: [314] " The presumption of fraud and collusion between the plaintiff in this judgment and . . the administrator, is almost conclusive."

[1] Acts of 1865 and 1866, pp. 239, 240.
[2] Acts of 1866, pp. 156, 157.
[3] " Said Order . . at the instance of the Convention of Georgia, temporarily put in force certain parts of the Constitution . . not then ratified . . 'No Court . . shall have jurisdiction to try . . any suit . . upon any contract made . . prior to . . June, 1865.' "

*Bugg v. Towner,* 41 Ga. 315, June 1870. [316] "Towner brought ejectment against Bugg. . . 1863 . . he left the country, leaving Bugg, as his slave, in possession, . . when he returned, after emancipation, [Bugg] refused to give him possession. . . The defense offered to show . . that . . Bugg was about to be sold and begged Towner to buy him, let him repay the price and then be actually free, though nominally Towner's slave; . . agreed . . Bugg repaid . . and that Towner agreed to buy this place for Bugg, let Bugg pay for it, . . that Bugg did so pay . . All this testimony was ruled out, upon the ground that . . a slave . . could not . . contract. The plaintiff had a verdict for the premises" New trial refused.

Judgment reversed: [318] "the Courts . . will leave the parties where they find them" "plaintiff . . undertook to emancipate . . in this State . . illegal transaction, in violation of . . public policy . . at that time." [Brown, C. J.]

*Fisher v. U. S.,* 6 Ct. Cl. 235, December 1870. [236] "eight bales of upland cotton, captured at Savannah [December 1864], amounting to $2,120 40. . . [237] procured in exchange for two negro men, . . in the fall of 1863,"

*Mills v. U. S.,* 6 Ct. Cl. 253, December 1870. [254] "in Savannah, . . at the outbreak of the rebellion, . . [255] The captain of a British ship was tarred and feathered for favor shown to a negro man. A Yankee school-master was treated in the same way."

*Ellis v. Rachels,* 42 Ga. 175, January 1871. Truitt's will, 1858: "I give . . unto my . . friend . . Ellis . . my [eleven] old and faithful slaves . . three good mules, . . wagon, six months supply of provisions, and two hundred acres . . after the death of my wife . . in trust . . for the purpose of providing for . . them . . [176] slaves to be kindly treated . . and to . . cultivate said land for their support." Testator's wife died in 1860. In 1869 Ellis "filed his bill . . concluded with a prayer for a decree . . to secure . . rights of said negroes." Bill dismissed. Affirmed: if a legal will, [179] "it cannot now be enforced."

*Godfrey v. Walker,* 42 Ga. 562, January 1871. [567] "1845, the trustees of the Methodist Episcopal Church, of Savannah, made a deed to the trustees of the Methodist Episcopal Church, South, to a . . lot . . in trust, upon . . conditions . . that such trustees were to erect . . a house of worship for the use of the colored members of the Methodist Episcopal Church, South, . . called it Andrew Chapel. . . within the protection of the General Conference . . until the capture . . of Savannah . . In the convulsion of public sentiment . . several of the members of Andrew Chapel joined the African Methodist Episcopal Church, and . . the Trustees . . [568] permitted the occupancy . . for public worship, which was continued by the members of the new organization"

*Hargroves v. Redd,* 43 Ga. 142, January 1871. See Redd *v.* Hargroves, p. 99, *supra.* [144] "To the grounds of *caveat* set forth in the original case, were added several others . . [145] executor . . swore . . that in

conversations after the war . . Thomas denounced, with bitter curses, his negroes, saying that they had abandoned him when set free, and left him to starve in his old age, knowing as they did, what he had intended to do for them if he could have had his own way. . . [146] said he was glad the will was no account, and that he would never give them a cent. He praised Margaret, and said she had been very kind to him; but he cursed Jim, her brother, above all the rest, because Jim . . had brought him before the military bureau, charged with stealing his jewelry. . . [148] Thomas was discharged for lack of any evidence against him." [147] " Witness gave the will [' the same paper propounded '] to Margaret, stating to her to keep it; it might benefit her some day. . . [149] The paper was . . established as the will " Affirmed.

*Ayer v. Cochran,* 43 Ga. 459, July 1871. " that he lost $73,500 00 by the emancipation of the slaves "

*Collins v. Collins,* 44 Ga. 128, July 1871. [45] " in the fall of 1863 . . bought . . two slaves at $5,000 00, Confederate valuation, to be paid for in pork . . and partly in cotton "

*White v. Hart,* 13 Wallace (80 U. S.) 646, December 1871. The plaintiff brought suit in 1866 [647] " upon a promissory note made to him by the defendants . . for twelve hundred and thirty dollars, dated . . 1859, and payable . . 1860. The defendant pleaded [in 1869 [1]] . . that ' the consideration of the note was a slave,' and that ' by the present Constitution of Georgia,[2] . . adopted since the last pleadings in this case, the court is prohibited to take . . jurisdiction . . therein.' . . the plaintiff demurred. The court overruled the demurrer and gave judgment for the defendants. The plaintiff excepted and removed the case to the Supreme Court of the State, . . affirmed, . . the plaintiff thereupon prosecuted this writ of error."

[654] " Judgment reversed and the case remanded to the Supreme Court of Georgia, with directions to proceed in conformity to this opinion." [651] " At no time were the rebellious States out of the pale of the Union. . . Their constitutional duties . . remained the same. . .[652] a State can no more impair the obligation of a contract by adopting a constitution than by passing a law. . . [654] when the contract here in question was entered into, ample remedies existed. All were taken away by the proviso in the new constitution. . . The proviso . . is . . a nullity." [Swayne, J.] Chief Justice Chase dissented.

*Mitchell v. McElvin,* 45 Ga. 558, January 1872. [559] " Simon Bisset was born . . about fourteen years before the trial; . . his mother . . and his father . . were the slaves of different masters, but lived together as husband and wife, after the manner of slaves, for many years . . just before the close of the war . . [the father] having become involved in a difficulty, had to run away, and when he returned his wife refused to live with him. When the Federal army passed through . . [the mother] and

[1] Same *v.* same, 39 Ga. 306.
[2] Constitution of 1868, art. V, sect. 17, par. 7.

her children moved . . about three years before the trial, . . [the father] went . . to see his former wife, and offered to help her take care of the children, saying that he had married another woman; . . [the mother] consented that he should take the two boys," In 1871 she made a deed of apprenticeship to McElvin.

Held: [560] "A colored child, born before the 9th day of March, 1866,[1] within what was regarded as a state of wedlock between its parents, while slaves, and . . acknowledged by its father, is the legitimate child of both parents. If the parents separate before that date, and the child remained with the mother, she is entitled to the control . . during minority. But if she voluntarily yield the control to the father . . she cannot afterwards resume the control without the assent of the father, no reason being shown why the father should not retain the custody"

*Houston v. Davidson,* 45 Ga. 574, January 1872. "about the commencement of this century, . . a free person of color, became the mother . . of . . [six] children, . . [One of them] [575] acquired considerable personal and real estate, and . . died in 1862 [?] . . 1860 [?] [the administrator] . . sold the real estate for . . $10,000"

*Colquitt v. Tarver,* 45 Ga. 631, July 1872. Tarver's will, 1850: [637] "that my executors should set apart ninety negroes . . for each of my . . [two] children, . . [638] to be selected by my executors, in families, as near, as it can be done, so as to be equitable."

*Green v. Lowry,* 46 Ga. 55, July 1872. [62] "My means of support [in November 1863] was from the labor of my negroes; we had thirty-nine . . outside of the lines, hiring for about five thousand dollars per annum;"

*Anderson v. Green,* 46 Ga. 361, July 1872. See Green *v.* Anderson, p. 98, *supra.* [367] "The jury returned the following verdict: . . '$5,000 with . . interest thereon from . . November, 1855, for the complainant, John Anderson, to be raised out of the estate of A. H. Anderson, . . in the hands of . . Green, executor.' . . [368] The defendant moved for a new trial upon . . thirty-seven [grounds.]" New trial ordered.

Judgment reversed: [382] "The verdict . . [383] being just such . . as should have been rendered . . we are of opinion that the complainant is entitled to a judgment thereon *de bonis testatoris et si non de bonis propriis.* . . We do not think $5,000 with interest . . an unreasonable price for twelve years of slavery, a deprivation of education, and three thousand dollars . . and the interest . . from February, 1862, . . Nor are we prepared to say that he was not entitled to the $2,000 left to his mother for life," [Montgomery, J.]

*Bennett v. Williams,* 46 Ga. 399, July 1872. Cotton's will, dated 1850: [400] "I give . . Jones at the death of my wife . . two lots . . on the trust . . profits to be applied to the benefit of . . old Perry, his wife . . and their grand-daughter . . a mulatto girl," The testator died in 1859.

[1] Acts of 1865 and 1866, p. 240.

Held: [401] " null and void . . in the very teeth of the provisions of the Act of 1818,"

*Lindsay v. Railroad Co.*, 46 Ga. 447, July 1872. " 1864 . . train was backing . . plaintiff . . about ten years old, got on platform . . a negro man emerged from the car . . and asked . . what he was doing there? Plaintiff replied, 'Is that anything to you?' The negro said, 'Yes, I have charge of this car,' . . told plaintiff he must get off; plaintiff told him he would not, . . the negro succeeded in pushing him off,"

*Dennis v. Weekes*, 46 Ga. 514, July 1872. [519] " he was the enrolling officer . . 1863 and 1864 . . duty to grant details of overseers on plantations having twenty . . slaves working thereon, and . . no white man residing thereon competent to manage . . Stallings was of unsound mind . . detail was granted "

*Redd v. Railroad Co.*, 48 Ga. 102, January 1873. [103] " The negro [worth $2000] . . August 14th, 1861 . . accompanied . . Robert [Thweatt, whose father had raised him,] . . as a servant. Robert . . was a member of a volunteer company . . There was a gap in the embankment . . causing the death of the negro." See Railroad Co. *v.* Redd, p. 106, *infra.*

*Mosely v. Lyon*, 48 Ga. 398, January 1873. [400] " In October, 1859, . . [he] was in Baltimore, on the eve of departing to the coast of Africa for the purpose of purchasing slaves. He had not been heard from since "

*Dorsey v. Simmons*, 49 Ga. 245, July 1873. [248] " During [1849 to 1862] . . four, and sometimes six, valuable negro men were hired out annually for $150 00 to $200 00, they being mechanics and railroad hands;"

*Simmons v. Byrd*, 49 Ga. 285, July 1873. [287] " The defendants qualified as executor and executrix on December 7th, 1863, . . The plaintiff urged [them] . . to sell the negroes, on account of the near approach of the Federal army. . . they refused [1] . . and hired out most of the negroes for the year 1864; but on July 6th, 1864, at the solicitation of the creditors . . consented . . levied on . . and went into the custody of the sheriff. Shortly thereafter, on account of the approach of the Federal forces, by consent of all parties interested, the negroes were sent out of the county " "where they remained until slavery ceased to exist."

*Tennille v. Phelps*, 49 Ga. 532, July 1873. Will of testatrix who died in 1864: [533] " direct that . . my plantation . . shall be cultivated, with my slaves thereon . . unless . . my slaves be dissatisfied, and from any cause . . threatening a great depreciation in their value or loss, or if . . farm shall become unprofitable. In any of these events . . dispose of the whole . . [534] if . . practicable . . permit my slaves . . to select their owners, who may be willing to pay a fair price . . and, as far as practicable, . . sell them in families." [536] " in the event her . . son should die with-

[1] " impossible to sell . . except for Confederate money, which the plaintiff refused to take upon his claims."

out wife . . or children, living . . and after the death of her husband, she gives . . Georgia Conference, for negro missions, $1,000 00; . . Gives direction as to the instruction and management of the slaves."

*Thweatt v. Redd,* 50 Ga. 181, July 1873. See Redd *v.* Hargroves, p. 99, and Hargroves *v.* Redd, p. 102, *supra.* [189] "It is contended . . that it is the clear meaning of the will that the negroes were not to take, unless they remained the slaves of the testator until his death." Held: "it is equally as apparent that the testator did intend that the legacy should be given to them when they were free"

*Ferguson v. Ferguson,* 51 Ga. 340, January 1874. [342] "The hire of the negroes for . . 1863, 1864 and 1865, amounted annually to $250 00."

*Strong v. Middleton,* 51 Ga. 462, January 1874. Will of Samuel Strong, who died in 1828: "I lend to my . . wife . . as long as she remains a widow, or during her . . life, nine negroes, . . Also, the use of my land . . and if my . . wife should . . remain single until my son, William . . comes of age, then I wish all . . I have lent [her] . . to be equally divided between [her] . . and . . William, . . and at . . [her] marriage or death . . the part I have left her I give to my son . . if my . . son . . should die without a lawful begotten heir . . I give all the negroes I have given him . . and one-half of the tract . . whereon I now live to the agent of the Colonization Society . . in trust for the Colonization Society, for them to send the . . negroes with their increase, to Liberia . . that they may be free, and the money arising from the sale of the land to bear their expenses and support them one year when there. . . for my wife . . to hold the other half of my land . . during . . life, and at her death for all the negroes that I lent her, I give in trust to the . . agent of the . . Society, for them to send such . . negroes to Africa to be free and the other half of this land to bear their expenses and support when there." The widow married in 1830 and the son died in 1867 [463] "without a lawful heir of his body begotten; that plaintiffs are the negroes, and the heirs of those who are dead, . . that they do not desire to go to Liberia . . pray that said land may be adjudged to belong to them"

Held: [465] "the fee vested absolutely in William . . at her marriage. The limitation over, if William should die without a lawfully begotten heir of his body, is void, as being too remote."

*Tudor v. James,* 53 Ga. 302, July 1874. "that it was the intention of the testator [Thomas Tudor, who died in January 1864,] in giving the property to Tillery . . to confer freedom on certain negro slaves, in violation of the then existing laws of this state."

*Railroad Co. v. Redd,* 54 Ga. 33, January 1875. See Redd *v.* Railroad Co., p. 105, *supra.* [34] "Thweatt . . testified that he did not pay his fare, . . [35] Captain Chapman . . stated that he applied to defendant for transportation for so many men, including servants, and obtained it." Held: the rule of *in pari delicto* applies. [48 Ga. 108] "If the war with the United States was illegal, . . both [the company and the owner of the negro] . . were engaged in an illegal undertaking,"

# FLORIDA

## INTRODUCTION

### I.

"From her early history as a Territory," Florida had been "opposed to the settlement" of free negroes "within her borders." [1] In 1829 an act was passed providing "that any person bringing into the State any slaves after the passage of the act, and wishing to manumit them, . . before he grants such manumission, shall give bond . . in a sum equal to the value of such slaves . . conditioned for the transportation of such slaves beyond the . . State, within thirty days after such manumission. . . that any slave manumitted contrary to its provisions, 'shall not be deemed free,' but shall be liable to be . . sold by the Sheriff." [2] In 1830 Sarah and Susan were brought to Florida by Jacob Bryan, and Susan thereafter gave birth to Dennis and Mary. In 1842 Bryan executed a deed emancipating these and other slaves; but he gave no bond conditioned for their transportation beyond the state, and they continued to reside in Florida. After his death in 1847 his heirs filed a petition in Chancery to recover them. The Supreme Court held in 1852 [3] that though it was conceded that Dennis and Mary "are not within the letter of the law, . . *non constat,* they are not within its policy and spirit. . . If we construe this law so as to restrict its application to slaves brought into the State, and not include their descendants . . we . . entail upon the State an evil . . which it is manifest it was the design of the Legislature to suppress." "In 1832,[4] the Legislature of the then Territory were compelled to enact the most stringent laws to arrest the evil, by prohibiting the further migration of free negroes within her limits; and the emphatic language of the Constitution of the State,[5] depriving the Legislature of the power of passing laws for the manumission of slaves, was but carrying out the principles of that policy settled upon by the previous Legislation of the country."

The Supreme Court in 1864-1865 [6] declared the will of Gaskins void, which provided that his slave might "go, if she wishes, to a free State," or remain in Florida enjoying "such privileges and freedom as is consistent with law." The court held that the slave had no capacity to elect, nor could she remain in Florida in a state of *quasi* slavery. [78] "There is no evil against which the policy of our laws is more pointedly directed than that of allowing slaves to have any other status than that of pure slavery."

[2] Bryan *v.* Dennis, p. 113, *infra.*
[3] Same *v.* same, 4 Fla. 445 (451). Thompson's *Digest,* p. 533.
[1] Bryan *v.* Dennis, p. 113, *infra.*
[4] Act of Feb. 10, 1832. Thompson's *Digest,* p. 534.
[5] Constitution of 1838, art. XVI., sect. 1. "The General Assembly shall have no power to pass laws for the emancipation of slaves."
[6] Miller *v.* Gaskins, p. 123, *infra.*

Nevertheless, in spite of this policy, a partnership was formed in 1863 [7] between a slave and a white man "in the business of blacksmithing." The slave "refused to continue" it after 1863, but it was renewed in 1866. It was held in 1874 that "the subsequent negotiations resulting in a renewal of the copartnership after he became free recognized his rights as though he was free in 1863, and he is entitled to the benefit of that recognition."

The fellow-servant rule was held in 1853 [8] not to apply to slaves.

## II.

"During the Territorial Government, . . [appellate] judicial power was invested in five inferior Judges, termed Judges of the Superior Court. This, after organization into the State, continued by provision of the Constitution, vesting the appellate power for five years in Circuit Judges. At the expiration of this time,[9] . . a separate Supreme Court was organized, to consist of three Justices." [10]

[7] Price *v.* Hicks, p. 125, *infra.*
[8] Forsyth *v.* Perry, p. 115, *infra.*
[9] Act of Dec. 20, 1850.
[10] Baltzell, C. J., in 8 Fla. 468.

*U. S. v. Wiggins,* 14 Peters (U. S.) 334, January 1840. [344] "Isabel Wiggins . . of Fernandina . . supplicates your Excellency to be pleased to grant to her three hundred acres . . as she has five children and five slaves, with herself; . . 1st August, 1815." [348] "By the regulations of Governor White, published in 1803, it was declared, that to every head of a family there should be distributed fifty acres; and to the children and slaves, sixteen years of age, twenty-five acres for each one; but from the age of eight to sixteen years, only fifteen acres."

*U. S. v. Forbes,* 15 Peters (U. S.) 173, January 1841. [174] "the . . firm of Panton, Leslie, and Company obtained, in . . one thousand seven hundred and ninety-nine, a grant of fifteen thousand acres of vacant lands . . in order to employ their slaves in the agriculture and for grazing their cattle; but . . being of an inferior quality . . I ['Don Juan Forbes, partner of . . successors of Panton'], from this moment [July 27, 1814], abandon the said fifteen thousand acres of land in behalf of his majesty," "wishing to establish a rice plantation, which production we have been, until the present time, under the necessity to import from foreign parts: . . supplicating . . an equivalent in the district of Nassau river."

*Buyck v. U. S.,* 15 Peters (U. S.) 215, January 1841, [216] "Don Augustin Buyck . . says [to Governor White]: That, having a large number of new negroes, (negroes bozales,) and there being also some white persons, native citizens of the United States . . who wish to join him for the settlement . . of the lands at Musquito, he solicits that this government will grant him fifty thousand acres . . [217] St. Augustine of Florida, 22d July, 1802."

*Edwards v. Union Bank,* 1 Fla. 136, January 1846. [143] "action of trespass . . that . . defendant, by its officers, . . [144] seized [in 1842] . . forty-one negro slaves"

*Manley v. Union Bank,* 1 Fla. 160, January 1846. [169] "two mortgages . . [170] to . . Bank, the first . . 1839, on twenty slaves, . . the second . . 1840, . . on the same twenty . . and on twenty-two other slaves, together with the future . . increase of the females,"

*State v. Charles* (*a slave*), 1 Fla. 298, January 1847. "The prisoner . . was indicted [1] . . for an assault with an intent to commit a rape on" Z. P., who "was a white woman, but the indictment did not so charge. A question was raised in the Court below, upon the validity of the indictment . . and the Judge . . made a statement in writing . . and brought . . [299] to this Court," Held: "this Court . . has no jurisdiction of a case thus brought up."

[1] Under the act of Nov. 21, 1828, sect. 39. Duval's *Compilation,* p. 224.

*U. S. v. Lawton,* 5 Howard (U. S.) 10, January 1847. [18] "in . . 1818, . . to make a survey . . Two black men, one . . belonging to Mr. Bulger of St. Augustine, and Peter Survel [the guide], a free black mulatto, were the chain-carriers."

*Camp v. Moseley.* 2 Fla. 171, January 1848. [191] "The administrators . . of Parkhill brought this action of trespass *vi et armis* . . against Camp for seizing . . a hundred and eighty [slaves] . . Camp . . justified . . that he had taken the negroes by virtue . . of an execution" At the sale [1] in 1845 [176] "Gov. Moseley [administrator] . . arranged the negroes in lots; . . said his reason for separating the families, (which was contrary to the wish of witness,) was, that he was determined to make them bring as much as possible; . . All the negroes were mortgaged; . . witness . . was authorized to buy one hundred negroes; . . Anderson . . proposed to give a certain sum for a family of negroes. . . Gov. Moseley . . replied that the negroes must be sold separately." Judgment for the plaintiffs reversed: Moseley is estopped.

*Ponder v. Moseley,* 2 Fla. 207, January 1848. [216] "one of the slaves . . applied to . . Moseley before the sale to purchase her, because she had a husband owned by Ponder, who resided in the neighborhood; Moseley . . recommended the slave to apply to Ponder . . [217] Accordingly the slave went over to Ponder's place, and afterwards Ponder came to the Court House . . bid [her] off . . [[175] 'the last night, after the sale'] Archer . . observed that he intended to stop the negroes bought at the sale, . . which the purchasers intended to send for sale to New Orleans. . . [218] at that time the slaves . . were near town on their way to be embarked; . . Juba, for an old woman, was a good hand, and was worth from forty to seventy dollars per year; Caroline about eighty dollars, the price fluctuating and generally low. A female slave of thirteen would hire for about thirty dollars; a girl of eleven and a boy of ten would be worth about their victuals and clothes." [208] "Juba . . [was] appraised [in 1844 or 1845] at three hundred and fifty dollars; . . Caroline, at five hundred and fifty . . Thinks slaves have advanced in value since that time twenty-five per centum."

*Le Baron v. Fauntleroy,* 2 Fla. 276, January 1848. Will of George L. Fauntleroy of Pensacola, 1839: [277] "To my slaves Davy, James, Maria Ann, and the children of James and Maria Ann, I give their freedom . . to be liberated at the expiration of six months after my decease."

*McRaeny v. Johnson,* 2 Fla. 520, January 1849. [521] "action of trespass . . against . . Johnson . . [and] Moore . . claiming damages for a trespass . . which consisted in . . beating a . . slave of plaintiff, so that he died. . . verdict: . . 'guilty . . assess the plaintiff's damages . . to four hundred and thirty-five dollars.'"

*Doggett v. Jordan,* 2 Fla. 541, January 1849. [542] "1842 . . Henry Doggett employed plaintiff as an overseer . . continued . . during 1842,

[1] [670] "184 slaves, sold by . . Camp, Marshal, . . $57,033 00."

1843, and 1844; . . [543] Henry Doggett had forty hands, and John eight." [542] " that plaintiff's services . . were worth $400 or $500 per annum."

*Sibley v. Maria (a woman of color),* 2 Fla. 553, January 1849. Will of William Oliphant of South Carolina, admitted to probate in 1828: [561] " I give . . to my nephew . . my estate . . under the following conditions . . that . . Maria, and her four children as his property and under his protection shall be allowed all the privileges of free persons, consistently with . . a proper subordination, and shall be allowed . . two hundred and fifty dollars each, to be paid . . at such times and in such quantities as in his judgment will be most proper, otherwise to take them to . . Ohio, and the balance . . above what will be expended in their passage to be paid to them there; and in case . . [he] should refuse or neglect . . or should die without . . heir, . . all the interests . . shall go to John H. Hollingsworth," Maria brought an action of trespass in 1847 against Sibley, who claimed her as a slave. [564] " we know nothing of the time of Maria's arrival in our State, or the circumstances in which she came." [554] " the Court charged . . That it was the duty of the executor . . to give freedom, and that, in the absence of all testimony . . as to the mode in which she has been held, . . and after the lapse of time, the jury may infer that that duty was performed. . . according to the law [of South Carolina] . . the bequest gave clear . . right of freedom to plaintiff."

Affirmed: [566] " the question involving the policy and statutes of our State . . cannot arise . . because the presumption is that she was free when she came here; and if she came after the passage of the law of 1829, she only rendered herself amenable to that act and that of 1832, prohibiting the coming of free persons of color to our State." [Hawkins, J.]

*Lanier v. Chappell,* 2 Fla. 621, January 1849. [627] " On the first . . January next, we promise to pay . . [628] three hundred and thirty-five dollars, for the hire of two negro boys, . . Treasurer Steam Saw Mill Company. January 1, 1841."

*Summerall v. Thoms,* 3 Fla. 298, January 1850. [302] " Petty . . sold . . Phoebe, and her child, Peter, to the children—John . . Joseph . . and Eliza Summerall, . . [for] three hundred dollars, and the grandfather . . acted as their guardian, to divide the children of Phoebe . . John . . was to take Peter, and Joseph was to have the next, and Eliza the next . . [303] The three that fell to John died. . . Old Simon, the husband of Phoebe, bought her for $750—which was divided among them. . . Sue was an infant [in 1838] . . lived with Phoebe until the early part of 1844 . . [304] Phoebe lived within gun shot . . of John . . but not on his place. At the birth of twins by Phoebe, (which was after she had been sold,) Sue was permitted to go and nurse the twins . . Sue is worth $400."

*Barnard v. Moseley,* 3 Fla. 322, January 1850. [323] " Moseley, receiver . . took into his possession the land, steam saw mill and negroes . . 1847 . . he sold . . [325] Noah . . for [$] 1205 . . Arthur . . 850 . .

Mary . . 100 . . Samson . . 447 . . Nero . . 375 . . March . . 655 . . York . . 687 . . Seley, Maria, and Cloe . . 600"

*Carter v. Bennett,* 4 Fla. 283, January 1852. In 1839 Colonel Jordan of Georgia mortgaged eighty-four negroes to the Georgia Railroad and Banking Company. There were [292] "twenty-four fellows," including "carriage driver . . house servant . . shoemaker . . waggoner . . superior house carpenter . . [and two] good house carpenters," nine "lads," twenty women and thirty children. Deposition of Thornton, Jordan's father-in-law: [296] "About the first of March, 1842, . . Jordan employed . . Harris . . to take charge of about eighty negroes, for the purpose of carrying them to Texas and settling a plantation for him, . . Harris [[6 Fla. 217] 'did in the night time receive said slaves and proceeded'] . . to Apalachicola, on the steamboat . . [297] for which passage he paid . . a likely young fellow, that would now command from six to seven hundred dollars. . . went into the custom-house, for . . a certificate of clearance . . a pre-requisite to their being shipped, and while there the negroes were arrested by the deputy marshal . . under . . attachment [1] sued out . . for the Central Bank of Georgia . . and placed in jail. . . [298] witness received the bill of sale from Jordan . . for the sole . . purpose of enabling him to replevy them for . . Jordan . . [299] found it impossible . . finally [March 16] sold the negroes to Bennett and Floyd, as they were, in the jail" [6 Fla. 219] "for . . about $14,000, . . not one half of the value" "fearing the creditors of Jordan would soon pursue the property, . . Bennett and Floyd . . delivered to Thornton an instrument . . [220] certifying that the . . slaves were sold subject to all liabilities against them . . either as the property of . . Jordan or of . . Thornton" [219] "That immediately . . Bennett and Floyd, obtained . . possession . . by giving bond . . and that a large number of said slaves were immediately . . sent out of Florida for . . sale beyond the reach of the creditors of Jordan." [4 Fla. 286] "The negroes were divided, in the schooner . . at sea, . . by virtue of an execution upon a judgment in favor of Carter, assignee [on May 31] of . . [Jordan's] mortgage to the Georgia Railroad and Banking Company" [6 Fla. 220] "attachment was issued [December 10] and levied upon thirty of . . slaves, in possession of . . Bennett . . [221] sold on the 31 day of December, 1842, and on the 9 day of January, 1843, and were bid in by . . Long, for the benefit of [Carter.] . . on the 15 day of December, 1842, . . Bennett instituted an action of Trover against . . Carter," [4 Fla. 285] "1848 . . a trial was had, which resulted in a verdict and judgment for plaintiff" [2]

Affirmed with costs: [358] "Whether Bennett's possession was rightful or not, Carter had no right to divest him of it *manu forti,* without

[1] "Watson of . . Georgia, perceiving suspicious circumstances, instituted proceedings at random," Same *v.* same, 6 Fla. 214 (218).

[2] "There was great prejudice and feeling against Rennet [in Apalachicola] at the time the suit was instituted, but a most prompt reaction took place before the trial. . . most was made of a case, whatever its legal claims to success, morally it had none, in the opinion of witness." 8 Fla. 183 (186).

showing that he was a judgment creditor or a mortgage creditor of Jordan's." [348] " Carter stood before the Court and jury as the assignee of the mortgage, without an interest in the debt. This was not sufficient to make him a mortgage creditor, or a creditor in any sense of Jordan " [Anderson, C. J.] See same *v.* same, p. 116, *infra.*

*Bryan v. Dennis, Mary, et al.,* 4 Fla. 445, 1852. [450] " 1830, Jacob Bryan, . . of Georgia, removed to Florida, bringing . . Sarah and Susan, the mother of Dennis and Mary, who were subsequently born . . [451] 1842 . . Bryan executed an instrument in writing . . which, by its terms, emancipated . . the defendants . . as well as other negroes . . Bryan never gave bond, as required by law, for the transportation of these negroes beyond . . Florida, and . . they continued to reside here until after the death of Bryan . . in 1847 " His heirs filed a [450] " petition in Chancery . . for the recovery of . . negroes, . . process was issued . . and three of them . . were taken into custody by the Sheriff . . These defendants . . filed . . their plea, and upon the issue of *liber vel non,* the cause was set for hearing. . . decreed that . . Dennis and Mary were free . . and that . . Sarah was a slave, and as such to be sold, . . From that portion . . liberating Dennis and Mary, an appeal was taken " Counsel for appellees contended: [449] " Dennis and Mary, were born in the State . . and are not subject to the penalties imposed by the act [of 1829[1]]."

Held: I. [452] " This construction . . cannot be sustained. That these two negroes are not within the letter of the law, is conceded, but *non constat,* they are not within its policy and spirit. . . the policy of this State in reference to free negroes . . is . . well settled. From her early history as a Territory, she has been opposed to the settlement of this class . . within her borders, . . [454] In 1832, the Legislature . . were compelled to enact the most stringent laws to arrest the evil, by prohibiting the further migration of free negroes within her limits; and the emphatic language of the Constitution of the State, depriving the Legislature of the power of passing laws for . . manumission . . was but carrying out the principles of that policy . . If we construe this law [the act of 1829] so as to restrict its application to slaves brought into the State, and not include their descendants . . we . . entail upon the State an evil . . which it is manifest it was the design of the Legislature to suppress. . . [II.] its provisions embracing all the negroes mentioned . . was the act of manumission . . consummated by the deed? . . [455] It is not pretended that the grantor ever gave bond, as required by the first section . . a condition precedent . . without it the deed has no legal existence," [Semmes, J.] [5 Fla. 240] " several days after the rendition of the . . decree . . Dennis, absconded,"

*Barrow v. Bailey,* 5 Fla. 9, January 1853. [30] " Of the property conveyed [in 1845 to his brother-in-law residing in Louisiana], there were one hundred and seventy-eight slaves; the value of those on the plantation in Jefferson County [Florida] . . is estimated . . [31] at the average price of $300 each. Another witness . . disclaiming all particular knowl-

[1] Thompson's *Digest,* p. 533.

edge of those in question, fixes the market price at an average of $275. . . Dr. Elliott, who claims to have a personal knowledge . . describes them as sickly, feeble, etc., the result of ill-treatment, and insufficient feeding and clothing; but the testimony of . . the overseer . . is in direct . . contradiction . . And . . a near neighbor . . answers, 'that the general appearance of the plantation, negroes, etc., was about the same as the neighboring plantations.' . . Mr. Branch . . says he had no personal knowledge . . that Doggett's negroes 'were said to be an unusually sorry lot.' . . [32] The Court is disposed to take the average given by Gov. Moseley, $275, . . especially as . . there were but few small children in the gangs."

*Lines v. Darden,* 5 Fla. 51, January 1853. Robinson's will, 1838: [54] "My will . . is, that my boy George, the carpenter, shall be allowed to choose his own employer, annually, . . such employer paying . . one dollar to my executors."

*Luke (a slave) v. State,* 5 Fla. 185, 1853. "an indictment . . for maliciously wounding animals. . . [186] 'a negro driver of . . Hernandez, in searching for . . mules . . of his . . master, found one dead . . and two others badly injured with gun shot wounds, . . traced the mules to the plantation of . . Dupont, prisoner's master, . . and meeting with prisoner, asked . . who had shot . . Prisoner replied that he had . . and was ordered so to do by his master . . that prisoner was the head driver'" [191] "The jury having found the prisoner guilty, assessed the punishment under the 59th section of the Act of February 10, 1832, . . at three months imprisonment, and the Court entered judgment"

Reversed: [195] "the Legislature, in 1832, did not intend to disturb the distinction established in 1828, between the two classes . . The Act of November 21, 1828 . . is in full force . . [196] there being no punishment specially providing for malicious mischief when committed by a slave, resort should have been had to the 61st section of the Act of November 21, 1828," [Thompson, J.]

*Waterman v. Mattair,* 5 Fla. 211, 1853 [212] "that the plaintiff . . incurred great expense for medical services, and in feeding and clothing her."

*Loammi Davis v. Fitchett,* 5 Fla. 261, 1853. [262] "The appellant, . . a free man of color, was sued . . upon a promissory note for . . fifty dollars, . . the Act of January 8, 1848, . . first section . . provides . . that free persons of color shall be required to have guardians, . . The second section provides, that such guardians 'shall have power to sue for . . money . . owing to such free negro,'"

Held: [264] "free persons of color . . may appear and defend by attorney as other persons of full age," [263] "The statute . . is silent as to those cases in which he is the debtor and defendant; . . [266] It is argued that the appellant, being a free man of color, could not interpose a plea denying the execution of a . . writing sued on . . in a case

where a white man is a party[1] . . it is difficult to see how an affidavit, by a party to his plea, would constitute him a witness. . . [267] There is nothing in this objection;" [Thompson, J.]

*Simon (a slave) v. State,* 5 Fla. 285, 1853. [299] "On the 17th October . . the dwelling-house . . was burned . . On the 21st or 22d . . Simon . . was apprehended and taken before the mayor . . on suspicion" The mayor testified that he [286] "said to Simon . . that if he . . was the one who burned the house, he would be put upon his trial, and would be certainly hung; that if he had any accomplices he would, by testifying against them, become State's evidence, and they would be put upon their trial and not him. . . [287] He replied, send for my master, and I will tell the whole. . . then said, he had set fire . . there was great excitement among the people . . [288] Witness . . thinks that but for his protection . . the people would have taken him into their own hands . . the excitement . . was sometimes in the presence of the prisoner, and sometimes not, but in his hearing. . . [291] McVoy [Simon's master] said . . that he never saw any one more terrified . . the crowd on the outside." The mayor [288] "had several interviews with the prisoner in jail, . . said . . you are in irons and you cannot escape." [298] "witnesses . . unimpeached, and . . uncontradicted, established the fact, that the confessions . . as to the particulars of the burning, were altogether untrue." [297] "he was convicted and sentenced to be hung." Judgment reversed and new trial ordered: "few cases . . where stronger influences were brought to bear . . to extract a confession"

*Forsyth v. Perry,* 5 Fla. 337, 1853. [341] "an action of trespass . . brought by the respondent against . . owners of the Steamboat . . to recover the value of a . . slave . . hired on board . . The slave was ordered [by the mate] to jump on board . . from a flat-boat . . he struck the guards of the steamer, . . and was drowned. . . The jury returned a verdict for the respondent, and thereby established the fact of gross negligence"

Judgment thereon affirmed: [343] "Unlike white persons, the slave does not, upon entering into the service of another, voluntarily incur the risks and dangers incident to such service. He has no power to guard against them by refusing to incur the peril, or by leaving the service of his employer. He is but a passive instrument . . [344] the case . . is governed by the law of bailments." [Semmes, J.]

*Bellamy v. Sheriff,* 6 Fla. 62, January 1855. In 1845 Samuel C. Bellamy conveyed to Dr. Edward C. Bellamy his equity of redemption in sixty-four slaves. The latter said: [83] "Of the sixty-four . . one old man has since died, and eight . . are perfectly worthless, by reason of consumption, dropsy, deformity from sickness, burns and chronic rheumatism, with which . . they were afflicted at the time of . . conveyance, . . an expense to the plantation. Thirteen . . were children, under . . nine [[73] 'five'] . . and about eight . . were from forty-five to seventy years old, and about eight or ten others . . from five to ten years of age,

[1] Act of Nov. 21, 1828, sect. 42.

at the time . . conveyance was made, . . not likely, . . an expensive set to support, and . . not at the time . . worth upon an average . . more than about two hundred and fifty dollars apiece. . . [86] Carlton . . in behalf of complainant [administrator *ex officio* of Samuel C. Bellamy], states: 'That he came to this country with Samuel C. Bellamy, and overseed for him in . . 1836, 1837, 1839 and 1840, . . 40 working hands at the time . . [87] as valuable a set of hands as any in . . County. . . That since they had gone out of Dr. S. C. Bellamy's possession he had not seen any of them well clothed, that they appeared poor and scrawny, and he frequently met them on the road and did not know them as some of the negroes he came from North Carolina with.' . . [95] 'April 10th, 1845. . . [96] Moore is to do the duties of an overseer . . [for] three hundred and fifty dollars out of the crop made' " [130] " Judge Baker . . says . . negroes, though saleable, were low; . . I [Judge King] consider a liberal valuation . . $300 each on an average for the negroes,"

*Carter v. Bennett,* 6 Fla. 214, January 1855. Carter filed a bill in the [217] " Circuit Court . . sitting in Chancery." [234] " to cancel . . bill of sale [of slaves] from . . Thornton to . . Bennett and Floyd, and to require the defendants . . to release all . . claim . . to said slaves . . also to set aside a judgment at law in an action of Trover [1] . . [235] And that . . defendants be enjoined from further proceeding . . until the final decree in this cause." He alleged that [217] " the . . Georgia Railroad and Banking Company, for a valuable consideration, assigned the said mortgage and the notes for which it was a security, to him . . [223] that by reason of the irregularities in the . . proceedings in the suit for the foreclosure of the mortgage . . which did not reach . . the merits of said mortgage, or the mortgage debt . . he could not defend himself in a Court of law by setting up his equities as assignee of the mortgage debt as his equities as judgment creditor of . . Jordan," [236] " An injunction . . was granted . . and upon the coming in of the answer of . . Bennett . . injunction . . was ordered to be dissolved." Held: [260] " the injunction must stand and the cause remanded " [Forward, J.]

*Frances (a slave) v. State,* 6 Fla. 306, February 1855. In 1854 Frances was found guilty of an assault and battery upon a white person.

*Maiben v. Bobe,* 6 Fla. 381, April 1855. [388] " 1829, . . Tate gave by deed . . to his sister . . several negroes . . 'not to be subject to the control, or debts, or contracts of her husband,' . . The two latter . . removed [from Alabama] to Pensacola . . where a sale was made by them to Bobe, . . 1847, of . . Henry, for . . three hundred dollars, and . . 1848, of . . Jents and her child Flemming, for . . six hundred dollars [[385] 'about half their value']. . . [401] She charges that 'her husband informed her, unless she signed the bills of sale he would run all the negroes to New Orleans and sell them,' . . [402] that 'a short time previous . . her husband took a valuable female slave of hers in open defiance of her, and placed her on . . a vessel to be shipped to New Orleans for sale when a friend of hers . . interposed . . and prevailed' "

[1] Same *v.* same, p. 112, *supra.*

*Sanderson v. Jones,* 6 Fla. 430, April 1855. Marriage settlement made in Georgia in 1813, conveying sixteen slaves to trustees for the use of [432] "Harrison and . . his intended wife . . [435] The marriage . . was shortly after solemnized and the parties . . removed to Florida . . whilst . . a provence [*sic*] of Spain."

*Perry v. Lewis,* 6 Fla. 555, January 1856. "an action of Trover brought to recover the value of a slave lost by Lewis, the plaintiff . . in . . Alabama, in July, 1844—sold by . . Jones, to Henshaw of . . Alabama, . . November, 1844—by Henshaw . . to Criglar of . . [556] Florida . . 1848—and finally sold by Criglar to . . Perry . . of the same county . . 1849, the plaintiff being ignorant whose possession the slave was in, until . . 1851." Verdict for the plaintiff. Judgment thereon affirmed.

*McDougall v. Van Brunt,* 6 Fla. 570, January 1856. "in March 1845, . . Lea . . borrowed of . . Van Brunt . . two hundred and fifty dollars, for which he gave his . . note . . and . . a bill of sale for . . Maria as a security . . [572] in . . 1846 . . she was . . three or four years of age. Her value then was about two hundred dollars. . . She remained in . . [Lea's] possession until his death [[570] 'the latter part of . . 1846, or early in 1847']." [571] "the day after" [570] "Van Brunt . . removed her from the premises,"

*Joe (a person of color) v. State,* 6 Fla. 591, January 1856. [600] "a free man of color . . [604] and the person complaining of being poisoned, a slave named Rebecca, were . . engaged in getting breakfast —the woman for the white family.—The prisoner handed Rebecca some cow haslet which he had been cooking . . she ate . . and immediately felt a pain" [591] "was blind when the 'misery was on.' . . She was friendly with the prisoner. . . Dr. . . Nash . . was called in . . on the second day . . [592] of opinion that these effects were produced by . . arsenic . . There were no . . chemical tests applied . . verdict of guilty" of administering poison. Motion for a new trial: "4th. Newly discovered evidence . . to prove by a witness that she herself partook with impunity from the same pot at the same time. 5th. The general good disposition of prisoner, . . [593] 6th. The absence of prisoner's original counsel, the counsel who defended the prisoner not having been appointed until the morning of the trial. 7th. The status and condition of the prisoner whose ignorance almost wholly incapacitated him from affording his counsel any intelligent or useful information in the conduct of the case. The Court . . refused a new trial," Judgment reversed and the cause remanded.

*Cherry v. State,* 6 Fla. 679, February 1856. [680] "convicted for the statutory offence of 'living in a state of fornication with a colored female.' . . [681] a motion was made to arrest the judgment . . overruled" Affirmed.

*Kelly v. Wallace,* 6 Fla. 690, February 1856. [700] "Peter . . was hired to work at a saw-mill owned by defendants . . for a year [1853], at . . $15 a month. . . about 25 or 30 . . [701] 'generally understood at

the mill that Peter could not swim; that he acted as though he was afraid when he went near deep water; . . was employed at work in the boom by order of the superintendent . . another boy . . was sent outside by him for a particular stick; he told Peter to go for it, . . it was then . . he was drowned;' " [695] " negroes . . were worth $1,000 in the spring and summer of those years. . . [Another witness] thinks good negroes were worth at that time from $800 to $1,000." Verdict and judgment in favor of the plaintiff. Affirmed.

*Hooker v. Johnson,* 6 Fla. 730, March 1856. [733] " Johnson obligates himself to cultivate . . the farm [of Hooker] . . with three hands in conjunction with [Nancy, Dick, and Josh] . . furnished by Hooker, . . entitled to have . . [734] one equal-half part of . . the crop of 1853."

*Hollingsworth v. Handcock,* 7 Fla. 338, March 1856. [339] " bill of sale [in 1845] . . of . . a negro girl . . about fourteen . . [for] four hundred dollars "

*Smith v. Croom,* 7 Fla. 81, January 1857. [98] " 1831—Hardy [Croom] is in Florida, his negroes having arrived [from North Carolina] before him, . . [103] 1835—Mrs. Croom at Newbern writes Hardy at Tallahassee . . says she would like . . a good house in Florida but dreads the expense as it would be better in negroes; . . [104] sends her love to the negroes and to ' tell them to have all things ready against I come out there.' . . [107] Croom [to his brother] . . Newbern, Oct. 13, 1836. . . I have bought horses and pedlars' wagons to carry our servants out [to Charleston] . . [113] Croom [from Newbern] to Mrs. Armistead, 1837, . . I do hope that you and your Ma will sell out here and send your negroes to Florida, where you may either carry on a plantation, or hire them out to great advantage. I think you need have no fears of the climate, for I have not lost one by bilious disease in the six years they have been there. . . [121] One of the advantages of Charleston was that he could remain there . . without the necessity of going to Florida more than once or twice during the winter to see how his overseer was managing;" Whitfield testified: [136] " I removed the greater number of my negroes [from North Carolina] to Florida in 1835, . . The balance . . were brought . . in 1836, except my house servants. Came to Florida with my family in 1845;"

*McHardy v. McHardy,* 7 Fla. 301, February 1857. [303] " McHardy . . in . . 1798 . . had intermarried with . . a resident of Nassau, New Providence; . . that some time after 1802 they had removed [from Nassau] to the Territory of Florida, bringing the negroes with which the crops were made, . . [304] The increase . . from nine to twenty-five, were sold . . in 1823."

*Heffron v. State,* 8 Fla. 73, 1858. " Two indictments . . for selling liquor to a negro,"

*Price v. Sanchez,* 8 Fla. 136, 1858. [138] " Crespo . . bought the negro boy in Charleston . . made the bill of sale [in 1847] . . to [his daughter] . . wife of . . DuPont . . Mrs. DuPont went to live in Jacksonville in . . 1851."

*Linton v. Walker,* 8 Fla. 144, 1858. [150] " infant children . . of . . Mrs. . . Walker, claiming . . the hire of fifteen slaves . . a legacy from their grandfather . . who, in . . 1824, made his will in . . Georgia, giving this . . property to his daughter . . their mother, and after her death to her children." After her death, however, their father hired the slaves in 1850 to Linton for five years for [148] " six thousand dollars, in five equal annual instalments, falling due . . first day of January . . 1851, 1852, 1853, 1854 and 1855, each instalment being for . . twelve hundred dollars. . . [Linton] covenants to treat said slaves kindly and to supply them with the usual amount of food and clothing, and on the first day of January, 1855, to return such . . as shall be alive, with the increase of the females," [147] " Linton was speaking at the time of the good bargain he had made . . and the cheapness of the price he was to pay for the hires."

*Wynn v. Ely,* 8 Fla. 232, 1858. [234] " 1846 . . shipped Jack . . to Columbus, Georgia," and sold him.

*Abernathy v. Abernathy,* 8 Fla. 243, 1858. [244] " About the 1st of January, 1853, this defendant . . with his wife . . with . . [four] slaves . . started to remove from . . Alabama to . . Texas, and at the close of the first day's travel, . . [245] was induced by . . his . . wife . . to exchange . . Rachel and her two children . . for a negro girl . . represented to be sound . . and a valuable house servant. . . Rachel could be of little or no service . . in keeping house . . that a short time after their arrival in . . Texas said negro girl . . proved to be seriously diseased . . defendant started back to Alabama with . . girl . . to return her . . but learned that Rachel and her children had been mortgaged . . was induced . . to exchange . . girl . . with a negro speculator for a negro girl named Malinda; that some months after the return [to Texas] . . Malinda also became diseased . . sold for . . about six hundred dollars. . . [249] Witness [in 1855] hired a negro boy . . for about twelve months, amounting to about $116,"

*Railroad Co. v. Macon,* 8 Fla. 299, 1859. " action . . for the recovery of the value of a . . slave hired to the appellant, who, it was alleged, died from the neglect . . Dr. . . Betton . . at the request of the plaintiff . . visited . . Esop on . . day . . Esop died. [[302] ' He found him very sick with pneumonia.'] . . He was in a car, one side of which was open. . . if closed . . no opening for the air to enter. He stayed . . about one hour; . . ought to have been sent for earlier. The negro had not the necessary conveniences, . . Considered the negro . . between forty and forty-five . . supposed he was worth from eight hundred to a thousand dollars." The overseer employed by the railroad testified that [300] " Esop never handled the rails; he had not the strength, and was put to light work, such as ramming dirt under the cross-ties. . . In the opinion of witness, he was between fifty and sixty . . did not consider him worth over three hundred dollars. . . [301] The cook-woman was directed to attend to him if he needed attention. . . the jury . . rendered a verdict in favor of plaintiff for six hundred dollars." New trial refused. Affirmed.

*Broome v. Alston,* 8 Fla. 307, 1859. [312] "that the slaves embraced in the marriage settlement and covered by the mortgages of the Bank this defendant . . has hired . . out annually by private hirings and with a view to the comfort and happiness of the slaves as well as to make them profitable,"

*Clark v. Gautier, in behalf of Dick (a person of color),* 8 Fla. 360, 1859. [361] "On the petition of . . Gautier in behalf of Dick, . . a writ of *habeas corpus* was issued against . . Clark to show why he detained . . Dick. . . Dick is a mulatto . . held in servitude from early infancy. The witnesses for the petitioner deposed that his mother was a white woman, and that he was sold for a small price until he was twenty-one years old. . . controverted by witnesses examined by defendant. The Court below decided that Dick was entitled to his freedom,"

Reversed: [367] "where there is a . . fair subject of controversy as to the facts of freedom, the writ of *habeas corpus* is not the appropriate remedy"

*Tucker v. Hancock,* 8 Fla. 435, 1859. "suit instituted upon . . notes given [by Hancock] for . . a negro man . . [436] Tucker bought the negro from . . Stafford [in September 1853 for $725]; had him four or five days before he sold him to Hancock. . . [440] asked Hancock $1,000 for the boy;" [438] "Tucker said he was a strong able-bodied boy and had split 250 or 300 rails a day, and he could do it again, just give him enough to eat." [437] "Dr. Todd . . says he prescribed for . . negro . . for dropsy some years since; . . but did not see him; . . [438] McLelland saw the boy in possession of Hancock; . . [439] appeared to be very much swollen and in a good deal of pain; . . McCarty . . [440] sold him [to Stafford] because he would run away . . Dr. Kendrick . . traveled with Tucker and the boy from Fort Dade to Hancock's . . 30 or 35 miles; . . the boy on foot . . stood the journey remarkably well;" The negro died in April 1854. Verdict for the defendant. New trial refused. Affirmed.

*The Mulhouse,* 17 Fed. Cas. 962 (22 Law Rep. 276), 1859. [967] "Compensation for saving life, except the life of a slave unconnected with the saving of property, is left by the law to the voluntary bounty of individuals."

*Kitrol v. State,* 9 Fla. 9, 1860. [10] "indicted . . 1858, under the act of January 6, 1855, entitled 'An Act to prevent white persons from gaming with negroes or other persons of color.' . . [11] convicted, and the Court assessed the punishment to a fine of one hundred dollars."

*Harris v. State,* 9 Fla. 156, 1860. "indicted . . for buying grain [[157] 'a half bushel of corn'] from a slave without a permit, under the statute of 1851.[1] . . [157] convicted, and a fine of one hundred dollars imposed"

*Cato (a slave) v. State,* 9 Fla. 163, 1860. "indicted for the offence of rape, . . [164] tried at the October term, 1859, . . Susan Leonard [a

[1] Acts of 1850, p. 133.

white woman] . . testified . . Cato came . . about one hour and a half before day; . . hand on each of my arms; I told him to go . . I said, who is this, and he said it is one of Dr. Ely's black men; . . he said 'hush, hush . . or I'll kill you;' . . drew the knife across my throat, and I was compelled to give up; . . Sarah A. Alsobrook . . testified . . heard Mrs. Leonard say, Lord-a-mercy, is this you Cato? . . [165] Mrs. Leonard said she was almost willing to swear it was Cato; . . he said it was Bill who lived at the hotel; . . she did not cry out; . . For the defence there were twelve witnesses, who testified that both the witnesses for the prosecution were common prostitutes [[181] 'of the lowest grade']." [164] "convicted and sentenced to be hanged on . . 16th . . December, 1859. . . [169] 22d . . October . . his attorney moved . . for a new trial" Refused.

Held: [186] "the prisoner is justly entitled to a new trial." [173] "it is the crowning glory of our 'peculiar institutions' [*sic*], that whenever life is involved, the slave stands upon as safe ground as the master. . . [186] *Ordered* that the sentence of death . . [187] be . . annulled, . . verdict . . set aside, and . . the cause . . remanded" [DuPont, C. J.]

*Clem Murray (a slave) v. State,* 9 Fla. 246, 1860. "Clem Murray . . was indicted[1] . . [248] two counts . . in the first it is alleged that . . [he] did . . play and bet at a gaming table, at a game of . . poker, with . . Jim Dunham, . . better known as Jim Deblois, . . In the second, he is charged, that he did . . in a place of which he . . had the charge, . . Clem's barber shop, permit . . Jim Dunham Deblois, a negro, . . to play for money, . . found guilty, and the jury assessed his punishment at fifty lashes. . . motion . . in arrest of judgment . . overruled"

[254] "*Per curiam.* Let the judgment . . be arrested and the defendant discharged." [251] "The legislature were creating a new offence[2] . . [252] they fix a punishment which to the slave is no punishment at all, because he has no means . . of paying a fine, nor . . liberty of which to be deprived. . . the policy of the State legislation was clearly . . established . . in keeping up the distinction between free persons and slaves, in separate codes, and in providing different punishments. We do not think the legislature intended including this class of persons, because as an additional reason, the offence is one a slave cannot . . commit. . . The slave has no control . . that is not under the master. . . [253] he has nothing to bet with; . . our general code . . creates the offence of adultery and fornication, and . . does not discriminate between white persons and negroes. Yet no one would think of indicting a slave for such an offence," [Forward, J.]

*Judge v. Moore,* 9 Fla. 269, 1860. "note [for $300] was given for the hire of . . Henry and Randall, for . . 1853" After two months [276] "Randall ran away . . and went back to plaintiff [his owner] . . plaintiff, on demand of defendant, delivered him up, . . boy ran away again and

[1] Under the act of Feb. 27, 1839, amending the act of Feb. 10, 1832, and under an amendment of the act of 1839, passed Jan. 8, 1853, and under the act of Nov. 21, 1828, sect. 61.

[2] Act of 1839, sects. 1 and 2.

went back to plaintiff, who thereupon proposed to defendant to take . . boy back and allow a credit of $150 on the note, but that defendant refused . . saying that he would sue plaintiff for damages." He told a witness that he "had got rid of a bad bargain, as Randall was a bad negro"

*Kendig v. Giles,* 9 Fla. 278, 1860. Bill of sale: [279] "Mobile, May 5th, 1858. Received . . eight hundred and fifty dollars . . for a negro man . . aged about twenty-three . . which slave I . . warrant sound in body and mind" The purchaser "has been put to great charges . . in employing physicians to prescribe for and nurse and attend said negro slave,"

*Powell v. Leonard,* 9 Fla. 359, 1861. [363] "Partridge . . was attended by . . Leonard . . as his physician; that a few hours before the death of . . Partridge, the slave Ann . . in the presence of witnesses, told her master that she had selected Dr. Leonard for her future master; that thereupon . . Partridge . . directed a bill of sale . . of . . Ann [and her four children] . . to be drawn up, which was accordingly done by . . Leonard" Held: [365] "the delivery of the mother was a sufficient delivery of the children."

*Donaldson v. State,* 9 Fla. 402, 1861. "The defendant . . was indicted[1] . . [in] Duval county. . . The first [count] charged that the defendant received grain from a slave, said slave not having a permit from the person having the control of said slave; the second, that the defendant purchased grain from a slave, not having such permit. . . [403] verdict of 'guilty' . . with a recommendation to the clemency of the Court; . . fine of twenty-five dollars against her" Judgment reversed: the eighth section of the act of February 5, 1834, was repealed as to East Florida, with the exception of Columbia County, by the act of February 14, 1835.

*McLeod v. Executor of B. M. Dell,* 9 Fla. 427, 1861. Dell's will, 1855: [432] "I . . bequeath to my Executors . . in trust for the Methodist Episcopal Church, in the place where my wife shall choose to reside . . in East Florida, . . one thousand dollars, . . the interest paid annually for the benefit of said Church, but under no circumstances to be paid to any man raised North of Mason and Dixon's Line, or tinctured with Abolitionism in the least degree;"

*McLeod v. Executor of W. Dell,* 9 Fla. 451, 1861. Held: [461] "it was the purpose of our Legislature in the enactment of the 51st section of the act of the 20th Nov. 1828, to withdraw slaves from the class of personalty to which they belong for ordinary purposes, and to place them upon an equal footing with realty, whenever a testamentary disposition is to be made of them; . . The growth . . of the 'peculiar institution' in the Southern States, has inspired sentiments which impart to that particular species of property even a greater degree of permanence than is accorded to realty. It is the cherished subject of inheritance, and a man . . [462] will strip himself of every other species of property,

[1] Under the act of Feb. 5, 1834, sect. 8. Thompson's *Digest,* p. 508.

even the old 'homestead,' . . before he will consent to part with his slaves. . . the land and slaves embraced in the nuncupative will of William Dell . . did not pass . . in respect to these, he is to be considered as having died intestate." [DuPont, C. J.]

*Harrell v. Durrance,* 9 Fla. 490, 1861. [493] "price and value of . . three negroes . . thirty-three hundred dollars" in 1858.

*Chaires v. Brady,* 10 Fla. 133, 1862. [139] "This family of slaves [[141] 'a negro woman . . and I think eight children said to be hers'] constituting the bulk of his property, . . he was dependent upon it for a support"

*Smith v. Hines,* 10 Fla. 258, 1863-1864. [262] "Slaves were hired in . . Lowndes [County, Georgia,] . . for the years 1857,—'8,—'9,—'60 and '61, No. 1 hands at from one hundred and sixty-five dollars—women at from one hundred to one hundred and twenty dollars; slaves, the present year, (1862,) men at one hundred and fifty dollars, women eighty-five dollars. . . [263] negroes hired for more in Hamilton county, Florida, . . [295] he takes all his negroes . . leaves Georgia and settles in . . Florida, in . . 1854;" He sold Olivia for $925.

*Owens v. Rhodes,* 10 Fla. 319, 1863-1864. [321] "Received of . . Rhodes a negro woman . . about thirty-five, which I am to take to . . Alabama to sell for seven hundred dollars or more; also a negro woman . . and her child, which I am to sell at one thousand dollars or more, . . Tallahassee, Dec. 23, 1853."

*Miller v. Gaskins,* 11 Fla. 73, 1864-1865. Sixth clause of the will of Thomas G. Gaskins, who died June 13, 1862: [74] "I give . . to . . Miller, Sarah and William Henry, in trust, that he will allow . . Sarah to go, if she wishes, to any free State, and for that purpose I direct my executor to pay him . . one hundred dollars, and upon trust that he will have William Henry bound out to a useful trade until he is twenty-one; and upon further trust that he will allow Sarah and William Henry to enjoy such privileges and freedom as is consistent with law, and I direct that . . Miller shall have the sole control . . without any account to any one." The bill alleges that Miller has "in a great measure given . . Sarah her freedom, allowing her to go at large . . without payment of any wages to him and without any subjection to him . . that Miller has . . William Henry with him . . in camps, to wait upon him and serve him as a slave in all respects, and treating him with great severity; . . not been put to a trade . . [75] The answer of Miller . . 'denies that he has given . . Sarah her freedom . . admits he has the boy . . in camps with him, but denies that he is treated with severity'"

Held: [78] "this devise [is] null and void. There is no evil against which the policy of our laws is more pointedly directed than that of allowing slaves to have any other status than that of pure slavery. . . [79] In answer to the argument that the woman was to be allowed to go . . if she wished, we say that she being a slave is incapable of electing . . [80] the property . . was not disposed of by the will" [Walker, J.]

*Robertson v. Baker,* 11 Fla. 192, 1866-1867. [212] " 1847 . . they purchased . . plantation . . with fifty-one slaves "

*Walker v. Gatlin,* 12 Fla. 1, 1867-1868. Held: [16] " the vendor and vendee—the one giving and the other accepting the warranty, that the negro was ' to be a slave for life,' contracted . . in the full understanding that their contract was subservient to any change in the political status of the negro . . which the supreme authority of the State might . . decree. . . [17] there was no *insurance* . . against the exercise of this right of sovereignty " [DuPont, C. J.]

*June v. Myers,* 12 Fla. 310, 1868-1869. " complainant . . alleges, that in . . 1861, he . . left this State, leaving in possession of the appellant three . . slaves . . agreement that they were to work . . upon the plantation of the appellant . . the complainant to receive . . an equal share per hand of the entire gross crop . . that said slaves labored continuously . . to the first of May, 1865,"

*Slaback v. Cushman,* 12 Fla. 472, 1868-1869. " action . . commenced in 1866 . . to recover for the services of a negro woman . . from October 20, 1863, to March 20, 1865. . . [473] Verdict for plaintiff . . for $136,"
No error: the emancipation proclamation [478] "was not effective *outside of the line of military occupation,*"

*Railroad Co. v. Nash,* 12 Fla. 497, 1868-1869. [507] " The slave Jackson was hired . . for the company, of . . Nash, in January, for the balance of the year 1860, for two hundred dollars. . . [509] Plaintiff asked more wages for Jackson, in consequence of the risk he would run as fireman, than he asked for him to work in the country. Jackson was in the employ of the . . company . . in 1857, as a fireman. . . He had objected to the manner in which he had been employed, first at one thing, then at another. . . The strict duties of a fireman were to be performed [in 1860]. He was not to attend to the coupling . . or shifting . . He got off to attach a rope to the train and engine . . when the train got far enough he loosed the rope and said, ' All right, come back,' . . [510] There was plenty of time from the time the rope was loosened to the time the engine started, to have got on before it started." [509] "getting back [while the ' engine was barely moving '] fell, and the wheel ran over his foot." " died from lockjaw, . . [511] The jury returned a verdict for the plaintiff, and assessed the damages at $1800."
New trial awarded: [517] " Jackson was not injured . . while employed in an act not warranted by the contract of hiring; that if he *had* lately *been* so engaged, the injury did not occur in its performance "

*Branch v. Wilson,* 12 Fla. 543, 1868-1869. [547] " Branch . . testified . . [Wilson] said Dr. McMickan thought the woman could not be safely moved for eight or ten days. I replied, if I purchased I should be my own judge as to the time of removing them. . . Handed him the note " [544] " five thousand dollars [in Confederate bonds] for . . Anna, and her four children, this 12th day of September, 1863." [547] " I said to him: ' As you have my note, I now demand the delivery of

the negroes.' He became agitated, and said: ' No, no, Dr. Branch, I cannot deliver them now, my property would be all exposed,' . . [548] he would have to move first; . . he would . . deliver them . . on Tuesday . . I replied, . . ' you live so near the line the Yankees may come up and carry them off, or they may run away.' He replied, ' That will be my risk,' " [546] " on Monday morning . . Wilson said: ' All my negroes are gone; they went last night.' "

*McNealy v. Gregory,* 13 Fla. 417, 1869, 1870, 1871. Held: [442] " The abolition of slavery . . does not destroy the right of action which the vendor of the slave so emancipated has against the vendee . . and any action of a convention . . which directs the courts to hold otherwise is void, as it impairs the obligation of the contract." [Westcott, J.]

*Stephens v. Gibbes,* 14 Fla. 331, October 1873. In 1860 General Kilcreasa's [332] " real estate consisted of . . many thousand acres, . . [333] the personal property consisted of 177 slaves, appraised at $135,-550; other personal property appraised at $16,240; . . [335] upon the close of the war, through the emancipation of the slaves and the depreciation of the real estate, the estate . . [became] insolvent,"

*Price v. Hicks,* 14 Fla. 565, July 1874. [566] " Hicks, complainant, . . alleged . . that in 1863 . . [he] was a slave . . that with the consent of his owner he formed a partnership with . . Fitts in the business of blacksmithing at Tallahassee, which continued for about a year, . . [567] Fitts keeping the accounts and collecting the moneys earned. . . The hire of Hicks from his owner in 1863 was to be paid at $600 per year out of Hicks ' share of the earnings. During . . 1863, there was purchased by the partners . . two town lots . . in . . Tallahassee, . . two mules and one horse were purchased by the firm, . . A valuable wagon was made by the firm as their property," [578] " It does not appear that there was a continuing copartnership from 1863 to 1866, because the complainant expressly states that he refused to continue it after 1863," [567] " From January, 1866, they again carried on the business as partners until Fitts' death in July." [583] " witnesses say that Fitts told them that Hicks owned one-half interest in [' the Lasch land . . 40 acres '] . . and that they were cropping the land together." [582] " The title . . was undoubtedly taken in the name of another than Hicks, because of his then legal incapacity to hold in his own name; and the transaction was managed by a very intelligent and honorable member of the bar, (Judge Hogue,) selected by Hicks himself for the purpose."

Held: [578] " whatever question might have been raised as to the rights of the parties on account of the status of the complainant in 1863, . . the subsequent negotiations resulting in a renewal of the copartnership after he became free recognized his rights as though he was free in 1863, and he is entitled to the benefit of that recognition." [Randall, C. J.]

# ALABAMA

## INTRODUCTION

### I.

A liberal spirit pervades the Alabama decisions down to 1859. The Supreme Court of that state did not even become excited in 1837 over the case of M'Donald, a free negro apparently, who had tried to instigate a slave to start an insurrection. It held that his "conviction was unauthorized," as his suggestions had failed to instigate and there was no actual insurrection on foot.[1]

In the matter of emancipation the Supreme Court of Alabama, unlike that of Georgia,[2] did not "stand upon the order" of the words "liberate" and "remove," but held in 1852[3] that the slaves which the testator directed should "be liberated and removed . . knowing full well they cannot be given their freedom to remain in this State," could be emancipated by removal to a free state, thus defeating the claim to the slaves, made by the heirs, who, it should be noted, resided in Wisconsin.

From 1830 to 1854[4] the Supreme Court of Alabama consistently held that slaves could not be emancipated by will, unless the emancipation was to take effect outside of Alabama. Chief Justice Collier declared, in Trotter *v.* Blocker,[5] that "the Constitution [of 1819], by investing the General Assembly with the power 'to pass laws to permit the owners of slaves to emancipate them,' has impliedly, abrogated all pre-existing modes." But in 1854[6] the court overruled Trotter *v.* Blocker on this point, holding that Darby's bond to emancipate the slaves of Mrs. Prater who had been sold to him by her on that condition, and whom he directed his executors to emancipate "in that manner which . . [they] can . . lawfully do," without specifying where, was legal, there being "nothing on the face of Darby's bond which requires him to free the slaves *in this State.*" Prater *v.* Darby was in turn overruled in 1859[7] when the court dismissed a bill for the specific performance of a contract which had been repudiated by the new owner of a slave blacksmith, who had agreed with the old, to free the slave as soon as he refunded the $1250 paid for him, with ten per cent. interest. The ground for dismissal was that the [452] "contract contains no term . . which looks beyond . . Alabama for its performance." The chancellor in the court below had ordered

[1] State *v.* M'Donald, p. 141, *infra.*

[2] See introduction to the Georgia cases. The Supreme Court of Mississippi was more explicit than that of Alabama. See introduction to the Mississippi cases.

[3] Atwood's Heirs *v.* Beck, p. 183, *infra.*

[4] Isbell *v.* Stamp, p. 135, Trotter *v.* Blocker, p. 143, Alston *v.* Coleman, p. 155, Harrison *v.* Harrison, p. 159, and Roberson *v.* Roberson, p. 182, *infra.*

[5] P. 143, *infra.*

[6] Prater's Administrator *v.* Darby, p. 195, *infra.*

[7] Evans *v.* Kittrell, p. 230, *infra.*

the defendant to remove the slave "to some non-slaveholding State or country, and there emancipate . . him." But the upper court refused to permit him to "engraft . . a term, not inserted by the parties."

A blunder of the court in 1848, in regard to Wallis's will, would have had more disastrous consequences for the slaves of Creswell in 1861 if the date of the decision relegating them to slavery had not been so momentous. Wallis's will had provided that eight "kind and faithful servants . . be permitted to go to Africa, . . [but if they] prefer to remain subject to my . . daughter, . . they may be permitted to do so," and the court had held (in Carroll *v.* Brumby)[8] that they had [105] "not the legal capacity . . to choose—the law forbids this, (see 6th Porter, 269)."[9] Therefore freedom was denied. But the question of choosing freedom or slavery did not arise in "6th Porter, 269" and was not even mentioned in that case. Nevertheless in 1861[10] the decision in Carroll *v.* Brumby was upheld by the Supreme Court. Creswell had directed his executor to take his four "faithful slaves . . to some non-slaveholding State, or to . . Liberia, as the . . slaves may prefer, . . But, should . . any . . of them, prefer to remain in slavery," they were bequeathed to his sister. The court denied to the slaves the capacity either to elect freedom, or, even if that were conceded, to choose where they would go to enjoy it, "a condition, the performance of which is essential to the execution of the trust in their favor."

In 1867 the Alabama Constitution of 1819[11] was invoked by Mrs. Frances L. Logan when seeking to recover from the state the value of her slaves, who, she alleged, had been emancipated by the state without her consent and without any offer of compensation; but the court held, in accordance with two of its decisions in 1866,[12] that slavery had not been abolished in Alabama by the convention of September 1865, but by the act of war—the occupation of the state by a federal army in May 1865. The judges of reconstruction days made some fine-spun distinctions in regard to this subject; but even with respect to them they did not unanimously concur.[13]

While the rule *"partus sequitur ventrem"* was rigidly applied in the slaveholding states (except in Maryland from 1664 to 1681), the Supreme Court of Alabama held, in two remarkable cases, "that all the incidents of the mother's condition at the . . birth of the child do not invariably attach to the offspring."[14] The first case[15] was that of the child George, born in 1848 in Indiana, where his mother and another infant, born in Alabama, had been taken by their owner and emancipated by deed in September 1847. The mother and children returned to Alabama a few

[8] P. 166, *infra.*
[9] Trotter *v.* Blocker, p. 143, *infra.*
[10] Creswell's Executor *v.* Walker, p. 247, *infra.*
[11] Art. VI. "The General Assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated."
[12] Jeffries and Jeffries *v.* State, p. 262, and Ferdinand Smith *v.* State, p. 264, *infra.*
[13] Morgan *v.* Nelson, p. 269, and McElvain *v.* Mudd, p. 270, *infra.*
[14] 23 Ala. 166.
[15] Bank *v.* Benham, p. 188, *infra.*

months after George's birth. In the meantime their former owner had departed for California, leaving unpaid a debt due in May 1847. An execution was twice levied on these three negroes in 1849, and each time they were taken out of the possession of the sheriff, under a writ of *habeas corpus,* and discharged. The Supreme Court of Alabama held that George was not subject to the levy. Though his mother " was liable . . to be subjected into slavery to satisfy the claims of antecedent creditors, . . until such creditors had obtained a lien, . . she must be regarded free to all the world." [16]

In the second case,[17] the owner of a slave who had fled from Virginia to Kentucky sought to recover her children, born after her flight, invoking the fugitive slave act of 1793; but the Supreme Court of Alabama held that the quality of " fugitive " was not inheritable.[18]

The number of cases in which slaves convicted of crimes were granted new trials is remarkable, all the resources of the law being invoked in their favor.[19] Special caution was observed in admitting their confessions.[20]

The frequency of unlawful acts in regard to slaves, such as " running them off " in the night to avoid creditors,[21] or seizing them violently in cases of disputed ownership,[22] reminds one of the lawlessness of the prohibition era. Such acts set a bad example to slaves and they followed it in numerous instances, particularly in running away from their hirer to their owner,[23] or from a new master to the old.[24]. The single instance of the suicide of a slave found among these Alabama cases is that of one who did not wish to go with a new master.[25]

[16] Judge Ligon, commenting on this case, in his opinion in Fields *v.* Walker (23 Ala. 155), says: [167] "notwithstanding the mother's *status,* on her return to this State, was that of slavery, so far as the creditors of her former master are concerned, this incident of her condition did not attach to the child born in Indiana after her emancipation, although she brought it here with her."

[17] Fields *v.* Walker, p. 189, *infra.* Judge Porter, giving the opinion of the Supreme Court of Louisiana in Volant *v.* Lambert in 1828, had declared: "The article in the constitution of the United States does not apply to a case where the citizens of another state, whose laws recognize slavery, set up a title to a slave found within its limits." P. 484, *infra.*

[18] Judge Yeates of Pennsylvania had declared in 1816: " It cannot be supposed for a moment, that the child . . who was not in existence when her mother ran away . . was a fugitive." 2 S. and R. 305 (308).

[19] Chief Justice A. J. Walker declared in 1866 that " it is alike creditable to the impartiality of our courts, and the wisdom of our laws, as well as to the sympathies and humanity of our slave-owners, that no class of culprits in the State have been more carefully or ably defended by counsel, or have more fully enjoyed the benefit of those wise principles which the law has appointed for the protection of innocent persons." 39 Ala. 620.

[20] See index, under Confessions rejected. Judge A. J. Walker declared in 1858 that " a slave who has once made a confession from the prospect of favor, may persist in the same statement, lest he might be punished for the change of his statements. . . a sufficient reason for the use of more caution in the admission of a slave's than of a freeman's subsequent confessions." 32 Ala. 568.

[21] See index under Running off slaves.

[22] *Ibid.* under Violent seizure of slaves.

[23] *Ibid.* under Running away from hirer to owner.

[24] *Ibid,* under Running away to former owner.

[25] Thomason *v.* Dill, p. 216, *infra.* There is a single instance of the same kind among the South Carolina excerpts (vol. II. of this series, p. 425). Other instances for other reasons are given in vol. I., p. 410, and in vol. II., pp. 586, 588.

The free negro appears to have flourished in Alabama. Lewis Young died in 1834, " seized of a lot . . with several tenements . . and possessed of two slaves, . . together with sundry notes and accounts . . and two soldiers' land warrants, each for one hundred and sixty acres " [26] in Arkansas. Another free negro rented a house, using the lower rooms as a barber's shop and the upper " in experimenting, and attempting to learn the art of taking daguerreotypes." After he " had abandoned the attempt to learn the daguerrean art," his dark room was appropriately used by ten or twelve white men for surreptitious gambling.[27] Another, Chavis, held the office of constable in 1859, and a white man was indicted for offering resistance to arrest at his hands. The defendant offered to prove that Chavis's great-grandparents were mulattoes, and that consequently his election as constable " was an absolute nullity . . and that the defendant had the right . . to prevent himself from being arrested by a free negro." The court excluded the evidence, holding that Chavis was an officer *de facto,* and that his pedigree could not be called in question.[28] If debts may be taken as an index of prosperity, Lawson Thomas owed $475 in 1847,[29] and a firm consisting of a free negro and a silent white partner owed $1500 in 1859.[30] Lydia, who had " made considerable money " as a midwife, was permitted to redeem a house and lot, the property of her husband, a blacksmith, by paying " upwards of three hundred dollars." [31]

Certain slaves did not lag far behind. One slave who was permitted " to hire his own time, make contracts, etc., and to keep what he made, paying his master hire . . had three or four hundred dollars " before he began working in a store. There he was " detected in purloining goods," his house was examined and five hundred and eight dollars found, of which he paid two hundred and fifty for the goods he had stolen.[32] Spencer, a slave, hired George, a good slave painter, for the year 1852 for $140. Hoke had previously hired Spencer from his owner, and permitted him to go at large, make contracts and collect the money, with the understanding that Spencer, on refunding his hire, " was himself to have the balance of his earnings; . . Spencer did business in the same way in . . 1851, and for several years prior." Such a " setting-up for himself " was in violation of the law; but the court held that acquisitions by a slave, absolutely disposed of by him, could not be reclaimed.[33] Dick " followed ditching . . and made a good deal of money in that way; . . had a shoe shop, and had hands employed under him . . also . . a shop . . where he sold candy, cheese, tobacco, etc.; . . he also purchased . . two negro boys." [34]

[26] Bentley *v.* Cleaveland, p. 188, *infra.*
[27] Moore *v.* State, p. 218, *infra.*
[28] Heath *v.* State, pp. 232, and 241, *infra.*
[29] Fambro *v.* Gantt, p. 164, *infra.*
[30] Ingersoll *v.* Robinson, p. 236, *infra.*
[31] Becton *v.* Ferguson, p. 187, *infra.*
[32] Jones *v.* Nirdlinger, p. 181, *infra.*
[33] Stanley *v.* Nelson, p. 208, *infra.*
[34] Broadhead *v.* Jones, p. 257, *infra*; see also Evans *v.* Kittrell, p. 230, Martin *v.* Reed, p. 247, and Webb *v.* Kelly, p. 249, *infra.*

The doctrine of states' rights proved a two-edged sword in the hands of Chief Justice A. J. Walker of Alabama. He gave an opinion in 1863 [35] that an Alabama court had no more right to obstruct the execution of the Confederate conscript law than a Wisconsin court [36] "to thwart the execution of the fugitive-slave law in that State." The sword was however blunted by the adverse decision of his colleagues in a later case [37] of the same term. In his dissenting opinion of twenty-eight pages the chief justice asks: [489] "upon what ground . . can it be maintained, that the State laws can interfere with the execution of the conscript law, and yet were without power to interfere with the enforcement of the fugitive-slave act? . . [497] [Ableman *v.* Booth [38]] ought to have settled the question; and in all probability the point would never again have been agitated, if we had continued to occupy our former relation to the United States. *Tempora mutantur, nos et mutamur in illis.*"

He predicts what may be the effect of holding that [499] "the officer charged with the execution of the conscript law has no authority to decide the question of liability to conscription." "The tribunals of a single State . . may utterly subvert the application of the power to raise armies to [*sic*] that State. They may even invite the people from other States, by peculiar rulings, to fly to their jurisdiction as a shelter from the enforcement of the law. It is to be apprehended that our government will not be permitted to pass through its infancy, without experiencing some or all of the ruinous consequences which are (as I believe) probable results of the proposition, that State courts have the jurisdiction claimed for them." But the chief justice stood alone in his broad assertion of the principle: [504] "in no case known to me has an appellate State court sustained the doctrine which I maintain. Both of my brother judges differ from me. . . Under the circumstances . . I shall . . suffer the State jurisdiction to be exercised, to the extent agreed upon [39] by this court, without further controversy."

## II.

The Alabama constitution of 1819 provided that, until the general assembly should otherwise prescribe, "the powers of the supreme court shall be vested in, and its duties shall be performed by, the judges of the several circuit courts;" [40] and this system continued till 1832, when a

[35] *Ex parte* Hill, *in re* Willis, *v.* Confederate States, p. 255, *infra.*
[36] Ableman *v.* Booth, 21 Howard (U. S.) 506 (1858).
[37] *Ex parte* Hill, *in re* Armistead, *v.* Confederate States, p. 256, *infra.*
[38] 21 Howard (U. S.) 506.
[39] [504] "whenever a person in the custody of an enrolling officer . . shows that he belongs to any one of the classes . . expressly 'exempted' . . by the laws of [C. S.] congress; or that, having furnished a substitute, he has obtained a discharge, which is still . . operative; or that he is not of conscript age; or that, because of non-residence, color, or other legitimate reason, the law of conscription does not apply to him, it is . . the sacred duty of the judges of the State courts, to discharge him on *habeas corpus.*" [R. W. Walker, J.]
[40] By the act of Dec. 14, 1819, the state was divided into five judicial circuits.

separate Supreme Court was created, consisting of three members.[41] The number of the judges was increased to five in 1851,[42] but reduced to three again in 1854.[43]

[41] Act. of Jan. 14, 1832
[42] Act of Dec. 20, 1851.
[43] Act of Feb. 1, 1854.

*McGrew v. Cato's Executors,* Minor 8, May 1820. "Sterling Cato brought his action of trespass *vi et armis* . . *vs.* . . . McGrew and another for killing his slave. . . Verdict of Guilty against McGrew, and of Not Guilty as to his co-defendant. Judgment against McGrew, on which he brought his Writ of error."

Judgment reversed: "The Court below erred . . in instructing the Jury that the plaintiffs could recover for the private injury before an acquittal for the presumed felony."

*Humphrey* (*a slave*) *v. State,* Minor 64, June 1822. "The prisoner was tried in the County Court . . April, 1822, under the Laws of this State for the trial of slaves charged with capital offences, and convicted of burglary. He appealed to this Court." Held: no jurisdiction.

*Meeker v. Childress,* Minor 109, June 1823. "Childress . . hired the slave for a year to . . Smith . . who called in the plaintiff, a practicing physician, to attend the slave." Held: "the hirer . . is bound to pay the physician for his services,"

*The Merino,* 9 Wheaton (U. S.) 391, February 1824. [393] "The *Merino* cleared out at Havana on the 2d of June, 1818, for Mobile, and the *Constitution* and *Louisa,* on the 10th . . for New-Orleans." They had "each received on board . . a number of slaves, newly imported from the coast of Africa, . . belonging to subjects of Spain, residents either of Havana or Pensacola, to be transported from the former to the latter place. . . [394] On their arrival within, or near to, the bay of Pensacola, that place was found in possession of the American army, under the command of Gen. Jackson." The *Merino* and *Louisa* were seized by the United States ketch *Surprise.* "The *Constitution* was taken possession of by Col. Brooke, . . [but] was boarded off Mobile point by the United States revenue boat, and was carried in and reported by Capt. Lewis, commanding said boat, . . as having been seized by him, . . the vessels [owned by citizens of the United States] and their cargoes were severally condemned as forfeited to the United States." [1]

Held: [408] "that in the case of Antonio de Frias [who imported the slaves from Africa] and David Nagle [who had purchased part of the slaves from de Frias] against eighty-four African slaves [on board the *Constitution*], the sentence of the Court below is erroneous, and ought to be reversed, and that a decree of restitution ought to be made." "The possession of the vessel . . being lawfully vested in Col. Brooke, at the time she was boarded by the revenue boat, . . it could not . . be asserted, that she was employed in carrying on trade, contrary to law, at the time she was so boarded. . . If . . a capture of the vessel could not be legally

[1] Acts of Congress, May 10, 1800, and Apr. 20, 1818.

made by the revenue boat, then the claims of the owners of the slaves on board, is [*sic*] not precluded by the 4th section of the act of 1800;" [Washington, J.]

*Outlaw v. Cook,* Minor 257, December 1824. " the note on which the action was brought was given for the hire of a slave for a year, who was in good health when hired; but two or three months afterwards, by an accidental wound, was disabled from performing any labour, and rendered . . expensive to the hirer . . The Court below charged the Jury, that unless it had been otherwise specially agreed, the hirer was nevertheless bound to pay the full amount " No error.

*Barnes v. Baker,* Minor 373, December 1824. [374] " Levied on one negro woman . . and child named Henderson, . . March, 1823." They were sold " for $540 12½ "

*State v. Moses,* Minor 393, December 1825. " Moses . . was indicted for the murder of . . his master. The indictment did not charge that the slain was a *free person.*[1] The prisoner was found guilty of manslaughter. . . judgment of death "

Judgment arrested and the cause remanded: [394] " the words of the indictment, ' master and owner of . . Moses,' does not necessarily imply a free person;" [Crenshaw, J.]

*Rogers v. Wilson,* Minor 407, July 1826. Wilson [408] " had stated . . that the negro of Rogers, who had run away, applied to him one night through the medium of another negro of Rogers, for a pass, and that he had refused to give it; and that another time, while the negro was run away, he was applied to to leave provisions for him in the woods where they had been at work—that Wilson was then in the employ of Rogers—that when asked why he did not then inform Rogers where his negro was, he said, because he ' did not wish to make a fuss.' . . witness . . has seen Wilson with one of Rogers's negroes . . buying liquor in the day time, when . . they ought to have been at work."

*State v. Phil,* 1 Stewart 31, January 1827. " March term 1825 . . Phil, a slave, was indicted and found guilty of an assault, with an intent to commit a rape. The judgement was arrested. At October term, 1825, an indictment for the same offence, charging the assault to have been on a free white woman, was returned a true bill. The venue was changed . . November term, 1825, . . On the appearance of the jurors . . so many were set aside that a sufficient jury was not left. . . a sufficient number . . could not be obtained at that term. At April term, 1826, . . [32] the presiding judge was informed of the alarming illness of his family, and gave intimation that the Court would . . adjourn. The counsel for the prisoner moved for his discharge;[2] . . refused . . At November term, 1826, . . the prisoner was found guilty and sentence of death passed on him." Judgment reversed, [33] " and that the prisoner be discharged."

[1] Act of 1814.
[2] Act of 1807, sect. 6. Toulmin's *Digest* (1823), p. 662.

*State v. Peter,* 1 Stewart 38, January 1827. " the prisoner was indicted for the murder of another slave, and found not guilty of murder, but guilty of manslaughter: . . judgement that he should be whipped and branded," [1] Affirmed.

*Morgan v. Rhodes,* 1 Stewart 70, January 1827. "Rhodes brought an action of trespass against Morgan, charging him with having killed his, the plaintiff's slave, of the value of $1000, . . The defendant . . plead ' that the plaintiff did not produce any witnesses before the grand jury, or use any exertions to have a bill of indictment found against the defendant, but . . [71] used all exertions to prevent, . . this plea was ordered to be stricken out. . . verdict and judgement for the plaintiff." Judgment reversed and the cause remanded: " public justice must be answered before the owner . . can obtain redress . . if the master becomes prosecutor . . he should conduct the prosecution in good faith. If an acquittal should be brought about by his collusion, he cannot afterwards sustain an action for the trespass." [Lipscomb, C. J.]

*Ross v. Wells,* 1 Stewart 139, January 1827. [140] " the consideration of the note [for $950] was three negro girls "

*Goodwin v. Morgan,* 1 Stewart 278, January 1828. [279] " when plaintiff was four or five years old, and Rose a little older, . . [his mother,] in the presence of [witnesses,] . . took Rose by the hand and placed it in the hand of the plaintiff, saying that she gave her to him as his property forever."

*Brandon v. Bank,* 1 Stewart 320, January 1828. [337] " an action of trover to recover $2,190 in notes of the Huntsville Bank." A witness " heard the boy [slave of the plaintiffs] exclaim he had found the money, and saw the boy hand the bundle . . to Pryor;" Pryor deposited the notes in the bank, but returned the next day and " demanded the notes of the Cashier, who refused to deliver them. . . that the plaintiffs were both absent from home, . . October, 1825 [eleven months later], . . Brandon, one of the plaintiffs, . . [demanded] of the Cashier . . the said notes . . and that the Cashier refused to deliver them," Held: [338] " the owner [of the slave] . . is entitled by law to sue . . [339] in the absence of any evidence respecting the loser " [344] " The defendants . . [are] *tort feasors* or trespassers "

*Bassett v. Jordan,* 1 Stewart 352, January 1828. " hired . . four negroes, from the first of July [1816] till the last day of September . . [at] $17 50 per month each, for two of the negroes, and $18 25 per month each, for the other two."

*Rivers v. Loving,* 1 Stewart 395, January 1828. " On the 25th day of December next, I promise to pay . . two hundred and thirty dollars current money, of the county . . for the hire of two negro men, . . which boys I promise to clothe with a summer and winter suit, blanket, hat and shoes, and return . . [396] on the 25th day of December next. . . 10th

[1] Toulmin's *Digest,* p. 185.

day of January, 1824." Endorsed on the back: "25th of December, 1824, credit for Doctor fee $10, to two pairs of shoes $5;"

*Caldwell v. Bennett,* 1 Stewart 425, January 1828. [426] "it was agreed . . 'that inasmuch as the negro was sickly, for the hire of whom the note was given, the defendants should deal tenderly with the . . negro; and that the value of the time . . lost . . on account of sickness, should be deducted'"

*Gayle v. Singleton,* 1 Stewart 566, July 1828. "1811 he lent to . . Gayle, who . . resided in South Carolina, eleven hundred dollars; and . . took . . a mortgage of fifteen negroes. . . some time after . . Gayle moved to the Alabama river, . . within the then Mississippi Territory, carrying with him the negroes"

*Brannan v. Oliver,* 2 Stewart 47, July 1829. "In 1817 . . removed with . . the slaves [from South Carolina] to . . Alabama."

*Hobbs v. Bibb,* 2 Stewart 54, July 1829. In 1825 four negroes were sold for $2700. They were hired [55] "for the year 1827, for $200"

*Moore v. Dudley,* 2 Stewart 170, July 1829. Bass's will, 1819: "unto my daughters, . . Susan [and four others] . . a lot of negroes to each, equal in value to the lots [of eight negroes each] given to my daughters Sarah . . and Ann . . as my daughters marry or come of age, that their lots of negroes should be valued and laid off" [171] "At the death of the testator . . the executor . . estimated each lot [belonging to Sarah and Ann] at about $3,900, . . In February, 1824, Susan . . intermarried . . The negroes being hired out . . in January following, the executor, with the assistance of two other persons, proceeded to set apart . . a lot of eight negroes, corresponding in age, size, comeliness, and capacity, to the lots . . assigned to . . the elder daughters." Susan and her husband "objected to receiving this lot as full satisfaction, . . three persons chosen by them . . valued them . . at $2,435, . . the County Court . . decreed that additional negroes should be set apart . . to the value of $1,515;"

Reversed: [173] "the testator intended to make these legacies . . equal . . by division; for otherwise . . It would depend alone on the contingent state of the negro market when either daughter might marry . . one might speculate handsomely on her brothers and sisters, by the temptation to favor a match at a time of extreme depression, as in 1824; while another, at a different period, might be compelled to postpone an acceptable offer, or yield her claim to four or five negroes, because the times should exhibit the delusive appearance of prosperity, as in 1819." [R. Saffold, J.]

*Brandon v. Snows,* 2 Stewart 255, January 1830. In 1824 a negro boy was levied on and sold for $255. He was hired soon after [256] "at $20 per year, . . a reasonable rate"

*Isbell v. Stamp* (cited in 6 Porter 293), January 1830. Held: "that slaves could not be emancipated by will . . that it was essential, that the authority should be given, either by general or special enactment."

*Duff v. Ivy,* 3 Stewart 140, July 1830. "Received . . three hundred and fifty dollars for . . Charity, which I warrant and defend" Held: [144] "the warranty extends . . to the soundness as well as the title."

*McMillion v. Pigg,* 3 Stewart 165, July 1830. "1827, he purchased a slave . . paid . . $150 . . and gave . . his note for $200, . . that the slave at the time . . and ever since, has been unsound in both his legs and other parts of his body, so that he has not been able to render service sufficient to pay for his maintenance;"

*Smith v. Wiggins,* 3 Stewart 221, July 1830. [222] "during two years, Smith . . had hired him out for $125 each year."

*Cary v. Gregg,* 3 Stewart 433, January 1831. [434] "levied on negro woman . . April, 1829, the negro . . was sold for $301,"

*Smith v. Rogers,* 1 Stew. and P. 317, January 1832. [323] "fraudulent sale of the negroes and running them to Florida"

*Standefer v. Chisholm,* 1 Stew. and P. 449, January 1832. [452] "on . . taking possession of the slaves, . . he procured . . Standefer to carry them to . . Mississippi . . where they remained on hire . . for a considerable time, and until . . they were brought back"

*Glover v. Millings,* 2 Stew. and P. 28, January 1832. "Charles Millings, a negro, filed a petition . . alleging that he was a free man, and . . illegally held in bondage by . . Glover; . . verdict . . in favor of the petitioner:" Bill of exceptions: [30] "The defendant . . moved the Court to exclude . . evidence . . it was material for the petitioner to prove, that he . . had been in the northern army, . . [31] witness [deposed]—'said Charles lived in Windsor [Vermont], with his parents, from his boyhood, until . . not far from the commencement of the late war with Great Britain, at which period, as deponent has understood by general remark, . . Charles, in some way, became attached to the army;' . . motion . . overruled, . . A witness . . swore that the petitioner had made himself known to him, as having known him . . in the northern army; that the petitioner had called to his mind things that did happen there; that from said circumstances, and also from the appearance of the boy, (he being evidently a northern negro) . . he believed him to be the boy he saw in the northern army; . . [32] evidence . . received." Judgment reversed and the cause remanded.

*Moorehead v. Gayle,* 2 Stew. and P. 224, June 1832. "assumpsit . . to recover the amount of a . . note . . given for . . a slave, . . [225] the vendor . . executed a bill of sale, containing an absolute warranty of the soundness of the slave; that on the second day after . . the overseer . . 'was told that the . . slave, from his appearance . . was unsound,' . . eight days after the sale the slave died. . . the slave continued to work on the defendant's plantation, from the sale till his death." Verdict for the defendant. No error.

*Tarver v. Richardson,* 2 Stew. and P. 331, June 1832. [332] "the defendant bought [in August 1827] . . a man, woman and child, at . .

nine hundred dollars, . . the woman was sick, and it was agreed that unless she recovered she was not to be paid for; . . the other two . . were not worth more than five hundred dollars, which . . was paid down . . the woman had not recovered in December following, . . tendered her back . . [The vendor] refused to receive her; . . she continued . . an expense . . until the fall of 1828, when Richardson sold all three [in Louisiana] for one thousand dollars, the woman being estimated at one hundred dollars."

*Baker v. Rowan,* 2 Stew. and P. 361, June 1832. Held: [371] " family slaves, to which owners are attached, should be preserved in *specie,* by the interposition of Chancery,"

*Prince v. State,* 3 Stew. and P. 253, January 1833. " indictment . . for negro stealing;[1] . . found guilty."

*Cozzins v. Whitaker,* 3 Stew. and P. 322, January 1833. [323] " action . . to recover damages for a deceit . . The declaration . . alleges, that the defendant, by . . representing . . that the slave was honest, industrious and free from vice, . . and would command a high price (when he . . knew the very reverse . . to be true) . . induced the plaintiff to purchase" Bill of sale: [324] " for . . five hundred and twenty-five dollars . . sold . . Anthony . . about eighteen . . (warranted sound, in body and mind, and a slave for live,)" [323] " The slave was, in fact, so dishonest, lazy and vicious . . that he . . was of little or no value, to the plaintiff." Held: [325] " it is competent for the vendee to prove by *parol,* that the sale was effected by fraudulent means."

*Richards v. Vanner,* 4 Stew. and P. 64, January 1833. [65] " Vanner doth . . hire to . . Richards [on January 31 or February 1, 1821], two . . slaves . . for the services of which . . Richards doth bind himself . . to give . . twelve dollars each, per month [for nine months]; and . . one summer suit"

*Caldwell v. Wallace,* 4 Stew. and P. 282, June 1833. [283] " Received . . four hundred dollars . . for a negro woman . . supposed to be about twenty-four . . which I warrant to be well and sound in person, . . 1830." " The plaintiff . . proved that the negro . . was of weak and unsound mind, being deficient in understanding." Held: " the warranty extended as well to defects of mind, as of body;"

*Hogan v. Bell,* 4 Stew. and P. 286, June 1833. [298] " bought three negroes [in North Carolina] from a Virginia trader" before 1798.

*Wyatt v. Greer,* 4 Stew. and P. 318, June 1833. " Wyatt filed a bill . . setting forth, that . . 1822, he purchased . . a negro man . . transferred . . a note . . for . . five hundred and fifty-one dollars and two cents . . and also a horse, saddle and bridle, estimated at one hundred dollars. . . That the bill of sale [warranting the good character of the slave] had been lost . . That the slave had been but a few days in . . [his] possession . . before he ran away, and, having committed a theft, was shot at

[1] Act of 1807, sect. 18. Toulmin's *Digest* p. 208.

and wounded; and after apprehension, . . [319] absconded a second and third time; and had been taken up, tried and executed for felony.—That . . the complainant had not more than one week's service from him: that his death was attributable, alone to his bad character—which was known to [the vendor] . . the slave having been removed from . . Georgia, in consequence of his infamous reputation. . . That the complainant had been put to great expense in defending said slave, on the charge of felony, . . The answer . . [320] denied . . any warranty of . . character . . Charged the complainant with cruelty to his slaves, generally, and alleged this as a reason why the slave absconded." Held: [324] "The testimony . . preponderates in favor of the truth of the allegation . . of a warranty of the character . . fact . . should be tried by a jury,"

*Caldwell v. Wallace,* 5 Stew. and P. 312, January 1834. Bill of sale, executed in Tennessee in 1830: [316] "Received . . eight hundred and fifty dollars . . for . . a woman . . about thirty . . a boy, twelve or thirteen . . a boy, about two . . and the other child, about sixth months old—all of a black complexion" The negroes had been brought to Alabama in 1829.

*White v. Martin,* 1 Porter 215, June 1834. "In . . 1824, Martin instituted an action of trover against White, for the permanent conversion of . . Charity. . . recovered a judgment . . for the full value . . satisfied in full. While the . . action was pending, . . two [children] . . subject of the present suit, were born of . . Charity," Judgment for the plaintiff, Martin.

Reversed: Martin has had [221] "full redress . . the full value . . at the time of the taking, with interest . . a jury would place a higher value on a female slave promising issue, than on one of a contrary description; if she has proved the issue, between the conversion and the trial, she has furnished the best evidence of that quality. . . while increasing the damages on account of the developement [*sic*] of the prolific nature of the female, they would . . consider the expense of . . raising the offspring." [R. Saffold, J.]

*Hatter v. Greenlee,* 1 Porter 222, June 1834. "Greenlee had been arrested in . . Mississippi, on the charge of having stolen or concealed . . [Hatter's] slave, . . when brought before the justice of the peace . . a compromise took place . . that Greenlee, in consideration of his discharge, should execute a bill of sale . . of the slave . . and give his note for five hundred dollars. . . [223] the slave was delivered."

*Tatum v. Young,* 1 Porter 298, January 1835. [307] "in 1818 or 1819, the slave came here [from Georgia] with the donor and donees," "Gorham . . had been employed . . to go after the slave . . to . . Selma, . . found the slave [without a pass] in a grog shop." [298] "Tatum . . paid him for the service . . fifty dollars."

*Commons v. Walters,* 1 Porter 323, January 1835. "action of slander . . for saying . . that he hired negroes to steal cotton and bought it of them."

*English v. Lane,* 1 Porter 328, January 1835. [342] "twenty eight negroes . . were worth nine thousand dollars [in 1826], . . [346] he put them to making brick . . twelve or eighteen months, when Lane said the business was unprofitable, and sent them on a farm. . . [347] that the negroes . . could have been hired at auction at from fourteen hundred to sixteen hundred dollars [per year], but in that way they would have been more exposed to loss from hardships, than when under the charge of one interested in their welfare."

*Harrison v. Hicks,* 1 Porter 423, January 1835. [429] "that the slave [worth $700] . . had been . . sold under an execution, upon a judgment obtained according to the laws and usages of the nation of Cherokee Indians,"

*Hawkins v. State,* 1 Porter 475, January 1835. "he had been convicted for negro-stealing . . pardoned"

*Hatfield v. Montgomery,* 2 Porter 58, January 1835. [70] "the girl was only about nine years of age [in 1807 or 1809], and there is not a *scintilla* of proof that the three hundred dollars paid, was not the full value . . the answer avers it to have been considerably more." [62] "Hatfield removed from . . Tennessee . . within six or nine months of the filing this bill . . to . . this state, with said girl and her issue, (six or eight children,)"

*Cawthorn v. Deas,* 2 Porter 276, June 1835. Thornton, J.: [279] "by adopting the principles of the Common Law, . . it will result from the peculiar nature of our slavery, that there is no redress, *civiliter,* for any injury done by a slave, not acting in obedience to his master's authority, express, or implied. . . so far as remuneration is concerned, it is, as if the injury was effected by the natural elements of air, or fire. . . But notwithstanding all this, . . I feel bound to adopt . . the principles of the Common Law, as applied to master and servant."

*Baylor v. Scott,* 2 Porter 315, June 1835. [320] "sheriff [in 1830] . . sold . . a negro boy about ten, and a girl about twelve . . [for] $650. . . twelve dollars for the hire of the boy for three months . . before the levy,"

*Hopkins v. Thompson,* 2 Porter 433, June 1835. The former owner "returned to Tennessee, and secretly took the slaves from a plantation . . upon which they were, under the control of an overseer, and conveyed them to this State;"

*Ivey v. Hardy,* 2 Porter 548, June 1835. Held: [549] "when a white man sues a free person of color or of mixed blood within the third degree, in a case under twenty dollars, and offers his own oath to establish his claim, the defendant can be permitted to be examined on oath, touching the suit, in his own defence . . [550] To give the plaintiff the benefit of this statute,[1] and exclude the defendant from it, under the prohibition of the other,[2] would open a door to very great frauds," [Hitchcock, J.]

[1] Aikin's *Digest,* p. 294.
[2] *Ibid.,* p. 452.

*Stone v. Dennis,* 3 Porter 231, January 1836. [235] "to furnish . . negroes [in 1831] . . to build . . [saw] mills, . . and to continue them thereafter . . at the rate of fifteen dollars a month,"

*Overton v. Morris,* 3 Porter 249, January 1836. [251] "negroes . . sent . . to Alabama; the sale being made in Virginia,"

*Carroll v. Pathkiller,* 3 Porter 279, January 1836. [281] "the slave belonged to the estate of . . a native Cherokee Indian, . . the son of Pathkiller, the king,"

*Middleton v. Holmes,* 3 Porter 424, June 1836. "an action of trespass, for killing a slave, . . no averment, that the defendant had been tried by the State, . . the defendant, . . a constable, had received a warrant . . commanding him to arrest the slave, on a charge of being at large without a pass; with wearing weapons; and with way-laying the path of . . Mise. That, in proceeding to arrest the slave, . . he had fled; and that the killing had been perpetrated,"

Held: I. [425] "the person injured, by the trespass, . . [cannot seek] his own redress, till it shall be . . determined, by the proper tribunal, what the justice of the State, requires of the accused, . . [II.] [429] He was not justifiable in killing the slave,"

*Charles (a slave) v. State,* 3 Porter 440, June 1836. "application for a writ of error, to reverse a sentence of . . death. . . forty-seven days will have intervened, between the commencement of this term of the [Supreme] Court, and the day fixed for the execution" No error: [441] "We consider the statute [1] as directory, only; . . the prolongation of the time, is not such an injury to the accused, as to warrant a reversal"

*Charles (a slave) v. State,* 4 Porter 107, June 1836. "Charles . . was indicted . . at the October term, eighteen hundred and thirty-five . . for the murder of . . Sanford: . . found guilty . . The Court . . adjourned . . to the succeeding term, without rendering judgment . . At April term . . a motion was made . . for his discharge, on the ground, that the judge . . had died . . overruled . . also one made in arrest of judgment" Affirmed.

*Flora (a slave) v. State,* 4 Porter 111, June 1836. "The indictment charged, that Flora, . . the property of . . administrators of the estate of . . Sanford, committed the murder upon the body of . . Sanford; . . found guilty. . . No proof . . that administration . . had ever been granted . . the prisoner's counsel moved the Court to instruct . . [112] the proof did not sustain the indictment . . refused"

Judgment reversed and the cause remanded: [114] "As the right of the owner to receive a part of the value of the slave, must appear from the record,[2] the fact of ownership . . as well as the fact of guilt . . ought to be put in issue"

*Darwin v. Railroad Co.,* 4 Porter 160, June 1836. "The cause of action was for the exposure of the plaintiff's negro, while in the defen-

[1] Aikin's *Digest,* p. 614.
[2] *Ibid.,* p. 124.

dants' service, to such hardships in inclement weather, as to cause his death;"

*Williams v. Taylor,* 4 Porter 234, June 1836 [237] "an action . . against . . the owners of a steam-boat . . to recover the value of a negro man . . employed as a steward . . killed . . by slipping and falling into the pit of the fly wheel of the boat; . . the fly wheel was not guarded by strips" Held: I. [239] "carrier is liable only for gross negligence, . . [II.] [240] If . . the master [of the slave] . . knew . . of the defects in the boat," he [239] "takes upon himself the risk of accidents"

*Portis v. Creagh,* 4 Porter 332, January 1837. Will, 1825: [333] "I want the most obedient children to have the most obedient negroes, or such as their mother thinks will suit best."

*State v. Brown,* 4 Porter 410, January 1837. "convicted of slave-stealing,[1] . . and received sentence of death."

*State v. M'Donald,* 4 Porter 449, January 1837. Indictment under the act of 1812.[2] [451] "that the master of . . Moses, in consequence of suspicions . . directed Moses, that if the prisoner should come . . he should conduct him to a particular spot, . . held the conversation . . in the hearing of his master and another, . . the defendant said the negroes ought to rise, . . that they had hard masters. That they must raise five hundred men, but he would start with three hundred . . Frank, was to furnish . . a horse. The defendant promised to give the rifle he had with him to Moses, when they started: . . that they would go to Mobile, and that if they did not like that, . . to Pensacola . . a weaker place. . . get arms and ammunition there, . . press a ship, with which they could go to Texas . . a free place . . [452] That they would be joined by other slaves on their way . . Moses, the next evening went, with his master and several gentlemen . . to . . defendant's residence. These gentlemen concealed themselves, and the slave was sent for the defendant, . . The defendant then told the slave that he must get him one thousand men, but he would start with five hundred. . . That it was not safe to stay in Florida, as the United States would reach them: . . they could get guns from their masters, with ammunition and horses, . . The defendant said there was no white men[3] engaged—he would head them, and that Frank would be second in command, and Moses third . . [453] The master of the slave stated, that the slave was faithful and obedient, and that the earliest information was received from him. . . The witnesses all stated that there was no disturbance in the county among the slaves . . no evidence of . . any illegal conduct further than . . these conversations."

Held: [459] "The *free person,* whether white or colored, who . . even . . [though] professing to be prompted by the *pure spirit of christianity,* shall proclaim to our slaves the doctrine of universal emancipation, . . and estrange the affections of the slave . . with the intention of arousing him to the effort to break by force the bonds of servitude, renders him-

[1] *Ibid.,* p. 103.
[2] *Ibid.,* p. 108, sect. 44.
[3] This would indicate that the prisoner was colored.

self a *subject* for criminal justice. . . [460] the indictment intended to embrace the first class of offences, declared by the second branch of the act — for advising, plotting or consulting with a slave, etc. for the purpose of . . assisting *any such* insurrection . . The words . . mean an actual or meditated rebellion. . . [461] The witnesses all state that there was no insurrection . . clear, that Moses never participated in any criminal design of the prisoner. . . [466] the conviction of the prisoner was unauthorized" [Collier, J.]

*State v. Coleman,* 5 Porter 32, January 1837. [36] "The first count charges . . the prisoner, in conjunction with . . Kennedy, with making an assault 'upon . . Primus, (a negro man . . belonging to . . Roll,) and . . Kennedy, with discharging the contents of a pistol at Primus, by means of which he was wounded, and thereafter died.'" The jury found the prisoner "guilty of manslaughter . . and assess his imprisonment at sixty-eight days, and a fine of one hundred dollars." Motion in arrest of judgment overruled. Affirmed.

*Turner v. Thrower,* 5 Porter 43, January 1837. [44] "action of detinue . . The plaintiff offered evidence, conducing to prove title . . The defendant sat [*sic*] up title, under the sale of the slave, by the sheriff . . proved a warrant of commitment . . and . . an advertisement in the Mobile *Commercial Register,* . . 'Committed to the jail . . 13th inst. by . . a justice of the peace, . . as a runaway slave, a negro man, who calls his name William Thompson, and says he is free, and that he came from . . [45] Virginia, as the servant of a Mr. Thompson: . . five feet, four or five inches high, twenty-five or thirty years of age, black, and has a number of small scars on his face. His owner is requested to come forward, . . otherwise he will be sold according to the statute[1] . . to pay jail fees. March 19, 1833.' This advertisement, and none other, was continued to be published . . until the fourteenth day of September, . . Defendant then . . proved, an advertisement . . 'Notice is hereby given, that . . William Thompson, committed as a runaway slave . . not having been claimed . . will on the 14th October next, at the Court House . . be sold . . September 14, 1833.' This last advertisement was followed by [another:] . . [46] 'sale is postponed until . . 21st October, . . October 12, 1833.' . . twenty-sixth [[47] 'twenty-first'] . . of October . . the negro was . . purchased by the defendant. . . sheriff . . testified, that he did not put up . . advertisement at the Court house, or any other public places,"

Held: the sale was invalid. [49] "The act . . does not authorise [the sheriff] . . to make any preparation to sell, until six months after the first publication. . . [51] the notice of the sale . . must be given by advertisement, . . in some newspaper in this State, at the court house . . and two other public places within the same county,"

*Childress v. M'Cullough,* 5 Porter 54, January 1837. Articles of agreement, January 1833: "that . . Childress has leased unto . . M'Cullough, for . . two years . . his plantation . . [55] and . . [twenty-five]

[1] Act of 1809. Aikin's *Digest,* p. 395, sect. 25.

slaves, . . M'Cullough is to furnish each of the male slaves . . with three shirts, three pair of pantaloons, a roundabout, a hat, blanket and pair of shoes; and the women with three shirts, three frocks, a blanket, hat and pair of shoes, annually. M'Cullough is to pay the State and county tax, on . . negroes and physician's bill, for attending . . [56] slaves; each of the negroes is to have three pounds of bacon, and one peck of meal per week. M'Cullough is to find provisions for the children of Anny and Hannah, and Childress, to furnish them with clothes. . . The negroes are not to be taken off the plantation to be worked, without the consent . . of . . Childress."

*M'Coy v. Moss,* 5 Porter 88, January 1837. A bill of sale was made in Alabama conveying [89] "a man about thirty . . and . . a woman about twenty" for $1050. The purchaser's agent "had taken the . . [man] slave into possession in Georgia," but he escaped.

*Hall v. M'Henry,* 5 Porter 123, January 1837. [124] "Royster . . ran the [two] negroes [claimed by others] out of the country."

*Burt v. Kimball,* 5 Porter 137, January 1837. In 1819 or 1820 a slave was brought from North Carolina to Alabama.

*Perry v. Hewlett,* 5 Porter 318, June 1837. "an agreement under seal, whereby the defendants, on [December 23, 1833,] . . covenanted to pay the plaintiff . . one hundred and fifty dollars, for the hire of two negroes, and to return them" on December 25, 1834. In June [319] "one of the slaves, a female . . died. That the surviving slave, on being permitted to visit the plaintiff, shortly afterwards, was detained by him."

Held: I. "the death of the female slave, if . . without the fault . . of the defendants,—discharged the covenant to return her. . . [II.] if the plaintiff detained the surviving slave . . the covenant to pay for the hire of both . . was discharged."

*Sutherland v. Goff,* 5 Porter 508, June 1837. [511] "that the defendant [in 1834] hired of the plaintiff . . a negro girl [about twelve years of age] . . and agreed to treat the slave with . . humanity, and to return her at the end of the year, but that by his negligence . . [512] the negro died, . . that [a third person] . . estimated the value of the slave, to be three hundred dollars."

*Trotter v. Blocker,* 6 Porter 269, January 1838. Will of William Butler, which was executed in 1832: [288] "It is my will . . after my death, that . . every one of my negro slaves be free . . they and their heirs forever.—I . . bequeath unto [them] . . all my plantation utensils, and my kitchen furniture, and give them one year's clothing, one year's provision, out of my estate, and should the laws of my State be such, that the said negroes can not remain within the limits of the State, free, I . . bequeath . . one hundred dollars, to the said negroes, to remove them to some other State" The testator died in 1836.

Held: [306] "the slaves . . are not entitled to freedom." I. [290] "If the bequest of freedom be considered as a legacy to the slaves, . . they have not the capacity to take property, . . [II.] [295] the Consti-

tution [of 1819], by investing the General Assembly with the power 'to pass laws to permit the owners of slaves to emancipate them,' has impliedly, abrogated all the pre-existing modes" [292] "until a general law was passed on this subject [in 1834[1]], . . applications were made to the legislature, at every session, for leave to emancipate slaves,[2] and . . after the adoption of the constitution, up to that time, there was no instance of emancipation being effected, otherwise than by legislative permission. . . [294] This statute [of 1834] authorises the owner to make an application for the manumission . . the mere authority to execute a will does not confer the ownership of property, . . [295] there is [therefore] a want of authority to confer freedom by will, . . [III.] [306] The bequest of plantation utensils, . . etc. being made in anticipation of the freedom of the slaves, must of course fail," [Collier, C. J.]

*Martin v. Chapman,* 6 Porter 344, January 1838. Articles of agreement, March 31, 1834: [348] "to attend to . . Martin's business, in the capacity of an overseer, . . also to work when necessary, at light work, such as he may prefer, and also after the crop is laid by, to attend without labor, to . . the [eleven] hands, in whatever business . . Martin may wish them to do, . . [349] these hands are to be under the control of [the overseer] . . in crop-time. . . Martin agrees to pay [him] . . the eighth part of corn, fodder, and cotton," "October . . misunderstanding took place . . in relation to the . . control of the hands, . . That the plaintiff insisted they should pick out cotton and the defendant [Martin] insisted that a part of them should saw some lumber for . . a gin-house, and . . others should get stocks to be sawed, and accordingly ordered . . the plaintiff left" The jury found for the plaintiff. New trial refused. Affirmed.

*Powers v. Bryant,* 7 Porter 9, January 1838. [10] "promised to pay [in 1833] . . three hundred dollars, in good negro property"

*Copewood v. Taylor,* 7 Porter 33, January 1838. [34] "a jury . . assessed the value of the boy Dick at one thousand dollars, and the boy Tink also"

*Greene v. Linton,* 7 Porter 133, January 1838. [134] "being desirous of carrying on the blacksmith's business, . . they would furnish three good hands to work under plaintiff;"

*Steel v. Worthington,* 7 Porter 266, January 1838. [267] "slave went to town . . by permission of . . overseers, with instructions to return home in a reasonable time, . . he went into the possession of [his former owner], . . who sold . . him"

*Ned (a slave) v. State,* 7 Porter 187, June 1838. [188] "indicted at the October term [1836] . . for . . murder . . 'The jurors . . say,

[1] Aikin's *Digest,* p. 647.

[2] [278] "See acts of 1825, p.p. 122, 3, 4—12 persons emancipated. Acts of 1830, p.p. 36, 7, 8, 9, 77—about 60 persons emancipated and in several instances on the applications of executors. Acts of 1832, p. 98—12 persons emancipated." [Counsel for the plaintiff in error.]

that they cannot, by any reasonable probability, agree . . [189] ordered by the court, that . . jury be discharged . . that the prisoner be remanded to jail, for trial at the next term' . . At the Spring term . . The jury . . could not agree . . They were, . . because of the expiration of the term of the court, discharged. At October term, . . the jury returned a verdict of guilty, and his value was assessed at eight hundred dollars. The prisoner was sentenced to be executed"

[217] "the judgment . . must be reversed, and the prisoner discharged." [214] "the discharge of the first jury . . was irregular, and unwarranted by law: . . [216] the unwarranted discharge . . is equivalent to an acquittal." [Goldthwaite, J.]

*Lamb v. Wragg,* 8 Porter 73, June 1838. Slaves were brought from South Carolina by their owner in 1826.

*Ricks v. Dillahunty,* 8 Porter 133, June 1838. [135] "the first day of January next, we . . promise to pay . . three hundred and forty eight dollars, for the hire of three negro men; . . 13th . . February, 1834." One of the negroes "died five or six weeks thereafter." Held: [140] "the loss of service must be borne by the hirer,"

*Gray v. Crocheron,* 8 Porter 191, June 1838. Trover. "the slave . . was sent across the Coosa river with a letter, by the defendant. The slave was the ferryman . . and was afterwards missing. His clothes were found about twenty yards above the ferry landing, and the skiff and flat . . [192] were at their proper places."

Held: [195] "if after having reached the other side . . and discharged his errand, he was lost, while following the inclination of his own will, the defendant would be liable only for the temporary conversion."

*Heirs of Capal v. M'Millan,* 8 Porter 197, June 1838. The bill stated: [201] "That the negroes could be hired out in Mobile to better advantage than in Wilcox, . . The answer . . thought the negroes would be exposed to injury in health and morals, by removing them to Mobile,"

*Rochelle v. Harrison,* 8 Porter 351, January 1839. [353] "That the [two] slaves sued for, were too small to work in the field, and they remained in the house, waiting on . . family."

*Hogan v. Thorington,* 8 Porter 428, January 1839. "the plaintiff . . proved the unsoundness . . at the time of the sale, in February [1833] . . and that at that time, she was not worth one half as much as . . if sound; that the price paid by plaintiff . . was five hundred and fifty dollars. . . that since the sale . . [429] negroes had greatly increased in price, and that the slave . . had apparently recovered . . The defendant proved, that the plaintiff sold said slave for one thousand dollars, without any warranty of soundness."

Held: the plaintiff [431] "has been prevented from realising the profit he was entitled to, by so much as the sums paid for medical attendance, nursing, etc. diminished it; and for this loss, he is entitled to recover."

*State v. Hawkins,* 8 Porter 461, January 1839. Indictment for stealing a slave.[1] "it was proven . . that the defendant had taken . . Jane . . and had attempted to place her on board . . the brig *Martha,* then just about sailing for a northern port, with a view . . to secure her freedom, . . that having failed to find the . . [462] brig . . on account of the darkness . . the defendant concealed [Jane] in the forecastle of the schooner . . (on which he was cook,) . . for several days, for the purpose of enabling her to make her escape to a free . . State."

Held: [465] "There being . . no intention to convert the slave to his own use,—he cannot . . be found guilty of larcency. . . [466] but the prisoner is to remain in custody . . to enable the solicitor . . to prefer an indictment against him for harboring or concealing . . Jane . . or for a conspiracy to deprive the owner . . of his property." [Ormond, J.]

*State v. Wisdom,* 8 Porter 511, January 1839. Indictment for negro-stealing. [514] "the prisoner . . between ten and eleven o'clock . . was discovered [in Dallas County] . . near where . . Dick was at work . . then . . went to a field . . where . . Peter . . was at work . . the negroes were missing . . the night of the same day. . . the prisoner arrived . . in the morning . . in Perry county: . . had . . with him . . Dick, and . . Peter." One of the negroes was [513] "traced . . to Mississippi, and found . . at a mill belonging to the prisoner;" The prisoner [512] "was tried, convicted, and sentenced to death,"

Judgment reversed and the case remanded: [521] "an individual cannot commit a larceny in one county, who is, at the time . . in another, and . . not near enough to aid"

*Swift v. Fitzhugh,* 9 Porter 39, January 1839. In 1834 a slave was hired [43] "at eighteen dollars per month"

*Fisher v. Campbell,* 9 Porter 210, January 1839. An overseer [211] "purchased . . eight barrels of pork, for the . . slaves"

*State v. Duncan,* 9 Porter 260, January 1839. "The first [count] charged him with concealing 'Ned . . the property of . . the said . . Duncan, so that he cannot be brought to condign punishment . . Ned being . . charged with a capital crime[2] . . of having committed an assault and battery with intent to kill, on . . a white person' . . no proof to show that legal proceedings had been instituted against Ned, . . [261] verdict of guilty" Judgment reversed and the case remanded.

*Skinner v. Gunn,* 9 Porter 305, June 1839. [307] "in consideration of . . one thousand dollars, . . sold . . Ned, supposed to be thirty . . which negro I warrant to be sound in body and mind" [305] "the negro died shortly after"

*State v. Saunders,* 9 Porter 326, June 1839. "The first count charges that the defendant: 'did buy . . from Dick . . two hundred pounds of

[1] Aikin's *Digest,* p. 103, sect. 19.
[2] *Ibid.,* p. 124.

cotton, for five dollars, without the consent of the master '[1] . . verdict and judgment against the defendant,"

*Reed v. Brasher,* 9 Porter 438, June 1839. A female slave was the property of an Indian belonging to the Creek tribe.

*Brown v. Lipscomb,* 9 Porter 472, June 1839. [473] "The services of the slave [in 1834] were worth one hundred and fifty, or two hundred dollars per annum."

*State v. Murphy,* 9 Porter 487, June 1839. "indictment for selling spirituous liquor to a slave, without the permission of the owner."

*Falls v. Gaither,* 9 Porter 605, June 1839. [606] "1835. Received . . one thousand dollars, for two negro girls . . about seventeen [and twenty] years old,"

*Hardeman v. Sims,* 3 Ala. 747, January 1840. [748] "The bill charges that the grand-father of the complainants . . 1822, by deed . . recorded in . . Virginia, conveyed to them . . slaves . . shortly after brought . . to this State. . . their father being a man of extravagant habits . . sold many of the negroes, . . one . . was . . purchased by . . Sims. . . a girl, now about fifteen . . 'a family negro . . and that they have all that personal regard for her . . entertained for property of this kind by all families, and therefore, seek her recovery in specie.' . . Sims, in his answer, . . [states] that he purchased the negro at public sale: she was then about six" Bill dismissed: [750] "the defendant . . must be presumed . . to be more attached to her, than those who had only known her in early infancy,"

*Gaines v. McKinley,* 1 Ala. 446, June 1840. "Received . . five hundred and twenty-five dollars, for . . [447] John, about twenty-seven . . and five hundred and twenty-five dollars, for . . Jackson, about seventeen"

*Black and Manning v. Oliver,* 1 Ala. 449, June 1840. "Detinue by the defendant in error . . and judgment in his favor in the court below, . . The facts . . are that the defendant in error, about eighteen months after his removal . . from South Carolina, sold . . the negro woman . . to . . Sweet. . . that Sweet gave his note . . for two hundred and fifty dollars, . . That the slave was worth from six to eight hundred dollars; and that the inducement for the sale . . to Sweet, was, that he was to make her his wife, and emancipate her. The plaintiffs in error proved, that they purchased the slave from Sweet for two hundred dollars . . knew the circumstances . . before they purchased . . Sweet, before his purchase . . told [a witness] . . that he had followed [Oliver] . . from Carolina, for the purpose of cheating him out of this negro,"

Judgment reversed and the cause remanded: [450] "We must infer . . that . . in this State, where a marriage between a white and colored person would be illegal . . it was probably intended, that the parties should live together in a state of concubinage. As either would be in violation

[1] *Ibid.,* p. 396.

of the law of this State, morality, and public decency, the stipulation would be void; and . . Sweet acquired the absolute property . . [451] It is difficult to resist the conclusion that the whole case does not appear on the record. What the law would be . . where the condition of a nominal sale of this character, was, to take the subject of it to some other country, where such marriages were lawful, it is not necessary now to determine." [Ormond, J.]

*Stringfellow v. Mariott,* 1 Ala. 573, June 1840. "Received . . a note . . for twelve hundred dollars . . for . . a negro girl . . twenty-two years old. I warrant . . negro to be sound . . 1836." [574] "that before the sale of the slave to the plaintiffs in error, the defendant in error . . sold the . . slave to the witness . . [who] kept her about four days, and then returned her . . informed him that the . . slave, said she was unsound, . . This evidence, so far as it related to the declarations of the slave, was excluded"

*Humphres v. Terrell,* 1 Ala. 650, June 1840. [651] "purchased the slaves [a woman and her child] at a constable's sale, . . 1830, for . . three hundred and fifty-one dollars,"

*State v. Marler,* 2 Ala. 43, January 1841. [44] "negro woman had been in the possession of the defendant for eight or ten years, and was, at the time the killing took place, in the possession of the deceased—that the defendant . . ordered said negro home, that she refused to go—and evidence was also offered, tending to show, that deceased called for his gun, and had it cocked"

*Gould v. Womack,* 2 Ala. 83, January 1841. [94] "He possessed . . one hundred and eighty slaves, and an immense landed estate,"

*Sims v. Sims,* 2 Ala. 117, January 1841. "the father of the plaintiff, . . in the presence of several persons, in 1832 or '3, called the woman Rachel into the yard, and . . the plaintiff ['five or six years old'] to the door . . and then said 'In the presence of you all, I give this negro to my daughter'" Ormond, J.: [124] "It rarely happens, I apprehend, that in any case of the gift of a slave, the senseless mummery is gone through of placing the hand of the slave in the hand of the donee."

*State v. John (a slave),* 2 Ala. 127, January 1841. "The prisoner was indicted for the crime of murder, and convicted. . . it does not appear, that after the verdict . . the jury were again sworn . . to assess the value of the slave."[1] Held: [129] "an omission in this particular, cannot avail the convict;" See John *v.* State, *infra.*

*Lucas v. Kernodle,* 2 Ala. 199, January 1841. [200] "hired two [slaves] . . for . . one year, commencing . . first of January, 1837, for six hundred dollars,"

*Litchfield v. Falconer,* 2 Ala. 280, January 1841. A negro woman was sold in 1836 for $800.

[1] Aikin's *Digest,* p. 124, sects. 60, 64.

*John (a slave) v. State,* 2 Ala. 290, January 1841. "One count . . charges Ruff and . . Anderson [owner of John] as assessories [*sic*] before the fact, and in subsequent counts, . . Ruff principal, and the others accessories. . . [291] the plaintiff in error was . . sentenced to be hung on . . 22d January, 1841. A question was reserved . . for the decision of the Supreme Court."[1] [292] "This Court commenced . . fourth day of January, . . only seventeen days could intervene . . when the shortest period permitted by the statute[2] is twenty-five." Judgment reversed and the case remanded: [292] "It was erroneous not to suspend the execution of the sentence"

*Watts v. Sheppard,* 2 Ala. 425, January 1841. [427] "claims . . about three thousand acres; . . also . . all the negroes . . on said plantation [in 1834] . . about one hundred and twenty-four in number;"

*Jones v. Yarborough,* 2 Ala. 524, June 1841. "note, made . . [525] November, 1838, for [$193.34] . . The consideration . . was the purchase of a negro man . . A physician . . testified, that on the 25th December . . he visited the negro . . and found him laboring under a chronic disease of the chest, and believed he could not ever be sound again."

*Caraway v. Wallace,* 2 Ala. 542, June 1841. [543] "sale . . of twenty-seven slaves [in 1836], for . . twenty-nine thousand dollars; . . another slave was added, at . . twelve hundred dollars,"

*Sims v. Canfield,* 2 Ala. 555, June 1841. [558] "he was willing to make him a bill of sale . . but as his wife was unwilling to part with the girl, he wished to hire her for two or three months, believing in that time his wife would be reconciled to the arrangement."

*Harrell v. Floyd,* 3 Ala. 16, June 1841. [17] "Delila and child Margaret" were sold in 1828 for $427.

*McCord v. Love,* 3 Ala. 107, June 1841. "Williams lived in South Carolina, and had sent three slaves to Alabama, by Love, for the purpose of farming together."

*Bryant v. Peters,* 3 Ala. 160, June 1841. [161] "a writing, which . . some persons say, is the last will . . By that paper, a legacy of one hundred dollars is given to a negro woman . . and the like sum to each of several other negroes:"

*Mock v. Kelly,* 3 Ala. 387, January 1842. Dr. Kelly "said, in order to cure [the slave] . . he must have her at Hayneville, whither she was sent, and died soon after her return, of dropsey, the same disease . . she had"

*Calhoun v. Cozens,* 3 Ala. 498, January 1842. In 1840 an attachment was levied, in Alabama, upon the complainant's four slaves [499] "while . . [her] agent . . was removing them from North Carolina to her residence in Mississippi,"

[1] State *v.* John, p. 148, *supra.*
[2] Act of 1836. Aikin's *Digest,* p. 614, sect. 1.

*Wood v. Wood,* 3 Ala. 756, January 1842. [758] "he received . . a negro man . . in 1822, who was worth but little, but would have sold for five hundred dollars;"

*Oden v. Stubblefield,* 4 Ala. 40, June 1842. "the plaintiff gave the negro woman . . to his son . . 1837," [42] "in 1838, [she] ran away . . and went to the plaintiff's house, where she remained for eight or ten days; . . [the son] had some difficulty in getting her away from the family, and to satisfy them, he had promised to return her at the end of the year."

*Bank v. Marshall,* 4 Ala. 60, June 1842. In 1836 [61] "he sold a negro man, (a blacksmith,) . . for . . twenty-one hundred dollars,"

*Gibson v. Andrews,* 4 Ala. 66, June 1842. [67] "that the plaintiff was a physician, and being at Pascagoula in Mississippi, attended on a slave of the defendant who was dangerously ill . . that there did not appear to be any one at Pascagoula whose duty it was to attend to said negro, the defendant being in Alabama. The defendant . . declined to pay . . alledging [*sic*] that . . Field was responsible."

Held: "The master . . is under both a moral and legal obligation to supply his necessary wants. . . [68] The hirer could not, any more than the owner voluntarily permit the slave to be absent from him; and in such a case there can be no doubt that the owner as well as the hirer would be responsible for necessary medical services" [Ormond, J.]

*McWhorter v. Lewis,* 4 Ala. 198, June 1842. "On the first day of January next, I promise to pay . . five hundred and fifty-three dollars, for the hire of three negro men for the present year, . . 1838." Signed by the president of the "W. and Coosa R. R. Company."

*State v. Abram,* 4 Ala. 272, June 1842. "The prisoner, a slave of . . Long, was indicted at the Circuit Court . . in 1842, for the murder of Reuben, a slave of the same master. . . he pleaded in abatement, that . . 1841, he was tried for the offence . . by a special Court, composed of the Judge of the County Court and two Justices of the Peace [1] . . and found guilty, . . obtained a *certiorari,* and caused the proceedings to be removed to the Circuit Court, where the verdict and judgment were reversed . . on the ground that the special Court permitted one of the Justices . . [273] after the trial had commenced, to withdraw . . and another to take his place. The judgment also directed the prisoner to be remanded to custody, until discharged by due course of law." As there [272] "has been no other trial of him . . by the special court . . he prays that the indictment may be quashed. This plea was adjudged bad on demurrer; and thereupon the prisoner pleaded—1. Not guilty. 2. Autrefois acquit. . . found guilty and sentenced to death,"

Judgment affirmed: I. [276] "The Court authorized [by the act of 1832] . . ceases with the occasion which gave it life. . . the Circuit Court could not have remanded the case" II. The withdrawal of the justice did not entitle the prisoner to a discharge.

[1] Act of 1832. Aikin's *Digest,* p. 124.

*Rasco v. Willis,* 5 Ala. 38, January 1843. [39] "proved . . the defendant . . carried on . . a poorly furnished grog shop, about which negroes resorted, with other circumstances, conducing to show that an unlawful traffic with slaves was carried on; and . . that the Brantleys were in the habit of receiving stolen goods from negroes,"

*Stallsworth v. Stallsworth,* 5 Ala. 143, January 1843. Will: [145] "that the residue of my negroes . . be valued and put into eleven equal parts, regard being had to the families of negroes; . . and that each of my children . . draw one share"

*Kennedy v. McArthur,* 5 Ala. 151, January 1843. "The declaration . . alleges, that the slave had run away . . and that the defendant, well knowing the fact, . . did . . conceal said slave . . judgment given against him for the damages assessed."

*Thomas v. Wallace,* 5 Ala. 268, January 1843. [269] "when the slave . . had run away and came to the agent [of the trustee], he was sent home by him."

*Vaughn v. Wood,* 5 Ala. 304, January 1843. "1839 . . five hundred dollars . . for . . Mahala"

*Bethea v. McColl,* 5 Ala. 308, January 1843. Ormond, J.: [314] "The ascertainment of the value of the labor of a slave . . depends upon the ability of the slave . . the quality of the soil . . the skill with which it is directed—and the price of its product."

*McAden v. Gibson,* 5 Ala. 341, January 1843. "a man, . . [two] women, . . [three] boys, and . . a girl . . were the property of the . . Rail Road Company;"

*Taylor v. Savage,* 1 Howard (U. S.) 282, January 1843. [283] "among the subjects of said levy were some family negroes, who had been for several generations in the family, whom it would be especially painful to part with;"

*Lazarus v. Lewis,* 5 Ala. 457, June 1843. [458] "Henly, about sixteen . . valued at five hundred and fifty dollars; Maria . . about eight . . valued at two hundred and fifty . . Major . . about four . . valued at one hundred and seventy-five . . Dick . . seven years old valued at two hundred and seventy-five dollars,"

*State v. Flanigan,* 5 Ala. 477, June 1843. [478] "The prisoner was an overseer . . was seen . . to whip [the slave] . . and strike him about the head with the handle of the whip, and a short time afterwards he was found dead . . A physician, who made a post mortem examination of the body . . stated, that it gave evidence that many blows and stripes had been inflicted with great violence; . . [479] The jury found the prisoner guilty of murder in the second degree, and he was . . sentenced . . to ten years imprisonment" Affirmed.

*State v. Jones,* 5 Ala. 666, June 1843. "The defendant was indicted . . for the murder of his own slave [Isabel] . . by beating with clubs,

sticks and whips . . cruelly, barbarously and inhumanly" He was found guilty of murder in the second degree and was sentenced [667] "to be confined in the penitentiary for ten years." Affirmed.

*Todd v. Hardie,* 5 Ala. 698, June 1843. [699] "he bought the slave . . in 1829 or '30, for . . three hundred and fifty dollars, which he considered his value, as he was runaway at the time. . . [701] witnesses . . state that negro men in the fall of 1828, were worth from three hundred and fifty to five hundred dollars, and that Jack was worth from four to four hundred and fifty dollars." Collier, C. J.: [702] "this, if we were to speak from the history of the times, we should think a fair estimate. Property . . was greatly depressed in 1828."

*Craddock v. Stewart,* 6 Ala. 77, January 1844. "at the sale of intestate's estate, in January, 1838, . . the defendant bought . . Billy, a man, for one thousand and ten dollars; . . a boy, for six hundred dollars; . . a boy, for one thousand and one dollars; and . . a man, for eight hundred and seventy-one dollars." The administrator warranted them to be sound. [78] "evidence . . that Billy was diseased, as early as 1834, of a spinal affection, . . more or less pain, up to . . August, 1839, when he died." Held: the administrator is chargeable in his representative character.

*Nabors v. State,* 6 Ala. 200, January 1844. "The indictment . . charges, that he . . a negro boy slave . . of the value of three hundred dollars . . did steal . . The jury returned [at 2 a.m. on Sunday morning] a verdict 'of guilty' . . and the court . . sentenced him to seven years imprisonment"

Reversed and remanded: I. [203] "no judicial act can be performed on Sunday, . . [II.] [204] if the verdict had been allowed to stand, no judgment could have been rendered on it, except for the punishment of grand larceny,[1] . . because the additional punishment provided by the 18th section of the 4th chapter of the Penal Code, creates a distinct offence,"

*Washington v. Cole,* 6 Ala. 212, January 1844. "The witness stated, that as a physician, he attended upon a negro boy . . from the 15th of May to the 19th of June, 1841, . . that the boy was at his house during the period . . that his death was occasioned by the dropsy, and witness' charge for his services was ten dollars. . . the deponent was sometimes called Doctor . . but was not a physician."

*Seawell v. Henry,* 6 Ala. 226, January 1844. See Sewall *v.* same, p. 158.

*Nelson (a slave) v. State,* 6 Ala. 394, January 1844. "indicted . . for an assault . . 'upon . . [395] Williams,' 'with intent . . to . . murder.' . . the jury by their verdict said, 'that they find the defendant guilty . . and also, . . Williams . . to be a white person:' and the court pronounced

[1] Not less than two nor more than five years in the penitentiary. Penal Code, ch. 4, sect. 57.

the sentence of death [1] . . It does not appear that any of the jurors . . were slave holders." [2]

Held: I. [398] "For the defectiveness of the indictment, the judgment . . is reversed, and the prisoner is directed to be detained in custody to await further proceedings, or until he be legally discharged." II. "The circuit court, in declaring that the jury are 'good and lawful men,' must be understood as saying that they were such as the law required." See State *v.* Nelson, p. 155, *infra.*

*Tuggle v. Barclay,* 6 Ala. 407, January 1844. [408] "November, 1842, a writ of *fieri facias* was issued . . Phebe and three other negroes had been run and secreted by Carter [their owner], after the plaintiff in execution had obtained the judgment under which his execution issued. Witness . . went with Barclay [to whom Carter had sold Phebe on December 2], and showed him the negroes, secreted among some rocks in the Warrior hills . . [409] and delivered Phebe to him." In January 1843 the sheriff [408] "levied this *fi. fa.* on . . Phebe . . and a negro boy . . about two years old"

*Hogan v. Carr,* 6 Ala. 471, January 1844. "the note sued on, was given for the hire of a slave, for one year, to . . Carr; and the defence was, that the plaintiff took the slave [back] . . about five months before the expiration of the year, . . The plaintiff, in excuse, offered to prove that, in consequence of mal-treatment by Carr, the slave . . required rest and immediate medical attention. And further, offered to prove by physicians . . called at the request of plaintiff and Carr, that to continue the slave at work . . would be at the extreme hazard of one of his legs, and, perhaps, of his life; . . Carr refused to call in medical aid, or to give the slave rest . . without regard to the consequences. The plaintiff . . retained the slave only so long as was necessary for medical treatment; . . Carr refused to receive him."

Held: [472] "The hirer . . impliedly stipulates, that he will treat the slave humanely, and provide for his necessary wants. . . The conduct of the defendant . . was a violation of the contract . . and being an injury to the reversion, authorizes the owner to rescind . . or to consider the contract as still subsisting, . . [473] by returning, or offering to return, the slave as soon as he was able to labor."

*Nancy (a slave) v. State,* 6 Ala. 483, January 1844. "indictment . . for an assault with intent to kill and murder Mary Beasley, a white person. . . 'a jury . . two thirds of whom being slaveholders . . find . . prisoner guilty of an assault, with intent to kill.' . . sentence of death by hanging," Affirmed: [486] "any voluntary attempt by a slave, to take the life of a white person, although the attempt, if executed, would make a case of manslaughter only," is a capital offence.

*Moore v. Spence,* 6 Ala. 506, January 1844. "1837 . . his father, informed him that his wife's mother had died in Virginia, and had given

[1] Clay's *Digest,* p. 472.
[2] *Ibid.,* p. 473.

to the wife some ten or twelve negroes, and that he, plaintiff, might have them if he would go or send for them. He . . sent an agent, who . . 1837 . . brought them to Talladega, . . until they could be sent [in 1839] to Mississippi, where plaintiff was then living."

*Sledge v. Clapton,* 6 Ala. 589, January 1844. [593] "The negroes were crying as they were about to leave [in 1829], and Mr. Sledge said to them, that they need not be disturbed, for complainant [their mistress] would make the money [due him] and bring them back."

*Turnipseed v. State,* 6 Ala. 664, June 1844. "indicted . . for having inflicted, 'on a negro woman . . [his] property . . cruel and unusual punishment,'[1] . . a jury . . returned a verdict of guilty, and assessed a fine of fifty dollars against him; for which sum, as well as the costs of prosecution, a judgment was rendered." Reversed [667] "and the defendant is directed to remain in custody to abide further proceedings, unless he shall be otherwise discharged." "the indictment is defective, because of the generality of the terms . . We regret the necessity of reversing . . however odious the offence, we must admeasure right to every one according to law." [Collier, C. J.]

*State v. Slack,* 6 Ala. 676, June 1844. "indicted for the murder of a slave. The jury found him guilty of murder in the second degree, and the court sentenced him to imprisonment . . for ten years." New trial granted.

*Pettus v. Roberts,* 6 Ala. 811, June 1844. "Received . . eight hundred and fifty dollars . . for . . Caroline, aged twenty-seven, and her daughter . . about nine. . . 1842." "the consideration was not [$850] . . but a negro man."

*McLane v. Spence,* 6 Ala. 894, June 1844. Ormond, J.: [897] "the executor purchased [[895] 'a man and his wife and ten children'] . . at his own sale . . in one lot . . for less than they would have sold, if sold separately . . although it would doubtless be proper to sell husband and wife, or parent and small children together, it could not be tolerated that twelve slaves, most of whom were grown, should be sold in one lot,"

*State v. Newman,* 7 Ala. 69, June 1844. "indicted for selling to a slave one yard of cotton cloth, without the consent of his master,"

*Davis v. Hunter,* 7 Ala. 135, June 1844. "Trespass by Hunter against Davis, for killing a slave. . . [136] One of the jurors . . had heard . . that the plaintiff's overseer, (the defendant,) had killed one of his slaves . . but he . . felt no more bias in this, than in suits of a similar character. . . The Court refused to exclude" the juror. Judgment affirmed.

*Doyle v. Bouler,* 7 Ala. 246, January 1845. Will, dated 1795, makes [247] "provision in respect to the manner in which . . [testator] desires his slaves treated, etc., after his death,"

*Wheat v. Croom,* 7 Ala. 349, January 1845. "Trespass, *vi et armis,* . . for an assault and battery on a slave, the property of the plaintiff. . .

[1] Clay's *Digest,* p. 431.

a witness had accused the defendant in the presence of the plaintiff . . defendant . . replied: 'If I whipped the negro, you prove it—I shall not tell you anything to commit myself.' . . the Court charged . . it was presumptive evidence that he was guilty . . Also, that the jury . . might give smart money." Affirmed.

*Johnston v. Bank,* 7 Ala. 379, January 1845. [380] "1843, Mary was hired . . at the rate of $100 per annum" for the purpose of "cooking and waiting on them"

*Couch v. Couch,* 7 Ala. 519, January 1845. [521] "On the day she died, heard her tell her negro to be a good boy, and that Henry would treat him well."

*State v. Nelson,* 7 Ala. 610, January 1845. See Nelson *v.* State, p 153, *supra.* [612] "the prisoner was tried, convicted and sentenced . at the Fall Term, 1844." Affirmed.

*Olds v. Powell,* 7 Ala. 652, January 1845. Deposition: [653] "Father said, that he would send the [three] negroes down [to my sister on her marriage], but the boy Daniel, he would take back; that he was a family negro, and had a wife at home. . . Father told sister that if the girl Susan did not suit her, she could return her and take . . Nancy."

*Smith v. Armistead,* 7 Ala. 698, January 1845. [699] "27th of February, 1830, . . promised to pay . . eighty dollars, on the first of January thereafter for the hire of Rachel and her child Emma, and her daughter Ann."

*Litchfield v. Allen,* 7 Ala. 779, January 1845. "1836 . . sold . . a negro man for $800,"

*Alston v. Coleman,* 7 Ala. 795, January 1845. Will of Jesse Coleman: "I give . . to my wife . . during her life time, a . . child slave . . Caroline, and at the death of my wife, it is my wish that . . Caroline be set free." "Tamer, the mother, is given to the same person in fee. . . Dave, to one of the testator's sons, to hold for . . twenty years, after which . . it is his earnest request . . that the slave should be set free." "I wish $1,500 to be reserved . . to be applied to the . . benefit of . . Caroline, . . at the discretion of my executors,"

Held: slaves [796] "can only be made free in the mode . . provided by statute . . [797] we are constrained to declare the will ineffectual to emancipate . . Caroline; . . the trust created for her benefit is illegal," [Goldthwaite, J.]

*Bell v. Pharr,* 7 Ala. 807, January 1845. A jury valued "a woman about twenty-four, and her . . boy about eight, [and] a boy about six . . [810] $1,100;" [807] "a boy about two, and her infant child . . [810] $300; Milley [[807] 'about nineteen . . and her . . boy about two . . and her infant child'] . . $1,000; Mary and two children, $900; Lucinda, $600, and two children, $300."

Held: [812] "The omission of the jury to ascertain the several values . . is a fatal defect . . our Courts have never recognized any course of proceeding, tending to authorize a forced separation of children of tender years from their parents, when slaves; but no such principle seems involved here," [Goldthwaite, J.]

*Winston v. Metcalf,* 7 Ala. 837, January 1845. "Assumpsit by . . indorsee of a promissory note . . for the payment of $200 . . 1st January, 1842, for the hire of two slaves, which were to be returned, clothed as slaves usually are. The breach assigned is, the nonpayment . . and the not returning the slaves clothed in the usual manner."

Held: [841] "the [latter] engagement . . is not assignable within the statute."

*Williamson v. Bank,* 7 Ala. 906, January 1845. [909] "removed from Virginia in 1837, bringing . . with him" "a large number of slaves,"

*Wier v. Buford,* 8 Ala. 134, June 1845. [135] "the latter part of December, 1841, . . the agent of Eleanor Williams, hired out, at public auction, . . two slaves . . bid off by Wier; Fanny at $120 50 ['to the 25th December, 1842.'] . . April, or May, . . Fanny, ranaway . . to the residence of Mrs. Eleanor Williams; . . Wier inquired, if she intended to give her up. Mrs. Williams replied . . that he had no right to retain them if he treated them cruelly; or if they were dissatisfied. . . the slave did not afterwards . . return to Wier."

*State v. Marshall (a slave),* 8 Ala. 302, June 1845. "The prisoner was indicted . . for burglary. . . [303] Upon the trial, the prisoner proved that he was a bright mulatto, and that for a number of years he had acted as a free person—that he owned property, or claimed it, and had made contracts as a free person. To prove that he was a slave, the State offered . . witness . . charged to be the owner, who stated . . That some six or seven years before, a bill of sale of the prisoner had been transferred to him, by . . Erwin; that in his opinion he had acquired no right of ownership under the bill of sale, that it was brought to him by the prisoner—that he had not given Erwin any consideration for it, . . The State then offered . . Breedon [an attorney at law] . . who testified that several years before, the prisoner had applied to him to draw up a petition to the Legislature for his freedom. . . the prisoner never called for it, . . [304] The prisoner being convicted, moved in arrest of judgment, . . The Court refused"

Judgment reversed and the cause remanded [308] "in *favorem vitae,* as the jury may have been . . misled, by the permission . . to speak of the bill of sale, without limiting the evidence to the fact of the admission of the prisoner [of his status as a slave], to be inferred from the *act,*" [Ormond, J.]

*Mooney et al v. State,* 8 Ala. 328, June 1845. [329] "that the defendants with others, had entered into a combination to steal negroes in the neighborhood, and . . the prisoner . . was furnished with a horse, and ten dollars, and told by Brewer, to go to . . a place . . near Barnett's

house, and inform the negroes, that . . Brewer, and McKowen, would be at that place on the next night . . to take them off. That he communicated the message to the slaves, . . That Barnett, being advised . . with some of his neighbors repaired to the place . . that Brewer and McKowen, came riding up, . . and after inducing [the slaves] . . to go with them a few steps, were hailed, and fired upon . . abandoned the possession of the slaves, and galloped off." Verdict of guilty.

Judgment thereon affirmed: [332] " at the time of the passage of this act,[1] . . it was intended to make a radical change in the law . . and to make the offence consist, not in the actual manucaption,[2] but in the seduction of the slave from his master's allegiance, and thus to strike at the root of the evil. . . [336] it was the intention of the Legislature, to create an offence essentially distinct from larceny at common law. . . when the slave . . is induced to abandon his master's service, . . whether the prisoner . . is, or is not present, when the determination to escape is manifested, by the act of leaving . . is to ' inveigle or entice away,' under the statute," [Ormond, J.]

*O'Neil v. Teague,* 8 Ala. 345, June 1845. [346] " This *fi. fa.* was . . levied [in 1844] on . . Caroline . . about twelve, and Henry, about eight . . Caroline was worth from $300 to $325, and . . Henry . . about $300."

*Julian v. Reynolds,* 8 Ala. 680, June 1845. [681] " At the sale [in South Carolina] . . the administratrix purchased the slaves . . and removed with them to Alabama,"

*Bogan v. Martins,* 8 Ala. 807, June 1845. " Received [$256.97] . . for a negro boy . . aged about 40 years; . . 1841." " liberty of repurchasing " if the same sum is repaid within four months.

*Garey v. Hines,* 8 Ala. 837, January 1846. [838] " the sheriff proceeded . . to levy on the slaves of the defendant . . who . . threatened to shoot the sheriff, if he persisted . . The sheriff abandoned the slaves,"

*Pinkston and Wife v. Greene,* 9 Ala. 19, January 1846. " Trespass *vi et armis* . . The second count, charges the assault and battery [upon the wife of the plaintiff] to have been committed by a negro man . . the slave of the defendant, by the command of his wife. The defendants pleaded . . [20] that . . Sarah [wife of the plaintiff] . . made an assault upon . . an infant child of . . Matilda [wife of the defendant] . . and . . Matilda immediately . . commanded . . slave . . to defend . . and in so doing the said slave did . . unavoidably a little beat . . Sarah . . the plaintiffs demurred, . . sustained . . verdict for two thousand dollars, for which judgment was rendered."

Reversed and the cause remanded: [22] " From the degraded condition of the slave, . . he is unfit to interpose in a difficulty between white persons, especially females; and therefore, the employment of such an instrument of defence would . . aggravate the injury, and enhance the damages, unless the threatened danger was so imminent as to render a

[1] Feb. 11, 1843. Clay's *Digest,* p. 419, sect. 18.
[2] See State *v.* Hawkins, and State *v.* Wisdom, p. 146, *supra.*

resort to any means justifiable, . . to prevent a battery . . she commanded the slave to defend her, . . This, if true, and if the battery [committed by him] was not . . pushed beyond the necessary defence of his mistress, constituted an excuse." [Ormond, J.]

*Sewall v. Henry,* 9 Ala. 24, January 1846. Sewall sold Tom, aged about twenty-four, in July 1841 for $250 to Henry, who agreed to sell him back to Sewall for the same price [25] " if applied for on the first day of January next." [6 *id.* 226] " October . . he was hired to a steam-boat, from which he runaway. . . November, the slave came into . . possession " of Sewall, who offered to pay Henry $250 for him on January 1, 1842. [227] " Henry refused to receive it." [9 *id.* 26] " witness, who had formerly owned the slave . . stated that in the summer of 1841, he was worth $400 or $450."

*Mobley v. Pickett,* 9 Ala. 97, January 1846. A negro woman was sold in 1840 for $600.

*Shanklin v. Johnson,* 9 Ala. 271, January 1846. [274] " Moses was permitted to labor in Mobile, upon the payment to Mrs. Owen of stated wages, all that he could earn beyond these, he was permitted to dispose of at pleasure; . . [275] he saved two hundred dollars, which the defendant [a free negro] invested in a lot . . receiving a legal conveyance . . to himself. . . Whether the lot was sold . . before the plaintiff became the master of Moses, does not conclusively appear . . But . . the ownership of the plaintiff had already commenced " when the defendant and Moses [271] " came to the witnesses [*sic*] house, and asked him to count money; . . [272] he counted seven hundred dollars, when defendant remarked, that he had sold Moses' lot for that sum, that he would use a part of it to purchase his (defendant's) daughter, but would return it to Moses at some future time."

Held: [275] " Moses was incompetent to make any contract . . There was then nothing more than a moral duty incumbent on the defendant, to give him the proceeds . . This moral duty imposed a legal obligation when the defendant produced the money, counted it for Moses, acknowledging it to be his, . . When this took place, the plaintiff was the master, and the right to the money of course inured to him. . . If . . the plaintiff is not entitled . . the defendant . . may retain it against all the rest of the world. This would be exceedingly unjust to the slave, as we must suppose, that whatever is recovered will be appropriated to his benefit, although the law might not coerce the performance of such a duty." [Collier, C. J.]

*Barney v. Bush,* 9 Ala. 345, January 1846. Held: [347] " an owner of slaves residing in another county, can be sued in the county where a default takes place, for the omission of his slaves to work upon the road."

*Gillian v. Senter,* 9 Ala. 379, January 1846. " action of trespass at the suit of the defendant in error, for violently beating, bruising and ill-treating a negro man . . belonging to him. . . that the defendant [over-

seer of the plaintiff] whipped his slave with severity. The defendant . . proved that . . in the absence of his employer from the State, the slave . . was detected in stealing from . . one of the . . neighbors, who thereupon brought him to the defendant, saying, 'If you will correct this boy . . I will not enforce the law against him.' Whereupon Gillian inflicted the punishment . . The court charged . . that . . [396] the authority of . . overseer, did not confer the right to whip the slave for . . committing a crime," Verdict and judgment for the plaintiff.

Reversed and the cause remanded: [397] "it is the duty of the overseer . . to punish slaves . . for offences against good morals. It cannot . . be important to inquire whether the offence is criminally punishable . . So far as it concerns the public, it is . . perhaps better, that his punishment should be admeasured by a domestic tribunal. Certainly . . preferable for the master, as it would relieve him both from anxiety and from the necessity of expending money." [Collier, C. J.]

*Borum v. Garland,* 9 Ala. 452, January 1846. In "March, the boy Henry was whipped by the patrol, at the house of his wife, and on the next day, the plaintiff [his owner], at the request of the boy, gave him a pass, to return to the house where his wife lived, and on that day, or night, the boy ran away, without having returned to . . Garland, the hirer. . . the plaintiff . . told Garland, that he should not have the boy again, even if he came back, . . [453] [In] May, plaintiff wrote to Garland . . that Henry was in jail . . and requesting him to take him out, . . that he should hold him responsible for the whole hire; . . Garland replied, refusing"

*Harrison v. Harrison,* 9 Ala. 470, January 1846. Harrison's will: [475] "I hereby emancipate . . the following slaves, . . and wish they should remain in . . Alabama, provided there can be a special act of the legislature obtained for that purpose. And if not, then it is my will . . they be removed to some free State, and be supplied . . with suitable means for a comfortable location . . I give . . unto . . Poole for the sole . . use . . of the said slaves . . the following [twenty-seven] negroes, . . to be kept . . for the sole . . use . . of the . . emancipated slaves." "Certain lands are devised to Poole, for the same trusts," [471] "decedent [in 1843] . . died without children," Held: [481] "The bequest of emancipation, and that for the use of the slaves intended to be freed, are entirely void." See Harrison *v.* Pool, p. 170, *infra.*

*Sorrelle v. Craig,* 9 Ala. 534, January 1846. [535] "engaged in purchasing negroes elsewhere, to be sold in Alabama; . . [536] up to 1835," [538] "a trade . . which required a considerable cash capital;"

*Givens v. Lawler,* 9 Ala. 543, January 1846. [544] "in December, 1843, . . a woman and her child, went from the possession of the defendant to . . [that] of the plaintiff; about the same time, $500 . . went from . . the plaintiff to . . the defendant. . . 14th January, 1844, the woman was burned to death" The negro child was resold a few days later to her former owner for $100.

*James v. Scott,* 9 Ala. 579, January 1846. [580] " the plaintiff agrees that he will place in the possession of Stiggins [a Creek Indian], the following [three] slaves . . and others, . . as an equivalent for the lease . . during his life."

*Bank v. James,* 9 Ala. 949, June 1846. [950] " 1842. . . On the plantation [of two thousand acres] there are six hundred acres of cleared land, . . with forty able working hands."

*Smith (a slave) v. State,* 9 Ala. 990, June 1846. " The prisoner was . . convicted on indictment for the murder of . . Edmund, also a slave, . . all the evidence was circumstantial. A slave . . Sam . . denied all knowledge of the murder . . Sam had been . . acquitted. . . while Sam was in jail, . . he . . desired . . Neal, a white man . . also confined . . to request the jailor to send for his master, and then stated . . that he . . had wrongfully accused the boy Smith . . the court refused to allow Sam's statements . . to go to the jury for any other purpose than to discredit him, . . [991] The prisoner . . proved, that . . Sam said Edmund and his wife were too intimate, and if he ever caught them together he would kill Edmund. . . the State attempted to establish . . the jealousy of the prisoner, . . and . . introduced the prisoner's wife as a witness against him. The prisoner objected . . but the court allowed her to be sworn " New trial refused.

Affirmed: I. the declaration of Sam [996] " was correctly refused . . [II.] whilst we admit the moral obligation . . in the relation of husband and wife, among slaves, all its legal consequences must flow from the municipal law. This does not recognize . . the marriages of slaves, and therefore there is no prohibition against the husband and wife being witnesses for, or against each other." [Ormond, J.] Goldthwaite, J., dissented as to admitting the declaration of Sam. [998] " Note.—The prisoner was pardoned by the Executive."

*Snedicor v. Leachman,* 10 Ala. 330, June 1846. " the overseer . . was to receive a part of the crop . . for his services,"

*Abney v. Kingsland,* 10 Ala. 355, June 1846. [363] " carried his father's slaves to Texas "

*Andrews v. Jones,* 10 Ala. 460, June 1846. [463] " the claimant had between seventy-five and one hundred slaves, . . with a valuable plantation of 12 or 1500 acres "

*Rivers v. Dubose,* 10 Ala. 475, June 1846. " the plaintiff . . said he had not agreed to warrant the soundness of the slave, which he had publicly proclaimed at the sale to be sold as a sick slave;"

*Catterlin v. Hardy,* 10 Ala. 511, June 1846. Slaves were removed from North Carolina to Alabama in 1834.

*Hansford v. Hansford,* 10 Ala. 561, June 1846. " Bill by . . free man of color, against Maria Hansford, who is not described as colored, for a divorce. . . married . . 1825, in accordance with the laws of Alabama. The ground . . is the alledged [*sic*] adultery of the wife,

and charges the birth of a child, . . white, with blue eyes, and it is charged that the defendant . . declared her intention that all subsequently born should be of that color. . . The testimony . . is chiefly by . . blacks or mulattoes." The chancellor decreed a divorce and gave the father the custody of the minor children.

Affirmed: [564] "in an appellate court, . . the presumption is, that both parties and witnesses are free persons of color, and it arises alike from the allegations . . that the parties were married according to the laws of Alabama,"

*Spence v. McMillan,* 10 Ala. 583, June 1846. [584] "committed to the jail . . on a charge of negro stealing, . . [585] he had swapped . . two slaves belonging to Mallory and Welsh, for a negro boy, and got some $600 or $700 . . to boot."

*Stewart v. Hood,* 10 Ala. 600, June 1846. [602] "knew the slave in South-Carolina, where he was delicate and troubled with a cough." "in 1842 . . the slave was afflicted with what the family thought were rheumatic pains." [601] "Feb. 1843, the day of the sale [of Sims's property] . . the slave . . had a sickly languid look, . . Hood lived about six miles from the place of sale, and was taking the slave home on horseback behind him. . . [602] The slave died . . in July, 1843. . . [603] a few weeks before . . [defendant] took him to Mr. Stewart's, . . to return him. Stewart [as administrator of Sims] declined receiving the slave, and the defendant went off . . but after riding a few miles, determined to go back . . forced the slave on Stewart, who afterwards sued Hood, and recovered judgment for the board of, and attention to the slave . . until he died."

*Steele v. Knox,* 10 Ala. 608, June 1846. [609] "that the slaves, with the exception of two, were all of one family; that the mother had children rapidly, and was generally pregnant, or had one at the breast, and that it was . . [610] proper that the mother and three youngest children should be kept together, and that the slaves, if taken by one person, would be worth to the hirer, ten per cent. less than . . if hired separately; and that the estate would be benefitted [*sic*] in that ratio by their being kept together."

*Brashear v. Williams,* 10 Ala. 630, June 1846. [633] "a Choctaw Indian, died in the Indian nation, previous to our laws being extended over it, in possession of a number of slaves."

*Huckabee v. Albritton,* 10 Ala. 657, June 1846. "About a week after the purchase it was discovered that the slave was greatly diseased in one leg, . . also . . had a violent diarrhoea, of which . . the slave died, about three months after the purchase. . . [The vendor] said the slave was as sound as any man, except being an old man, he would sometimes grunt a little."

*Lee v. Mathews,* 10 Ala. 682, June 1846. [687] "removed with his family [from North Carolina in 1829] to Alabama, bringing the slaves with him."

*State v. Ware,* 10 Ala. 814, June 1846. "indicted . . for the stealing . . two slaves,"

*Inge v. Murphy,* 10 Ala. 885, June 1846. [887] "1819, Dr. Inge removed . . [with] the slaves [from North Carolina] . . to . . Alabama. . . [888] Nazareth was . . employed as a sawyer. . . Tabby, Eliza and . . [their] children . . did not . . go [in 1837] into the possession of his son . . [because] they had husbands on Dr. Inge's plantation. Tabby was old, Eliza sickly, and the . . children, . . would be of no use to one commencing in the woods;"

*State v. Abram* (*a slave*), 10 Ala. 928. January 1847. "Kirkendall, . . the overseer . . seeing him loitering about the negro cabins, told him to go to work. The prisoner replied he was sick . . the overseer felt his pulse, told him he was not sick, and again ordered him to his work. The prisoner moved off slowly, and Kirkendall struck him with his whip, which was caught by the prisoner. Kirkendall then kicked at him, and Abram . . threw him down, and whilst down, . . [the former] drew a pistol, which Abram knocked out of his hand, . . They then engaged in mutual combat, . . Abram bit off a piece of the upper part, or rim of Kirkendall's ear, and received in his own side a severe cut from Kirkendall's knife. Abram sustained a good character, as an obedient servant. . . [929] The prisoner was found guilty,[1] and sentenced to be executed."

Judgment reversed and the cause remanded: I. [931] "the refusal of the court to charge, that the biting off a small piece of the ear . . was not mayhem, was erroneous, . . [II.] to constitute mayhem, it must be done . . in the case of a slave wilfully. . . [932] Slave though he be, . . and forbidden to resist . . he is nevertheless a human being, and when engaged in mortal strife, his adversary armed with a deadly weapon, and he defenceless, the law . . would attribute such a mutilation . . to the instinct of self defence, in which the will did not co-operate; unless . . wantonly done; . . [III.] [933] the master, or the overseer . . must be the judge of the capacity of the slave to labor." [Ormond, J.]

*Price v. Tally,* 10 Ala. 946, January 1847. [947] "they continued to reside in Virginia until 1812, when they moved [with the slaves] to Tennessee, and . . 1820 . . to . . Alabama,"

*State v. Clarissa (a slave),* 11 Ala. 57, January 1847. [58] "The grand jurors . . charged . . that Clarissa . . did administer to . . Parsons [her overseer], and . . Bussey, . . white persons, a large quantity of . . the seed of Jimson weed . . with intent . . to poison, . . [59] Chloe, the mother of the prisoner, . . stated, that she cooked for the negroes . . and was often in the kitchen, where the prisoner prepared the overseer's meals. . . she had seen the prisoner put a small bag of the seed . . in the coffee-pot . . That not wishing to see Bussey her master [who was eating breakfast with Parsons] poisoned, during the absence of the prisoner . . she took the bag of seed from the coffee-pot, . . that at first she had denied all knowledge . . but on being whipped by Bussey, had

[1] Clay's *Digest,* p. 472, sect. 4.

disclosed the above facts, . . That the prisoner was also whipped with great severity, but refused to make any confession; but on being informed by . . her master, that Chloe had confessed . . made a confession, that she had prepared and administered the poison . . This confession was . . excluded. . . after this confession, . . the prisoner was removed . . to the field, and on the next Saturday . . the overseer . . asked her which she liked the best, cooking, or working in the field, . . she preferred the former, he then asked . . [60] why she had continued to give him poison, when she saw him so near dying from the effect . . She replied that she did not know, unless it was the devil that put it into her head. . . the court refused to [exclude this confession.] . . The prisoner was found guilty, and condemned to be hung."

Judgment reversed: I. [61] "the indictment should alledge [*sic*], that the substance administered was a deadly poison, . . [II.] [62] To hold that the reply of a slave to her overseer, under such circumstances, was testimony of the fact, thus impliedly asserted, because it could not be denied, would be exceedingly improper. The humane policy of our law would exclude such evidence, coming from a white person, and the reason is much stronger for excluding it in the case of a slave. . . the prisoner will remain in custody for another indictment, or until discharged by due course of law." [Ormond, J.]

*Hale v. Brown,* 11 Ala. 87, January 1847. [88] "Attached to this plantation was a blacksmith and waggon-making shop, . . It was conducted by slaves, the principal one having been purchased . . and the others afterwards learned the trade. . . [90] [The overseer's] wages were paid out of collections made by him from the shop, and . . in one year besides . . his wages, . . [the shop] had made . . as much as $1500 . . [91] it was carried on with one forger and two hands;" See Rembert and Hale *v.* Brown, p. 167, *infra.*

*Clopton v. Martin,* 11 Ala. 187, January 1847. "Some years previous to the sale [in 1841], the slave had been afflicted with spasms or fits. Of this the complainant fully informed Clopton . . [188] asked $800 as his price, but for the reason that the slave had been so afflicted, although the complainant did not believe they would . . recur, and because he did not intend to warrant his health, he agreed to take $700. . . the slave after the purchase was afflicted in a similar manner . . [189] A physician was examined to prove his attendance on the slave in 1839, when he was considered cured—the cause was supposed to be worms, or too rapid growth."

*Martin v. Everett,* 11 Ala. 375, January 1847. "the defendant employed the plaintiff as an overseer for twelve months, . . 1845, at $25 per month, . . that the plaintiff had treated one of his slaves cruelly, in April or May, preceding his dismissal" in "September . . for being absent from his plantation . . for a day or two . . without his consent." Held: [377] "if the defendant overlooked that outrage, and still continued the plaintiff in his employment, he could not justify his action [in dismissing him], some four months afterwards upon that ground." [Collier, C. J.]

*Hooe v. Harrison,* 11 Ala. 499, January 1847. [501] "his removal from Virginia to Alabama in . . 1831 . . [with] sixteen slaves"

*White v. Strother,* 11 Ala. 720, January 1847. [721] "To identify the slaves, . . witness was . . asked . . whether he had ever heard these four slaves, call the negro . . mamma." Held: [724] "we can perceive no just ground to exclude the evidence [as information [722] 'derived from what was said by the slaves'], any more than to exclude proof that the [supposed mother] . . had nursed them when infants." [Goldthwaite, J.]

*Milton v. Rowland,* 11 Ala. 732, January 1847. In 1843 [734] "she was called in her capacity of midwife . . to visit . . Harriet . . and found her . . diseased with the *gonorrhoea* in its last stages. The child was also diseased in consequence of sucking its mother's milk [and died.] . . the slave was affected at the same time with *prolapsus uteri,*" The plaintiff had sold these slaves to the defendant a few weeks before and had warranted them sound. [735] "two months afterwards . . the defendant . . sold the slave, without the child, for $600 ['an advance, although the slave was unsound']."

*Taylor v. Benham,* 5 Howard (U. S.) 233, January 1847. The will of W. F. Taylor of South Carolina in 1811 gave [235] "a legacy to his negro woman Sylvia."

*Cook v. Kennerly,* 12 Ala. 42, June 1847. [45] "had concealed the slaves, and endeavored to run them off, to prevent their being levied on,"

*Rumph v. Abercrombie,* 12 Ala. 64, June 1847. [65] "That the negroes are family slaves, to which complainants are much attached, having been raised with them,"

*Goodgame v. Cole,* 12 Ala. 77, June 1847. [79] "the slaves were employed in the tavern,"

*Bank v. Hodges,* 12 Ala. 118, June 1847. [119] "that Booth had won Bob at a game called *Faro,* in . . 1838,"

*Hodges v. Hoole,* 12 Ala. 177, June 1847. [178] "that the plaintiffs had rendered medical services to the amount of $45 to slaves . . at her request."

*Simerson v. Bank,* 12 Ala. 205, June 1847. [206] "the slaves . . worked [in 1844] . . at a brick yard, . . a person was employed . . to superintend the slaves . . one of the slaves . . had been in the employ of the claimant to build a chimney for him."

*Adams v. Garrett,* 12 Ala. 229, June 1847. In 1841 a certain slave's [230] "yearly services were worth $100."

*Fambro v. Gantt,* 12 Ala. 298, June 1847. [299] "defendant, as attorney for . . Fiffe, held for collection certain notes made by . . Gantt, . . about $2100. It was agreed by the plaintiff [Gantt's administrator] . . that . . [he] should settle the notes by selling to Fiffe the family of ne-

groes [belonging to Gantt's estate.] . . While the transaction was in the progress of consummation, the plaintiff objected to going on with it, stating that . . Lawson Thomas, a free negro, who was the husband of the woman and father of the children about to be sold, owed him $475, and he feared he would not be able to collect it of him, if he allowed his wife and children to go—that being the only hold on him. . . The defendant then said that he had Lawson's effects in his hands, and if the bill of sale was executed, he would see the debt paid; . . [300] the plaintiff sent to the person having charge of a tin box of Lawson's, which contained some notes and accounts of the latter, for the most part, if not entirely valueless, to inquire of Lawson's ability to pay, . . the plaintiff spoke to Lawson [later] about paying him some money . . and said to Lawson if he did not pay it he would kill him, or words to that effect."

*Stewart v. Weaver,* 12 Ala. 538, June 1847. In 1840 "Stewart [the plaintiff] agrees to bore a well for Weaver, . . Weaver to furnish provisions for the hands employed . . [539] by 11 o'clock they pecked 18 inches. . . by night had finished 18 inches more. . . The plaintiff . . returned later in the evening . . appeared . . to be in bad humor, without any cause, and commenced beating one of his hands on some frivolous ground. Out of this occurrence, and from some remark made upon it by the witness [Weaver's agent and overseer], some unpleasant feeling arose"

*McLane v. Miller,* 12 Ala. 643, June 1847. "in August, 1842, . . he . . had a large crop of cotton, and . . [three slaves] were engaged in picking it out, when the defendant [as coroner] took them, and it was some weeks before he could procure others"

*Sidney v. White,* 12 Ala. 728, June 1847. "The plaintiff in error, a colored man, sued for his freedom, and . . proved, that by the will of William Patterson, of . . Delaware, . . Phillis, was bequeathed her freedom, and providing that she should remain in servitude, until she became thirty-one . . That she was carried to . . Tennessee . . and that whilst there . . before she attained the age of thirty-one . . she gave birth to the plaintiff, who was sold to . . an innocent purchaser, . . The court . . charged the jury, that if they believed the plaintiff was born before his mother attained the age of thirty-one, he . . [729] was not entitled to his freedom."

No error: I. [730] "Until the event happened, upon which the mother was entitled to her freedom, she continued a slave, . . it follows that the child born whilst the mother was a slave, is also a slave.[1] . . [731] In . . Tennessee, . . a different rule prevails,[2] . . if he had remained there, he would have been free when his mother became thirty-one . . and this right . . will follow him wherever he may be carried, . . if the question . . was presented upon the record; but it does not appear

[1] Maria *v.* Surbaugh, vol. I. of this series, p. 138.
[2] Harris *v.* Clarissa, vol. II. of this series, p. 500.

from the record, that there was any proof offered of the law . . of Tennessee. . . [732] this court cannot take notice of it," [Ormond, J.]

*Worrell v. State,* 12 Ala. 732, June 1847. "indicted for selling to a slave . . 'eight gallons of whiskey, without having first obtained the . . consent of the master . . or overseer'"[1]

*Carroll v. Brumby,* 13 Ala. 102, January 1848. Will of John F. Wallis: "In relation to my kind and faithful servants, Jane Harper and her [three] children, . . Millary and her two children, . . and Aaron, . . it is my will that they be permitted to go to Africa, their passage paid, and two years support . . after their arrival, . . If however, my said servants prefer to remain subject to my . . daughter, as they are to me, they may be permitted to do so, but in no event shall they be sold, or deprived of their privilege, either before or after the death of my . . [103] daughter. It is further my will, that my executors buy, if practicable, Tilly and Kora, children of said Milly [*sic*], which were sold by me, the first for a supposed fault, and the other at the request of the mother, and advice of friends. Said servants . . are to be allowed to accompany [the others] to Africa . . or to remain under the control of my daughter, as they shall prefer . . who is hereby admonished to treat them kindly, and to attend to their religious instruction. Should they . . remain in servitude until the death of my daughter, they must be sent to what free colony my executors may consider most advantageous."

Held: [105] "they have not the legal capacity . . to choose—the law forbids this, (see 6th Porter, 269,)[2] . . [106] In this case, the legatee (the slave) has not capacity to accept; . . the gift . . to the daughter ought not to fail, if the slave will not, or by law cannot, accept of his freedom. . . the administrator is not responsible for their hire, nor are the slaves liable to pay the legacies." [Dargan, J.]

*Barney v. Earle,* 13 Ala. 106, January 1848. [107] "1837, complainant formed a partnership with defendant . . for 3 years; the complainant putting into the concern as stock, 58 negro slaves, estimated . . at $52,000, and . . defendant . . furnishing lands,"

*Scott v. Baber,* 13 Ala. 182, January 1848. The plaintiff said: [183] "Baber did not make his . . negroes work so as to make a support,"

*Brown v. Brown,* 13 Ala. 208, January 1848. "1828, Charles was delivered to [the plaintiff] . . in . . South Carolina, . . [209] the plaintiff carried Charles to Mississippi, where he was forcibly taken by the defendant [sister of the plaintiff] . . 1836,"

*Pope v. Randolph,* 13 Ala. 214, January 1848. In 1839 [215] "he was to give the intestate $300 for his services as overseer for the year, and $300 for the hire of the [three] slaves,"

[1] Clay's *Digest,* p. 437, sect. 8.

[2] The question of the legal capacity of slaves to choose freedom or servitude did not arise in Trotter *v.* Blocker (p. 143, *supra*), the case cited. Ed.

*Nelson v. Dunn,* 13 Ala. 259, January 1848. [260] "1840, Nelson and Hatch purchased . . land and about ninety slaves, . . The witness stated . . That he wrote down the name of each as they passed before him, and also the estimated value of each. . . the vendor, gave no information to the vendees, that any of the slaves were unsound, except . . two . . [261] that four of the [female] slaves priced by . . the witness, as sound, . . were unsound, with incurable diseases, which could not be discovered by external observation, . . That . . [their] value was impaired . . to the amount of $1200,"

*Bishop v. Bishop,* 13 Ala. 475, January 1848. [476] "in 1827 [he] brought the slaves to Alabama" from Georgia.

*Bohannan v. Chapman,* 13 Ala. 641, January 1848. [642] "removed with . . slave to Mississippi, . . [In] 1839, . . the . . slave was brought into . . Alabama, and sold to . . Bohannan, . . [who,] in January, 1843, removed to the republic of Texas, . . in December, 1843, said slave was again brought into this State,"

*Harris v. Mauldin,* 13 Ala. 674, January 1848. [675] "Mauldin . . attempted to take the negro from the plaintiff, which he prevented, by raising an axe."

*Welch v. Welch,* 14 Ala. 76, January 1848. [77] "In 1832, the last will . . of Thomas Welch . . was admitted to probate," [82] "the testator attempted to liberate four slaves . . and requested his executors to have them set free, as soon as it could be done. . . the administrators applied to the legislature . . but the legislature refused . . These four slaves ['by an agreement between the administrators, who were the husbands of two of the distributees, and the husbands of the other distributees'] were permitted to go at large, and the administrators exercised no control over them. John . . is gone to Arkansas. After several years, the administrators said the distributees divided the others, with their increase, as slaves,"

*Sanders v. Watson,* 14 Ala. 198, January 1848. [199] "has removed . . and now resides in Mississippi. That he secretly carried off his slaves from the State."

*Chapman v. Hughes,* 14 Ala. 218, January 1848. [221] "he was to have the woman and children for their victuals and clothes,"

*Rembert and Hale v. Brown,* 14 Ala. 360, June 1848. See Hale *v.* Brown, p. 163, *supra.* Woods and his brother [361] "carried on a large plantation, on which were some sixty or seventy hands. . . The plaintiff commenced . . as overseer, in 1834, . . receiving for his wages the first year $400, the second $500, and afterwards $600 per annum, with certain privileges, estimated to be worth several hundred dollars more. That the Woods' lived at Selma, forty miles from the plantation, which they visited two or three times a-year, and that the plaintiff had entire control"

*Wilks v. Greer,* 14 Ala. 437, June 1848. Held: [445] "the issue of slaves, born pending the life estate," go to the remainderman. "the

law . . treats [slaves] . . as human beings, deprived, doubtless for wise purposes, of their freedom. The maxim of the common [civil] law, '*partus sequitur ventrem,*' applies to them, and in our opinion the rule which applies to animals has no application to them." [Chilton, J.]

*State v. Daily,* 14 Ala. 469, June 1848. [471] "that prior to the seizure, the [flat] boat had been in the actual possession of a slave of Feny called Jim, . . That Daily [as constable] had intrusted the custody of the boat to . . his bailiff, who, after the discharge of the boat, meeting . . Jim in sight of the boat, said . . 'Jim, there is your boat.'"

Held: I. a slave may be an agent; II. [472] "The expressions used, amount to a mere pointing out, . . The question whether there was a delivery, was one of fact, and the jury could alone judge whether the evidence sufficiently proved it. . . no delivery was made, unless the servant was apprized of the . . intention to make it, by the terms employed."

*State v. Adams,* 14 Ala. 486, June 1848. [489] "that there existed in adjacent parts of Florida and Alabama, a set of men who had confederated to steal and run negroes from Florida to Alabama, and that the defendant was one of those concerned. That the [two] slaves were inveigled or stolen . . in pursuance of such scheme, . . The slaves secretly left their owner in Florida in April, 1846, were next found in possession of . . Smith, in [Alabama] . . in June, . . the prisoner obtained them from Smith by a sale . . [490] or what purported to be a sale."

Held: [491] "the facts shown . . did not sustain the indictment,[1] . . the presumption is created that Smith honestly brought the slaves from . . Florida, and until this presumption was rebutted, the prisoner was entitled to his acquittal, . . cause remanded." [Chilton, J.]

*Wragg v. State,* 14 Ala. 492, June 1848. After the purchase of cotton by the defendant, [493] "a free person of color accompanied the classifier of the defendant, and under his directions . . he used a gimlet, to draw from the bale a sample of the cotton. . . carried by the free negro to the office of the defendant."

Held: the defendant did not violate the seventh section of the act approved February 29, 1848. [495] "negroes . . are prohibited from sampling cotton . . in those cases only, where the cotton does not belong to the person employing the slave or free person of color;"

*Mosely v. Wilkinson,* 14 Ala. 812, June 1848. "Trespass on the case, by the plaintiff, against the defendant . . for carelessness . . in the treatment of a negro girl, hired . . to the latter. . . that the . . girl was sick, and died in a few days. That . . overseer of . . Hughes, (to whom the defendant had hired the slave,) bled her, applied mustard plasters, etc."

*Hunley v. Hunley,* 15 Ala. 91, June 1848. [101] "Hunley pointed out . . eight young negroes, then standing in his yard, saying he had given them to his four grand-children, . . two apiece;"

[1] Clay's *Digest,* p. 420, sect. 25.

*Snodgrass v. Cabiness,* 15 Ala. 160, June 1848. [161] "the slaves were left in the possession of . . Harris, . . and that he ran off with them to . . Tennessee," etc. See also Swink *v.* Snodgrass, p. 175, *infra.*

*Howell v. Hair,* 15 Ala. 194, January 1849. "About the year 1832, the slave was taken by fraud, force, or felony, from . . Mrs. Drummond, in Florida, and carried to . . Georgia, and there sold. . . [195] 1839 . . Drummond . . covertly obtained possession of him, and brought him to Alabama."

*Williams v. State,* 15 Ala. 259, January 1849. [260] "Indictment . . for larceny of a slave, . . the slave . . was taken from the possession of his owner . . in . . Tennessee, and was afterwards found in the possession of the prisoner, in . . Alabama. . . The jury . . found the defendant 'guilty . . as charged in the bill of indictment.' . . sentence of ten years imprisonment in the penitentiary."

Judgment reversed: [263] "The statute [1] must be followed, and *quo animo* the act was committed, must be specially stated. . . [264] issue a mandate . . commanding the . . sheriff to transfer the prisoner to the jail"

*Dean v. Rathbone,* 15 Ala. 328, January 1849. "immediately after the sale [in 1843], the slaves were . . carried . . to Tennessee."

*State v. Stephen* (*a slave*), 15 Ala. 534, January 1849. "indictment . . for the murder of . . a white man. . . verdict: . . 'guilty of voluntary manslaughter.' . . sentence of death" Affirmed.

*Geron v. Geron,* 15 Ala. 558, January 1849. [559] "allowed . . to remove . . slave from Tennessee to . . Alabama, where he . . hired her out from year to year, until 1846, for $75 a year."

*Marshall v. Gantt,* 15 Ala. 682, January 1849. [683] "that about two months after the purchase of the negroes, . . one . . received a gun-shot wound . . passing through the arm, . . that his attending physicians soon discovered that his lungs were seriously affected: . . that in two days after his arm was amputated, he died. His physicians gave it as their opinion that his lungs were diseased at the time of the sale, and that but for that reason, he would have recovered from the wound. . . Testimony was introduced . . tending to show unsoundness in another . . at the time of the sale, . . [684] This last slave was . . exhibited to the jury,"

Held: I. the defendant [686] "cannot be held liable, for injuries received afterwards, which, . . conjointly with the disease, hastens [*sic*] his death. . . [II.] the practice of producing the slave before the jury, should not be encouraged." [Dargan, J.]

*Jordan v. State,* 15 Ala. 746, January 1849. [747] "indicted under the 2d section of the act of 1846, for selling slaves without license, and before trial, the revenue act of 1848 was passed, . . re-enacting . . that of 1846, except laying the tax at $10 on each slave sold, instead of $5."

[1] Clay's *Digest,* p. 420, sect. 25.

Held: [748] "the act of 1846, is repealed by the act of 1848. . . he could not be convicted."

*Craig v. McGehee,* 16 Ala. 41, January 1849. [47] "the widow . . worked in the cotton-field with the hands daily, during the cotton season, for eleven years," In 1835 she bought a negro girl for $437.50.

*Cook v. Lewis,* 16 Ala. 67, January 1849. Will: [68] "I give unto my daughter . . and her children, twenty negroes, which I cannot name; but . . to be selected . . out of the balance of my negroes, by families as nearly as can be, after my wife makes her selection."

*Barnes v. Blair,* 16 Ala. 71, January 1849. Bill of sale: [72] "Received, Mobile . . 1845 . . six hundred and fifty dollars for . . Joe, about 25 years old, sound and healthy; the title to the same I fully guarantee." Held: no warranty of soundness.

*Harrison v. Pool,* 16 Ala. 167, January 1849. [168] "Detinue . . [by Pool] against . . administrator with the will annexed of . . Harrison, . . The slaves . . belonged to the decedent in South Carolina, and were in charge of [Pool] . . as his overseer. The latter lived with an illegitimate daughter of the decedent as his wife, but they were never married. . . removed . . to this State, and the slaves . . remained in . . [Pool's] possession . . for some fifteen years . . Just before the decedent's death, he executed a will,[1] by which he bequeathed said slaves to [Pool] . . his administrator demanded the slaves . . surrendered . . distributed . . [Pool] took no steps in opposition"

Judgment reversed and the cause remanded: Pool is estopped from setting up any claim to the slaves. See Pool *v.* Harrison, p. 177, *infra.*

*Hearrin v. Savage,* 16 Ala. 286, June 1849. [288] "claimed . . expenses and compensation in going to Louisiana in pursuit of, and in capturing and bringing back to Alabama about forty negroes belonging to the estate, which had been run off by one of the heirs."

*Williams v. Shackelford,* 16 Ala. 318, June 1849. [319] "Being unable to make a sale of the slave [in Mississippi], . . and inasmuch as the plaintiff [who resided in North Carolina] did not desire . . the slave . . taken back to him, . . [the agent of the plaintiff] proposed to the defendant [who resided in Alabama] again to hire him. This the defendant refused to do at any price, alleging that the slave was a bad negro, and old, and was injurious to his younger negroes"

*Vaught v. Wellborn,* 16 Ala. 377, June 1849. [381] "During the preparation for the removal of . . [the Cherokee tribe,] Catharine [a member of the tribe] . . pointed out two of the slaves . . and claiming them as her property [from her father's estate], induced the soldiers ['under the command of Gen. Scott'] to take charge of them."

*Robinson v. Farrelly,* 16 Ala. 472, June 1849. In 1846 Mary, aged twenty-five, was sold for $460. [475] "The defendant was a negro trader, . . complainant was also"

[1] See Harrison *v.* Harrison, p. 159, *supra.*

*Boling v. Wright,* 16 Ala. 664, June 1849. " action of trespass *vi et armis* . . one of the defendants, introduced evidence tending to show that . . the slave was run from his premises, and that the plaintiff had authorised him [some three years before] to whip said slave should he thereafter be found there, . . that about three years before, but since the authority was given . . defendant caught the slave on his premises and gave him eighty lashes. . . the whipping now complained of was unusually severe and such as to incapacitate the slave for labor for . . two weeks,"

Held: [666] " the evidence [of the first whipping] was proper in mitigation," The defendants " proposed to show . . the repetition of his offence . . rendered it necessary, under the license they had, to use more severity than before."

*Eldridge v. Spence,* 16 Ala. 682, June 1849. " the sheriff . . levied on . . three slaves . . [683] and delivered two of them to . . [his] overseer . . to be carried to . . the jail. The overseer was not accompanied by the sheriff, nor were the slaves in any manner confined, they being on foot, and the overseer on horseback. When they reached the jail, and whilst the overseer was dismounting, one of the slaves ran off." [684] " and has never been retaken." Held: the sheriff is liable.

*Sharpe v. Hunter,* 16 Ala. 765, June 1849. [766] "levied on a negro woman and child, who were committed to jail and there confined for eight months;"

*Phereby (a slave) v. State,* 16 Ala. 774, June 1849. [775]" The plaintiff in error was indicted for the murder of Elizabeth Sheppard, and was described in the indictment as her property. . . The prisoner's counsel requested the court to charge . . ' that unless a property in the prisoner, at the time of the finding of the indictment, was proved, the jury must acquit ' [1] . . the court refused "

Judgment reversed and the cause remanded. " The prisoner, however, will be retained in custody to abide another trial, unless . . discharged in the meantime by due course of law."

*Cobia v. State,* 16 Ala. 781, June 1849. "Francis J. Cobia was indicted for the murder of . . a slave, the property of . . Crawford. . . verdict of ' Guilty in manner and form as charged in the indictment.' . . [782] sentence, that the prisoner be imprisoned . . ten years."

Judgment reversed and the cause remanded: [783] " before the court can pronounce judgment, it must be ascertained by the verdict . . whether he be guilty in the first or second degree. . . [784] he may be tried again."

*Stapler v. Hurt,* 16 Ala. 799, June 1849. [804] " the bill . . charges a fraudulent transfer of the slaves " Letter, 1841: [801] " You had better start the negroes from the house before it is night, and let them come a mile or two and wait until dark—tell them where they are coming, for fear they may not want to come."

*Marshall v. Wood,* 16 Ala. 806, June 1849. [807] " that the slave . . with her child, was purchased . . at the price of six hundred dollars . .

[1] See Flora *v.* State, p. 140, *supra.*

that the woman alone, if sound, would have been worth $550 . . that she was a short time after the sale affected with a disease, termed Amenorrhoea, in consequence of which she was not worth more than two hundred dollars, and that the disease was apparently of several years standing, the defendant . . about a month after the sale . . proposed to the plaintiff to take the slave back"

*Drew v. Ricks,* 17 Ala. 25, June 1849. "Ricks, did arrest the slave and take him before a justice, . . the slave belonged to Drew and had run away; . . the justice ordered the slave to be committed, but . . Ricks refused to take the slave to jail . . or to deliver him to his master;" Held: Ricks is [26] "entitled to the reward of six dollars,[1] . . The rest becomes the official duty of the justice."

*Field v. Milly Walker,* 17 Ala. 80, June 1849. *Habeas corpus.* [81] "The petition sets forth that the petitioners are free persons of color . . confined in the common jail . . The return of the officer . . shows that he detains them as the slaves of Field, under an order . . by three justices of the peace, . . record of a recovery of their freedom by a portion of these petitioners, against Jones," [2]

Held: I. [83] "from the nature of the institution of slavery, from the design of the writ of *habeas corpus,* and from the legislation of the state, that the person asserting his title as owner cannot be compelled to submit to this summary jurisdiction, but is entitled to have his rights adjudicated according to the statute [3] . . [II.] [84] improper for us to express any opinion as to the effect of the recovery . . of their freedom, as against Jones, coupled with his possession . . for a length of time sufficient, if he held adversely, to bar the right of Field . . as against him." [Chilton, J.]

*Kirkman v. Mason,* 17 Ala. 134, June 1849. Will: [137] "that his slaves in Mississippi be sold at the expiration of a year from his death, unless in the opinion of his executors it be advisable not to sell; in that event, they were directed to rent land in Mississippi and save another crop; and at the expiration of this year . . to sell"

*Montgomery v. Givhan,* 24 Ala. 568, November 1849. [578] "that Sam died in less than a year after his purchase; . . Peggy . . in about three years after her purchase, and Scipio in about four years"

*Gerald v. Bunkley,* 17 Ala. 170, January 1850. Dargan, C. J.: [175] "It became necessary to build negro houses . . as those left by the deceased had become rotten and dilapidated; . . Not only common prudence but common humanity demands of the master that he should provide suitable houses . . [177] the intestate did not leave land sufficient to employ his force as profitably as it might have been, and . . the administratrix purchased . . two tracts"

[1] Clay's *Digest,* p. 541, sect. 14.
[2] Cited in Fields *v.* Walker, p. 189, *infra.*
[3] Clay's *Digest,* p. 542, sect. 19.

*Ham v. State,* 17 Ala. 188, January 1850. "The indictment . . alleges that . . Ham . . 1847, 'a slave . . [189] of the value of seven hundred dollars, . . did steal' . . The evidence tended to show that the slave was stolen . . in . . Mississippi, and brought . . to . . this State." Held: "the judgment of conviction . . cannot be supported.[1] . . Let . . the prisoner be retained in custody to await a further trial"

*Pleasant (a slave) v. State,* 17 Ala. 190, January 1850. [191] "Pleasant . . was indicted . . for the murder of . . Copeland, and having been convicted and judgment of death pronounced . . he prosecutes a writ of error . . The indictment charges him to be . . the property of the late . . Copeland,"

Held: "it is necessary to prove the ownership of a slave when indicted for a capital offence, . . The accused is . . alleged to be the property of one not in life. . . the indictment is consequently defective. . . the accused will be retained in custody to abide another trial,"

*Spence (a slave) v. State,* 17 Ala. 192, January 1850. Spence, the property of Cole, was found guilty of the murder of John Ramsey and sentenced to be executed. "a bill of exceptions . . presents the following points . . 1. Was Scurlock a competent juror? . . [193] he did not then hold any slaves, but . . he expected to receive some slaves as his distributive share. . . We are clear . . that this juror . . was not a slaveholder in the sense contemplated by the act[2] . . [194] 2. Is the master a competent witness for the slave? . . [196] we are inclined to place the competency of the master upon the high ground that society on the one hand, and the slave whose life is at stake, on the other, have each an interest in the master's testimony, compared with which the pecuniary interest of the master sinks into insignificance, and should not be regarded except as affecting the credit to be given to it. . . [197] 3. . . that the prisoner was arrested by his master at the house of the latter; that his master immediately had his hands tied, and that . . the slave made certain confessions to a third person with whom his master had temporarily left him. . . the prisoner's counsel proposed to prove by the master . . 'that he . . had always been in the habit of tying his slaves when they were charged . . and whipping them till they confessed . . and that he had frequently treated the prisoner in the same way.' . . [198] is there anything unreasonable in the proposition that the slave . . should suppose . . that the temporary absence of the master was but to provide the means of torture which his confessions might avert? . . the proof proposed to be made . . was legitimate, as tending to show whether the confessions were voluntary or otherwise. Let the judgment be reversed and the cause remanded, that the prisoner may be again tried." [Chilton, J.]

*Townsend et al. v. Jeffries' Executors,* 17 Ala. 276, January 1850. [278] "action of trespass . . for beating and wounding a slave . . The defendants pleaded . . That they only punished [him] . . moderately for

[1] See Williams *v.* State, p. 169, *supra.*
[2] Clay's *Digest,* p. 473. sect. 10.

having killed and used, and for injuring their hogs, . . That the punishment . . was authorised by said plaintiffs, . . the jury find for the plaintiffs and assess their damages at . . three hundred and seventy-five dollars." Judgment thereon reversed on error, and the cause remanded. See Townsend *v.* Jeffries' Administrator, p. 194, *infra.*

*Merriwether v. Eames,* 17 Ala. 330, January 1850. [332] "sent the slave with her clothes and bedding in his wagon to the house of . . his daughter's husband, . . daughter had been married about twenty years" Held: "a gift should be presumed;"

*Nesbitt et al. v. Drew,* 17 Ala. 379, January 1850. "Assumpsit . . on a promissory note for one hundred and sixty-eight dollars, . . 'I, John Drew . . hired unto . . Nesbitt . . Jeffro and Daniel, for . . twelve months from the twenty-fifth day of January [1847] . . [380] I am to clothe said negroes comfortably, and all time lost by sickness or otherwise I am to deduct' . . Sept. Jeffro was taken sick and went home, whence he never returned, and that . . November, Drew . . took Daniel . . and refused to return him . . that he could not swim and Nesbitt had put him to rafting logs . . the defendants proved . . that . . there was no restriction . . as to the kind of work . . that they were hired to work . . at Nesbitt's steam mill; and that rafting saw logs was . . a part of the ordinary weekly labor" Held: [383] "Drew . . violated the contract . . [384] no sufficient excuse for the withdrawal of . . Daniel"

*Leaird v. Davis,* 17 Ala. 448, January 1850. "1848. . . I have this day hired to . . Leaird eight negroes . . and the service of me as overseer and laborer for this year, for . . four hundred dollars, and am to furnish my own meat and bread, and two horses, one yoke of oxen and cart, for the use of the farm"

*Baalam (a slave) v. State,* 17 Ala. 451, January 1850. [453] "convicted of the murder of Ellen, a slave. . . the deceased and the accused had been seen together . . going apparently in the direction of the church, and he had been seen afterwards to return alone. . . however, shown that he did not intend going all the way . . The dead body was found about half a mile from the road leading to the church, . . a shoe track, which . . was changed to the track of a bare foot. The prisoner was bare foot when he returned and also when he left home. He did not attempt to conceal himself . . Several witnesses who had examined the tracks near the dead body testified that they corresponded with the tracks of the prisoner. The prosecutor then offered a witness to prove that the deceased and the prisoner were husband and wife, and about a year previous . . had quarreled and separated,"

Held: [454] "Had there been no other circumstances implicating the accused . . such proof . . might well have been rejected: . . [455] the judgment must be affirmed and sentence of death be here pronounced"

*Knox v. Fair,* 17 Ala. 503, January 1850. In 1844 Cater and Holt sold Sarah and her children to Fair for $1200. [504] "The money was handed to *Fair by Sarah,* who paid it to C. and H., but the proof did not

show from whom Sarah got the money. . . some weeks before the sale . . after the house [of Taylor] was burned Cater told her to . . stay at his house, which she did for two months; but . . Cater neither directed nor controlled her labor, but she paid wages for her time, which she had done for several years previously. . . Sarah was industrious and a good . . dress-maker, but there was no evidence that she ever received money for such services. Sarah lived with Taylor until . . 1848, when . . [he] left,—an indictment having been found against him. . . Sarah left the house and hired one for one month, when . . Coleman rented one for her, in which she lived till levied on."

*Johnson v. State,* 17 Ala. 618, January 1850. Dying declaration of Mrs. Johnson: [621] "That . . a negro girl, gave her some wine, and told her that . . Johnson gave it to said negro, and told said negro that it would do her [his wife] good"

*Swink v. Snodgrass,* 17 Ala. 653, January 1850. [654] "Harris ran the slaves to Mississippi . . with the consent of the administrator. The slaves were pursued by an agent of the Bank . . and brought back"

*Walker v. Blassingame,* 17 Ala. 810, January 1850. [811] "1837 or 1838, Walker . . had given the negro girl . . to his daughter, . . and that [his son-in-law] . . came to carry her home, but about the time he was starting, she gave him the slip,"

*Gaunt v. Tucker,* 18 Ala. 27, June 1850. [30] "a deed of gift, by which the testator [Hartwell Tucker] conveyed [Frederick] . . to him about a month before his death. . . contended that this deed was upon a secret trust that . . the donee, should emancipate the slave, . . [but] [31] if the testator recovered . . the slave was to continue the property of the testator." Held: "the title will vest absolutely in the donee,"

*Tucker v. Magee,* 18 Ala. 99, June 1850. [100] "Samuel Acre, in . . 1836, put the slave into the possession of . . a brick-layer and plasterer, and then agreed with the latter that he should . . feed and clothe him for five years, and teach him the trade . . and deliver him, at the end of that time, to . . Samuel's niece, . . made a deed of indenture"

*State v. Richardson,* 18 Ala. 109, June 1850. [111] "The defendant was indicted . . for concealing a slave, who had been indicted for a capital offence. He was convicted and fined one thousand dollars, and sentenced to imprisonment in the . . jail . . until the fine and costs were paid. After . . some time, he was pardoned" Held: [112] "it was not the intention of the Executive to release the fine,"

*Sims and Jones v. Knox,* 18 Ala. 236, June 1850. [237] "I have . . hired from . . Drish . . his boy William for the balance of this year, . . at the rate of six hundred dollars per annum, and do further agree to find . . William in summer and winter clothing and his board. . . 21st January 1848.—William Knox." "the slave was . . extremely ill with brain

fever at the house of . . Norment, a note . . by Dr. Sims . . to Mrs. Knox . . ' The Dutch doctor . . visited him yesterday without my knowledge . . I called on him afterwards to ascertain the motive of his interference, and he stated that you had told him to do so, and that Mr. Knox was the agent of the negro. I would beg leave . . to inform you that I was sent for to attend . . William at his own request, and the consent of his real agent, Mr. Pfister, and that his master, Dr. Drish, has written to Mr. Norment expressing his satisfaction ' " Held: [240]" the plaintiffs . . must . . look to Drish . . for payment."

*Thurman v. State,* 18 Ala. 276, June 1850. " indicted for a rape on a white woman." [278] " he had ' kinky hair and yellow skin ' . . The prisoner's counsel asked the court to charge the jury ' that if they were satisfied . . that the prisoner was the offspring of a white mother and a mulatto father, or a father of any other cross of the negro and the white race, that . . the prisoner was not a free negro . . or mulatto as charged,"[1] which the court refused,"

Judgment reversed and the cause remanded: " A mulatto is . . ' the offspring of a negress by a white man, or of a white woman by a negro.' . . [279] there is another law that embraces his case,[2] and the atrocity of the crime . . was a proper matter for Legislative, . . not for judicial consideration. . . If the statute against mulattoes is by construction to include quadroons, then where are we to stop? . . are we not bound to pursue the line of descendants, as long as there is a drop of negro blood remaining?" [Parsons, J.]

*Hooper v. Edwards,* 18 Ala. 280, June 1850. [281] " Mangham absconded . . with all his negroes and was pursued . . overtaken "

*Hooks v. Smith,* 18 Ala. 338, June 1850. [341] " in January 1847, hired a slave . . to the defendant . . for that year, for house service exclusively, but that in July . . he put her to work on his plantation, in which business, as she was crossing a creek on a log, she fell in and was drowned. . . had become rogueish, ill natured and unmanageable." Held: " no excuse for putting her into the field, . . he was clearly liable for her value."

*Wolfe v. Parham,* 18 Ala. 441, June 1850. [443] " the garnishee employed Tucker to go to Mississippi, and take and bring to Mobile three negroes . . for which service Tucker was to receive one of the negroes, or one third the value of the three;"

*Myers v. Gilbert,* 18 Ala. 467, June 1850. A slave, hired for [470] " three months, at twenty dollars per month," [468] " as a deck hand on . . a steamboat . . a regular packet between Mobile and New Orleans; . . fell from said boat and was drowned . . whilst said boat was making a trip up the Tombeckbee river for the purpose of taking on board some negroes that were to be carried to New Orleans."

[1] Clay's *Digest,* p. 472, sect. 4.
[2] *Ibid.,* p. 445, sect. 42.

*Pool v. Harrison,* 18 Ala. 514, June 1850. See Harrison *v.* Pool, p. 170, *supra.* On the second trial, the plaintiff [516] "replied over to both pleas of estoppel, that the slaves . . belonged to him under . . the . . will" [517] "of . . Harrison, thus going behind the estoppel, . . [518] The will makes him a trustee of the slaves sued for, for the use of other slaves attempted to be emancipated" Held: "this trust is void,"

*Crow v. State,* 18 Ala. 541, January 1851. [544] "The prisoner [1] resided in Butler [County], and in his vicinity, . . the slave had a wife, but belonged himself to a plantation in Lowndes. . . he escaped . . but the evidence conduced to prove that he was enticed . . [545] into Butler by the prisoner," [542] "the slave was seen on a Stockton steamboat at the wharf in Mobile, . . taken up by a city officer, who found in his possession a pass . . and a letter to . . Lesesne, both signed . . Readmond, but which there was evidence conducing to show were in the handwriting of the prisoner. The latter instructed Lesesne to hire the slave out . . for account of the writer, who spoke of the slave as his property."

*White v. Adkins,* 18 Ala. 636, January 1851. "in 1826, . . Bell contracted to sell . . twenty slaves for . . $19,000, payable in ten annual instalments; that ten . . were . . [637] to be delivered . . in 1826, and the remainder in . . 1827;"

*Felix (a slave) v. State,* 18 Ala. 720, January 1851. [721] "indicted . . for the murder of . . Francis Saturnina . . called Spanish Frank, a free negro, . . It appears that at a ball for colored persons given in Mobile, . . [722] the deceased ['a bright mulatto'] was a manager, and the prisoner, though uninvited, attended and took part in a musical band, as a performer on the bass drum; . . shortly before its close ['about two in the morning'], the deceased and prisoner had some words, when the deceased reminded the prisoner that he was there without an invitation, . . they came violently together; . . Thomas Lorant, a free person of color, . . took hold of the prisoner, telling him not to make a fuss, . . the prisoner replied, 'I have no complaint against you Thomas, but as to Frank, I will kill him to-night.' This took place in a negro shanty . . composed of two rooms. Lorant . . was . . called into the other room to take a drink, . . heard some one cry out that Frank was dying . . stabbed . . The prisoner introduced two witnesses, who swore that . . he had borne an exceedingly good and peaceable character," He was found guilty and sentenced to be hanged. Judgment reversed for error in the charge to the jury. [726] "As to the supposed variance . . We do not think a bright mulatto . . fills the description of a negro. This can . . be remedied by an additional count"

*Murray v. State,* 18 Ala. 727, January 1851. "the slaves were stolen in . . [728] Louisiana . . and brought . . into this State,"

*Rowland v. Walker,* 18 Ala. 749, January 1851. "asked the witness [not a physician] to state of what the slave complained, . . permitted to

[1] Clay's *Digest,* p. 419, sect. 18.

answer . . [750] and he stated that he complained of pain in his head, back and knees, and said he was sick all over," Held [752] " no error in admitting the negro's declarations . . They were to be carefully weighed by the jury."

*Hurt v. State,* 19 Ala. 19, January 1851. " Mr. Hurt was convicted [1] . . for selling a pair of shoes to a slave. On the trial he admitted the sale, . . But he then proved by the owner . . that, two months before . . he gave to Mr. Hurt verbal permission to sell dry goods, at any time, to the same slave, provided he made him pay the money for them, but prohibited the sale of ardent spirits. The court charged that the particular articles to be sold . . must be expressed in the permission;"

Judgment affirmed: " Most owners, I believe, allow to their slaves reasonable time to make provision for the comfort of themselves and families, and, to that end, permit them to deal with honest white persons, so far as to sell their commodities, or to expend their money, in the purchase of necessaries. . . [20] In requiring the articles to be specifically stated, . . the Legislature designed to suppress . . a general evil in some parts of the country, growing out of a clandestine traffic between slaves and a particular class of white persons. It was intended . . that the negro should have the privilege of making himself and family comfortable and even respectable in his caste, but not to dispense with the owner's discretion . . altogether. For if a negro may buy all sorts of dry goods . . he might soon . . become a pedlar among other negroes and the class of white men, whose conduct led to the passage of the act," [Parsons,J.] Dargan, C. J., dissented: " I think the term, dry goods, sufficiently descriptive "

*Smith v. Hooks,* 19 Ala. 101, January 1851. [102] " The defendant . . hired a female slave . . [103] the slave was drowned, under circumstances that rendered the defendant liable for her value."

*Strong v. Gregory,* 19 Ala. 146, January 1851. [147] "Susan Gregory, before her intermarriage, was possessed of ninety-two slaves in . . Georgia, . . an agreement in writing . . to settle . . sixty-one . . on . . Nesbit," to her use for life. The other slaves were sold under the order of her husband, and they " removed to Alabama, and brought the sixty-one slaves with them,"

*McClung v. Spotswood,* 19 Ala. 165, January 1851. Mrs. Spotswood was [169] " engaged in waiting on the girl [slave] . . who was sick,"

*Gilmer v. Ware,* 19 Ala. 252, January 1851. [255] " 1849, the slave . . was sold under a mortgage, made by . . Benbow, to secure a debt due to the . . Bank . . bid in by . . Whiting . . the agent . . of . . Bank. On the day after . . Whiting sold the slave to . Ware, for five hundred and fifty dollars, . . an advance upon the price . . Ware agreeing to give his note . . but on the same day, Ware came . . and said that the boy was unsound, having a defect in one eye, . . Whiting replied . . Benbow said . . nothing was the matter with him. . . they found one of his eyes de-

[1] Clay's *Digest,* p. 437, sect. 8.

fective, but Ware . . did not object . . About two weeks afterwards . . Ware . . said he could not comply, because he was told by one of his negroes that the boy had had a fit, and . . was subject to them, . . that although Benbow thought they were spasms occasioned from eating [something ' that disagreed with him '], . . Ware, thought they were fits, and . . asked Whiting to rescind . . refused . . Ware . . said, if Whiting would sell the negro that day as the property of Benbow, under the mortgage, he would make up the difference, . . [256] ' to be sold without warranty.' . . the negro [was] sold at auction, and was purchased by Gilmer at $550 cash. . . all sales made under mortgages to the bank were without warranty . . Whiting . . disclosed to [Gilmer] . . all that had passed . . Gilmer replied . . that if what Benbow said was true, the negro was a cheap bargain, and if what Ware said was true, he would send the negro up to some of the negro traders in Montgomery, and get them to sell him; and he then paid the money . . if the negro had been sound, he would have been worth $700;" Held: [259] " he cannot be said to have been defrauded,"

*Turner v. Fenner,* 19 Ala. 355, June 1851. In 1843 negroes were brought to Alabama from North Carolina.

*Hirschfelder v. State,* 19 Ala. 534, June 1851. [537] " The indictment charges that the plaintiff in error . . ' did sell to a negro man slave . . one bowl, of the value of twenty-five cents, and one set of plates of the value of fifty cents,' "

Held: the act of February 7, 1850,[1] renders it unnecessary to state the name of the owner or to aver that the commodities were sold without his consent. The act is constitutional. [540] " The consent proven . . which does not express the articles to be purchased, . . furnishes no protection to the accused."

*Lindsay v. State,* 19 Ala. 560, June 1851. " proven that the defendant sold . . to the slave . . several drinks of either ale or whiskey "

*Doss v. Campbell,* 19 Ala. 590, June 1851. [592] " removed [from Texas] to Alabama, bringing the slaves with them;"

*Carter v. Balfour,* 19 Ala. 814, June 1851. Will, 1843: [816] " I give one thousand dollars . . betwixt . . the Baptist Societies for Foreign and Domestic Missions, and the American and Foreign Bible Societies; and at my sister Emily's death, if the boy Mike given to her during her life-time be alive, he shall be sold . . and the proceeds . . equally divided . . between the societies "

*Seaborn and Jim v. State,* 20 Ala. 15, January 1852. " slaves . . indicted for the murder of another slave. . . The committing magistrate . . testified, ' that when he reached the place where the examination took place, . . the two prisoners were sitting down, each chained with a padlock around his neck, and that they looked quite melancholy; that the owner of the prisoners and the owner of the deceased were present, and

[1] Pamphlet Acts, p. 51.

that there was a gun and a stick in the company; that the witness said to the prisoners, 'that it was a bad . . situation, they were in;' that Seaborn replied 'yes, it was; but that it was too late,' and shook his head; that . . witness . . sent . . Jim, with two men, one of whom had a gun, out of the hearing . . [16] asked Seaborn if he was guilty, or not guilty, and Seaborn replied . . 'guilty;' witness then asked him to state how the killing occurred, and he replied,' . . detailing the circumstances . . Jim was afterwards examined apart . . and his confession corroborated . . The State also produced other proof corroborating . . verdict of 'guilty' . . sentenced to be executed"

Affirmed: [18] "the admissions of guilt . . were voluntarily made . . That they were made to the examining magistrate, who did not previously caution them, as he undoubtedly ought to have done, as to the effect . . would not justify the court in excluding them." [Chilton, J.]

*State, ex rel. Savary, v. Caroline (a slave) et al.,* 20 Ala. 19, January 1852. "Libel to forfeit slaves brought into Alabama from the Republic of Texas. The relator alleges that the slaves . . were brought in . . contrary to the act of Congress for the suppression of the slave trade, and prays that they may be declared forfeited, and sold for the benefit of the State and himself." Libel dismissed.

Affirmed: [22] "By the fourth section of an act of Congress, approved 3d March, 1819, . . [23] all power over the subject is conferred on the District Courts of the United States, their attorneys and marshals; and the power of disposing of the persons unlawfully imported is taken from the States, and conferred on the President of the United States."

*Spencer v. State,* 20 Ala. 24, January 1852. "indicted for 'inveigling . . and enticing away a slave, with a view to convert . . to his own use,'[1] . . the State offered to prove the . . declarations of the slave, made the day after the prisoner's arrest, . . in his presence . . some person . . asked the prisoner if he did not intend to whip the slave for making them, . . he replied that 'he did.' . . admitted . . The State also offered to prove . . declarations made by the slave . . while the prisoner was being conveyed to jail . . which declarations were not contradicted by the prisoner. . . admitted . . There was also evidence . . that the slave had run away from his overseer when about to be whipped by him, in . . Georgia." Held: I. [28] "no error . . in the admission of the testimony . . [II.] [29] the indictment must be framed on the eighteenth section" of chapter 4 of the Penal Code.[2]

*Winter and Scisson v. State,* 20 Ala. 39, January 1852. [42] "indicted . . for . . aiding . . Henry and George [mulattoes], to escape from their master's service. . . they had lived with . . Jones for several years, when Jones died, and the prosecutor . . his administrator, . . did not include [them] in his inventory . . The plaintiffs in error . . introduced

[1] [25] "The indictment was found under the provisions of the 25th . . section." Clay's *Digest,* p. 420.
[2] *Ibid.,* p. 419.

proof . . tending strongly to show that Henry and George were . . free persons of color." [40] " declarations of Jones that they were . . born of a free woman, . . and never having exercised acts of ownership over them for fifteen years;" [41] " treated them as his children " Held: [42] " the prisoners . . should have been acquitted."

*Smith v. Hooper,* 20 Ala. 245, January 1852. [246] " By . . consent, the acts of the executor in conveying to Ohio certain slaves of the testator [John Hooper], which he directed should be done in order to effect their emancipation, and the appropriation of three hundred dollars from the share of each distributee, to defray the expense of their removal, . . a sum considerably below what the testator had appropriated for that purpose, were . . approved. . . the husband [of one of the distributees] . . was not before the court to make any consent," Held: " the whole proceeding . . is erroneous."

*Patton v. Rambo,* 20 Ala. 485, January 1852. " about August, the slave had an attack of fever, and was sick until winter. . . Dr. Jackson . . was called in . . in November, and prescribed for him for a month or two; . . had given the boy a thorough examination, . . his opinion . . that the boy was unsound at the time of the sale [in April]. . . Dr. Henkle had been called . . about two months before "

*Jones v. Nirdlinger,* 20 Ala. 488, January 1852. [490] " The master sought to recover money which the slave had paid to the defendants." It was proved that [489] " the slave was allowed by his master . . to hire his own time, make contracts, etc., and to keep what he made, paying his master hire. . . was employed by the defendants . . in their store . . detected in purloining goods . . taken up by the clerk . . who . . with the . . constable, examined his house, and found . . goods belonging to the defendants, and five hundred and eight dollars . . the slave had three or four hundred dollars before he entered the defendants' service. . . the slave confessed . . that he . . had frequently stolen from them, and had sent some of their goods to Limestone County; . . he was satisfied he had taken enough to amount to two hundred and fifty dollars, . . would willingly pay it . . The defendants . . accepted . . and the slave kept the goods. . . plaintiff's counsel moved to exclude the confessions . . overruled " Verdict for the defendants. Affirmed: [491] " parts of the *res gestae;*"

*Hooper v. Edwards,* 20 Ala. 528, January 1852. [529] " 1848 . . left . . clandestinely, and carried with him all his negroes, except the boy . . previously levied on "

*Carpenter v. Going,* 20 Ala. 587, January 1852. [590] " At . . sale, the defendant became the purchaser of the slave . . paid . . a thousand and one dollars."

*Harrison v. Harrison,* 20 Ala. 629, June 1852. [632] " her happiness . . did not . . enter into his views, as was manifest from . . his abandoning her bed, and taking to his embrace a negro woman belonging to him,

with whom he slept in regular companionship, . . she did return . . to the residence of her parents"

*Ewing v. Blount,* 20 Ala. 694, June 1852. "the slave ran away from the plaintiff in January, 1849, and soon afterwards was in the possession of the defendant, who sold him to . . Vaughan. . . the negro ran away from Vaughan in . . 1850, and was arrested and put in jail . . as a runaway. . . the plaintiff expended about thirty dollars in regaining the possession . . he was worth from eight hundred to one thousand dollars, and his hire by the month from twelve to sixteen dollars."

*Brainard v. McDevitt,* 21 Ala. 119, June 1852. "McDevitt . . purchased her of . . Montgomery, for . . four hundred dollars . . 1845; . . Montgomery, after the sale . . [120] made a bill of sale of said slave to . . Devine, for the purpose of having [her] . . emancipated, but . . Devine . . paid nothing . . execution of a bill of sale for the same slave, by Montgomery, to . . Brainard, . . 1848; . . some money passed . . no delivery . . after the death of Montgomery, Brainard . . assumed the control . . but she was permitted to live in the city where she pleased."

*Roberson v. Roberson,* 21 Ala. 273, June 1852. Will of John Roberson, 1844: [274] "for good services and regard that I have for my four slaves, . . Old Peter and . . his wife, and Little Peter and . . his wife, I hereby set them free at my death." They were sold by the executors. Held: the bequest was void. They go to the residuary legatees.

*Gingles v. Caldwell,* 21 Ala. 444, June 1852. Bill of sale: [445] "1842, received . . three hundred and forty dollars, for . . Joe, aged eight years; . . warrant Joe to be sound . . with the exception of his legs, and I . . bind myself, . . if Joe's legs should injure him from being a serviceable boy at . . fifteen years, to make him good" "the slave's legs had been burned before the sale, . . grew worse, . . at . . fifteen, his legs had become more crooked, . . one thigh and hip seemed to have dwindled away, . . however, . . although not 'a full hand,' he could render valuable service." Held: the warranty [447] "has no reference to his market value,"

*Shomo v. Caldwell,* 21 Ala. 448, June 1852. "1847, Joseph Shomo . . removed with [the two slaves] . . to . . Florida. In 1849, Caldwell [the plaintiff] . . purchased . . brought the slaves back to Alabama, when they ran away from him, and went into the possession of [D. T. Shomo] . . of whom they were demanded . . [449] refused . . agreed that . . Edgar was worth $800, and Abram $900; that the hire for each is $10 per month. . . judgment for the plaintiff for the agreed value . . and damages for their detention." Affirmed.

*Tannis v. Doe, ex dem. St. Cyre,* 21 Ala. 449, June 1852. [450] "Ejectment by Lucy St. Cyre . . to recover a certain lot . . in . . Mobile, which the plaintiff claimed as the sister and heir at law of . . Cyrus Evans, a free man of color. . . that the only child of . . Cyrus was a slave, and that his brothers and sisters, with the exception of herself, were either dead or slaves; that the plaintiff was a slave at her birth, but was

emancipated under the Spanish law about . . 1818, at which time she was a resident of Florida; . . found residing in Alabama, after the treaty of cession of 1819,"

Held: [454] "incapacity [to hold property] . . can only be fixed upon [a free person of color or an emancipated slave] . . by express legislative enactment, or by necessary implication." I. [453] "the legislature . . having . . virtually exempted from the operation of the laws directed against free persons of color, those who came into the State prior to 1832, no argument founded on the policy of the law can be maintained against those so situated. The charge of the court, therefore, that a negro could hold and inherit lands, was, as a general rule, correct; . . we do not decide the question as to the right of a free person of color to inherit lands . . where the descent was cast since the passage of the act of 1832, and the heir was not a resident . . on the first day of February of that year. . . [II.] previous to the act of 1834,[1] . . there was no law which required the slave to leave the State, . . to complete, the act of emancipation. . . [454] the defendant in error would, therefore, be exempted from its operation." [Goldthwaite, J.]

*Patterson v. State,* 21 Ala. 571, June 1852. [572] "indicted for selling . . a half gallon of rum . . to a slave, without the written permission required by the statute."

*Ganaway v. Mayor,* 21 Ala. 577, June 1852. "judgment was rendered . . 1850, for . . fifty dollars, besides costs . . for violating the ordinance . . of Mobile . . [578] that if any white person . . shall be . . within . . Mobile, found in company . . with slaves, at any . . meeting of such slaves, or if he . . harbor, secrete or entertain any slave . . without the consent of his . . owner, . . every person . . being thereof legally convicted, shall . . pay . . a fine of fifty dollars."

*Atwood's Heirs v. Beck, Administrator,* 21 Ala. 590, December 1852. Will of Henry S. Atwood, executed in 1843, admitted to probate in 1851: [593] "I give . . to a mulatto boy . . aged about fifteen, also to his sister, a mulatto girl aged about twelve . . now [and [624] 'for many years'] residing in Ohio,[2] in charge of . . Brown, . . also to their sister . . Cebille, aged about nine, also to her brother, . . Julius, aged about eight . . also to his brother, John, aged about five, the three latter . . being on my plantation, . . and all . . being children of a negro woman belonging to me, . . [594] Candis; I also give . . to a mulatto boy . . aged about six . . and to his brother . . aged less than one year, . . children of a slave of mine named Mary, who resides at my plantation . . six miles [away] . . eight thousand dollars each, . . and the bondage . . to which said children, by the laws of the State, are subjected, I . . invest in the hands of my executors . . for the purpose of . . removing [the last five] . . to a free State; the other two . . being already in a free State, from which they are not to be removed into any slave State, it being my desire to give to each . . their freedom, . . I also will . . to nine

[1] Clay's *Digest,* p. 545, sects. 37 and 38.
[2] [593] "Atwood took [them] . . to . . Ohio in his lifetime;"

of my servants their freedom, and . . invest in my . . executors . . the control and ownership . . so far as . . necessary to remove [them] . . to a free State, . . at furthest in one year after the probate . . The . . slaves . . to be liberated and removed [1] are Candis, . . aged about thirty-six, she being the mother of five . . mentioned, and her two black children . . aged about eighteen . . and . . fifteen . . also Seaborn, . . about twenty-seven, and four small children of his . . To . . Candis, Seaborn and Mary I . . bequeath . . two thousand dollars each, . . [595] The expense of removing . . to be borne by my estate, and the means furnished them for a six months' supply of provisions . . All the personal effects they have . . here, to . . belong unto them," " Testator further requires, that the . . fifty-six thousand dollars, be invested in lands in Indiana, Illinois or Michigan, which can be entered at Government price, . . until one half . . [596] is invested, and the other half to be loaned out . . that his land and [other] negroes be sold . . He desires . . the children of Candis to be well supported . . and educated, . . The residue . . to the children of . . his sister, resident in . . New York: . . further . . 'I . . invest in my executors full . . power to remove . . and that the . . ownership in the said persons be . . complete for so removing them, knowing full well they cannot be given their freedom to remain in this State.'" [591] " estate . . estimated . . at three or four hundred thousand dollars; . . the executors named refused to qualify, . . complainants [children of his sister] resided in Wisconsin, . . the administrators . . proceeded to obtain an order . . for the sale of one hundred of the slaves for cash, and one hundred and seventy-five more on a credit of twelve months, at public auction; . . sold . . [592] The complainants charge . . that the bequests in favor of said slaves, as well as the legacies . . are absolutely void, and if this be so, they pray . . that the slaves be distributed among those entitled; that if . . valid . . the complainants . . pray they may be appointed the guardians and trustees . . that the applicants are residents of a free State [Wisconsin], and could carry the slaves and settle them in the State of their residence at less expense than any one else; . . [593] they would feel bound, by the ties of blood as well as those of justice and humanity, to carry into full . . execution . . the intention of . . Atwood, . . [598] the Chancellor pronounced a decree . . That the trusts . . in favor of slaves who are in this State, are void; that they cannot be emancipated in the manner pointed out in the will, without the consent of the parties interested in the estate;"

Decree reversed and the cause remanded: [614] " There is nothing said, either in the Constitution, statutes or decisions of Alabama, about the power of the owner to remove his slaves to a non-slaveholding State, either by himself, his agent or his personal representative; nor any attempt to forestall emancipation by such means. . . [623] the executors hold the funds, as they do the bondage and title to the slaves, in trust, upon a use to spring up . . upon the condition of their removal, when the intended beneficiaries shall be capable of taking. . . [624] the trustee

[1] In Georgia this order of words would have nullified the bequest of freedom. See introduction to the Georgia cases, p. 2, *supra*.

is willing and proposes to carry [the trust] . . into execution." [Chilton, C. J.]

*Nimmo v. Stewart,* 21 Ala. 682, December 1852. [684] " conveyed away some of the negroes [bequeathed in Virginia] in . . Tennessee, . . some are . . in . . Texas, . . [two] are in . . Alabama "

*Michan v. Wyatt,* 21 Ala. 813, December 1852. [816] " Leah Michan has had possession of the slaves . . since 1819—a part of the time in South Carolina, a part in Georgia, and then in Alabama;" [814] " that they are family slaves, to which . . Leah is greatly attached, she having raised most of them in her dwelling house with her own children; . . [818] witness . . told Leah . . his opinion that the sheriff intended to levy . . on Ann and her child, . . on the night of this day the slaves were sent away . . and hired "

*DeLane v. Moore,* 14 Howard (U. S.) 253, December 1852. [261] " the decedent did . . obtain . . in . . 1822, a negro woman slave, . . and her child . . in payment of a store account . . for sugar, coffee, pork, butter, clothing, and other necessaries "

*Ben v. State,* 22 Ala. 9, January 1853. " indictment . . that . . Ben, a slave, . . [10] ' did administer [in 1851] . . to . . [three] white persons . . arsenic . . one-half ounce ' . . found . . guilty . . and . . sentenced . . to be executed." Affirmed.

*Dave v. State,* 22 Ala. 23, January 1853. [24] " Indictment . . for an assault . . with intent to kill. . . ' Cunningham . . had the boy Dave [hired from Mrs. Underwood] under his control; . . had a negro whip in his hand, . . caught . . Dave . . by the collar or neck handkerchief, and . . asked him why he had disobeyed his orders, and had not fed the horses and mules . . Dave replied, that his master, Franklin Morgan, had sent word to him that one of his dogs had run mad . . wished . . Dave, to help him kill him; . . witness then told Dave, that he . . had to obey him, and not . . any body else, . . ordered . . Dave to drop his pantaloons; . . Dave replied, that he had done nothing to be whipped for, and that he would not do it; that witness then ordered the other two boys . . to take hold of . . Dave; . . witness struck Dave over the head with the butt of the whip . . and . . Dave drew out his pocket knife . . and told the other boys that if they took hold of him he would cut them or kill them, and . . [25] cut the left hand of the witness . . the other boys refused to take hold . . witness then told . . Step to take the axe and knock him in the head, and that he would stand between him and all danger; that Dave cut the witness . . in about twenty-six places, but many of the cuts were very slight;' ' when the boy cut his right hand, Dave got away . . the difficulty lasted about a minute and a half.' . . The defendant introduced a witness to prove his general character as a peaceable and obedient boy; ' and the court explained . . [26] that general character was, what a majority of . . neighbors said or thought of him;' . . excepted." Judgment reversed and the cause remanded.

*Dill v. Camp,* 22 Ala. 249, January 1853. "On the 25th day of December next, we . . promise to pay to . . Dill, guardian of . . Goodwin, . . one hundred and twenty-five 50/100 dollars . . for the hire of two negro boys, Carter and Alexander, which I promise to feed with good and wholesome diet, and furnish two good cotton and one woolen suit of clothing, one blanket, hat, two pair of shoes, and pay their taxes; this 27th day of Dec., 1848." [251] "Aleck staid all the year, and Carter some four or five weeks, and then ran away and returned no more.[1] . . Aleck could not plow, was but an indifferent hoe-hand, and greatly lacking in intellect; as witness [the overseer] supposed, was more trouble than his work was worth. . . Goodwin said that the negro [Carter] had been whipped, and he should not go back"

*Chenault v. Walker,* 22 Ala. 275, January 1853. "sheriff . . levied upon and sold eight slaves . . 'Sheriff's fees for victualing, clothing, and paying tax for eight negroes twelve months, and commission fees'"

*Walker v. Bolling,* 22 Ala. 294, January 1853. "Trespass on the case . . to recover damages from . . the owner of the steamboat . . for the value of one slave . . killed, and of several others . . [295] injured, by the explosion of the boilers . . hired . . as deck hands . . the first engineer, was grossly . . negligent . . the captain . . was told of this . . one or two trips before the explosion . . the rate of hire for steamboat hands is greater than in service on land." Held: the owner of the steamboat is responsible.

*Hunter v. Green,* 22 Ala. 329, January 1853. Will of Thomas Finley[2] of South Carolina, who died in 1831: [330] "After the death of my . . wife . . I give . . to . . Ann Finley, my negro boy Franklin, . . and also my negro girl Peggy, until she arrive at . . twenty-five . . at which age she is to be emancipated or sent to . . Indiana or Ohio, where the laws will free them [*sic*], and her children, if she have any, shall go free with her. . . Franklin is not to be bartered or sold out of her family, where I trust he will be well treated." In 1832 Ann removed to Alabama, bringing Franklin and Peggy [332] "with the . . consent of . . the widow of the testator, and . . of the executor, the plaintiff." [331] "The plaintiff introduced an act . . of South Carolina, passed . . December, 1841,"[3] [335] "some two years before the passage of this act, . . Peggy had reached the age of twenty-five"

Held: [342] "There is nothing in our law making the trust imposed . . illegal; and the defendant, if he thinks proper, may execute it. But even if he does not, . . the defendant and the property are entirely unaffected by the act of the legislature of South Carolina of 1841." [Gibbons, J.]

[1] [27 Ala. 556] "remained in the woods until . . September;" [554] "about September . . [Burns] hired . . Carter . . for the remainder of the year; . . the boy was then in the woods, but was soon afterwards recovered,"

[2] See Finley *v.* Hunter, vol. II. of this series, p. 409.

[3] "That any bequest . . whereby the removal of any slave . . without . . this State, is intended with a view to emancipation . . shall be . . void"

*Dixon v. Barclay, 22* Ala. 370, January 1853. Bill of sale: [371] "Received of . . Cunningham, four hundred and twenty-five dollars . . for a negro boy . . about 32 . . 1845." The plaintiff proved "that . . Cunningham, agreed to take the slave . . to . . Texas [but he is still in Alabama], and that the plaintiff let him go at less than his real value, in consideration of such agreement. . . [372] that his value was about $600 . . that Cunningham, after he purchased the slave, permitted him, with the consent of the plaintiff, to go down into the neighborhood . . to get some things, . . [but] not to be allowed to go on his (plaintiff's) premises; that Cunningham sent the negro down tied, and in charge of two able-bodied men, but . . he made his escape, and was runaway some months; . . that Cunningham . . paid a reward . . when he . . was retaken; . . Defendant . . offered to prove by . . a negro trader . . that in the spring of 1848, the slave . . was not worth, in Talladega, more than $400; . . that any diminution in value from the increase in the age . . since 1845, was more than overcome by the existing advance in the price of negroes;"

*White v. Word, 22* Ala. 442, January 1853. Malinda was hired for $60 for 1840, and for $55 for 1842.

*Roberts v. Trawick, 22* Ala. 490, January 1853. [491] "two days before his death . . [he] spoke of his slaves giving him a great deal of trouble, and said he did not know what to do with them;"

*Becton v. Ferguson, 22* Ala. 599, January 1853. [600] "Jeter . . was . . of copper complexion, and . . his wife, Lydia, was . . a colored woman, of dark complexion. The plaintiff, . . to rebut the presumption of slavery, proved 'that . . Jeter had been, for some sixteen or seventeen years, residing in . . [601] Selma, . . and during the whole of that time had been engaged in the blacksmith business, working and trading as a free man, . . the witnesses had never known . . any one . . to claim . . Jeter as their property,'" [600] "Lydia . . lived also as a free woman, . . was a midwife, and made considerable money by that business; . . [The garnishee] made an arrangement with . . Lydia, that he would permit her to redeem a certain house and lot, which he had taken from . . Jeter to indemnify himself . . and . . he had received from her upwards of three hundred dollars."

Held: [601] "The effect of the proof offered to rebut the presumption arising from his color, was for the jury to decide. . . [602] We see nothing in the present record that militates against the idea that Jeter was born free." [Gibbons, J.]

*Lindsay v. Griffin, 22* Ala. 629, January 1853. "action of trespass *vi et armis*, . . that the overseer [of the defendant] directed the slaves to put the hogs of the plaintiff . . out of the field [of the defendant], and that in doing this the slaves had killed some and injured others . . that the defendant did not know" Held: not liable.

*Newcomb v. Leavitt, 22* Ala. 631, January 1853. [632] "Fields, in 1843, . . was largely indebted . . [His] negroes were sent away from his plantation . . in the night" and were sold to a resident of Mississippi.

*Bentley v. Cleaveland, 22* Ala. 814, June 1853. "The complainants, . . Bentley and Cecilia, his wife, and Lewis Young, a minor, who sues by . . his next friend, set out . . that . . Cecilia and Lewis are the only heirs at law and distributees of the estate of Lewis Young . . a free man of color . . who died intestate in 1834 . . seized of a lot . . with several tenements . . and possessed of two slaves, a woman about forty . . and a man about fifty . . together with sundry notes and accounts . . and two soldiers' land warrants, each for one hundred and sixty acres . . in . . Arkansas; . . [815] that . . Cleaveland was the friend [of their father] . . and at his death . . took charge of his estate, . . refuses to account . . The answer sets up matter in bar to the persons of the complainants, averring that . . the children of . . Young . . are slaves, denying that Bentley is free, and averring that he is of full African descent. . . [816] the evidence . . established that the mother of Bentley's wife, and of the infant . . Young, was a slave, the property, first, of Dr. Gannard, and then, by purchase from him, of Lewis Young, deceased, . . and she was never manumitted by her husband according to the laws of this State." Bill dismissed. Affirmed: [818] "A slave can have no standing in a court of chancery in this State."

*Boling v. Boling, 22* Ala. 826, June 1853. Memorandum made in 1852 by a lawyer: [827] "I somewhat prefer a plantation and negroes to other investments . . because I think property of this kind, if not the most profitable, or the most desirable to own, is as little liable to be wasted. It is hazardous to loan money, or to invest in stocks in this State, and unpleasant to hire negroes out; I can think of no investment so sure as a plantation and negroes."

*Carpenter v. State, 23* Ala. 84, June 1853. "indicted for an assault and battery, with intent to murder . . [85] a slave of . . Hand. . . The jury . . found the defendant [a white man] 'guilty of assault and battery' merely, and fined him $500; . . judgment . . rendered . . affirmed."

*Ex parte Smith, 23* Ala. 94, June 1853. "The bill . . alleges . . that, in 1846, he committed adultery, with one of his own negro women, . . [95] that [complainant, his wife,] having detected him in the act, he threatened complainant with personal violence, and pursued her out of the room" In 1852 Smith [96] "executed a deed for . . some eighteen hundred acres, and between seventy and eighty slaves, being the shares alloted to his wife, . . in trust for . . [her] separate use . . [97] The bill charges . . that serious loss and injury have occurred to the negroes from his giving them medicine when he was intoxicated; that on this subject . . he is a monomaniac, and no entreaty . . can induce him to desist;"

*Bank v. Benham, 23* Ala. 143, June 1853. [145] "Lucinda and Henry Hewett . . were in . . September, 1847, carried by . . Campbell [their owner] from this State to . . Ohio, where they remained about three weeks, . . and from there went to Indiana, where they remained seven months, and where George . . was born; . . in November or December,

1848, . . [they] returned to Alabama, bringing . . George; . . deed of manumission of . . Lucinda and Henry, executed by Campbell [in Indiana] . . Know all men . . that I, . . from motives of benevolence and humanity, have manumitted . . Lucinda Hewett, aged about seventeen years, and her son Henry, aged about twelve months, . . Campbell . . removed to California in the spring of 1848." In October 1849 an execution, "upon a debt" due in May 1847, was levied on Lucinda and her two children, as the property of Campbell. Endorsement on the execution: [143] "The negroes . . were . . taken out of my possession by the coroner . . under a writ of *habeas corpus,* and were discharged from the levy by . . the judge . . (Signed) V. M. Benham, sheriff." "Two other endorsements . . [144] to the effect that a levy was made upon the same negroes . . November, 1849, and that they were taken from the possession of the sheriff . . January . . under a writ of *habeas corpus* issued by the judge . . and were by him discharged . . February, 1850, from the levy." The bank [151] "was attempting to charge the defendant in error for failing to make the money upon . . [the] writ of execution . . which he had received as sheriff."

Held: "the two writs of *habeas corpus* and the returns thereon" were admissible evidence. [153] "the magistrate had jurisdiction to try the legality of the confinement . . provided it did not touch the relation of owner;[1] . . [154] where negroes not held as slaves are levied on and discharged, the sheriff, when ruled for failing to make the money, may repel the presumption arising from the levy, by showing that the negroes were free. The execution . . was upon a debt . . due before the act of manumission; . . simply a gift of freedom . . and must be governed by the same rules that apply to other gifts. These considerations . . do not apply to . . George, . . [His mother] was liable . . to be subjected into slavery to satisfy the claims of antecedent creditors, but . . not . . until such creditors had obtained a lien, and until that contingency happened, she must be regarded free to all the world; and the child born while she was in that condition, would, as a matter of course, follow the *status* . . of the mother at the time of the birth." [Goldthwaite, J.] Judge Ligon cites this case, in his opinion in Fields *v.* Walker,[2] and declares that [166] "all the incidents of the mother's condition at the time of the birth of the child do not invariably attach to the offspring."

*Fields v. Walker,* 23 Ala. 155, June 1853. [156] "John Walker and . . his brothers [Stephen[3] and three others] and sister [*sic*], filed their petition for freedom . . setting forth . . that they were born in this State, and under its laws are entitled to be free, their mother [Milley Walker] being free at the time of their birth; . . The petition also sets out the proceedings on a former petition for freedom . . in the Circuit Court . . by Milley Walker . . for herself and the present petitioners, against . . Jones,[4] . . on which . . they were declared free persons of color,

[1] Field *v.* Milly Walker, p. 172, *supra.*
[2] *Infra.*
[3] See Jones *v.* Covey, p. 203, *infra.*
[4] [162] "Jones had the defendants in his possession, claiming them as his slaves, as a purchaser for valuable consideration, for a period that barred the claim of Fields." [17 Ala. 84] "if he held adversely,"

at the September term, 1833, of that court. The appellant . . was not a party to those proceedings. . . Fields, the appellant, . . pleaded . . 'that this . . court cannot . . take jurisdiction . . because he says . . 1848, the petitioners were . . arrested,[1] in . . Alabama, by the defendant . . a resident . . of . . Virginia . . taken before three magistrates . . and under the act of Congress . . 1793 . . the defendant produced . . [157] proof . . whereupon the . . magistrates . . executed . . the certificate required' . . 'Be it known that . . Milley, and her children John, Le Roy and Priscilla, were arrested . . as fugitive slaves, and brought before us, . . and claimed as slaves and owing service to . . Fields of . . Virginia; and after an investigation of two days, both parties represented by counsel, we were satisfied by the proof . . that Milley and her children, Armistead, Eliza, John, Le Roy, Priscilla and Stephen, are slaves under the laws . . of Virginia, from which State . . Milley fled, or was stolen, before the birth of her . . children, and that said slaves owe service to . . Fields . . that . . Fields . . may remove said slaves to . . Virginia,' . . the petitioners filed a demurrer . . The court sustained the demurrer . . and allowed the defendant to plead over. What plea was put in under this order, the record does not show. . . [158] on the trial . . the defendant proved the death of . . Wyatt, who had testified on the proceedings before the justices under the act of Congress, and offered to prove what . . Wyatt had sworn . . objection . . sustained," The jury "found for the petitioners, and judgment was rendered accordingly."

Affirmed: I. [163] "no error in sustaining the demurrer." "The matter . . should have been pleaded in bar, . . [II.] [164] the testimony . . [of] Wyatt . . was rightly excluded." [a] "the proceeding under the act of Congress was not such a trial as would authorize such proof to be made. . . [b] Milley is not here a party, nor were Stephen and Armistead arrested on the warrant of the justice of the peace. . . [c] [165] the proceedings before the justices . . and those arising in this suit, are materially different. . . [167] the petitioners . . cannot be regarded as *fugitives* . . within the meaning of the constitution . . and the act of Congress of the 12th Feb. 1793. . . as to them, the proceedings before the justices . . are wholly without authority of law." [Ligon, J.]

*Gantt v. Phillips,* 23 Ala. 275, June 1853. [277] "a trade made . . in . . 1831 or 1832; . . Mrs. Gantt . . stating that she owned the wife of . . negro man [belonging to Dr. Phillips], and that she would give in exchange . . two ['small'] boys for the negro man and one hundred dollars; she urged, as an additional reason, that she owned no negro man, and that the family very much needed one, to cut and haul wood, and do other work which could not be done by women; . . the negro man and the one hundred dollars was a full and fair consideration and more."

*Walker v. Jones,* 23 Ala. 448, June 1853. Will, 1847: [449] "I give my old servant woman . . to my daughter . . that she may be taken care of in her old age, as she is now valueless."

[1] See Field *v.* Walker, p. 172, *supra.*

*Seay v. Marks,* 23 Ala. 532, June 1853. Contract of hire: "we promise to pay . . Marks . . one hundred and seventy dollars for the hire of King until the 25th day of December next, when he is to be returned, having been first provided with a summer and winter suit of clothes, hat, blanket and pair of shoes; . . [533] Marks to pay physician's bills. . . 1st . . January, 1852." "Parol evidence was admitted to prove that Seay hired the slave to assist in carrying on a livery stable. . . [Later] he was hired by the agent or superintendent of Seay . . to . . Nance, to assist him in rafting lumber . . without the knowledge . . of Marks, the owner. Nance directed him to cross . . at a certain ferry . . but the slave disobeyed . . and went to another crossing . . and with five others was drowned. . . customary for persons who hired slaves to re-hire them by the day or week," [537] "case . . remanded, for the error in admitting the parol evidence"

*Hudson v. Helmes,* 23 Ala. 585, June 1853. [586] "Peter was . . about twenty-two . . of bad character, a blacksmith . . in the whitesmith department . . had nine skeleton keys . . and had entered into the storehouse of . . Sevier and stolen . . was threatened with a prosecution . . Helmes, the guardian [of the owner], . . sold said boy for $503 50, to . . Sevier . . 1844, understanding that . . Sevier was to carry the slave out of this State, and allowed Sevier the supposed value of the goods . . stolen . . reducing the amount realized to $486 50; . . carried to Tennessee by . . Sevier, and disposed of there. Sevier said the negro would now be worth about $700." [585] "The ward . . introduced witnesses who proved . . [586] that he is . . now worth $1000. . . that the hire . . was worth at least $150 a year, on an average, from 1844, to this time inclusive;" [590] "the Probate Court made the guardian pay $700 for Peter," Affirmed.

*Whitsett v. Slater,* 23 Ala. 626, June 1853. [627] "Petty . . was specially charged . . to keep . . Bob and Eliza, beyond the reach of any one who might approach, as it was apprehended the sheriff would try to levy upon them; that early in June [1849] the sheriff came . . and [Petty] told . . Bob to hide in the gin-house; . . soon after the sheriff was gone, the door leading to the second story of the house was unlocked, and . . Eliza came out; that about two weeks afterwards the sheriff came again . . that in the intermediate time Mrs. Boyd had carried off . . Eliza, and disposed of her; that . . Bob slipped off into the woods . . [628] that the sheriff came twice in July . . but the slave was studiously kept out of his way."

*Harris v. Rowland,* 23 Ala. 644, June 1853. Bill of sale: [645] "Received of . . Rowland five hundred and fifty dollars . . for . . Rhoda, aged about nineteen . . and her boy . . about two . . also her girl . . aged about five months; . . 1846." The agent of the vendor "called on . . Rowland, before the negroes . . were delivered . . and proposed . . rescission . . on the ground that Rowland had not paid enough . . refused."

*Furlow v. Merrell,* 23 Ala. 705, June 1853. Will, 1813: [707] "I give . . to my grand-son . . negro girl Chany, her first child to be the property of [my granddaughter.] . . [708] I give . . the first issue of my negro woman, Suckey," to another granddaughter.

*Brown v. Mayor, etc.,* 23 Ala. 722, June 1853. Brown was charged in 1850 with violating [725] "the ordinance of . . Mobile against trading with slaves . . This ordinance is substantially the same with the statute of the State . . except as to the punishment." [722] "He was found guilty, and fined by the Mayor $50; . . he appealed to the Circuit Court." The statement of the case filed therein did not aver [725] "either the name, or owner, or employer of the slave" The defendant [723] "demurred to this statement, . . overruled . . the plaintiffs . . introduced two witnesses, who testified that they saw a negro, . . a slave, enter the defendant's grocery in the night time, with an empty bottle . . and the defendant . . went into the house with the slave, from which they both presently came out, the negro with the same bottle nearly filled with spirituous liquors;" Judgment against the defendant. Reversed and the cause remanded.

*Randall v. Lang,* 23 Ala. 751, June 1853. [752] "the slave [boy] levied on was seven or eight years old . . and was born and raised in the family"

*Jordan v. Roney,* 23 Ala. 758, June 1853. [759] "Memorandum of an agreement . . Roney agrees to take a . . negro boy of . . Jordan, . . who has a sore leg, and effect a cure . . free of any charge for board, in consideration of which . . Jordan agrees to pay . . one hundred dollars . . six months from the time the cure . . is effected, . . May 8th, 1851." "The plaintiff . . proved that the boy was returned . . September, 1851, and offered evidence tending to show that . . negro was cured . . but . . the evidence was conflicting. . . The defendant then offered evidence tending to show, that from the appearance . . of the . . leg in July, 1852, he was not cured at the time he was returned."

*Foster v. Sykes,* 23 Ala. 796, June 1853. Held: [797] "the hirers of of the slaves . . are liable for the physician's bill, independent of their contract [to that effect] with the owner."

*Benning v. Nelson,* 23 Ala. 801, June 1853. "about 1844, . . [802] he removed . . to . . Georgia; . . he continued to cultivate . . plantation [in Alabama], with the same slaves which he had . . used . . previous to 1844, and has employed overseers . . and has . . spent his summers on said plantation;"

*Nelson v. Iverson,* 24 Ala. 9, June 1853. [20] "Dawkins, some few months before the birth of the plaintiff [James Nelson], delivered [a negro girl] . . to [his sister] . . the mother of the plaintiff, . . to belong to her child . . should it be a boy."

Held: "this would invest in him an inchoate right, which would become perfected at his birth, without any further . . delivery. The mother would hold in trust for him." [Chilton, C. J.]

*Cook v. Parham,* 24 Ala. 21, June 1853. [22] "June . . was hired as a deck hand . . 1847, a collision took place . . June, with some other hands, was ordered aft to launch the yawl, . . June unnecessarily jumped overboard . . and was drowned; . . [23] slaves hire for greater wages as deck hands on steamboats, than elsewhere,"

*McElhaney v. State,* 24 Ala. 71, January 1854. "The appellant was indicted under the fourteenth section of the fourth chapter of the Penal Code, . . The court charged . . that to constitute the act of harboring, it was sufficient if McElhaney, knowing her to be a runaway, supported and entertained her, or provided her with a home . . although she did 'go about the streets, and was seen by the neighbors.'" Judgment affirmed.

*Tucker v. State,* 24 Ala. 77, January 1854. "indicted for selling spirituous liquors to 'one Dade Massey, a free person of color.' . . 'several witnesses . . stated . . that he has acted . . as a free man, residing in . . Alabama for more than twenty years, . . that, from hearsay and general reputation, they had always considered him a free person;" Evidence admitted.

Judgment of conviction affirmed: [79] "from the necessity of the case, hearsay evidence or reputation as to the *status* of the party must be received in prosecutions of this kind;" [Chilton, C. J.]

*Millard v. Hall,* 24 Ala. 209, January 1854. [211] "in 1845 removed [from Alabama] to Mississippi, where his negroes, more than twenty . . remained until . . 1847, when they were secretly removed back . . 1848 . . a judgment against him [in Mississippi] . . [212] he started his overseer, in the night time, with ten negroes, . . afterwards levied on . . instructing him to go to Louisiana, or somewhere west, and do the best he could for him with them."

*Florey's Executors v. Florey,* 24 Ala. 241, January 1854. [242] "will . . by which . . [Gustavus Florey] gave to Edward G. Florey, whom he recognized as his son, a life estate in his property, with remainder to his children, if any, . . 'witness for the contestant . . testified, that . . [243] [Gustavus] would doze off, and then wake up looking perfectly wild; . . called Edward G., who had hold of him by his side, and said, "I suppose he is out drinking and frolicking with the negroes;" . . witness . . was of opinion he was of unsound mind. . . [244] Proof having been given . . that . . Gustavus Florey intermarried with the mother of . . Edward G. about . . 1816, and that . . two or three years thereafter . . Edward G. was born; that . . Gustavus . . has ever recognized [him] . . as his son; that . . Gustavus was a white man, of fair skin, and that the mother of . . Edward G. was also of fair skin, and a white woman, while . . Edward G. was of dark skin, and mulatto color, with woolly or kinky hair, the defendant asked the court to charge the jury, that, if they believed . . that . . Gustavus . . was under an insane delusion as to Edward G. being his son, and that the will was the . . result . . the will is void,' . . the plaintiffs objected, . . overruled,"

Affirmed: [249] "the belief of the testator, in opposition to this evidence, was admissible, for the purpose of showing delusion upon this particular subject."

*Pinckard v. Pinckard,* 24 Ala. 250, January 1854. [252] "the boy Lambert, who was a blacksmith, had been hired out . . for the year 1850, to a carriage-maker, for . . $175, on condition that he should be found to suit the business: . . the decedent had hired out the boy Randall, . . a blacksmith, for the year 1850, for . . $150, to . . a carriage and wagon maker . . on condition that the boy would suit . . Amy was hired out . . February, for the balance of . . 1850, . . for $45, . . in June, . . proved to be pregnant, and . . returned . . [253] The [two] girls . . who were employed about the house . . as a nurse, and . . as a house girl, were kept in the family . . [also] a cook woman, an old negro man about seventy . . who tended the garden, an old man who was unable to take care of himself, two small girls six or seven . . and a small boy less than the girls; . . [254] 'purchased . . 1850 . . thread which was made into cloth for the use of the negroes. . . some bacon . . for the use of the negroes, . . that the amount of clothing purchased was less than is usually found necessary to clothe the same number of negroes, and that the negroes were all well clothed when delivered to the heirs.'"

*Bush v. Jackson,* 24 Ala. 273, January 1854. [274] "Dr. Peebles . . attended the . . slave in her last sickness, . . she died with chronic pneumonia, . . had never recovered from an attack of acute pneumonia which she had anterior to the bill of sale."

*Townsend v. Jeffries' Administrator,* 24 Ala. 329, January 1854. See Townsend *v.* Jeffries' Executors, p. 173, *supra.* [331] "1852 . . the cause being tried" a witness testified [336] "that the defendants inflicted a most cruel whipping upon the slave, without authority, or even well founded excuse, for so doing." Verdict and judgment for the plaintiff. Affirmed.

*Maury v. Coleman,* 24 Ala. 381, January 1854. [382] "On the first of January, 1852, we . . promise to pay . . Phillips one hundred and thirty-five dollars, for the hire of a negro man . . and to furnish . . the usual clothing." "The evidence tended to show that Maury [one of the hirers] treated the slave humanely, but that . . September . . he ran away, . . that Maury went to a neighbor . . procured dogs accustomed to trailing negroes, . . and in company with their owner, trailed the slave to his master's house; . . Phillips, came out, and Maury demanded the slave, being free from excitement, and telling Phillips that the slave should go into no one's hands but his own, and should not be treated harshly; but Phillips refused to deliver the slave, . . [383] Phillips . . tendered him the slave about an hour after . . when . . Maury . . told him, that, as he could not get the slave when he wanted him, he would not take him,"

*Moseley v. Wilkinson,* 24 Ala. 411, January 1854. See Wilkinson *v.* Moseley, p. 218, *infra.*

*Stevenson v. Reaves,* 24 Ala. 425, January 1854. "the plaintiff proved, that he had purchased the slave . . at . . $540, . . [426] not worth $50. . . 'that the defendant . . represented . . slave to be sound, and to be deceitful in pretending to be sick frequently; and that . . all she needed was a master to drive her, . . a breeding woman, . . of good qualities and capacity for household and field work;' that said slave was . . incapable of . . bearing children,"

*McNeill v. Easley,* 24 Ala. 455, January 1854. [456] "the [plaintiff's] slave was hired, . . ran away . . found at plaintiff's house, [having been] captured [by a third person] . . as a runaway;" Plaintiff "refused to deliver him, saying that he had reason to believe that the slave had been treated with inhumanity, . . [Later on] plaintiff . . told said slave to return to defendant, . . instead of returning . . ran away."

*Prater's Administrator v. Darby,* 24 Ala. 496, January 1854. [498] "Mrs. Prater, prior to . . 1826, . . had entertained a fixed and frequently expressed purpose of emancipating [her slaves;] . . was on the eve of leaving . . for Illinois . . for the purpose . . Rachel had, at that time, a husband in this county, who belonged to some other person" On January 14, 1826, Mrs. Prater executed the following instrument: [496] "Received of Richard Darby five hundred and twenty-five dollars, in notes, for . . Rachel, about twenty-five . . and her three children, Eliza [Elijah?], about eight . . William, about five . . Thomas, about three" Darby executed a bond for $1050: [497] "The condition . . is such, that if . . Darby doth liberate . . Rachel and her children, when a reasonable compensation is made . . for his trouble . . above obligation to be void;" "the negroes . . were then delivered . . [498] Mrs. Prater left for Illinois [on the same day] . . and remained there till her death in 1834;" Darby died in 1834, leaving a will: [497] "I give . . wife . . Lige, William and Tom, to labor for her support and the benefit of my children; . . it is my desire that each of my negro boys . . be emancipated at the age of twenty-eight; to be effected in that manner which my executors can . . lawfully do."

Held: [505] "the undertaking of Darby to free the slaves was legal; . . There is nothing on the face of Darby's bond which requires him to free the slaves *in this State*; . . [506] We have been cited to the case of Trotter . . *v.* Blocker [1] . . [507] we feel constrained to dissent from it, and, as to so much . . as is expressed in the first clause of the fifth headnote,[2] to overrule it. . . power given to the General Assembly to legislate upon certain rights . . cannot be construed . . into an abrogation of such rights." [Chilton, C. J.]

*Tate v. Shackelford,* 24 Ala. 510, January 1854. "contract . . for the services of a slave . . in the erection of a boat, for which service she was to pay . . $52 50."

[1] P. 143, *supra.*

[2] "The first article of the constitution of Alabama, in relation to slaves, is equivalent to a positive inhibition of the owner to emancipate them, except only under such regulations as the legislature may prescribe." 6 Porter 269.

*Trust Co. v. Pettway,* 24 Ala. 544, January 1854. [561] "partners in buying and selling slaves, and also in planting . . did not use a firm name, but the business was usually conducted in the individual name of the partner who transacted the business. They became embarrassed in . . 1845," Pettway purchased from one of the partners [564] "thirty-six [slaves] . . in North Carolina; the price was $15,000, . . [565] with the view of securing himself . . against the liabilities he was under" for the partners.

*Malinda and Sarah v. Gardner,* 24 Ala. 719, June 1854. "final settlement of the estate of Tom, a free negro, . . belonged to Baxter Smith, who died . . in 1828, leaving a . . will . . he directed his executors to emancipate . . Tom and . . Charity, with whom . . Tom had cohabited, and by whom he had two children, Malinda and Sarah, . . [720] After the death of . . Smith, an act was passed . . authorizing his executor to emancipate . . Tom and Charity, and their children, upon entering into bond conditioned that they should not become a charge . . executor . . emancipated the slaves. Before the death of . . Smith Tom had ceased cohabitating with . . Charity, and had formed another connection with a woman of the same name, . . also a slave, and whom he purchased after his emancipation; . . had three children by her, . . Organ, Miles and Rebecca. Tom . . died in 1850, letters of administration . . were granted to . . Gardner . . An act . . was passed . . 1852, emancipating the 'negro slaves belonging to the estate of . . Tom,' . . upon their removal from the State within two years . . relinquishing all the rights which had accrued to the State, by escheat, in the property of . . Tom; and enacting that, upon . . Gardner's executing a bond for the removal . . 'then . . Charity ["his widow"], Malinda, Sarah, Organ, Miles, and Rebecca shall be qualified . . to . . inherit the estate . . in such portions as would descend to them by the statute of distributions.'[1] . . Gardner executed the bond . . the court decided, that . . Malinda, Sarah, Miles, Organ and Rebecca, were entitled to share equally, . . Malinda and Sarah excepted."

Held: [724] "The cohabitation . . was not marriage [in either case.] . . no . . heirs . . his property would escheat to the State. The State . . relinquished all its right . . and the appellants . . [725] having no inheritable blood, . . can only take by virtue of the relinquishment . . the Legislature regarded the slaves as the property of the State, and in the capacity of owner the State emancipates them." [Goldthwaite, J.]

*Wyatt (a slave) v. State,* 25 Ala. 9, June 1854. [13] "His master's gin-house had been burned the night of the day on which the prisoner had run away . . the foreman, with other slaves, had been directed to watch and capture . . him, dead or alive. . . on the second or third night . . brought to his owner, who said, 'Well, boy, you have done it now' . . assuming his guilt. . . The master, returning next morning to where he had left the prisoner bound, . . discovered that he had cut his hands with a razor in an attempt to sever the rope . . The master then said . . 'Boy, these denials only make the matter worse' . . the prisoner replied,

[1] Pamphlet Acts, 1851-1852, p. 486.

'Master, I have done wrong.' . . 'I burnt your gin-house.' On the same day, the witness (the master) carried the slave before a justice of the peace . . 'He has burnt my gin-house;' . . The justice then examined the prisoner in the presence of the master, and the same confessions were made" [9] "His confessions . . were admitted in evidence on the trial below" "convicted, and sentenced to death."

[15] "the sentence of conviction must be reversed, and the cause remanded," "where confessions have once been made by a slave to his master, under circumstances which will render them improper as evidence, the utmost precaution should be taken to advise him of their . . effect, by the examining officer, and it must be clearly shown that he was free from the least apprehension of punishment from his master as a result of his recantation. Even then . . unsafe to convict . . upon such subsequent confessions, if wholly uncorroborated by other proof." [Chilton, C. J.]

*Eskridge v. State,* 25 Ala. 30, June 1854. [31] "Richard M. Eskridge . . was indicted . . for disabling the leg of . . Maria, alleged to be 'the property of Mrs. Eskridge,' by shooting . . The principal evidence . . consisted of his own confessions, as testified to by the physicians who amputated the limb" [33] "It is said, the defendant was much intoxicated when he made the declarations . . [36] when the master attempted to chastise the slave, she seized an axe and told him not to come near her, else she would kill him; . . [37] got his gun, with which his boys had been . . shooting birds with small shot, but which, without his knowledge, had been loaded . . with buck shot; . . the slave moved off . . defendant . . called to her to stop, which she refused to do, and thereupon he shot her, . . [38] so near that the shot made but one orifice," The evidence showed that the defendant was the owner. Judgment against him reversed and the cause remanded: the variance as to the ownership is material.

*Starr v. State,* 25 Ala. 38, June 1854. "indicted for trading with 'a slave, the property of Benajah S. Bibb, whose name is to the jury unknown.' . . found guilty . . and fined $200." Held: [40] "This description is too general to require the defendant to be put to his answer of the charge."

*Thompson et al. v. State,* 25 Ala. 41, June 1854. [48] "while the search was going on, or just as it had terminated, a female slave fled shrieking from the negro house to the chamber of her mistress, pursued by two of the party [defendants], who planted themselves beside the door . . and when the owner . . attempted to pass in, civilly requesting the defendants to leave . . he was . . severely beaten by one of the party," [44] "Burps, who led the party, . . [had] 'stated to Bennett that his slave Josh had stolen two hogs from him, and that he had been searching . . Josh's house for the meat; . . Bennett [had] replied . . that . . defendant had done right.'" Counsel for the state: [45] "Bennett's words of approval were spoken before he knew the number, character and object of the parties"

Held: [46] "The house of the slave is the house of his owner; . . [47] parties invading the premises of the master, or the dwelling of the slave [without a search warrant], are trespassers,"

*Starr v. State,* 25 Ala. 49, June 1854. "the slave named . . was seen carrying bricks to the lot owned by the defendant, . . received by the defendant. . . the owner of the slave . . 'believed from their size [that they] were made at his brick-yard;'" Judgment against defendant. Affirmed.

*Lodano v. State,* 25 Ala. 64, June 1854. "Jones or Budd, to whom the liquors were sold, was the child of a free woman of color, who was an inhabitant of Mobile . . when the territory was ceded to the United States; . . both she and his father, who was a negro, had always been free."

Held: [67] "in order to exempt the free persons of color protected by the treaty of cession[1] from Spain to the United States from being included in the act of 1852,[2] it should have been declared in the act itself that the terms used . . should not apply to them." [Ligon, J.]

*Martin v. Martin,* 25 Ala. 201, June 1854. "that the defendant kept . . [202] slave . . secreted about his house and farm during the fall of 1847, and furnished him with the means of escaping from persons who were searching for him; . . 'then procured . . Blake to take . . slave off, . . agreed . . that Blake was to . . sell him two or three times, and then take him to a free State, and send back to defendant one half of the proceeds of the sales; . . that Blake promised witness, on the night he left with the slave, that he would pay him $10 if he would keep this affair secret, . . Blake . . taught school . . in 1847, and boarded at defendant's house;'"

*Crosby v. Hawthorn,* 25 Ala. 221, June 1854. "warrant issued by a justice of the peace . . on the affidavit of . . Hawthorn . . 'that he . . did believe, that . . Crosby . . was trying to persuade, two of his hired negroes to leave his premises.'"

Held: [223] "the affidavit . . was substantially sufficient to justify the warrant." [228] "one who procures a slave to run away . . by such means as beget and strengthen the slave's determination to do so . . is guilty of aiding"[3] [227] "Such an omission [by the Legislature] . . would be leaving wide the door for the . . disaffecting of the slave population . . by the vile and fanatical, with impunity, and would greatly depreciate the value, if not endanger the permanency of the institution itself." [Chilton, C. J.] Judge Goldthwaite dissented: [224] "The term 'aid' . . is . . very different from 'persuasion'"

*Vanzant v. Morris,* 25 Ala. 285, June 1854. Will: [286] "if there is only one slave born, Hannah shall be sold; if two slave children, Prudence shall be sold also,"

[1] Article VI. 8 St. at Large 256, 258.
[2] Pamphlet Acts, 1851-1852, p. 80.
[3] Clay's *Digest,* p. 419, sect. 16.

*Rives v. Baptiste,* 25 Ala. 382, June 1854. [385] "January, 1847, he did . . in Mobile, sell all the property . . described in . . deed of trust [of September, 1845], except five slaves, three of which . . had died . . [386] and the two others . . after the sale were carried . . to New Orleans, and there sold"

*Gould v. Hays,* 25 Ala. 426, June 1854. [428] "the estate consisted of a large body of lands, embracing two plantations in this State and other lands in Mississippi, and about one hundred and sixty negroes; . . [429] The record tends to show that . . [the executor] seldom visited the plantations; he employed overseers at the highest rates; the condition of the cabins is proved to have been bad, and there was a scarcity of blankets;"

*Jelks v. McRae,* 25 Ala. 440, June 1854. "1851, the plaintiff accused . . slave belonging to defendant, named Bill, of having received $200 . . lost by him, from . . another slave belonging to . . Threadgill; . . Bill confessed . . defendant . . requested plaintiff to whip said slave . . but the plaintiff declined . . and delivered the slave to defendant, and told him that he held him responsible for the money; that defendant promised to pay . . the $200; . . [441] that immediately after . . defendant . . caused him to be whipped, in part to make him disclose or deliver up the money, but the slave did neither," Held: [443] "the promise . . [444] was without consideration; . . an owner is not bound to answer for the illegal and unauthorized acts of his slave."

*Petty v. Gayle,* 25 Ala. 472, June 1854. "that he had hired the slave for . . four months, at $15 per month, . . that the universal custom in Mobile was, to pay only for a full month of twenty-six working days, unless . . a special contract to the contrary."

*Stallings v. Finch,* 25 Ala. 518, June 1854. "that, in 1844, William Finch . . came [from Georgia] to Alabama, . . and placed [Charlotte] . . in the possession of the defendant [John Finch] to hold for him; that . . in 1846 . . William Finch again came . . informed witness that he had that day left said negro woman with plaintiff and his wife, and . . that if he never called for her plaintiff's wife was to have her, . . negro had remained . . until . . 1850, when she ran away, and went to defendant's, . . [519] he delivered her up to . . the executor of . . William Finch . . [who] died, in Georgia, in 1849, . . never married; . . omitted . . Charlotte in . . will." Letter written to plaintiff in 1847 by William Finch: "Gives me great satisfaction that . . Charlotte is satisfied. . . Tell Charlotte I don't know what to do; I can't sell my land yet. . . Tell her that her father and mother is well, and all of her brothers and sisters, and her children. . . Tell her, if she can get a good master to live with, may-be it would be best for her; but I would ask six hundred dollars for her, if she wants to be sold, and can get that price for her. . . if she don't want to be sold, I expect I can hire her out for something; but I think, if she had a good master, her mind would be better off, and better satisfied," "Plaintiff offered to prove, that the negro woman was a kept mistress of . . William Finch; also, that she had children by him;"

*Perry v. Marsh,* 25 Ala. 659, June 1854. [660] " a slave of the plaintiff had been killed while at work as a mason in a cotton press owned by the defendant, by the falling in of the roof; . . slave had been apprenticed by his owner to . . Sadler to learn the bricklayer's trade, and was in the possession of . . a master mason, by Sadler's consent;"

*Chambers v. State,* 26 Ala. 59, January 1855. Chilton, C. J.: [64] " A slave merchant or trader . . is often migratory with his slaves, . . we are of opinion, that if he follows this business anywhere in the State without license, he may be indicted . . in any county in which he sells or exhibits his slaves for sale,"

*Martha (a slave) v. State,* 26 Ala. 72, January 1855. " indicted . . [73] for arson [for burning a dwelling-house]. . . The prisoner pleaded . . *autrefois acquit*; . . [74] not sustained by the proof;" Judgment affirmed, [75] " and the sentence of death . . must be carried into execution."

*Spivey v. State,* 26 Ala. 90, January 1855. [92] " that the defendant . . [in 1853] applied to . . Skinner to let him have Joe to nurse his . . children, saying that he was too poor to hire . . or to buy . . Joe was delivered . . [93] Longmaster . . testified, that in March or February, 1854, defendant came to witness' house in Mobile, and placed the boy . . there for sale; . . that the boy remained . . for about ten days, and during that time defendant took him in [*sic*] public places and offered him for sale; . . placed him at a slave depot on Royal street," [91] " defendant . . sold Joe in New Orleans for $600,"

*Brister et al. (slaves) v. State,* 26 Ala. 107, January 1855. [109] " 1853 . . an indictment for the murder of John Rickard was found against . . [eleven] slaves, . . charging that Wash struck the mortal blow. . . a *nolle pros.* was entered as to . . Jerry; . . John Wallace [the slave foreman], Wash and George were . . convicted, and sentenced to death; and the cause was continued as to the other defendants, . . on the application of the defendants, the venue was changed . . a trial was had . . 1854. . . [110] evidence: That the body of . . Rickard was found interred in the bank of a ditch . . February, 1853; . . that two wounds . . had fractured his skull, . . that he disappeared . . January . . [111] that he had thirteen negro men (slaves) in his employment as a ditcher, . . among whom were the prisoners and . . John Wallace, Wash, and George . . that the deceased and said thirteen slaves . . together occupied a cabin . . about sixteen feet square, . . in the centre of which the fires were made; . . the only white person . . [114] A witness . . testified, that on the morning after . . the disappearance . . he went to the ditch . . and . . asked . . where Mr. Rickard was, . . that . . some one of them told witness to ask John Wallace . . and he said that the deceased had gone to New Orleans." [111] " some time after . . suspicions were aroused . . slaves . . still continued to work together on the ditch. . . some sixteen or seventeen of the neighbors, some . . armed with double-barreled guns, others . . having negro whips commonly used by over-

seers, and others with sticks, went . . to the place . . that one of the company also carried along a pack of negro dogs . . known to be such to all the prisoners, Jeff, Caesar, Brister and John Rodgers; . . took [the slaves] . . in custody, . . some of them were tied, and the company then separated them . . [112] not . . so far . . but that they could hear any blows . . inflicted on any of them . . some conflict in the testimony, as to whether the confessions were made before or after the boy Bill Stokely . . was whipped. . . [While the slaves] were being examined, it was announced so that said slaves . . could hear, that . . Ned confessed; . . then . . Caesar confessed that a plot had been mentioned to him by John Wallace . . that he had assented . . was in the house when the deceased was killed, but was asleep . . had assisted in . . burying him." Brister, Jeff and John Rodgers made similar confessions, all of which the court admitted. [115] "Archer . . [said] that he had no knowledge of the killing, . . [118] verdict of guilty against . . Caesar, Brister, Jeff, and John Rodgers, and not guilty as to Bill and Archer; and the court . . pronounced sentence of death on the four first-named, but ordered the execution to be suspended until the decision of the Supreme Court . . upon the points reserved" Reversed and the cause remanded: [129] "A majority of the court are of opinion, that the confessions . . were improperly received,"

*Ex parte Vincent (a slave),* 26 Ala. 145, January 1855. [146] "Application for the writ of *habeas corpus,* . . The petitioner alleges, that he is . . the property of Hon. Samuel F. Rice,[1] that he was arrested . . under a warrant . . issued on the affidavit of . . Adler that petitioner 'did . . commit the crime of burglary,' . . [147] on the trial . . two justices of the peace presided, . . they were requested by said slave, through his counsel, to call in the probate judge, and summon a jury, and try the case upon its merits, which they refused to do, and committed . . slave to jail to answer an indictment to be preferred" He [146] "made application to . . Chancellor . . to be discharged upon *habeas corpus,* but . . chancellor . . remanded the petitioner to jail; . . bill of exceptions . . as follows: 'The prisoner . . admitted that he did . . break into the front room of . . "Adler's store," in the night-time, and took . . goods. . . Adler and his brother . . were sleeping in the back room'"

Motion refused: [153] "The old law,[2] which punished capitally every case of burglary when committed by a slave, was regarded as too severe, and . . the meaning of the dwelling-house . . was narrowed. It was required that there should be a white person in the house . . and . . that the building must be actually . . parcel of the dwelling-house.[3] [Goldthwaite, J.] [154] "Rice, J., not sitting."

[1] [3 n.] "Elected by the Legislature to fill the vacancy [in the Supreme Court] caused by the resignation of the Hon. David G. Ligon, which took effect on the 1st January, 1855."

[2] Clay's *Digest,* p. 472, sect. 4.

[3] Code, sects. 3308, 3309.

*Miller v. Jones,* 26 Ala. 247, January 1855. [251] "a suit arising . . the slave was run off from Louisiana . . sold at public auction . . 1852 . . for . . $850;" She was a [249] "mulatto girl, about eighteen"

*Walker v. Walker,* 26 Ala. 262, January 1855. [271] "The record shows, that in 1852, and prior thereto, the executrix had . . an overseer who was cruel and severe upon slaves; that some . . had been severely whipped . . and several of them had run away in consequence of his cruelty, and been taken up and committed to jail, . . before the particular slaves ran away [in August and September] for whose jail fees [$34.50] a credit . . is now claimed . . that said overseer made good crops, and continued in the service of the estate until in the fall of 1852 . . discharged . . on account of his severity to slaves."

*Nelson et al. v. Bondurant et al.,* 26 Ala. 341, January 1855. [342] "Trespass *vi et armis* . . against . . Nelson, . . Jackson, [and three others.] . . The declaration . . averred, that . . [343] 'the . . defendants . . were duly prosecuted before the grand jury . . no bill of indictment' . . [344] evidence . . That . . Sam was hired by the plaintiffs to . . [345] Nelson for the year 1850, . . that on Saturday night, in . . April, the slave wanted a pass to go to his wife's house, but Nelson told the overseer not to let him go until the next morning, as the creek was so high; . . the boy . . disobeyed . . and went that night; that when the overseer went into the field . . Monday morning, Sam picked up a club . . and left; . . went to . . Bondurant's, who tied him and whipped him . . about thirty blows with a handful of switches, and . . sent him back . . by Mr. Jackson; . . Nelson took hold of him by the collar . . but the boy drew a knife . . cut him . . in several places; that Nelson . . called to his wife to bring . . a rope, but . . the boy cut her in the face . . and attempted to stab a negro woman who ran to her relief; that Nelson succeeded in throwing the boy, who . . struck his head on a root or stump; that the other defendants came up . . and with their assistance the boy was . . tied [[346] 'hand and foot'], . . whipped by Nelson, Jackson, and Booker . . between thirty and forty blows . . some of which cut the skin; that the boy resisted to the last, and was insolent and rebellious after he was finally turned loose. . . The boy . . walked about the house and yard, but complained of being sick, and did no work; . . Sunday . . following he suddenly died. The defendants offered evidence tending to show that . . they did not know that he had been whipped by . . Bondurant . . A post mortem examination . . was made by several physicians,"

Judgment reversed and the cause remanded: I. [350] "The allegation that they were duly prosecuted . . is sufficient. . . [II.] [351] In every contract of hiring, . . a reservation is implied, requiring the bailee to treat him with humanity, . . If he fails to do this, . . the owner can resume the possession. . . And if the act is forcible, as well as unlawful, the owner can maintain trespass; . . [III.] [352] The charge seems to lay some stress upon the fact of the slave being secured, so as to be unable to resist . . but this cannot in any way affect the rights in re-

spect to correction. If . . the punishment is not cruel . . there is no liability even should death ensue." [Goldthwaite, J.]

*Denson v. Mitchell,* 26 Ala. 360, January 1855. Will, 1851: [361] "I will . . to my son . . Nancy and her children, provided he takes up his permanent residence in Barbour county . . if . . not, then I desire my executors to sell her . . and her children, at public outcry, to the highest bidder, . . [362] to my wife . . my three negro men . . also, two girls, . . during her . . life, and after her death to be sold at public outcry,"

*Stewart v. Bradford,* 26 Ala. 410, January 1855. "the appellant took the slave 'at his own risk.' . . deposition . . 'A few days after . . [411] [I] examined her at his request, and found her to be so unsound that I would not have had her as a gift.'"

*Jones v. Covey,* 26 Ala. 464, January 1855. [465] "that . . Stephen Walker and others had . . instituted a suit against . . Field [1] [*sic*] . . to recover their freedom; that pending the suit, the court made an order . . requiring the plaintiffs to enter into the statutory recognizance; that . . defendant and others became bail for said Walker; that afterwards defendant, for himself and his co-sureties, surrendered . . Walker to the sheriff, in discharge of their . . bond, . . committed . . to jail; . . that on the trial of the . . petition, the plaintiffs therein recovered a judgment declaring them to be free." The jailer brought suit [464] "to recover $36 50 . . for boarding Stephen Walker . . [465] before the trial of his . . suit for freedom;" Held: "the statute [2] imposes no duty on the sheriff to detain him . . [466] his mistake of the law . . should not prejudice other parties."

*Johnson v. Boyles et al.,* 26 Ala. 576, January 1855. [577] "Trover . . against . . Johnson, . . [578] 1847 . . Boyles, . . owning two young negroes, sent them to . . Abney for the purpose of trading . . them for a negro woman for his wife [Abney's sister], . . June or July, . . [Abney] sent . . Eliza to the house of Boyles, in Monroe county, . . August . . Abney executed . . deed [of trust], and the woman remained . . until about frost . . when she ran away to . . Abney in Butler county. . . [579] Abney paid hire for Eliza to Mrs. Boyles, at . . $75 per year; . . on two occasions . . he . . had sent her to Mobile and New Orleans for a few weeks, for the purpose of selling her;" In 1851 Johnson "purchased Eliza from . . Abney, for $875," Judgment for plaintiffs affirmed.

*Dearing v. Moore,* 26 Ala. 586, January 1855. "Trespass *vi et armis* by . . Dearing against . . Moore . . 'a witness [Williams] . . stated . . that the dogs commenced a sharp barking . . that he . . [587] discovered the camp of what he took to be runaway slaves, but saw no slaves; . . got the defendant, who had a pack of dogs trained to run slaves; . . they caught one negro man; that defendant put [him] . . into

[1] Fields *v.* Walker, p. 189, *supra.*
[2] Clay's *Digest,* p. 542, sect. 19.

the possession of witness, and gave witness his pistol; . . that they took the negro to show them . . where he had separated from the other, and the dogs there took the trail . . through the woods to the field . . that defendant . . followed . . and witness went with . . slave to the . . field; . . on his way . . heard the report of a gun, or pistol, . . defendant came to him from the swamp . . and told him that he came up with the negro in the field . . and that the negro turned on him with a large stick, and that he retreated' . . Robinson . . 'stated, that he came to the . . [588] field while the . . slave was pursuing defendant with a large stick; . . that defendant got his pistol, . . told him not to follow the slave into the swamp, that he said he would not be taken—that he would die before he would be taken;'" [587] "defendant further told [Williams] . . that he . . pursued the negro to the swamp, . . and shot him just as the negro was turning on him; that they . . put him in a cart, and carried him to plaintiff, and that plaintiff sent for a physician." "died about a year afterwards;" Judgment in favor of defendant. Affirmed.

*Bennett v. Fail and Patterson,* 26 Ala. 605, January 1855. [606] "Assumpsit by Fail and Patterson . . on a . . note for $2,100, . . given [in 1852] for . . three slaves . . as one entire contract . . Doctors Riddle, Howell, Robbins, and Hutchinson . . examined each one . . a few weeks after . . that Mary Jane had syphilis, Nancy chronic gonorrhea, and Judy umbilical hernia; that . . these diseases must have existed from a period anterior . . and that the slaves . . stated such to be the fact. On the part of the plaintiffs, Dr. Mattheson testified, that he examined the slaves about six weeks after the sale, . . and his professional opinion was, that Mary Jane and Nancy had not been diseased more than three weeks, and that Judy's disease . . was curable, . . Doctors Troy and Bythwood . . did not concur with Dr. Riddle, from the symptoms which he described, as to the character and degree of Mary Jane's disease."

*Eckles and Brown v. Bates,* 26 Ala. 655, January 1855. [656] "Covenant . . against Eckles and Brown, to recover damages for the breach of a warranty of soundness . . Doct. Peterson . . testified, that he had been called to see the slave . . 'I learned from him, though he made the statement with extreme reluctance, that he had been subject to similar attacks before, and had been very ill from one such attack years previous. . . From the statement . . and the symptoms . . together with the post-mortem examination, my . . opinion is, that the negro had been unsound for years.' . . [657] Mrs. Treadwell [deposed] . . 'when said slave was suffering under the illness ["severe pain in the stomach"] of which he died, he made frequent suggestions as to the treatment . . had generally been relieved by drinking soap-suds. . . He opposed the use of the remedies which we had been applying, . . the remedies which he suggested . . seemed to afford momentary relief. . . he said, he had also been benefited previously by being put in a barrel of warm water.' . . [658] Miss Stevens [deposed] . . 'I have heard said slave . . suggest the use of red pepper, which he usually carried in his pocket and used habitu-

ally. . . he often asked for syrup, and said meat would hurt him. His ordinary movements . . were slow, and in a stooping attitude.' "

Held: [659] " the declarations . . as to his previous attacks . . made . . to the female witnesses . . [660] who are not skilled in the science of medicine, were improperly allowed to go to the jury."

*Allen v. Harper,* 26 Ala. 686, January 1855. Articles of agreement: [687] " Harper does . . obligate himself to attend to . . Lee's business as an overseer, during . . 1852, . . Lee does agree to give . . Harper full control, so far as the management of the slaves is concerned, . . to furnish . . Harper with seven good hands, and all the necessary implements . . and to pay him three-sixteenths of all the cotton, corn and fodder made . . to board, wash and furnish . . Harper with a horse to ride on Sabbath days, . . also, to gin and haul . . Harper's cotton, with his own, clear of charges."

*Frank et al. (slaves) v. State,* 27 Ala. 37, June 1855. [38] " Frank, Jerry and Trussvan, with four other slaves, were indicted . . for the murder of another slave named La Fayette," [44] " Trussvan . . knocked La Fayette down with a pine knot while [the latter was] retreating from Jerry's assault, . . Frank killed La Fayette by stabbing him after he was knocked down." Judgment reversed and the cause remanded.

*Powell v. State,* 27 Ala. 51, June 1855. " Whitesides, who was the overseer of . . slave, and at work with him in a stable for stage horses, would . . tell defendant that he would send the . . slave for some spirituous liquor, naming the quantity and quality; that when . . Whitesides returned to the stable, . . he would send . . slave with a jug . . and defendant would put the . . liquor in the jug," Held: [52] " not a sale . . to a slave, within the meaning of section 3243 of the Code, . . lawful without any order in writing."

*Gibson v. Land,* 27 Ala. 117, June 1855. Will, made in South Carolina in 1793: [126] " I lend unto my . . wife . . negro girl . . I . . desire, if my wife marries, that my eldest daughter may have the . . girl; and if the negro should have children, . . that my second daughter may have her first child, . . my third . . daughter the . . second child."

*Woodward v. Donally,* 27 Ala. 198, June 1855. [199] " plaintiff's guardian in . . Tennessee . . brought the slaves [a woman and her children] to this State, and sold them . . to raise money for . . paying plaintiff's expenses at a medical school,"

*Rowan v. Hutchisson,* 27 Ala. 328, June 1855. [329] " Tom, about seven . . and Mary . . about nine . . levied . . on "

*Fluker v. Henry,* 27 Ala. 403, June 1855. [404] " that J. G. Dent and Co. arrived in Tennessee . . with their hands and implements, the . . negro being one of them;" " commenced working on a railroad where they had taken a contract, . . negro . . breathed like he had . . ' the bellowses', and complained of pains in his side or chest; that within three or four weeks . . his feet and ankles were swollen, and the swelling

extended up his legs and system, . . in twelve or fifteen months he died; . . did not work more than one-third of his time, . . that a good deal of the time he had to be . . waited on by some one of the other negroes; that the wages of a hand were usually about $13 per month and boarded;"

*Freeman v. Scurlock,* 27 Ala. 407, June 1855. [411] "The sheriff . . had gone . . in search of [Lucy and her infant child] . . only two days before they were carried off. The slaves, with Mrs. Freeman and her two brothers, . . all left . . in the night. . . traveled an unusual route . . to Montgomery . . where . . Scurlock, and his sister, Mrs. Freeman, proceeded to Texas with the slaves by steamboat;"

*Abercrombie's Executor v. Abercrombie's Heirs,* 27 Ala. 489, June 1855. Will of Albert G. Abercrombie, dated 1848: [491] "I . . convey unto . . Ware . . all of my property . . for the purposes hereinafter mentioned . . to receive . . at my death . . Nancy, and her six children . . Ware is to take care of . . and control [the children], until they arrive at age, . . treating them with humanity, according to the position they occupy in society, and see that they are not imposed upon by others. And when the . . children shall have arrived at age, . . Ware is to have their freedom secured to them, by the laws . . of Alabama, if it can be done, so that they may remain in the State. If he cannot . . he . . is to send them to some free State or country, wherever in his discretion will be best for them. . . after having paid . . debts . . and having compensated himself for . . trouble and expense . . the remainder [of my property], if any, shall be paid over to the . . children and . . Nancy."

Held: I. [494] "there is . . nothing in the language used, from which it could legitimately be inferred that the children were to occupy ['until they arrived at age'] any other position than that of slaves, . . [II.] As to the directions for the emancipation of the children . . it was a perfectly valid trust, . . [495] and if . . [the executor] was so regardless of . . duties . . as to fail in the faithful execution . . the powers of the court of chancery . . are amply sufficient to enforce it; . . [III.] by the terms of the will, . . Nancy is not to be emancipated. If we were at liberty to resort to parol evidence, the case might be different. . . [496] [IV.] the legacies to the children were valid. . . [V.] The bequest to . . Nancy was void, as she had no capacity to take; . . this slave, and the portion bequeathed to her . . must be regarded as not disposed of by the testator," [Goldthwaite, J.]

*Harris v. Bell,* 27 Ala. 520, June 1855. [521] "Mary . . with her husband, was hired by plaintiff to . . Maury, for . . 1852. Maury rehired [them] . . to Allison, for himself and Bell, and the woman died" "plaintiff . . had told . . Mary . . to go back to Bell's, and stay there as long as Bell treated her well, and if he mistreated her, to come to him;"

*Railroad Co. v. Burke,* 27 Ala. 535, June 1855. [536] "Allen . . was hired . . January, 1852, . . to work on . . railroad as a laborer . . at . . $200. . . the railroad company promised to clothe the slave, and it was

agreed that a deduction should be made for any loss of time caused by his running away; . . employed as an ox-driver . . November he became sick, . . [537] 'the person who had control of Allen . . consulted with . . a physician . . as to the propriety of sending Allen to Selma for medical treatment; . . advised that Allen should be sent'" [536] "the night on which he was sent down [on the railroad] was cold . . and inclement: . . Marlow . . who had been requested by the plaintiff to pay attention to his negroes hired on the railroad, removed him that night to his own house, and called in a physician . . next morning, . . dropsy of the chest; . . the slave died within forty hours afterwards."

*Morton v. Bradley,* 27 Ala. 640, June 1855. "The plaintiff claims . . damages for . . killing a negro man slave . . by shooting him with a gun"

*Agee v. Williams,* 27 Ala. 644, June 1855. [645] "bill of sale for . . negro . . from . . Walker . . evidence tending to show that . . Walker had stolen the negro."

*Stalls v. State,* 28 Ala. 25, January 1856. "indicted . . for harboring or concealing a runaway slave,"

*Martin v. State,* 28 Ala. 71, January 1856. [78] "Rawles . . had had his attention particularly called to Cortez, by finding out that he and his wife were boarding in the house of his (witness') slaves; . . that he would not . . believe him on oath,"

*May v. May,* 28 Ala. 141, January 1856. [146] "I lived with Mr. May, as an overseer, in 1843, '44, '45, and '46, and went back to live with him in 1848." "First three years I lived with May, sixty hands went to field; eighty on the place. . . Negroes were low in 1843, and did rise much till 1849. Don't know what negroes were worth . . in 1849."

*Hair v. Little,* 28 Ala. 236, January 1856. [237] "Hair claimed the slaves under a purchase from . . Little, . . [240] one of the negroes now sued for came to Hair's house, with a letter informing him that the negroes sued for would be sent to Mississippi the next day by the plaintiffs, to be sold, unless he came up and attended to his own interests; . . arrived at Mrs. Little's about midnight; . . brought them away;"

*Hair v. Avery,* 28 Ala. 267, January 1856. [268] "a large number of valuable family slaves . . were . . divided [in Virginia] among the residuary legatees . . [One of them] 'removed to . . this State [about 1837], bringing . . slaves'"

*Irons v. Reynolds,* 28 Ala. 305, January 1856. Mr. and Mrs. Irons [307] "removed to this State in January, 1853," In the spring a female slave was purchased in Mobile with [308] "the proceeds of property secured by an antenuptial contract entered into . . in . . Ohio;"

*Henderson v. Segars,* 28 Ala. 352, January 1856. [354] "the negroes [a woman and her three children] had been privately removed to Arkansas [in 1845] . . to avoid the debts" A few weeks later they were

[355] "carried . . to Misssissippi, and . . sold . . for $700, which was about the average market price"

*Walker v. Fenner,* 28 Ala. 367, January 1856. Negroes, conveyed by will in North Carolina in 1842, were removed to Alabama in 1843.

*Livingston v. Arrington,* 28 Ala. 424, January 1856. Action brought on a promissory note. Bill of sale: [427] "Received . . 1850, of . . Livingston . . six hundred and eighty dollars . . for . . negro girl . . which . . negro I do warrant and defend to him," [425] "$80 of this sum was for the hire of the slave for the year preceding . . she died within six months after the sale. Dr. Peterson, one of the physicians who prescribed for her . . testified that the slave had irregular menstrual discharges, caused by ulceration of the *os uteri,* and accompanied by dyspeptic derangement of the stomach, and functional derangement of the liver; . . that she had been laboring under the disease for a considerable length of time, . . 'The plaintiff then proved that Livingston hired said slave . . from the spring of 1849 . . that several times . . he called in a physician to attend her, . . that said physician, before the sale, informed Livingston of the . . extent of the disease'" Held: [428] "the bill of sale . . contains a warranty of soundness as well as of title," [Rice, C. J.] See Duff *v.* Ivy, p. 136, *supra*

*Andrews v. Andrews,* 28 Ala. 432, January 1856. [434] "The bill alleges . . that the complainant refused to assign her right of dower in . . lands . . until . . induced by the defendant's promise that he [her husband] would settle on her . . Sarah and her children [bequeathed to her by her father]; . . that the negroes are family slaves, between whom and complainant there exists a strong personal attachment; . . The bill prays . . for a specific performance," Decreed.

*Stanley v. Nelson,* 28 Ala. 514, January 1856. Action founded on a note: "I promise (to pay), to . . Nelson, one hundred and forty dollars, for the hire of George for . . 1852. . . (signed) H. Stanley." Testimony of plaintiff: [515] "The price for the hire . . was agreed on with . . Spencer [a slave], provided he brought me a note . . from some responsible white man, who should control . . George during that year. . . Spencer was engaged in the business of painting. . . [George] was then a good painter. . . I received from . . Spencer . . with the understanding that they were to go to the credit of an account due me for the hire of George for the preceding year, the following amounts: for painting my house, $13 50; . . Malone's note, . . $67 10. . . also . . with the agreement that the same was to be credited on defendant's note, . . Donnell's note, for work, paints, etc., furnished . . $65 85," Hoke testified [516] "that he had hired Spencer from his owner [Thompson] for . . 1852; that he permitted . . [him] to go at large . . to make his own contracts . . and to collect the money . . that witness paid Thompson the hire, and that the understanding was, that Spencer was to pay witness the amount of the hire, and was himself to have the balance of his earnings; . . if any had refused to pay, witness . . considered that he had a right to

sue therefor; that Spencer did business in the same way in . . 1851, and for several years prior" [520] "The defendant insisted that the amount . . appropriated [to the hire of George for 1851] should be credited on the bond sued on."

Held: I. a slave may act as the agent of his owner or hirer; II. the note is void; [518] "the law, as it existed in 1852,[1] is not only violated in its letter, but in its wise policy. . . [III.] [520] acquisitions by his labor . . absolutely disposed of . . by the slave" cannot be reclaimed.

*Rawdon v. Rawdon,* 28 Ala. 565, January 1856. [566] "that during his paroxysms of insanity . . complainant was several times compelled to interfere, to prevent him from killing some of the negroes;"

*Walker v. Smith,* 28 Ala. 569, January 1856. Complainant hired two slaves to Mrs. Walker for the year 1853 to work in [570] "a steam saw-mill . . a part of her separate estate . . [They] ran away, and were lodged in jail . . that Mrs. Walker . . was requested by complainant to take them out, but she . . refused . . that complainant, after the expiration of the term of hiring, was compelled, in order to regain the possession . . to pay jail fees amounting to $175;" Held: "Mrs. Walker is . . bound to refund [from her separate estate] . . the amount . . paid . . as also the amount of their hire"

*Ivey v. Owens,* 28 Ala. 641, January 1856. [642] "that, in 1841, '42, or '43, . . testator called up his daughter Nancy and the slave Jinney, . . [643] then a small negro, placed the hand of Jinney in the hand of . . Nancy, and said that he gave the negro to his daughter, . . for the long services . . rendered to him and his family after she had come of age, and called upon the witness to witness . . when Nancy was about leaving for Louisiana, . . her father objected to her taking the slave . . that she was too young to be . . parted from the family, but stated that . . he would send her the next fall, . . 1853 . . he sold her for $800." Held: the gift was complete.

*Foust v. Yielding,* 28 Ala. 658, January 1856. [659] "The defendant . . proved . . by . . Anderton, that plaintiff, defendant and himself entered into a recognizance with . . William Patterson, a negro claiming his freedom, for the appearance of . . Patterson to abide his trial; . . Patterson wanted to know to whom he would first go,—that he was willing to give his labor to his sureties until he obtained his freedom; . . witness said, that he would prefer . . that plaintiff should keep the boy, as he would be better able to rescue him, if he should be . . forced away; . . plaintiff . . to pay each of the other sureties in proportion to the boy's work . . that plaintiff had had him twelve months." "The plaintiff . . offered evidence tending to reduce the amount . . [660] claimed by the defendant, by showing that he . . had . . incurred considerable expense, in the prosecution of . . Patterson's suit"

*Mastin v. Cullom,* 28 Ala. 670, January 1856. In 1855 [671] "a negro man . . [was levied on and sold] for $795; and the woman . . for $700."

[1] Clay's *Digest,* p. 541, sects. 12 and 13.

*Jones v. Sterns,* 28 Ala. 677, January 1856. [678] "the appellee in New Orleans, in 1851, . . wished to send a slave by witness to his plantation in Texas; . . told witness, that he had been to Texas frequently."

*Barlow v. Lambert,* 28 Ala. 704, January 1856. "the note [for $175] was given for the hire of a slave [for the year 1853] . . before the note was executed, 'plaintiff told defendant that . . defendant . . would have to lose the negro's lost time,' . . [705] negro died, during the year" [704] "The defendants offered two witnesses, 'to prove that . . "lose the negro's lost time" . . [705] had a . . well understood meaning in Baldwin county, . . related to time lost by sickness or running away, and not to time lost . . [by] death.' . . which testimony the court ruled inadmissible," No error.

*Bob (a slave) v. State,* 29 Ala. 20, June 1856. [21] "The prisoner was indicted for the murder of . . a white child between seven and eight years old, and was convicted. . . The deceased was much attached to . . Dinah . . had gone with her into a field . . where Dinah was clearing up new ground, while the prisoner was employed . . a few hundred yards distant making rails. . . 'came . . and told witness [Dinah] to hand him her axe, . . refused . . the prisoner succeeded in wrenching it out of her hand, and . . struck the deceased with it. . . attempted to stab [Dinah.] . . Witness . . begged for her life; but the prisoner said, "No, I came here to kill you and Lou" . . Witness asked him to let her try to bring the deceased to life, by washing her face . . in the branch; . . refused . . [22] ran after her, struck her and jumped on her . . about 12 o'clock . . she recovered her senses.' On cross-examination, Dinah stated, 'that it was possible the prisoner struck the deceased in wresting the axe from the hands of witness;' . . The father of the deceased testified, 'that he and his partner, who lived nearly a mile apart, had hired Dinah and the prisoner . . that during the first of last year, . . [they] lived . . at the house of witness, as man and wife. . . in August of last year . . quarreled; that the prisoner beat Dinah severely, and they . . had not since lived together; that he then gave the prisoner a whipping, and sent him to live at the house of his partner;'"

Judgment reversed and the cause remanded: [25] "if a slave, in the attempt . . to commit an assault . . on another slave, kill a white person by misadventure, he is guilty of involuntary manslaughter, under section 3312 of the Code. . . [26] under an indictment charging the defendant with murder, he can not be convicted of involuntary manslaughter," [Stone, J.] Overruled in Henry *v.* State, p. 229, *infra.*

*Anthony (a slave) v. State,* 29 Ala. 27, June 1856. "The indictment . . charged 'that Anthony . . the property of Elias G. Hodges, did attempt to poison Elias G. Hodges . . and Mary C. Hodges,'"

Judgment reversed: [29] "no indictment for an attempt to poison can be good, which does not, by a direct and express allegation, impose upon the State the burden of proving that the substance employed . . was a deadly poison, . . [30] the prisoner must remain in custody, to take his

trial on a new indictment, unless in the mean time he be discharged by due course of law." [Rice, C. J.]

*Bill (a slave) v. State,* 29 Ala. 34, June 1856. "indicted for the murder of another slave, and . . convicted" [36] "The bill of exceptions . . shows, that the defendant was not in actual custody, and that he had counsel whose names had been regularly entered as such; and no application for a list of the jurors summoned . . appears to have been made, either by him or his counsel." Judgment affirmed: in such a case, "the right to such list does not arise, except, 'on application'"[1]

*Mangham v. Cox and Waring,* 29 Ala. 81, June 1856. "plaintiff . . claims of . . part owners of . . steamboat . . the value of . . slave . . pursuant to section 1010 of the Code of Alabama." "the plaintiff . . was the owner of . . [82] Spencer; . . slave ran away . . in . . Mobile, in February, 1853, . . was not discovered on . . boat, until . . some seventy-five miles above Mobile; . . put in irons, by the direction of the captain, . . and chained to a post some eight or ten feet aft the boiler; . . had no covering . . except the clothes he had on, but there were some blankets belonging to the boat hands near where he was chained, and he was told that he could use them; . . a relative of plaintiff, went to the office of Waring and Co., . . having been informed that . . negro had probably been carried off on said boat; that a dispatch was . . sent to the agent . . at Cahaba and at Montgomery . . 'To Capt. J. J. Cox.—See if you have . . Spencer on board, . . The boy came down with you the last trip. If on board, bring him back.' . . [83] Sheppard . . testified . . that he . . recognized [the slave] as plaintiff's boy Spencer, brought on shore in chains; . . thought him very sick with pneumonia; . . told [the men in charge of the slave] . . the boy would certainly die if they carried him to jail in that condition,—that they had better let him take the boy . . to the house where he kept his own negroes, and have him attended to,—and that he was going to Mobile in a few days, and would take the boy down to his master's brother; that they replied . . they were responsible for him, and intended to carry him to jail," [82] "physicians were called to see him [at the jail], . . attended by them until his death; . . defendants paid the physicians' bills." Judgment for defendants.

Reversed and the cause remanded: [88] "The immense value . . the peculiar nature of slaves; the known disposition of at least a portion of the abolitionists of the non-slave-holding States, to delude them by art or persuasion to avail themselves of all facilities for escaping . . the number of steamboats and vessels . . and of vehicles running upon railroads . . and the consequent exposedness of the owners of slaves, to the depredations of the fanatical and vicious . . have called forth the legislation upon the meaning of which this case must turn. . . [89] The legislature has scrupulously exacted . . '*written* authority.' . . [90] section 1010 . . does not use the word 'receive'[2] . . from which an implication

[1] Code, sect. 3576.

[2] [89] "the statutes of Tennessee, Kentucky and Louisiana differ . . [90] from section 1010 of our Code."

can . . be drawn, that the act must be *knowingly* done, to entitle the owner of the slave to . . recover." [Rice, C. J.]

*Ashley v. Robinson,* 29 Ala. 112, June 1856. [121] "a few weeks after filing his petition in bankruptcy, . . he wanted a horse . . 'to send to North Carolina for four or five negroes he had hid out there.'"

*Upson v. Raiford,* 29 Ala. 188, June 1856. [190] "that Minerva was almost blind from a scrofulous affection, . . and some of her children also exhibited symptoms of scrofula; and that the slaves, . . with the exception of two years [out of six], 'were a bill of expense' to him."

*Abercrombie v. Allen,* 29 Ala. 281, June 1856. "on the trial of a suit before a justice of the peace, for damages for wasting provisions set apart for the slaves under the charge of . . overseer, . . [282] [the overseer] said that he had discharged his duty as defendant's overseer, and that either he or his wife was always present when meat was given out for the negroes."

*Morgan v. Smith,* 29 Ala. 283, June 1856. In 1852 a negro man, about thirty, was sold for $800.

*Grant v. Moseley,* 29 Ala. 302, June 1856. "The slave . . a girl about seventeen . . was, with her mistress a [cabin] passenger on the steamer . . from New Orleans to Mobile; and had gone ashore . . but was sent back for some articles . . [303] at the forward gangway ['used by the crew and deck passengers'] . . meeting on the plank two of the boat hands, with a handbarrow loaded with wood, her clothes became entangled in the wood, and she was thrown into the water, and drowned." Judgment for her owner. Affirmed.

*Mosser v. Mosser,* 29 Ala. 313, June 1856. [314] "bill filed by Mrs. . . Mosser, seeking a divorce from her husband . . on the ground of his alleged adultery with a mulatto girl named Holland, the property of his wife." Mrs. Wood, his housekeeper during his wife's absence in Florida, testified: "a little negro girl . . came and told Holland that her master said she must go . . in the store; . . repeated four mornings in succession, . . [315] The defendant . . was frequently in the kitchen with her when she was cooking; . . I have seen her go into his bed-room, and the door was shut-to; . . he fondled around her more than he did around his wife . . and the girl acted impertinently to me . . saw the impression where two persons had laid in the bed, and two headings: . . I then told him, that I was going away . . that when I said anything was so, she would say it was not so; and she replied, that she did not say it, and then flirted out of the room with a great air." [316] "On the part of the defendant, it was proved . . that during his wife's absence . . he was afflicted with a cutaneous eruption on his legs, . . required to be dressed with poultices several times a day. . . Mrs. Williams . . testified . . that on one occasion . . she saw the defendant, on the complaint of Mrs. Wood, give Holland a severe whipping; that she heard him tell Mrs.

Wood to whip the girl whenever she was disobedient;" Decree for the complainant.

Reversed and a decree rendered dismissing the complainant's bill: I. adultery, as the term is used in the statute which makes it a ground for divorce,[1] may [316] " be committed by sexual connection with a slave . . [318] [II.] I think the charge in this case is sufficiently sustained by the testimony, but my brothers [Rice, C. J., and Walker, J.,] think it insufficient . . that the circumstances . . are all susceptible of a reasonable interpretation, consistent with the innocence of Mr. Mosser." [Stone, J.]

*Burton v. Holley,* 29 Ala. 318, June 1856. [319] " that he had procured provisions, and other articles . . for the feed and support of . . [six] slaves for the year 1854, which cost . . from $100 to $125;"

*Atwood's Administrator v. Wright,* 29 Ala. 346, June 1856. " action . . founded on . . note for $575." Bill of exceptions: [347] " the sale of . . slave, together with two or three hundred others of the estate of Atwood, was made under an order of the probate court . . before the sale commenced, and repeatedly during the sale, . . one of the administrators, publicly announced . . that the administrators knew none of the negroes, except a few house-servants, and would warrant none of them to be sound," " that while . . auctioneer was crying her, . . slave spoke, and said, ' that she was diseased, and had a knot in her belly '; that the auctioneer then said to her, audibly, in a jocular way, ' hush, you are not diseased, you have eaten too many peas or potatoes, and they have swelled your belly '; that the bidding had stopped when this remark . . was made; but was afterwards resumed, and . . Wright became the purchaser." Witnesses proved the slave " to have been unsound before the sale, and almost (if not quite) valueless; and . . that Wright, before the sale was over, . . tendered her back to the plaintiff, who refused to receive her. . . [348] no evidence . . that either [the auctioneer] . . or . . administrators knew of the unsoundness " Judgment for Wright affirmed.

*Lockhart v. Cameron,* 29 Ala. 355, June 1856. " the deed of gift was executed in South Carolina, in 1824, . . The bill alleges . . [357] that . . Clay, when Cameron asked the hand of his daughter . . informed him . . that the family of slaves to which Louisa belonged had been entailed on him by his grand-father, and he intended that Louisa and her increase should be entailed on his grand-children in the same way;"

*Massey v. Cole,* 29 Ala. 364, June 1856. " action . . against the appellants, as the owners of the steamboat . . to recover the penalty of fifty dollars for their transportation of plaintiff's slave . . without his written permission; . . ' A witness for plaintiff testified, that the slave . . [365] had been run away about six weeks, and he was employed . . to hunt him up . . found the slave near . . steamboat, on the wharf in Mobile; . . heard Massey . . after . . slave was arrested, admit that the slave had been on board . . about sixteen days, and had been used as second cook

[1] Code, sect. 1961.

. . was first discovered above Claiborne, on the upward trip, and was then placed in charge of the steward . . without being confined in any manner. . . that when . . boat reached Mobile, no steps were taken . . to restore the slave . . but he was permitted to . . go about at large; the witness arrested him on the morning after the boat arrived . . and was paid the reward . . The defendants offered evidence . . that said slave, . . a small boy about twelve or fifteen . . got on board . . without the knowledge . . of any one in charge . . that . . [when] discovered, . . [he] was . . put in charge of the steward . . with instructions . . to deliver him up to his owner; that the boat was . . sixteen days . . aground; . . that the boy . . was not employed, but was an expense; . . was in the habit of running away and making trips on other boats," Judgment affirmed.

*Stoudenmeier v. Williamson,* 29 Ala. 558, January 1857. [559] "evidence . . that . . slave . . was affected with a venereal disease; . . [A physician] testified, that the slave, some ten or fifteen days after the sale, was delivered of a child, which soon afterwards had symptoms of the same disease in its primary form, and died. . . that the old negro woman, who acted as midwife . . had the same disease, in its secondary or tertiary stage, and that it was possible both the child and its mother might have taken the disease from the old woman. . . [560] the auctioneer . . testified, 'that . . [he] publicly proclaimed . . that the slaves were sold by . . administrator, that he would not warrant the title or the soundness'"

*Trippe v. Trippe,* 29 Ala. 637, January 1857. Will, 1840: [638] "I desire that none of the negroes be sold, but that the farm be carried on"

*Ex parte Howard,* 30 Ala. 43, January 1857. "indicted . . for the homicide [[44] 'of his slave Jake'] . . alleged to have been caused by cruel whipping or beating. . . his case was continued . . against his objection. . . applied for bail, on *habeas corpus,* . . refused . . renews his application to this court."

Held: [43] "The indictment . . is framed in reference to section 3296 of the Code, . . [44] there cannot be a conviction under it for murder in the first degree. And therefore, under our constitution and Code, we are compelled to hold, that he is entitled to bail . . ordered . . five thousand dollars;" [Rice, C. J.]

*Lewis (a slave) v. State,* 30 Ala. 54, January 1857. "The indictment . . charged, that the prisoner . . 'did forcibly ravish, or attempt forcibly to ravish . . a white female.' The prosecutrix testified . . that . . she was awakened by some one rubbing his face against hers; . . that she at first supposed it was her husband, . . put her hand on his hand, when she discovered that it was a negro; . . [55] ordered him to 'clear out,' and the negro got up; that on her calling out to her uncle . . sleeping in an adjoining room, the negro said, 'hush,' and ran out of the room; that she recognized the prisoner from his voice. . . the prosecutrix made contradictory statements . . at one time admitting . . connection . . at another time saying that she did not know"

Judgment against him reversed and the cause remanded: [56] " force is a necessary ingredient . . There was, in this case, at least some evidence tending to show that the act of the prisoner was an attempt to accomplish his object by fraudulent personation of the husband; . . [57] We depart from our usual course, for the purpose of inviting the attention of the legislature to this subject. Under our . . laws, one who obtains . . goods . . under false . . pretenses, is held guilty . . as if he had . . stolen them. He who contaminates female purity under like fraudulent pretenses, goes unwhipped of justice. Let the prisoner remain in custody until discharge by due course of law." [Stone, J.]

*McReynolds v. Jones,* 30 Ala. 101, January 1857. [102] " The . . will . . of John McReynolds . . was propounded for probate . . 4th September, 1854, . . the testator directed all his slaves to be carried to Liberia by his executor, and there emancipated; bequeathed $8000 to his wife, ' as her full . . portion ' . . and directed his executor to sell all his lands . . and divide the proceeds . . among his residuary legatees. On the 5th September, . . the widow filed her written dissent . . On 1st January, 1855, commissioners were appointed . . to divide the slaves . . and allot to her her portion. On the 15th . . the commissioners made their report, . . ' confirmed by the court, and ordered to be spread on the minutes.' . . [103] February, . . the widow filed her petition, asking the court ' to set aside the order appointing commissioners . . and also the order made . . on the return of the report ' . . on the following grounds: 1st, that said proceedings were had before the expiration of eighteen months from the grant of administration . . 2d, that said application was made by her under the apprehension that the property . . other than slaves, was not sufficient to pay her distributive share; 3d, that said proceedings . . would defeat the provisions . . respecting the emancipation . . ' ordered by the court, that said motion be refused,' "

Affirmed: I. [104] " It is true . . that the application by the widow . . was premature. . . But . . [sections 1771 and 1772 of the Code were] intended for the protection . . of the administrator. If he does not object, we think the widow cannot . . [II.] [105] The personal estate, other than slaves, is not . . sufficient to pay the debts and expenses of administration, and . . the widow's share, which is one half the personalty. . . the argument [of her counsel] brings in the lands left after the allotment of the dower, and seeks to regard them as money, because . . devised to be sold. . . The will devised the entire real estate to be sold; . . This would have the effect of destroying the dower proper; . . [106] the widow can[not] claim both against the will and under it." [Stone, J.]

*Mitchell v. County,* 30 Ala. 130, January 1857. " action . . brought by the appellant, to recover . . the amount of an account for medicines . . and services rendered by him, as a physician, at the request of the sheriff, . . a slave . . was confined in jail on a charge of having murdered his . . master, and . . the relatives . . who were his prosecutors, refused to procure medical aid for him."

Held: [131] "there is no law which creates a liability against *the county* . . The . . master . . being dead, his representative must be regarded as his master. . . cannot 'absolve himself from the obligation' . . to provide for his necessary wants in sickness, whilst confined under a criminal charge." [1] [Rice, C. J.]

*McKenzie v. Bentley,* 30 Ala. 139, January 1857. [140] "she permitted . . Bentley and wife [her daughter] to take one of her slaves, . . under an agreement that . . Bentley should clothe and pay taxes . . during . . 1853, and return her . . at the end of that year; that Bentley and wife shortly afterwards left the country, secretly, and by night, taking . . slave . . and removed to . . Georgia,"

*Farrow v. Bragg,* 30 Ala. 261, January 1857. [263] "wishing to get a slave . . out of the town . . on account of . . feeble health, and to keep him from getting into difficulties, [he] placed him in the possession of the defendant, who lived in the country, . . to . . keep . . until called for, and pay nothing for his hire"

*Thomason v. Dill,* 30 Ala. 444, January 1857. [445] "Action . . brought by . . Dill . . founded on . . note, . . Witness and defendant went [on April 26, 1853,] to plaintiff's field, where the slave was, and examined him; . . when they returned to the house, plaintiff was at home. . . plaintiff said that he had sold the negro once before, and had recanted, but that the negro had disobeyed him, and he now had to go. . . defendant agreed to give [$800.] . . said, that he would give security, if plaintiff desired it. Plaintiff said, . . not . . but, if he got uneasy, . . defendant could secure it. Defendant then executed the note sued on, and delivered it to plaintiff, who . . delivered . . a bill of sale . . Plaintiff sent . . for the negro, and told him that he had sold him to Thomason. The negro commenced crying, and begged plaintiff to rescind the trade. Plaintiff's wife also requested him to rescind . . [446] Defendant refused to rue, and wanted to take the negro . . that evening. Plaintiff remarked, that he would bring the negro, with his clothes, to Ashville the next morning. . . [448] The negro [when brought] was in his shirt sleeves, and had no clothes [with him] except what he wore; . . Plaintiff proposed to give defendant $10 to rue,—saying, that he had $5, and the negro $5." [446] "Defendant declined . . saying that he never made a negro trade for less than $50. . . [448] plaintiff then said, 'If you wont rue, go and get security as you promised,' . . [The brother of defendant] said . . 'I have the money, and will deposit it,'" [447] "until the defendant could . . get security. Plaintiff said, 'No,' . . but objected that some of the parties to the proposed note lived in [different counties.] . . Witness then persuaded [*sic*] defendant to rue with plaintiff . . without requiring any pay, but defendant declined. Plaintiff then said, that the negro had some debts due to him in the neighborhood, which he could collect in a few days; that he had a bed and some clothes; and that defendant could . . get a note signed with security, come back

[1] Gibson *v.* Andrews, p. 150, *supra.*

. . and get the negro." [446] " The negro committed suicide [by hanging] a few days afterwards, . . [449] before delivering said note . . [defendant] had heard . . that the negro was dead." Grady [449] " carried the [new] note to plaintiff . . told plaintiff, that he was instructed to demand the negro . . plaintiff replied, . . that . . [he] could have his body or his bones, if he desired them."

Held: [454] " The . . agreements . . reduced to writing, on the 26th April, . . amounted to an executed contract, passing the title . . to Thomason, . . [455] The agreement by which the slave was permitted to remain one night with Dill . . had no effect to impair Thomason's title. . . [457] [But] it should have been left to the jury . . whether by agreement the first contract was so far modified, as to be made executory,—Thomason's *right* to the slave not to attach until he . . tendered the proposed note. . . [458] For the error . . the judgment . . is reversed, and the cause remanded." [Stone, J.] The second trial also resulted in a judgment in favor of Dill. Judgment affirmed.[1]

*Brooks v. State,* 30 Ala. 513, June 1857. [514] " The indictment . . charged, that . . Brooks, ' being a negro-trader, broker, or agent for the sale of slaves, sold . . a slave named Rufus, the property of . . Carson, without a license,'[2] . . ' the defendant's clerk . . testified, that the defendant was an auctioneer, . . selling real estate, slaves . . and whatever was sent to him for sale; . . that he had sold during the year last before trial, more than one hundred slaves for other presons, . . some privately; that some of those sold privately were for persons living out of the State; that when slaves were sent . . for sale, he boarded them with a Mrs. Moseley, . . and charged it to the owner on settlement; that he had . . place of business . . in . . Mobile, opposite the court-house, where slaves sent to him . . were generally kept during the day, exposed publicly to the . . examination of those wishing to purchase, and . . sometimes sold privately when the price would be agreed on. . . that the slave sold belonged to . . Carson, . . of North Carolina, . . that . . Carson brought this slave ["lately "], with a number of others, to Mobile for sale; that the defendant . . advertised the sale regularly, through the newspapers and hand-bills; that these slaves were boarded at . . the " Eutaw house," . . nearly opposite to defendant's place of business, where a sort of negro boarding-house is now kept; that Carson was . . recommended to this house by defendant, but paid the bills . . himself; that defendant sold . . Rufus . . 1857, in front of the court-house . . at public auction; that Carson was present . . and executed the bill of sale ' "

Held: [516] " It is not necessary that the sale of slaves shall constitute the entire business of such agent or broker. . . the general auction licence . . gave him no authority to sell slaves as an agent, broker, or auctioneer . . engaged in the business of selling slaves." [Stone, J.]

*Case v. Mayor,* 30 Ala. 538, June 1857. [539] " Plaintiff claims . . $50 as a fine, for that the defendant, . . 1856, did sell to certain slaves,

[1] Same *v.* same, 34 Ala. 175.

[2] Code, sect. 397, par. 17; and the act amendatory thereof, approved Feb. 7, 1856 (Pamphlet Acts, p. 25).

. . a yellow boy, about thirty-four years of age, and . . a black boy, about twenty-two years of age, . . spirituous liquors, without the written permission of the owner,"

*Eberlin v. Mayor,* 30 Ala. 548, June 1857. [549] "Plaintiff charges, that the defendant, . . 1856, . . sold to . . one black boy, about twenty . . and one yellow boy, stout and heavy, . . candles and sugar, . . without the written or personal assent . . of the owner,"

*Moore v. State,* 30 Ala. 550, June 1857. [551] "the State proved, by [witnesses] . . that they had seen the defendant . . play cards . . in a back room in the upper story of a house . . rented and controlled by . . Shandy Jones, a free man of color, . . that the lower rooms . . were used by . . Jones as a barber's shop; . . that he used . . [the upper] rooms in experimenting, and attempting to learn the art of taking daguerreotypes; that he took the pictures in the front room, and subjected them to . . chemical process in the back room, . . for which purpose he had . . suspended . . before each window . . thick curtains, . . that of ten or twelve gentlemen named, four frequently, and six or seven occasionally, . . played cards in this room; that the key . . was kept by . . Jones, . . [552] that Jones, prior to the time when the playing took place, had abandoned the attempt to learn the daguerrean art;" Held: the room is within the prohibition of the statute against gaming.

*Wilkinson v. Moseley,* 30 Ala. 562, June 1857. [563] "action . . brought by . . Moseley . . to recover damages for the loss of a hired slave. . . [565] plaintiff hired to defendant . . for the year 1844, or until Christmas . . a girl [Adeline] who had cooked in the country for two years,[1] and a boy ['to wait in his store']; . . $90 for the girl, and $50 for the boy; . . before the . . delivery of the notes . . and . . the delivery of the negroes, defendant asked . . why he hired his negroes in the city rather than the country, and the plaintiff replied, because he could get better prices . . and . . it was healthier . . in March or April . . [566] defendant hired . . Adeline [and the boy] to . . Hughes . . whose plantation lay upon the Alabama river; that Hughes . . worked her in the field with his other field-negroes; and . . in July or August . . she died. . . sick but about three days. Moore, the overseer of Hughes . . testified . . the girl had a chill and fever . . that he gave her calomel on Sunday night . . and castor oil on Monday morning, . . appeared much better . . that on Monday night . . she was much worse, . . that he took about a half-pint of blood from her, and put a mustard-plaster on her side and stomach, and on her wrists; that she . . went to sleep; that he remained . . until eleven . . left a negro man and woman to sit up with her, . . that one of the negroes called him about day-light . . that he . . found her dying, . . that he had been overseer-ing for fifteen years, and had been in the habit of administering medicine to sick slaves . . Defendant proposed to prove by Moore . . that prudent planters generally did not call in a physician to attend their negroes, unless in dangerous

[1] The plaintiff had also "an old and experienced cook, washer and ironer," for whom he asked $130 per year.

cases; . . [567] Plaintiff objected . . sustained . . dependant excepted." Mrs. Linn deposed: [568] " She had a violent fever . . and was in the family way, . . in great pain. . . I told Mr. Hughes that the girl was very sick. . . [569] Mr. Hughes was very sick at the time . . Dr. Ames attended on him. . . I do not know that the physician was at the house the day Adeline died. . . She was lying on the kitchen-floor, with nothing under her." [557] " For . . errors . . the judgment [in favor of Moseley was] . . reversed, and the cause remanded."

*Gunter v. Lecky,* 30 Ala. 591, June 1857. [592] " that, in . . 1853, the plaintiff was a negro-trader, and . . sold to defendant [without a license] . . Mary and Eliza, and, in payment therefor, received . . Addison and Harriet . . and $100 . . that plaintiff afterwards went . . in defendant's absence, and took . . the two negroes . . first mentioned . . and left . . the two negroes last . . named . . [593] because he thought himself defrauded " Held: [598] " not a sale . . within the meaning of the statute " [1]

*Mason v. Hall,* 30 Ala. 599, June 1857. [600] " 1st January, 1854, she hired a negro man to . . Hall, for . . one year, for $155,"

*Harris v. Maury,* 30 Ala. 679, June 1857. " action . . founded on a . . note for $175 . . for the hire of . . Gabe and Mary, for . . 1852. . . Gabe . . ran away . . [to] plaintiff, who refused to let him go back again . . [680] that the negroes were treated well " Held: " the plaintiff . . lost his right to recover any thing for the hire of the slaves."

*Morton v. Bradley,* 30 Ala. 683, June 1857. " This action was brought by . . Morton . . to recover damages for the killing of a slave;" [691] " The master of a dangerous runaway slave, who was armed with a deadly weapon, employed [Holbert] . . to capture him, and instructed [him] . . 'if the slave resisted being taken, to take him dead or alive, and to shoot and kill him, if he could not otherwise be taken.' The slave . . 'resisted being taken' . . and it was necessary . . [to] have the assistance of men and arms." [684] " Holbert . . requested defendant to aid . . and communicated . . the . . instructions " [683] " defendant joined with others in pursuit . . [684] came up with . . slave, who . . brandishing said weapon, refused to be taken, . . defendant shot him, to prevent his escape, and . . [685] killed him;"

Held: [694] " The killing of a runaway slave, merely for the purpose of preventing his escape, is not permitted. . . It may be that the flight of the slave, after brandishing the weapon . . was the reason why shooting was necessary to his apprehension. But . . [the] captor . . must have been brought into peril, before the killing could be permissible;" [A. J. Walker, J.]

*Turner v. Roundtree,* 30 Ala. 706, June 1857. " Plaintiff claims . . $300, for this: Defendant employed plaintiff as an overseer, for . . 1854,

[1] Code, sect. 399.

. . to take charge of his hands and stock, and to make a crop; . . agreed to give . . one-fifth of all . . crops"

*Fail and Miles v. McArthur,* 31 Ala. 26, June 1857. [27] "the plaintiff [McArthur] . . hired to [defendants] . . for the year 1854 . . the negro woman for whose conversion this suit is brought; . . removed from the defendants' brick-yard . . after the middle of January . . to the plantation of . . Fail; . . put to picking cotton on the low grounds, where there was . . [28] mud and water; . . on the third day . . she was taken sick, and, after a few days . . died. With a view of showing misconduct . . on the part of plaintiff, the defendants attempted to show that . . negro . . within one month before said hiring . . had given birth to a child, which had died. . . in rebuttal . . the plaintiff introduced a witness . . who testified, that about the last of November, 1853, his wife left home, to go to plaintiff's house, and told him that she had been sent for to see a negro woman there who was about to have a child;"

*Henderson v. Renfro,* 31 Ala. 101, June 1857. Dr. Watkins testified [103] "that the boy was afflicted with a diseased leg, ulcerated about the ancle-joint; . . chronic . . 'required absolute rest to be cured';" [102] "he usually worked with a hoe, or did some other light work, and did not plow any; . . services for that year were reasonably worth $50;"

*Thorpe v. Burroughs,* 31 Ala. 159, June 1857. "action . . brought by . . Burroughs . . to recover the statutory penalty for the arrest of an alleged runaway slave . . 'near the wharf . . near a swamp, under a shed, with some provisions in his possession'; . . [Plaintiff] . . was . . asked to state . . 'if he did not confess . . that he was a runaway.' The defendant objected . . overruled"

Judgment for Burroughs reversed and the cause remanded: [160] "it was improper to receive in evidence the declarations of the slave. . . The testimony of the defendant clearly showed that the slave was at . . the wharf with the . . permission of his owner,"

*Gardner v. Boothe,* 31 Ala. 186, June 1857. [187] "the slave Paralee was bought . . in Mississippi, . . 1848, . . removed to Mobile,"

*Wittick v. Traun,* 31 Ala. 203, June 1857. "At the instance of the appellant, Rachel Wittick, . . an emancipated negro, a citation was issued to . . Traun . . administrator of Frederick Wittick, . . requiring him to produce the will . . Traun produced a paper . . without signature, . . by which two slaves, an eighty-acre tract of land, and some personal property, were bequeathed to . . Rachel Wittick, and all the residue to . . [204] Traun, his nephew, who was . . appointed executor."

*Scruggs v. Driver,* 31 Ala. 274, June 1857. [285] "Two plantations, with slaves . . belonging to . . testator, were in different counties in . . Mississippi; and the residence of the testator . . was in Memphis, Tennessee."

*Pinkston v. McLemore,* 31 Ala. 308, June 1857. "Mrs. Pinkston made an agreement with her . . husband, in 1839 or 1840, that she would defray all their family expenses out of the earnings of herself and four domestic servants, if he would allow her to retain the surplus"

*Godfrey (a slave) v. State,* 31 Ala. 323, January 1858. [324] "indicted for the murder of . . Lawrence Gomez [four years and eleven months old], whose nurse he was; . . [a witness] 'testified . . that he was cut on . . the head, three cuts, and a bruise as if with the head of a hatchet; . . defendant had said an Indian had done it; . . they hunted for Indians, but could not find any; . . Godfrey . . on the day before [the child was killed] . . was flying a kite, . . the child tried to take the string; Godfrey threw brick-bats at him, and knocked him down; and witness . . made him go off. Godfrey said, he would kill him any way. . . [325] Defendant is . . "heap smarter than boys of twelve years generally are." . . On the day of the killing, in the evening, [that] Godfrey said, that he had killed Lawrence because he had broken his kite, and he would do it again if they did not hang him. . . [326] Mrs. Cox testified, that she . . sold him to . . the grandmother of the deceased, about one year ago; that he is ten or eleven years of age in July, 1857; that he was the nurse of her child; that she never saw anything unkind from him to the child; and that he did not seem to be very smart, but about as boys usually are.'" [329] "The judgment of the city court is affirmed, and its sentence must be executed."

*Huey v. State,* 31 Ala. 349, January 1858. "during Christmas week, 1856, he saw a slave . . going by night into the defendant's grocery, and into the back room . . had some article in his hand, which he supposed to be a handsaw; . . saw . . slave come out . . and found a bottle of whiskey in the pocket of his pantaloons." Judgment affirmed.

*Brown v. State,* 31 Ala. 353, January 1858. [354] "The stranger . . drank [whiskey] out of the bottle, and also a negro he had with him;"

*McConeghy v. McCaw,* 31 Ala. 447, January 1858. [448] "1850 . . McConeghy went to South Carolina . . recovered from . . executors . . four slaves, three of whom he brought with him to Alabama . . the fourth . . he did not bring, being of no value."

*Governor v. Pearce,* 31 Ala. 465, January 1858. "action . . against . . sheriff . . and the sureties on his official bond; . . [466] 'slave . . was apprehended by . . an acting justice of the peace . . on [Sunday] the 16th January, 1853, between . . 9 and 10 o'clock, P.M., . . and immediately taken by him to the . . jail . . and delivered to the jailor, in the presence of the sheriff, as a runaway; . . declared . . that he delivered him as a justice of the peace, and upon his decision, as such justice, that the slave was a runaway, . . that the sheriff and jailor . . kept him . . in one of the cells . . until the Tuesday morning following, when he was delivered to . . overseer [of his owner]; that the weather was very cold . . that the slave was only furnished with one blanket and part of another, both very much worn, very thin, and of an inferior quality, and, in conse-

quence . . was badly frost-bitten in his feet, . . and his value lessened by several hundred dollars. . . that said justice made no order in writing for the commitment' "

Held: [467] "There was no breach of the sheriff's bond, . . [468] The jurisdictional fact is the carrying of the slave before a justice . . as a runaway.[1] . . It . . can not be supplied by the intendment of the justice, that he, having apprehended the slave, had carried him before himself as a judicial officer." [A. J. Walker, J.]

*Dargan v. Mayor,* 31 Ala. 469, January 1858. [470] "The plaintiff claims . . damages . . for the . . destruction of . . Henry, of the value of $1,500, . . killed . . by the . . agents of the defendants, . . [He] was found by . . the city guard . . at about 12 o'clock [midnight] . . on the premises of . . Smith [[471] 'with three other slaves'] . . without any written permission . . was in fact liable to be seized . . by virtue of . . city ordinance, . . But . . guard did . . [471] so . . negligently conduct themselves, that . . slave . . was . . wounded, and . . died" Held: [474] "the corporation . . is irresponsible"

*Intendant and Town Council v. Pippin,* 31 Ala. 542, January 1858. [543] "This agreement . . witnessed, that . . corporation has this day hired of . . Pippin his negro boy Hardy, for the purpose of boring . . an artesian well; which said boy . . Pippin guaranties to be . . skilful in the prosecution of works of that kind. The . . corporation agrees to pay . . Pippin, for the services of said boy, . . $100 per month, payable monthly, and to furnish him with food and lodging only; reserving the right to dismiss said boy . . at the expiration of any month, and to make deduction for [his] sickness or absence . . Pippin . . agrees to furnish all the . . apparatus . . but the . . corporation agrees to keep [them] . . in . . repair . . 13th December, 1854." Pippin claimed $3,500 [544] "due on the 1st April, 1857, for the hire of negro man Hardy, . . with interest" [545] "defendants say, that . . plaintiff, during two months . . interfered with . . Hardy, . . took him under his . . own management; and so unskillfully prosecuted . . said work . . that no progress whatever was made" Judgment for Pippin affirmed.

*Bloodgood v. Grasey,* 31 Ala. 575, January 1858. "petition for freedom, under section 2049 of the Code, by Grasey and her children, . . claimed . . under a deed of manumission from Josias W. Dallam . . executed [March 13, 1787,] in Maryland . . 'I . . do hereby declare free . . Cromwell, to be free at the expiration of too [*sic*] years; Malborough [*sic*], at the expiration of four . . Orange, at the expiration of five . . [576] Lemon, at the expiration of eleven . . Hannah, at the expiration of thirteen . . Nance, at the expiration of fifteen . . Sook, at the expiration of seventeen years . . All the children, or children's children, which may descend from said negroes, and born in slavery from the date hereof, shall be free at twenty-three years of age. . . Attest: John Archer.' . . Grasey was the daughter of . . Matilda, . . the daughter of Hannah . .

[1] Clay's *Digest,* p. 541, sect. 14.

[578] the defendants objected . . 'that said deed was not evidenced by two witnesses, as required by . . Maryland statute of 1752;' and, 'to show the judicial construction of said act by the courts of Maryland,' read . . Negro James *v.* Gaither,[1] . . the court overruled the objection, . . The petitioners, having adduced evidence . . that Grasey . . was born about . . 1820, was run off from Kentucky by a son of Mrs. Molly Townsend, against whom Matilda had previously instituted a suit for her freedom, and that the defendants in this suit claimed by purchase under said Townsend,—offered in evidence a certified transcript of the Kentucky suit, . . 1831 . . decided in favor of the petitioner. The defendants objected . . overruled"

Judgment reversed and the cause remanded: I. [586] "The law [of 1752] . . was construed by the court of appeals . . of Maryland; in 1807, in the case of negro James *v.* Gaither, . . [587] The proposition that one subscribing witness was not sufficient . . must be regarded as decided by the court. . . [588] It is true, that the Maryland decision . . was made about twenty years after the execution of the deed, and about three years after Matilda . . had been carried to Kentucky; but these facts do not detract from the weight of the decision as evidence in the case. . . [II.] [591] As Grasey would not have been estopped by the judgment [of the Kentucky court] . . if adverse to her mother, so she cannot avail herself of the contrary judgment as an estoppel in her favor. . . It results . . that . . the petitioners are slaves."[2] [A. J. Walker, J.]

*Reynolds v. Crook,* 31 Ala. 634, January 1858. [636] "execution . . was levied on . . [637] four women and eight children"

*Roberts v. Fleming,* 31 Ala. 683, January 1858. [685] "Dr. Connor testified to his examination of the slave . . about six weeks after plaintiff's purchase of her [in 1853 for $1000], . . 'Were I not a medical man, I would not have her, as the medical bill for attention to her would exceed the profit she could render her owner.'"

*Thompson v. Drake,* 32 Ala. 99, January 1858. [101] "The plaintiff proved, that an agreement was made . . between his wife and defendant . . that the latter 'should pursue the plaintiff, and if he succeeded in obtaining the negroes, he should have one half of them for his trouble; . . [105] that the defendant went to Mississippi, took possession of the negroes by force, and then, in the night time, entered plaintiff's house . . and forced him, by cocking a pistol, and by threats of wounding, . . and of death, to go with defendant, who also had said negroes in

[1] 2 Har. and J. 176.

[2] But the Maryland act of 1810, to which James *v.* Gaither (2 Leigh 307) "probably gave occasion," cured such a defect in "any deed heretofore executed for . . manumission . . acknowledged and recorded" saving the rights of *bona fide* purchasers before the passage of the act. If this act had been invoked in favor of Grasey, one of the "children's children," emancipated by the "cured" deed, she might have secured her freedom, for she was not born till 1820, so that no rights of any bona fide purchaser could have been infringed. Ed.

company, to Florence, where the plaintiff signed the deed [conveying the negroes, in trust, for the separate use of his wife, during her life].' "

*Hall v. Goodson,* 32 Ala. 277, January 1858. Hall hired his slave to defendant [278] " for the year 1855, at the price of $120; and the injuries . . were inflicted . . in June . . There is no direct proof . . that the injuries were inflicted by the defendant; but . . on the slave being caught by . . Carpenter and others as a runaway, and delivered to the defendant bound, ' he took the slave away, saying that he intended to whip him with a cowhide (one of the largest kind) which he had in his hand;' that the slave again ran away, and returned to his master, some two weeks afterwards; . . bore on his back, arms and legs, the marks of a severe whipping; and that some of the scars and wales [[279] ' two or three inches long, and as large as his finger,'] were plainly visible . . for a year after . . that the plaintiff retained the possession . . for the remainder of the year . . ' that the market value . . was permanently injured, from $100 to $300, by reason of the scars . . though his capacity for labor was only impaired for a month or two;' . . before the commencement of this suit, the defendant paid in full . . the note . . for the year's hire; . . [279] The defendant introduced a witness [Carpenter] who testified, ' that he arrested said slave as a runaway, a short time before June, 1855, on a plantation where he was acting as overseer; . . that the slave ran away from him when arrested, and, when he was about to overtake him, seized a pine-knot, and attempted to strike witness with it.' The plaintiff objected . . overruled . . The bill of exceptions says, ' there was no evidence that this fact was communicated to the defendant.' "

Judgment in favor of the defendant reversed and the cause remanded: I. [284] " the receipt of the full hire cannot be regarded as a waiver of the owner's right to maintain the action of trespass. . . [II.] [287] an unknown offense by the slave could not justify excessive whipping, or mitigate the damages caused by it." [Stone, J.]

*Ward v. Reynolds,* 32 Ala. 384, January 1858. [385] " action . . founded on a . . note for $800, dated . . 1847, . . The defendants pleaded . . fraud . . It was proved . . that the note was given for . . a slave sold by plaintiff, through an agent, to . . Ward; that . . agent, ' both before the sale, and while negotiating . . informed . . Ward that . . slave was a negro of excellent character, . . giving as the only reason why he was sold that there had been a disturbance between him and another negro;' that the slave was, prior to the sale, in the habit of running away, and was sold on that account; and that, after remaining in Ward's possession about two months . . he ran away without cause, and had never been regained. . . [387] evidence . . that, if the character of . . slave as a runaway had been known at the time of the sale . . he would not have been worth . . the price for which he was sold, by from two to four hundred dollars." [390] " Bill . . was a good hand; . . [391] active, able, and willing; with this exception, that he would occasionally run away;" [387] " The court charged the jury . . they must find a

verdict for the plaintiff, for the real market value, his character . . considered," Affirmed.

*Cox v. McKinney,* 32 Ala. 461, January 1858. [463] "In 1833 . . [Cox] removed [from South Carolina] to . . Alabama, 'and brought . . slaves of . . father's estate,'"

*McAllister's Executor v. Thompson,* 32 Ala. 497, January 1858. "William McAllister . . died in . . 1853, leaving a will . . admitted to probate . . August, 1854, . . [He] bequeathed all his property . . to his wife for life; directed his executor, after the death of his wife, to transport all his slaves to Liberia, so soon as their labor had created a fund sufficient for that purpose; . . The widow dissented from the will, . . March, 1856, . . the testator's sister and sole heir-at-law . . filed her petition in . . [the probate] court 'for a distribution of the slaves' . . the court held—'1st, that the direction to the executor to remove the slaves to Liberia was void; . . [498] that the widow's dissent . . left an estate not disposed of . . to which the heir-at-law was entitled'" Held: "1st, that the probate court had no jurisdiction . . 2d, that the executor has no right to appeal . . until after a final settlement of the estate."

*Bob (a slave) v. State,* 32 Ala. 560, June 1858. "indicted for an assault with intent to kill . . a white person. . . March term, 1857, . . a mistrial . . A second trial was had at the March term, 1858, . . verdict of guilty, and consequent conviction and sentence of death." Bill of exceptions: "Curtis . . stated that . . January, 1857, . . he was . . acting as overseer for his father; . . informed his father's negroes that he was going to the house of Judge Joshua Morse, . . between 8 and 9 o'clock at night, . . he started for home . . some person . . concealed in the bushes, shot him with squirrel shot . . in . . face; . . two or three hours after . . negro dogs were carried to the place . . they immediately trailed off in the direction of . . [Curtis's] house, where . . tracks . . were plainly discoverable. On the following morning . . Bob and other negro men on the place were called up, and the size of their feet and shoes compared with the measure which had been taken. After nearly all . . had been called up, and a comparison . . made . . [562] Bob was called into his master's house, (it being now evening,) . . in the presence of his master and mistress, with several of the neighbors . . when the measure of the said tracks was applied to the shoes which he was . . wearing. . . it fit in every particular. Several . . exclaimed, that they were the shoes that made the tracks; . . the prisoner made no reply. . . the court permitted [these exclamations] . . to go to the jury in connection with the evidence that the prisoner made no reply, . . Soon after it was discovered that the shoes . . corresponded . . with the measurement . . Bob was taken out by Joshua Morse, a son-in-law of his master, and some of the other neighbors, and severely whipped, and afterwards salted, by pouring the salt upon the wounds made by the blows inflicted. On the next day, Bob was confined in the jail . . McGehee [the jailer] . . said, 'Bob, you are a fool; you had better confess your guilt; every body around here believes you are guilty; and you ought to know that it

would be better for you to confess, and for your master to have your value in his pocket [[567] "that his master would sell him"], than for you to have your neck broke, and he have no money for you.' . . [563] Bob made a confession of guilt, stating all the circumstances. A day or two after . . Joshua Morse and . . the sheriff, both of whom were present at the whipping . . on the day after . . Curtis was shot, and were active agents in all the proceedings . . entered the prison, and approached Bob, with a leather strap made for the purpose of whipping negroes; . . ordered Bob to pull off his shirt and lie down. Bob thereupon immediately confessed that he was guilty . . Morse told him he wanted to hear none of his confessions, and then whipped him severely, without giving him any explanation as to the cause. At the trial at the March term, 1857, which resulted in a mistrial, all the . . confessions . . were excluded from the jury by the court. . . [In September 1857] in the presence of Frisby, Steadham or Macdonald, when all . . were standing at the window of Bob's cell, asked him, 'What in the h—l are you doing in here?' to which Bob replied, 'I was put in here for shooting my young master.' He was then asked if he did it, and replied, 'I did;' . . On the next morning, the same three men . . on making inquiry of him as to his guilt, he denied that he was guilty . . [564] The court [in 1858] permitted the confessions made in Frisby's presence to go to the jury . . and his denial of his guilt"

Judgment reversed and the cause remanded: I. [566] "the court erred in the admission of the exclamation, and of the slave's silence." [565] "His social relation to his master and mistress, and to the other white persons present, forbidding the freedom of speech allowed among equals, and making a contradiction in most cases an insolence, rendered it unnatural, and, perhaps, improper . . for him to interpose a denial . . [II.] [568] the court erred in the admission of the confessions" [A. J. Walker, J.]

*Hooper v. Hooper,* 32 Ala. 669, June 1858. Will of John Hooper, who died in 1848: "3. It is my wish, that my executor [my brother, Zachariah,] . . take Harriet, a yellow woman, and her six children . . [670] to . . Ohio, and free them there; settle them comfortably in the country, (not in a city,) and . . my executor is requested to place in some solvent bank in Ohio . . ten thousand dollars, . . that Harriet and her six children are to be supported from the interest . . the principle [*sic*] is not to be used, unless Harriet marries—then she may draw her proportional part . . and the same may be done with each child's proportional part, as they become of age or marry. 4. It is my wish, that Harriet and her six children have all my beds and bed-clothing, and my set of knives and forks. 5. My executor is requested to pay all the expenses of conveying and settling . . before a division [of my estate] takes place; after which, I wish him to give to his oldest daughter . . a little girl, about three years old, named Alice. Leathy and Clary . . to my brother, Henry . . John is to be sold . . Dick is to be sold, if thirteen hundred dollars can be obtained for him, in order that he may remain in

. . Alabama. My property is to be equally divided between my brothers and sisters, with the exception of . . Zachariah . . I will him a double interest . . provided he carries my will into execution; and if not, he is to have but a fourth of one share." A bill was filed in 1853 by Harriet, "a free woman of color," and her six children, which [669] "sought the recovery of . . [the] pecuniary legacy . . and the specific performance . . of the trusts . . [670] alleged, that the complainants were 'resident citizens . . in . . Ohio;' . . that . . February, 1850, 'final settlement was made . . of the estate' . . that the . . brothers and sisters of the testator 'had consented in writing . . [671] that complainants . . should forever . . be free—that . . executor should retain for their use . . out of each of . . distributive shares . . three hundred dollars, which being deducted . . and . . twelve hundred dollars being allowed to the executor as his commissions, a balance of $22,301 59 was left in the hands of the executor,' . . distributed . . 'and . . executor . . discharged;' . . that . . eighteen hundred dollars . . was all that they had ever received . . The executor answered . . that . . [the brothers and sisters of the testator] all agreed, 'as a compromise of the whole matter, and as a gratuity on their part,' that . . three hundred dollars should be retained . . out of each of their legacies, to be expended in the removal and settlement . . in Ohio; that this was accepted by . . Hannah, in behalf of herself and her children, in full satisfaction of their claims . . if any they had; . . that respondent . . [672] carried the complainants to Ohio ['about . . March, 1850'], bought for them a house and lot . . and deposited the balance of the funds . . to their credit in a bank; . . The chancellor . . held . . that the complainants were entitled to recover the pecuniary legacy"

Decree reversed: [673] "the owner's executor . . will . . [not] be compelled by the court, *at the instance . . of the slave,* to carry him to the State to which the will directs him to be carried for . . emancipation. The court of chancery will recognize *the authority* of the executor to execute the trust, and, if by *his bill he submits the administration* to that court, it might possess the power to enforce its execution,[1] as a condition of giving its aid . . [674] the complainants . . did not obtain their freedom *under the will* . . [675] Their removal . . was . . by virtue of the . . agreement made between the free white legatees; and . . the former executor acted . . as the mere agent . . of the parties to that agreement. . . And the terms of that agreement do not give any support to the claim to the $10,000," [Rice, C. J.]

*Deens v. Dunklin,* 33 Ala. 47, June 1858. [48] "note for $300 . . for the hire of . . Abe and Jake, for the year 1855 . . to cut logs, and to work about a steam saw-mill . . About one month after . . Abe was killed by the machinery . . [49] The plaintiff brought an action . . to recover the value . . verdict for the defendants,"

[1] Judge Goldthwaite declared in 1855 that if an executor "was so regardless of . . [his] duties . . as to fail in the faithful execution [of such a will] . . the powers of the court of chancery . . are amply sufficient to enforce it;" Abercrombie's Executor *v.* Abercrombie's Heirs, p. 206, *supra.*

*James v. County,* 33 Ala. 51, June 1858. "seven slaves . . were apportioned to work on a public road,"

*Myers v. Myers,* 33 Ala. 85, June 1858. "he owned [in 1853] about one hundred and sixty slaves . . [86] which were distributed and worked on his three plantations;"

*Pool's Heirs v. Pool's Executor,* 33 Ala. 145, June 1858. [146] "The testator's will directed his executor to carry certain slaves (to-wit, Harriet, a mulatto woman, and several children of another woman, who were principally raised by her, and whose father the testator appears to have been) to Ohio, for . . emancipation, and to invest in a bank for their benefit the entire proceeds arising from the sale of all his [other] property. . . 'that Pool became jealous of a negro man who was running after one of his women, . . and declared his intention to shoot him; that Canty went to Harriet, and requested her to get Pool to abandon the idea; . . nothing more [heard] about the matter. . . that Harriet was the reputed daughter'" of another white man. See same *v.* same, p. 234, *infra.*

*Gunn v. Samuel,* 33 Ala. 201, June 1858. Dr. Gunn [202] "was called in to attend Mrs. Samuel, her children and slaves,"

*Hassell v. Hamilton,* 33 Ala. 280, June 1858. [281] "The plaintiff proved, that the girl . . [282] was born in 1842; that she . . was in the possession of [plaintiff's husband] . . in Tennessee in 1848, and, in . . that year, was run off by him to . . Alabama,"

*Henderson v. Simmons,* 33 Ala. 291, June 1858. [296] "sums paid . . to an agent, between . . 1852, and . . 1854. . . 'going to lower end of county, and bringing up negroes to hire out, $12.00; . . furnishing wagon, and hauling negroes . . $3.00;'"

*Hatcher v. Clifton,* 33 Ala. 301, June 1858. [302] "1848. Petition to sell slaves. . . 'that . . intestate departed this life, owning . . no real estate,—his estate consisting of seventeen negroes, with but little other effects; . . largely in debt . . six . . were sold by the sheriff, . . that there are large . . debts . . unpaid,'" Ordered that the administrator have leave to sell the slaves.

*Matthews v. Robinson,* 33 Ala. 320, June 1858. A slave was sold for $1600 in 1854.

*Dupree v. State,* 33 Ala. 380, January 1859. [381] "Dupree . . was convicted of manslaughter in the first degree, . . 'Witness . . heard the cries of a female slave of the prisoner's as if receiving severe punishment. . . heard the sound of blows, like that of a whip . . saw the prisoner coming . . with his gun, and running down towards the cabins ["on the prisoner's place"]from which the noise . . proceeded. . . [382] This negro woman [Clara] and her children lived in one of them.'" Dupree fired twice. [381] "Smith . . ran out from behind the cabin, . . fell . . dead . . [382] Smith . . that morning . . appeared to have been drinking; . . [A few days before,] deceased told [another witness] . . that

the prisoner's folks had been killing his chickens, and that he intended to kill the prisoner's chickens, and that, if the prisoner said a word about it, he would cut his throat; . . 'he would kill him anyhow;' . . [383] witness told [Dupree.] . . [Other] threats were communicated . . before the killing. . . excluded . . [384] The defendant offered three witnesses, aged nine, eleven, and thirteen years, . . the children of the woman Clara; and proposed to prove by them, that . . the killing . . was done in self-defense, . . The solicitor then stated . . that these boys . . were not competent witnesses, . . The children were produced, and appeared to be white. . . [Witnesses] testified, that . . Clara was the mother of the . . children by defendant, a white man; . . that her mother . . Anastasia . . was a dark griffe . . [385] her nose flat, and her hair kinky. . . that Jean Seymour [Clara's grandmother] was a griffe, and had white blood in her . . that Anastasia was the daughter of a white man, Simon Andre . . who always lived with Jean . . called man and wife in Spanish times, . . that Anastasia's only husband was a white man, named Chastang . . the father of Clara . . that these colored women were always free, and owned slaves and other property; and that they were treated as husbands and wives under the Spanish laws. . . the court decided that the witnesses were not competent, . . [386] Smith . . [was] an escaped convict"

Judgment reversed and the cause remanded: I. [387] "Such threats were admissible . . [II.] The children of Clara were incompetent witnesses."[1]

*Henry (a slave) v. State,* 33 Ala. 389, January 1859. Held: [403] "Under an indictment which charges 'a slave' with the murder of 'a white person,' the defendant may be convicted of voluntary manslaughter;" [402] "we are forced to the conclusion, that the ruling . . in . . [403] Bob *v.* The State[2] [[401] 'that under an indictment for the murder of a white person, a slave cannot be convicted of involuntary manslaughter' nor, consequently, of voluntary] . . is unsound in principle, and not reconcilable with the true . . meaning of section 3601 of the Code. . . [We adhere] to the rule as settled in the State *v.* Stephens," [3] [R. W. Walker, J.] Judgment reversed and the cause remanded. See same *v.* same, p. 241, *infra.*

*Molett v. State,* 33 Ala. 408, January 1859. Indictment for failure to keep a white person on plantation. [409] "witnesses . . testified . . that between the 1st March and the 1st June, 1856, they were frequently on the plantation . . saw ten or fifteen slaves . . who worked and lived on the place; and that no white person resided on the place, . . [410] 'The defendant then proved, that the place . . was part of a continuous body of land belonging to him, . . that he had several negro-quarters, and five different plantations, . . on said lands at convenient distances from each other, and some of them within a mile of his resi-

[1] Code, sect. 2276.
[2] P. 210, *supra.*
[3] P. 169, *supra.*

dence; that he acted as ["a vigilant"] overseer . . that he was frequently on the place mentioned . . superintending . . in the day-time, and, at night, returning to his residence four miles distant; . . no . . other white agent . . that he was, during . . 1856 and 1857, at no time absent . . so much as a week at a time. . . proved, however, that . . he remained on each [plantation] but a short time'" Held: [412] "The fact that the intervening land belonged to the defendant, neither takes the case out of the letter of the statute,[1] nor tends to avoid the evils which the statute aims to prevent."

*Oxford v. State,* 33 Ala. 416, January 1859. [417] "the testimony tended to show, that the bacon was stolen . . by a negro boy, . . the property of . . Sellers, from whom the bacon was stolen; that it was delivered . . to the defendant, and concealed by her."

*Evans v. Kittrell,* 33 Ala. 449, January 1859. Bill for specific performance of a contract. [450] "This will certify, that I have . . bought of Dr. P. W. Kittrell ['about to remove to Texas'] his negro man Carney, a blacksmith . . for . . $1250. Now, for the protection of . . Carney, and in order to carry out the contract formerly existing between Dr. Kittrell . . and said boy, respecting his obtaining freedom, I do hereby obligate . . myself to the said boy, and to . . Kittrell, as soon as the . . boy may, by himself or his next friend, refund to me . . $1250, with ten per cent. interest . . I will release [him] . . from slavery; and . . in the event of my death before . . Kittrell, . . boy shall revert to . . Kittrell, on condition that he shall pay . . to my legal representatives the above . . sum . . or any part . . unpaid . . It is also . . agreed, that after deducting all . . proper charges against said boy, I am to allow him the proceeds of his labor in the shop, to go to his credit on the above sum. December 16, 1848." [451] "The master [in chancery] having reported . . that the defendant had been more than repaid . . the chancellor . . ordered the defendant, by . . September [1857] . . 'to remove . . Carney . . to some non-slaveholding State or country, and there emancipate . . him.'"

Decree reversed and the bill dismissed: [452] "The contract . . contains no term . . which looks beyond . . Alabama for its performance . . [454] void" [453] "We feel it our duty to overrule [Prater *v.* Darby][2] . . so far as it conflicts with our former decisions,[3] . . the error of the opinion in . . Prater *v.* Darby is shown by the decree which the chancellor was constrained to make in this case, . . To avoid the imputation of illegality in the contract of Mr. Evans, . . the chancellor was forced to engraft . . a term, not inserted by the parties, . . to carry the slave out of this State, to a place where he could enjoy freedom," [Stone, J.]

*Holloway v. Cotten,* 33 Ala. 529, January 1859. [530] "a witness . . testified . . 'In March, 1854, . . two months after the sale . . Maria

[1] Session Acts, 1855-1856, p. 18.
[2] P. 195, *supra.*
[3] Pp. 143, 155, 159, 166, 167, and 177, *supra.*

was engaged in working on the ditches, clearing [them] out . . with a weeding-hoe. . . her eyes were rolling about in her head, and her breath was very short. . . she said, " that she was sick; that it would soon wear off; and that she had been that way, off and on, for the last year or two." . . [531] about the middle of March, 1854, said slave was badly burned . . by her clothes catching fire; ten or fifteen days afterwards . . died from the effects ' " " evidence of physicians . . that her womb was greatly enlarged, and had a large tumor on it; that two of them made a post mortem examination . . if she had been sound, [she] would have been worth $400,"

*Nesbitt v. Pearson,* 33 Ala. 668, January 1859. [669] " On the 8th January, 1852, I [Watson] hired to . . Nesbitt . . my negro man . . Joseph, a hammer-man, for twelve months . . for which I hold his note for $265. Now . . I . . agree to sell [him] . . at the expiration of his time, for $1000, including his hire, should . . Nesbitt conclude to take the boy after trying him." During the year Watson sold Nesbitt's note and the negro to Pearson who [670] " 4th January, 1853, . . claimed the slave . . [but] agreed to release all right . . in consideration of a promise by . . Watson to pay him $50; that Nesbitt then proposed to pay . . Watson the [$1000] . . and $150 in iron, (or . . one ton of iron,) if . . Watson would agree to let him have the negro; . . agreed . . [to] meet . . five or six days thereafter, when . . Watson should receive . . $1000, should give up Nesbitt's . . note for the hire, and should execute . . bill of sale . . Watson failed to appear, . . [671] Pearson and . . Watson, a few days after said term of hiring expired, went upon the defendant's premises, in his absence, and . . took away said slave; . . in . . 1854 . . [Smith] was authorized by defendant [Nesbitt] to give $1100 . . including the note here sued on; . . Pearson refused . . and defendant then authorized him . . to buy the slave on such terms as he could, . . bought . . at . . $1100, . . immediately carried the slave to the iron-works where defendant was engaged in business," Stone, J.: [674] " Under strict rules, it may be that the agreement . . is but an offer by Watson to sell, and not a contract until accepted by Nesbitt."

*Belcher v. Sanders,* 34 Ala. 9, January 1859. [10] " Mrs. Belcher lost her mother in infancy, and was . . placed under the charge of a negro woman named Lizzy . . by whom she was nursed and tended with affectionate care. The two children of Lizzy . . thus became the playmates . . of their young mistress, who conceived a strong attachment towards them and their mother. Her father . . declared that the two negro girls should belong to his . . daughter, and should never be separated from her. . . bequeathed said negroes to her; . . [12] are [now] worth about $2500."

*Bennett v. Bennett,* 34 Ala. 53, January 1859. [54] " $300 overseer's wages for . . 1855, . . an account of . . Smith for medical services rendered by him to the . . slaves between February and December, 1855; . . also, an account of $126 50 to Clark and Longhorne, physicians, for medicines and medical services furnished and rendered by

them . . between January and November, 1855, for the negroes on . . plantation;"

*Buckley v. Cunningham,* 34 Ala. 69, January 1859. "I understood that it became necessary to favor him [the slave] from the most laborious parts of his duties, and that he was put under the care of a physician at Mobile;" "I understood he was sent to Dr. Nott's hospital."

*Walthall v. Rives,* 34 Ala. 91, January 1859. [92] "conveyed . . four hundred and ninety acres, together with about sixty negroes,"

*Whitley v. Murray,* 34 Ala. 155, January 1859. [156] "The defendant [Murray] proved . . the written contract . . by which . . [Whitley, the plaintiff,] . . agreed to serve him in the capacity of an overseer, from the 1st January, 1858, to the 1st January, 1859, 'for . . [157] $400 in cash, 300 lbs. of bacon, 50 lbs. of brown sugar, and 25 lbs. of coffee, under the following conditions: . . Whitley is never to leave . . plantation on business at any time during my absence from the State, and only with my consent when I am on the plantation; he is never to drink ardent spirits to intoxication, while in my employ; he is not to maltreat any of my slaves, . . and failing to comply fully . . Whitley is to leave my employ, at my discretion, without the least renumeration for the time he may have served me.'"

*Thomason v. Dill,* 34 Ala. 175, January 1859. See same *v.* same, p. 216, *supra.*

*Lucas v. Daniels,* 34 Ala. 188, January 1859. [189] "Caroline, . . the mother of Manuel and Perry, belonged to . . Gardner, in South Carolina, in 1820; and in 1821, on plaintiff's marriage with . . a daughter . . went into plaintiff's possession . . In 1825 . . [they] removed . . to . . Alabama, and brought . . negro woman . . 1830, . . Gardner . . conveyed . . Caroline . . to . . trustee . . 'for the . . benefit of [his daughter] . . and her heirs' . . [190] Caroline, with her two children, . . born after the execution of the deed . . on . . [plaintiff's] removal to Mississippi [in 1851] . . were carried with him, . . and in 1856, . . were taken from his possession . . by stealth or violence, and were in the defendant's possession . . he having . . married one of the plaintiff's daughters"

*Heath v. State,* 34 Ala. 250, June 1859. [251] "The indictment . . charged, that . . Heath 'did . . resist William Chavis, a constable . . in attempting to . . execute a . . writ of arrest,' . . the State . . offered . . Chavis as a witness . . The defendant objected to the competency . . and showed to the court, that the great-grandfather and great-grandmother of . . Chavis were . . each . . the progeny of a full-blooded negro and a white person; . . the court held . . Chavis to be a competent witness, . . [252] The defendant proved, that the ground of his resistance . . was that . . [Chavis,] being a mulatto, had no right to exercise the office of constable; . . 'some of the witnesses testifying, also, that the . . great-grandparents . . claimed to be of Indian, and not of negro blood.'"

Judgment reversed and the cause remanded: Chavis was not a competent witness against a white man. See same *v.* same, p. 241, *infra.*

*Hudson v. State,* 34 Ala. 253, June 1859. The indictment charged that Hudson and Carlisle "killed a negro man slave, the property of . . Fuller, by shooting him" The jury found "Carlisle not guilty, and . . Hudson guilty of manslaughter in the second degree, and assess a fine . . of $500, and that he be imprisoned in the county jail six months."

Judgment thereon affirmed: [254] "when a slave is unlawfully deprived of life, he is . . a reasonable creature in being, in whose homicide either a white person or a slave may commit the crime of murder or manslaughter." [Stone, J.]

*Farrelly v. Maria Louisa* (*woman of color*), 34 Ala. 284, June 1859. "a statutory suit for freedom,[1] . . [285] Mrs. Thompson . . testified . . that she became acquainted with the petitioner's mother, in New Orleans, . . a woman of yellow complexion, and . . always acted as a free person; that she died in 1839, leaving the petitioner an infant about one year old. . . her father, a white man, placed her in the care of a Miss Richards in New Orleans; that she was afterwards . . recognized in Mobile by several persons who had known her in New Orleans; that from 1844-5 to 1854-5, she was in the possession of . . Burns, who claimed her as a slave, . . that in 1855, or soon afterwards, . . Summer, of New Orleans, at the instance of some persons in Mobile, who had heard that the petitioner was free, came . . for her, and carried her . . to New Orleans. Some . . witnesses . . testified, that her mother seemed to be of Indian or Mexican descent, and had the characteristic features of an Indian Mexican or Mexican Indian . . [286] the defendant . . offered the deposition of . . Summer . . that the petitioner had belonged to Miss Richards, from whom he purchased her, and that he afterwards sold 'his interest' in her to the defendant. . . The court charged the jury . . 'that if . . the petitioner's mother was an Indian or Mexican, this would remove the presumption of slavery arising from color,'" Judgment for the petitioner reversed and the cause remanded: [287] "We cannot agree that the provisions of section 2049 of the Code are confined to persons of African blood."

*Rand v. Oxford,* 34 Ala. 474, June 1859. In 1854 a woman slave was sold to Rand for $999. He "tried to make her work in his plantation" "tendered her back [because of unsoundness.] . . refused . . [475] [He then] told the overseer to let her work or not, just as she pleased . . doing . . very little work—about equal to a half hand." The vendor [474] "brought suit . . on the note given for the purchase-money; . . the jury found in favor of the defendant, . . the plaintiff shortly after demanded the slave of the defendant, who gave her up to him." Held: [477] "When . . Rand . . allowed her to work at pleasure . . it cannot be deemed a conversion."

[1] Code, sect. 2049.

*Burns v. Mayor,* 34 Ala. 485, June 1859. Mrs. Burns [486] "was prosecuted . . for the violation of a municipal ordinance [of Mobile],[1] and was fined $50." Affirmed.

*Pierce v. Wilson,* 34 Ala. 596, June 1859. [597] "represented . . that an ordinary negro slave could, with said loom, weave good, substantial, plain cloth, one yard wide, at the rate of three yards per hour, or thirty yards per day; . . [599] [but] loom . . entirely failed to meet . . representations;"

*Huckebee v. Andrews,* 34 Ala. 646, June 1859. [649] "$4,900, the value of seven average working hands [in 1851]."

*Walker v. McCoy,* 34 Ala. 659, June 1859. [660] "that McGibbony pursued [McCoy] . . to Atlanta . . and there procured his arrest and the recapture of the negro [girl], and that . . [her owner] paid McGibbony $400 for said services."

*Athey v. Olive,* 34 Ala. 711, June 1859. Action founded on a note. Matilda was sold by plaintiff to defendant in 1857, "at . . $1,100; . . a physician . . testified, that said slave, while she was neither insane nor an idiot, wanted ordinary sense; . . not worth more than five or six hundred dollars. . . [713] Matilda was pregnant at the time of the sale, . . delivered of a child . . three or four weeks afterwards; . . child lived only three or four weeks; but the defendant . . stated . . that he would have been satisfied if the child had lived; . . that . . the woman had worked on the defendant's farm . . and had cooked and washed for his family" Held: [714] "not . . a breach of the warranty that she is of sound mind."

*Pool's Heirs v. Pool's Executor,* 35 Ala. 12, June 1859. See same *v.* same, p. 228, *supra.* [14] "The contestants requested the court . . to charge the jury . . '1. That if they believe . . that the will was the result of Pool's attachment to . . Harriet as his mistress, then undue influence may be presumed . . from slight circumstances, . . 4. That if the jury believe . . that Pool made his will out of spite to his brothers and sisters, because they would not associate with him on account of his living in adulterous intercourse with negro women, . . this would be evidence for the jury to consider whether he was acting under such an insane delusion as to his brothers and sisters, as would render his will invalid. . . [17] 12. That if the entire will was made for the sole purpose of carrying out the bequest . . of freedom . . [it] is contrary to law and public policy in this State, and is void . . The refusal of these . . charges . . are . . assigned as error."

Judgment affirmed: [18] "We have not been able to find any statute or legislative policy, which prohibits the removal of slaves from Alabama. . . all attempts at testamentary emancipation, to take effect within . . Alabama, have been declared void. . . The attempt, however, which is manifest in Mr. Pool's will, rests on a very different principle." [Stone, J.]

[1] "That if . . any . . person shall sell, furnish, or give away, or permit any other person to sell, furnish, or give away, any spirituous . . liquors, to any slave . . without the written consent of the owner . . he . . shall . . incur a fine of fifty dollars."

*Bell v. Troy,* 35 Ala. 184, June 1859. [186] "action . . brought by . . [Dr.] Troy, . . ' claims . . damages sustained . . by the burning of his dwelling-house [February 1856] . . by Pleas . . the property of . . defendant. . . [187] grand jury did refuse to find a true bill against [Bell] . . [189] the plaintiff introduced . . Bird [his brother-in-law] as a witness . . [who] testified . . [190] that he knew an attempt was made to burn his [own] house in . . [March] 1856. . . that . . he said to Bell, "Your boy Pleas burned Dr. Troy's house, and he is the same damned rascal that set fire to mine; you know, when Lodor owned him, and he was charged with robbing, Lodor was allowed to carry him off, and now you must carry him out of the State;" that Bell replied, "The boy is a very valuable one, and pays me good wages regularly; but if I can sell him for a fair price, I am willing to do so;" . . that . . [Bird] obtained a warrant for the arrest of Pleas, . . [191] that he put an advertisement in a newspaper, about a week after . . "$100 is offered for the arrest of . . Pleas, . . charged with [setting fire to the premises of Dr. Troy and of Judge Bird] . . as well as . . robberies . . All persons harboring or secreting him, or assisting in carrying him beyond the reach of justice, will be prosecuted under the 3219th section of the . . [192] Code." (Signed by . . Troy and . . Bird.) . . that about two weeks after he had sued out the warrant . . Pleas was put in [jail by Bell;] . . and that, fearing the slave might be taken out . . without any legal authority . . [Bird] obtained a *mittimus* for . . [his] confinement . . that in April 1856, Pleas was brought before a justice of the peace . . charged with seven felonies, . . one for the burning of plaintiff's house; that he (witness) . . was . . prosecutor . . [193] witness . . stated, . . on cross-examination, that Dr. Troy's servants . . were careless, though not more so than slaves generally are; and that he had told plaintiff that the burning . . was the result of systematic carelessness. . . Taylor . . [194] once heard . . Bell say, when buying . . Lewis, . . "Some folks object to these smart negroes, but I would rather have one of them than three common field-hands. If I had one or two more like Lewis or Pleas, they would steal me rich in a short time." . . the remark was . . jestingly made . . [196] Haweth . . testified, that . . after Bird's house was set on fire . . he . . heard . . Bell saying, "That's right, damn 'em, burn 'em up." . . no one [near] . . except . . Bell and Pleas; . . [197] the defendant introduced . . as a witness . . housekeeper at . . hotel . . [She testified] that Pleas had a wife at the hotel, . . that she was awakened by the ringing of the bells, . . and heard the voice of a man whom she believed to be Pleas . . The defendant proposed to prove that, at the time this suit was commenced, . . Pleas had been indicted . . and the prosecution undetermined. . . objected . . as irrelevant. . . sustained ' " Reversed and remanded.

*Barker v. Coleman,* 35 Ala. 221, June 1859. "to recover damages for a breach of warranty of the soundness of . . Henry . . sold . . 1857, at . . $1000. . . [222] ' appraised as unsound; . . sold at the administrator's sale [in 1856] for $500.' . . ' Marson . . hired . . slave, in February or

March, 1858, to work on the grading of a railroad by digging dirt and rolling with a wheel-barrow; that the weather was wet and cold, and the slave was much exposed; . . slave . . [223] soon gave out . . and he returned him . . Dr. Ulmer . . attended the slave . . for about ten days . . " he was of very little value, though some dunces might give $500 for him." . . The defendant . . introduced . . a witness, who testified . . [224] that . . he . . one day [in 1856] rolled logs . . without complaining.' "

*Sellers v. Sellers,* 35 Ala. 235, June 1858. Will, 1852: [236] " that, in no event, except under very extraordinary circumstances, shall the principal, or capital stock of my property, my negroes, etc., be sold "

*Blackman v. Johnson,* 35 Ala. 252, June 1858. " action . . founded on the defendant's bill of exchange . . 1850 . . given . . for . . a slave . . sold [by Johnson] . . at . . $800; . . a warranty that the slave was ' sound . . venereal disease excepted.' . . ' that the first night Dr. Dunn was called in, they thought the boy would die; and that the boy called on Dr. Dunn to pray for him, and called on his master and mistress to pray for him, and prayed himself.' " " ' when again called in . . [Dr. Dunn told Blackman] that he could not cure the boy, and . . to carry him to Dr. Jones, of Tuskegee; that it was a bad case, and the knife would have to be used on him.' . . [254] the depositions of Drs. Jones and Howard . . who had performed a surgical operation on the slave for a stricture of the urethra, . . and stated . . ' that the boy told them the stricture was attempted to be burned out in Richmond.' . . excluded . . The defendants offered to prove . . ' that before the bill of sale . . was signed . . the plaintiff told . . Blackman, that the disease . . was an ordinary case of gonorrhœa; that the slave had just caught it, . . and that he then had medicine along with him that would cure it.' "

*Ingersoll v. Robinson,* 35 Ala. 292, June 1859. " The defendant . . says, that . . plaintiff was a silent partner of . . Horace King, a free negro; that said firm . . was indebted to defendant . . $1500 . . which he hereby offers to set off against the plaintiff's demand;"

*Morgan v. Morgan,* 35 Ala. 303, June 1859. [306] " $1350 . . the present value of . . negro,"

*Glawson v. Wiley,* 35 Ala. 328, June 1859. Glawson sold Phyllis in 1856. [329] " that Mrs. Glawson was sorry to part with her, and she and the children were crying in view of their separation; . . Mrs. Glawson told [witness] . . to ' take care of the girl, and not let her get wet, as she had been sick with scarlet fever;' " She died in 1857. " depositions of two . . physicians, who had made a post mortem examination . . and who testified to the chronic character of the disease which caused her death, and that scarlet fever was one of the exciting causes of said disease."

*Lewis (a slave) v. State,* 35 Ala. 380, January 1860. [381] " The indictment . . charged, that ' Lewis . . attempted to commit a rape on . . a white female;' . . ' proved that [after breakfast] she met . . Busby,

a young man who was living with Harless, . . that after going about three quarters of a mile beyond . . she saw a negro man . . thirty or forty yards from the road, who had no clothing except a shirt; . . [382] " Stop, gal, aint you going to stop? " that she then commenced running, and he ran . . after her for more than a mile, and then stopped; . . repeated [those words] . . many times, . . never nearer to her than ten steps; . . Harless . . testified, that he had hired the prisoner from his father, . . that . . [383] after ordinary breakfast, he directed . . Busby . . to take . . oxen to . . pasture . . after Busby had been gone long enough to have returned, he saw the prisoner at the house, watering horses . . Said witness was asked . . if he had not told . . Busby . . that he must swear . . that he saw the prisoner at the house after he . . returned; . . answered . . that he had not. . . asked . . if he had not said . . that he would acquit the prisoner, or would spend his father's estate; to which he answered, that he had not. . . Busby . . testified . . that he saw the prisoner, just after breakfast . . going . . in the direction of the road . . and he did not see him again until night; . . [384] The prisoner thereupon introduced the sworn testimony of this witness on the preliminary examination, . . " that he found the prisoner at Harless' house when he got back there." . . The prosecuting attorney . . asked . . why he had so sworn . . witness answered, " because . . Harless told him to swear it, and that he would whip him if he did not." . . a witness . . testified, that . . the general character of . . Harless . . for truth . . was good, and that . . he would believe him on oath . . excluded ' "

Judgment reversed and the cause remanded: I. the court erred in excluding [386] " testimony to sustain . . [Harless's] general credit as a truthful witness. . . [II.] [387] an attempt to commit a rape by a slave on a white female may be complete within the statute,[1] and yet no assault be actually committed. . . [388] To justify his conviction, however, the jury must be satisfied, beyond a reasonable doubt, that such was his purpose, . . An indecent advance, or importunity, however revolting, would not constitute the offense. . . [389] If the proof [on a new trial] shows that Lewis voluntarily desisted from the pursuit, when the accomplishment . . was . . possibly attainable, this is a circumstance which should weigh much against the truth of the charge contained in the indictment. . . [390] Let the prisoner remain in custody until discharged by due course of law." [Stone, J.]

*Shuttleworth v. State,* 35 Ala. 415, January 1860. [416] " proved . . that . . the defendant received from . . slave [of Wesley Shuttleworth] . . a black bottle filled with whiskey . . The defendant . . requested the court to instruct . . ' that if they believed the whiskey . . was the article most earnestly wanted by the defendant, then he could not be convicted ' . . [417] refused "

Affirmed: " The whiskey is a commodity for which this section [3285] makes no provision, and the defendant was convicted for receiving the bottle. . . [418] The act of receiving the bottle could not be rendered

[1] Code, sect. 3307.

harmless, by the fact that the commodity with which the bottle was filled was more earnestly wanted than the bottle," [Stone, J.]

*Mose (a slave) v. State,* 35 Ala. 421, January 1860. Oaks, the overseer, stated [423] "that there were two persons together when he was shot, . . that he was not certain who it was that shot him; that Mose was the only slave on the place at enmity with him, and that he was runaway. These statements . . [422] being offered in evidence as his dying declarations, the prisoner objected . . overruled" Verdict of guilty and sentence of death. Judgment reversed and cause remanded: [427] "the circumstances of the death [were not] the subject of the dying declarations." See same *v.* same, p. 239, *infra.*

*Pickens v. Pickens,* 35 Ala. 442, January 1860. [444] "a receipted account for $140, in favor of J. W. McCann [missionary], for services rendered by him in preaching to the slaves on two of the intestate's plantations, on two Sabbaths of each month during . . [445] 1857. . . disallowed . . the administratrix excepted."

Reversed and remanded: [452] "The master . . is morally bound to furnish to this . . subject class such moral and religious instruction as is adapted to its political status. Such instruction, properly directed, not only benefits the slave in his moral relations, but enhances his value as an honest, faithful servant and laborer." [Stone, J.]

*Purcell v. Mather,* 35 Ala. 570, January 1860. "hired . . a negro . . blacksmith, to work in my shop . . for the year 1858, for . . twenty-five dollars per month,"

*Gandy v. Humphries,* 35 Ala. 617, January 1860. In 1855 [621] "a preacher of the gospel" [620] "agreed to pay . . Gandy fifty dollars, besides expenses, for selling . . [two] negroes." [619] "one [was sold] at $900, and the other at $1,200;"

*Kinnebrew v. Kinnebrew,* 35 Ala. 628, January 1860. [631] "that he physicked and waited on all the sick negroes on . . [his father's] plantation;"

*Goode v. Longmire,* 35 Ala. 668, January 1860. [669] "In 1827, Mrs. Lyon married . . Longmire, and . . removed with him [from South Carolina] to this State, in company with her children and slaves."

*Kelly v. Cunningham,* 36 Ala. 78, January 1860. [79] "a witness testified, 'that he had known the slave . . up to the time of his death, . . 1857; . . had frequently seen [him] . . at church; and that said slave told him . . that he had the dropsy, that it . . had been on him a long time.'" Held inadmissible.

*Striplin v. Ware,* 36 Ala. 87, January 1860. [91] "the testimony tends to show, (though it is not, in our opinion, conclusive,) that at one time . . [he] was guilty of adulterous intercourse with slaves. The circumstances were . . so suspicious as to arouse the jealousy of [his wife] . . and create . . great domestic disturbance . . if this . . intercourse ever . .

existed, it has ceased—the wife has become satisfied that the charge was untrue"

*Guilford v. Hicks,* 36 Ala. 95, January 1860. "Mrs. Cassy Ann Hicks filed her petition in the office of the probate judge . . 1859, alleging that her daughter, Patience L. Hicks, and her grand-daughter, . . (both . . under . . twenty-one) . . were . . held as slaves, by . . Guilford; and praying that the writ of *habeas corpus* might issue . . Guilford . . filed an answer, alleging that he held . . Patience L. and her child as slaves under a purchase from . . Wilson. . . [96] On the trial . . the petitioner adduced evidence . . that . . Patience . . was a free white person, and was decoyed from her house, under promises of marriage, by . . Wilson; while the respondent offered testimony tending to show that . . Patience was a person of color . . and had belonged to . . Jones, in Florida, from whom she was purchased by Wilson." "The judge . . decided, in terms most emphatic, that Patience . . and her infant child are free white persons." Appeal of Guilford dismissed.

*Clement v. Cureton,* 36 Ala. 120, January 1860. Deposition of overseer: [121] "By my orders, when a negro got sick . . he had to come to me immediately, if I was about the place;"

*U. S. v. Gould,* 25 Fed. Cas. 1375 (8 Am. Law. Reg. 525), Spring 1860. Gould was "indicted [in the United States district court] under the 7th section of the act of Congress of April 20, 1818,[1] . . [1380] the indictment . . alleges that . . [he] knowingly held as a slave, in Alabama, a [female] negro, who had . . been unlawfully imported [in 1859], by some other unknown person."

Held: "This . . is not an indictable offence under the laws of the United States. . . Congress manifestly considered that the person who seized a negro in Africa, and brought him to the United States, was guilty of a much greater offence than one who, living in the United States, near the Florida or Mexican line, should buy a slave from his neighbor in Florida or Mexico, and bring him into the United States. . . My construction . . of the act of 1818 is . . [1381] The 7th section was intended to apply to those who brought them in from Florida or Mexico." [Wm. G. Jones, J.] See U. S. *v.* Haun, p. 244, *infra.*

*Mose* (*a slave*) *v. State,* 36 Ala. 211, June 1860. See same *v.* same, p. 238, *supra.* On the second trial [213] "Hardy, a slave . . of . . Walker . . testified, that on the night . . Oaks was killed, Mose . . told him that he had shot Oakes . . Jennings . . testified, that about one month after the death . . he went . . at the instance of . . Mose; . . found Mose confined in a little room back of a grocery, with a chain passing around his neck by one end, and the other end fastened to the house, handcuffed, and perhaps otherwise secured; . . [214] Mose [said] . . 'Mass Edmund, . . we are members of the same church. You examined me very closely on the other trial [[211] "an informal preliminary examination"]. I then told you a lie; I now want to talk to you as a church member.' . . The State

[1] 3 St. at L. 452.

then offered to prove, that the prisoner then made confessions of his guilt to . . Jennings. The prisoner objected . . overruled . . [The court] held said confessions, *prima facie,* voluntary . . To show that the confessions . . were not voluntarily made, the prisoner then proved . . the following facts . . When the prisoner . . [voluntarily] returned to his master on the eighth day [after Oaks was killed,] . . his master cursed him, struck him in the face with his fist, and made it bleed; told him that he believed he had shot Oaks, and that he was going to send him to the vigilance committee; that he hoped they would hang him, . . and then bound him securely with cords, and sent him . . Said committee . . discharged him, and he returned . . His master . . kept him chained the balance of the week; . . [215] stripped him while tied, cursed him, and told him that he would make him tell about the murder . . or kill him. The prisoner . . at length, so satisfied his master of his innocence, that, after striking him once or twice with a whip, . . he let him go, . . Afterwards . . his master . . told him, that if he would tell all . . he would run him off, and he should never be hurt for any part he took in it; but the prisoner again denied that he knew anything . . two or three weeks [later] . . Riggs went . . to arrest him . . on Sunday afternoon . . His master, being very much excited, on account of having heard that Hardy had confessed that the prisoner had killed . . Oaks, . . told him . . that he was going to send him again to the vigilance committee, and hoped they would hang or burn him; that he would give $200 to have him hung; . . and that he need not look for . . any further . . protection from him. While his master was . . talking . . the prisoner . . had his arms pinioned to his sides . . delivered to the vigilance committee, . . [216] fastened with a chain around his neck, had on handcuffs and was tied with a rope. Many persons . . that night . . asked him a great many questions; . . threats of violence were used . . [He was] told . . that there were men then engaged in trying to make up money to pay for him, and hang him right there, without judge or jury; . . Carson . . testified, that he and Mr. Rives, having been sent for by Mose, went . . on Monday morning; that Mose . . said . . 'that he felt badly, and was tired—please to fix a place for him to rest, that he wanted to sleep a little, so that he could compose his mind; and to return in about an hour,' . . When they returned . . Mose . . asked . . if there was any chance for a man who had committed murder to get to heaven; . . [217] one of them replied, that he did not know—there might be mercy, but he would have to repent. Mose then said, that he had done a great deal of hard praying, and did not want to miss heaven. Carson then told him . . not to tell anything against himself . . said . . 'Well, Mose, as you seem to have nothing to tell on anybody else, you must be the guilty one;' . . Mose said . . 'It is a certain matter that I shot Mr. Oaks;' . . that he got with . . [218] Hardy that night [after the killing] . . that when he came home to his master Hardy had the gun; that he . . got the gun [the next week] . . to prevent Hardy from killing his own overseer with it, as he said he intended to do, . . and that he killed the deceased because he was a hard down man on him, and said he was going to be harder. . .

Carson stated, that he, Rives and Mose were all members of the same church. . . the owner of Mose . . testified, that he was a very timid negro, and had been from childhood; . . that it was in fact agreed . . that both Mose and Hardy . . should be taken to the place where Oaks was killed, and there burned; and that Mose was so greatly alarmed that he could hear his heart beat seven or eight feet distant. . . [219] that on the same day, but subsequent to the time testified to by . . Carson, the prisoner made . . confession to . . Jennings." The court held all the confessions to be admissible evidence. [220] "The prisoner offered evidence of his own good character, and also evidence impeaching the general character of . . Hardy, . . The State then introduced . . Wiley as a witness . . [who] did not know Hardy's character in the neighborhood, but . . in the family in which he (Hardy) lived . . [consisting] of some eight or ten whites and about fifty blacks. . . that his character in said family was good. . . the prisoner objected, and excepted to . . allowance by the court."

Held: I. [228] "no error in admitting . . the confessions" "His confessions seem to have been prompted by a sense of religious duty, awakened by the apprehension of a speedy execution at the hands of lawless violence, . . [II.] [230] no error in admitting the evidence of . . Wiley." "A wholesome discipline requires that the slaves should be kept chiefly at home; . . His character in [such] a family . . is a general character" But the judgment was reversed and the cause remanded for error in admitting some other evidence and for refusing to give certain charges.

*Harrington v. State,* 36 Ala. 236, June 1860. [238] "The indictment . . charged, that . . Catherine Harrington . . 'did sell, give, or deliver, to a slave . . belonging to . . Lyon, . . spirituous liquors, without an order in writing, signed by the . . master' . . [239] 'Lyon supplied the slave with a bottle, and with money, and told him to go and see if he could get liquor from the defendant, . . stood behind a post, and watched said slave go into the house . . in the night-time . . came out in a short time . . crossed over to . . Lyon, and held his two hands together, forming a kind of cup, and let whiskey run out of his mouth into his hands; and that said slave, some ten minutes previously, had gone into another grocery, and brought out liquor in his mouth, and poured it out in his hands in the same way." Judgment affirmed: [243] "the consent, to be an available defense, must be a consent to a sale . . not merely to an experiment to detect a violation of the law."

*Henry (a slave) v. State,* 36 Ala. 268, June 1860. See same *v.* same, p. 229, *supra.* [269] "The charge of the court . . authorized a conviction without proof of the venue." Judgment reversed and the cause remanded.

*Heath v. State,* 36 Ala. 273, June 1860. See same *v.* same, p. 232, *supra.* On the second trial "the State introduced legal evidence, showing that . . Chavis had been elected a constable . . that he had attempted to arrest the defendant . . [274] and that the defendant . . resisted"

The defendant offered to prove "that the paternal grandmother of . . Chavis was the daughter of two mulattoes . . 'which proof was offered for the purpose of showing . . that the election of . . Chavis . . was an absolute nullity . . and that the defendant had the right . . to prevent himself from being arrested by a free negro.' The court excluded the evidence,"

No error: [276] "Chavis was . . an officer *de facto,* . . The mischief would be intolerable, if persons whose rights depend on the acts of officers *de facto* . . could be called on in every proceeding involving those rights, to enter into an inquiry into the pedigree of individuals holding the offices. . . It is fair to presume, that if any others ['not . . free white males'] should . . hold such offices, they would be persons whose antecedent history was unknown, and whose personal appearance would furnish no indication of . . impure blood . . The necessity of . . maintaining the supremacy of law, requires that the official acts of such persons should not be invalidated, nor their title to office annulled, in any proceeding to which they are not parties." [R. W. Walker, J.]

*Withers v. Coyles,* 36 Ala. 320, June 1860. [321] "the slave Battiste was tried . . before . . Withers [acting mayor of Mobile] . . 1856; . . judgment . . 'Stripes, and bond, $500, good behavior' . . 'The plaintiff [brought suit for damages and] . . proved, that [his] said slave . . was hired out . . to . . Hurtel . . in the business of storing and compressing cotton; . . worth $16.66 per month; that said slave was whipped under the orders entered on said docket, and, on the non-execution of the bond . . committed to the city guard-house [for more than two months.] . . The defendant . . offered evidence . . that . . various citizens of Mobile had frequently complained to the police that they lived in terror . . of said slave, and were afraid to leave their houses . . that he had been brought up . . in . . 1854, on a charge of burglary, and had been shot at therefor; that he stole fowls, and had been in the habit of having unlawful assemblies of slaves at his house, . . and of harboring runaway slaves, and had kept an assignation-house . . that it was difficult for police officers to find him, and difficult to arrest him when found; that he had gone greased, in order to facilitate his escape, and wore his clothes without buttons, in such a manner that he could and did readily divest himself . . [323] when seized; . . that he was found on the [Saturday] night preceding . . with some eighteen other negroes, in a cotton-press . . used by . . Hurtel, . . singing, dancing, and gambling; that when ordered by the officers to open the door . . they refused, . . had to be prized open . . One . . of the police officers . . testified, on cross-examination, that he had never heard of said slave . . using violence towards any white person; . . but the court would not permit him to prove the matters ["above set forth"] . . unless he proposed to further prove, that complaint was also made of threats or danger from said slave to the person or property of some particular individual, which . . defendant did not propose to do; . . The court ruled . . [324] that . . "An ordinance for the punishment of vagrants and disorderly persons,"

did not embrace slaves . . and that the defendant . . had no right to require a bond that said slave should . . be of good behavior . . That the defendant had no right under the statutes of the State . . to require . . bond . . unless . . proof were made of danger . . to the person or property of some particular individual.' "

Judgment affirmed: [329] " the mayor . . in committing Battiste to prison in default of such bond, . . acted beyond his jurisdiction." [Stone, J.]

*Durden v. McWilliams,* 36 Ala. 345, June 1860. [346] " The claimant . . let [her son] . . have the labor of . . slave, . . that the slave returned to her possession every Christmas "

*Jeter v. Jeter,* 36 Ala. 391, June 1860. Mrs. Jeter [393] " sought a divorce *a vinculo matrimonii,* on the grounds of cruelty and adultery. . . 1854, Mrs. Jeter gave birth to a son . . the defendant disowned the paternity . . and refused to have any further intercourse . . [394] testimony of . . overseer during . . 1856 and 1857 . . ' in the night, I saw a negro girl at his window. She disappeared through the window. On another night, at a late hour, I saw him coming from towards his negro-cabins. . . He went towards his room, and soon afterwards I saw a negro girl going after him.' . . the chancellor held . . [this and other] evidence sufficient to establish the charge of adultery, and granted a divorce . . [395] granted . . twenty thousand dollars . . as permanent alimony;"

*Jones v. Fort,* 36 Ala. 449, June 1860. [452] " Lowry . . the son-in-law of the plaintiff, hired from her the slave Orange . . for the year 1858, and gave his note . . ' general in its terms, not expressing the employment ' . . Said slave was employed . . as a field hand . . 24th December [when Lowry and his overseer were absent] . . the defendants . . sent a negro boy . . requesting the loan of four hands to assist in raising a gin-house; . . four . . including the boy Orange [were sent.] . . Orange . . [was] killed while assisting . . one of the timbers having . . fallen upon him. Lowry . . [453] ' had expressly ordered his overseer, prior to . . 22d December, not to send any of the negroes . . to aid in raising a gin-house or screw, unless said overseer . . accompanied them.' . . Lowry's overseer . . ' was asked, if the defendants' overseer did not, on the 22d December, apply . . for help to raise a gin-house the next day; and he answered, that he did, and that he . . did not send the negroes . . [because] a negro on the place . . was to be buried on the next day. . . told said overseer that he would send to help him . . if any of the negroes . . did not want to go to the funeral.' "

Held: [457] " A master may . . set his slave to blasting rock, immure him in an unhealthy mine, or put him before the mast on a distant voyage; but the hirer, under a general contract of hiring, has no right to do any of these things. . . [460] The legal effect of such a contract is, to deny to the hirer the right . . of lending . . the slave for the specific purpose of being engaged in any service which involves more danger than prudent masters would usually be willing to have their own slaves exposed to;"

*Roundtree v. Turner,* 36 Ala. 555, June 1860. [556] "1854 . . a contract . . to superintend the making of a crop . . for one-fifth part of said crop;"

*Brooks v. Pollard,* 36 Ala. 573, June 1860. Held: [576] "There is nothing in the Code, which deprives a broker or agent for the sale of slaves (not being a negro-trader) of the right to sell, at private sale, and without special license therefor, a slave belonging to himself."

*Dillard v. Scruggs,* 36 Ala. 670, June 1860. "action . . by . . Scruggs . . to recover $300 . . 'witness . . testified, that plaintiff was a negro-trader . . and had a house and yard in . . Mobile where negroes were exhibited for sale; that the defendant had several slaves for sale at said house . . that . . witness . . purchased from defendant his . . negroes . . and paid him eight or ten thousand dollars for them.'" Plaintiff was paid $200 for the board of the negroes; but said [671] "that he was also entitled to commissions, . . [672] that it was a custom . . among negro-traders in Mobile, if the owner effected a sale after they had been put at a sales-house, and while they were there, to . . receive half-commissions on the amount . . unless . . a special agreement to the contrary."

*Fitzpatrick v. Hays,* 36 Ala. 684, June 1860. "action . . for medical services . . amounting to $185. . . The defendant pleaded . . a special plea of set-off for the value of several slaves . . who were alleged to have died from . . [plaintiff's] negligent and unskillful treatment."

*Howard v. Coleman,* 36 Ala. 721, June 1860. [722] "George . . was hired . . to defendant, for . . 1857, . . [723] the defendant agreed to pay one hundred dollars . . 'and Mrs. Howard [plaintiff's mother] agreed to pay the doctor's bills.' . . the defendant contracted the small-pox . . his wife and two of his servants . . also . . it was afterwards communicated to . . George, who, after two weeks illness, died. . . [724] 'As soon as it was ascertained that Geroge had the small-pox, Mrs. Coleman (defendant's wife) . . requested [Todd] . . to . . ask [Mrs. Howard] if she would not have a physician sent . . Mrs. Howard . . told [him] . . that, as Mrs. Coleman had treated Mr. Coleman and his slaves . . she was . . willing for her to . . manage George's case, as she had her own, all of whom had recovered;'" Judgment for the defendant affirmed.

*U. S. v. Haun,* 26 Fed. Cas. 227 (8. Am. Law Reg. 663), June 1860. "This indictment [in the United States circuit court] . . charges that the defendant held, sold and disposed of . . negroes, as slaves, illegally imported into the United States in 1859, . . by some person unknown. . . The district attorney . . suggested that the opinion had been expressed upon a similar indictment [1] in this court, by my colleague, the judge of the district court, that the offence charged did not subject the defendant to a criminal prosecution, . . [I.] The indictment must be

[1] See U. S. *v.* Gould, p. 239, *supra.* But Gould was indicted under the *seventh* section of the act of 1818. Ed.

supported under the sixth section of the act of April 20, 1818,[1] . . [230] Regarding the language of the act . . alone, my opinion is, that the indictment charges an indictable offence" [228] "The sixth section . . provides . . for the punishment of those . . who hold, sell, or otherwise dispose of the African imported. . . corroborated by the eighth section . . Congress . . imposes upon all persons the obligation to make a diligent inquiry . . The African, legally imported prior to 1818, . . must be readily distinguished from the African imported in 1859. . . the most casual inquirer, must be able to say of the latter class, 'Surely thou art one of them; for thy speech betrayeth [*sic*] thee.' . . [229] The circumstances accompanying the enactment of the act of 1818 may be considered in ascertaining the policy of Congress . . Congress were informed that the slave trade was vigorously prosecuted by citizens of the United States, and particularly through the Spanish settlements of Florida and Texas, and that Africans, to the number of thousands, had been illegally imported into the United States. . . Congress . . employed committees, who carefully revised the act of 1807[2] . . amplified its scope, and increased its penal provisions, . . [230] [II.] But another rule is invoked . . It is said . . That Africans . . after they come within the jurisdiction . . of a state, cease to be under the dominion of the federal authority. . . [231] Among the powers delegated by [the Constitution] . . to Congress, was the power to define and punish offences against the law of nations. . . which unquestionably gave congress a full power over the subject, independently of that derived from their right to regulate commerce. . . [232] If there were not men who held, sold, or otherwise disposed of Africans, after the termination of the slave voyage, . . there would be no building . . of ships, no voyages to the African coast for slaves, no barracoons to supply American vessels, . . no confinements . . of Africans as slaves, no mortuary lists of the victims of such acts to . . shock humanity, no need of African squadrons, . . A complete prevention of the holding, selling or disposing of Africans . . would remove the stain which has fallen upon our country by the abuse of its flag. . . [233] Regarding this act as within the competency of congress, . . The order of the court is, that process issue to the marshals of the state of Mississippi, as well as to the marshal of this district, for the arrest of the accused." [John A. Campbell, J.]

*Ben (a slave) v. State,* 37 Ala. 103, January 1861. "indicted for the murder of another slave, . . [104] 'the deceased was conscious that he would die from his wounds, . . and directed his fellow-servants what to do with the little effects he had; . . declarations of the deceased to his master, . . "he was knocked down, but did not know who did it; that some time before he had met the prisoner, (who was a runaway,) near the premises of his master, and told him that he had better go home, and that he would tell his master if he did not; to which the prisoner replied, that he intended to do so the next day." To . . admission of

[1] 3 St. at L. 452.
[2] 2 St. at L. 426.

[this] evidence the prisoner excepted.'" Judgment reversed and the cause remanded: [105] "The court erred,"

*Aaron (a slave) v. State,* 37 Ala. 106, January 1861. [107] "The prisoner was indicted, jointly with another slave, . . for the murder of . . a white man. . . Drish . . being examined touching his qualifications as a juror, 'stated, that he was not a freeholder;' . . challenged . . overruled . . also . . Choate . . [108] The deceased was killed . . 1858. The prisoner was at that time a runaway, and did not return home for several days afterwards. . . suspicion having been aroused . . he was . . tied by his overseer, and delivered up to a magistrate, . . denied all participation . . during the night . . Nelson . . acting as constable, . . kept him bound with handcuffs and a chain. On the next morning . . [109] Nelson . . said to the prisoner, 'If you killed him, you had better confess; it would be best for you to tell the truth; truth is always the best policy. But, if you did not kill him, we don't want you to say so;' . . Aaron walked on a little way, . . and then made the confession" [108] "of his guilt; and immediately afterwards . . repeated the confession in the presence of the other persons [[111] 'an excited party of white men who were investigating the facts']. One of the handcuffs had swollen his wrist and Nelson took it off" [39 Ala. 80] "a short time . . before the [first] confession was made . . because the prisoner complained that the irons hurt him."

Held: [115] "The circuit court did not err in receiving evidence of the confessions." But [113] "Drish and Choate were not competent jurors; and for the error in putting them upon the prisoner, this case must be reversed" and remanded. See same *v.* same, p. 257, *infra.*

*Scott (a slave) v. State,* 37 Ala. 117, January 1861. [118] "January, 1860, the prisoner was caught by a patrolling party, of whom the deceased was one . . [119] about half a mile from his master's house, without a pass; and the deceased, under the direction of the captain of the patrol, inflicted . . a light whipping. On the next morning . . the prisoner . . accosted him in a rude . . manner, . . 'The deceased told him to go away . . and threw a chip at him, but did not hit him. The defendant continued to talk angrily . . saying, "I don't see what business school-boys have to patrol, any way;" and the deceased threw at him a piece of a wagon-felloe . . and then a piece of a buggy-shaft, with a [part] of the cross-bar attached, but did not hit him. . . Ratcliffe . . handed to the deceased a buggy-whip . . and told him to . . whip the defendant. The defendant seized upon the piece of buggy-shaft . . and the deceased . . struck the defendant around the body with the whip, and the defendant struck him on the left forehead with the buggy-shaft.' . . died, on the second day afterwards. . . [120] verdict of 'guilty of murder,' . . sentence of death" Affirmed: [122] "Under our code, murder, when committed by a slave, and the voluntary manslaughter of a white person by a slave, are subjected to the same punishment."[1]

[1] Sect. 3312.

*Ward v. State,* 37 Ala. 158, January 1861. "The indictment . . charged, 'that . . a white person, did play at cards with a slave'[1] . . 'a witness . . testified . . [159] that the defendant and the slave, as soon as they saw him, bunched all the cards together, and the defendant remarked, "that the slave was telling his fortune;" . . that the slave professed to be a fortune-teller, and was so reputed'" Held: [160] "Amusing one's self with cards, as with toys, will not make out the offense."

*Jemison v. Smith,* 37 Ala. 185, January 1861. Smith's will, executed in Georgia in 1798: [187] "the wench to be hired to support . . [my] children; . . that the children should be . . schooled upon the hire of the negroes, . . the hire to go to the support of all the children, both black and white."

*Martin v. Reed,* 37 Ala. 198, January 1861. [199] "note [for $58], which is the foundation of this suit, was given to Henry, a slave of Godwin, . . for money borrowed from . . Henry; that plaintiff obtained . . note from . . Henry by transfer . . that . . Henry acted and contracted for himself" Held: the note was void.

*Creswell's Executor v. Walker,* 37 Ala. 229, January 1861. Will of John T. Creswell, 1856: "that my [four] faithful slaves . . be liberated . . my executor will have them taken, at the expense of my estate, to some non-slaveholding State, or to . . Liberia, as the said slaves may prefer, there to be free, and will furnish each . . such an outfit . . as . . will render them comfortable. But, should . . any . . of them, prefer to remain in slavery, then I . . bequeath . . such . . to my sister . . requiring her to . . bequeath . . to such person or persons as she may believe will treat them with kindness and humanity." The executor "sought the . . instructions of the court, . . [230] asserted, that the slaves had frequently expressed . . their desire to be emancipated, and had designated the country to which they wished to be carried; and declared his readiness . . to execute the trusts . . if he could legally do so. . . the chancellor held, on the authority of Carroll . . *v.* Brumby,[2] that the trusts . . were void, and dismissed the bill, . . his decree is now assigned as error." "Webb, for the appellant. . . will creates a valid trust, . . What was said to the contrary in . . Carroll *v.* Brumby . . is not sustained by the authority cited from 6 Porter, 269;"[3]

Decree affirmed: [232] "the principle announced . . in Carroll *v.* Brumby . . is a sound one; . . [236] Because they are rational *human beings,* they are capable of committing crimes; and, in reference to acts which are crimes, are regarded as *persons.* Because they are *slaves,* they are . . incapable of performing civil acts; and, in reference to all such, they are *things,* not persons. . . [239] As their election of the place to which they shall be taken is a condition, the performance of which is essential to the execution of the trust in their favor, the making

[1] Code, sect. 3256.
[2] P. 166, *supra.*
[3] Mr. Webb is correct. Ed.

of that choice is as much a civil act as an election between freedom and slavery." [R. W. Walker, J.]

*Williams v. Ivey,* 37 Ala. 244, January 1861. The plaintiff [245] " and his son . . were stopped by the defendant, who was . . assisted by . . [another] white man and two negroes, . . [and] forcibly . . tied,"

*Jack et al. (slaves) v. Doran's Executors,* 37 Ala. 265, January 1861. [266] " The plaintiffs claimed their freedom under two special acts of the legislature of Alabama . . and under the will of . . Doran, . . admitted to probate . . 1840, as a will of personal property only, being attested by but two witnesses." Act of 1832: " that James Doran . . is hereby, authorized to (to take effect at his discretion) emancipate . . [twelve named] slaves . . provided, he shall previously convey to the judge of the county court . . and his successors, six hundred and forty acres of land, on which he now resides, or lands equal in value thereto, in trust forever, for the use of said slaves, as security that they shall not become chargeable " An act of 1833 " authorized . . Doran to emancipate two other slaves . . upon the condition mentioned in the previous act. . . [267] Doran's will . . ' At the death of my wife, . . I . . bequeath unto my negro slaves ' . . (specifying . . all the slaves mentioned in the two acts . . and their children,) ' and all future increase . . their freedom; provided, they be obedient servants to my wife . . And, as the law obliges the owners . . to give security . . so that they may not become a public charge, I leave to them, for that purpose, the whole of that tract . . on which I now live, to be divided in the following manner,' . . The petition [for freedom] alleged, that the widow . . died in 1851; that the plaintiffs were afterwards carried into Tennessee, . . The circuit court sustained a demurrer to their petition."

Judgment affirmed: [268] " No conveyance . . was ever made . . by Doran, to the judge of the county court . . The attempt to devise the . . land . . directly to the slaves, was, perhaps, made with the view of complying with this requirement . . But . . futile, if for no other reason, because . . not so executed as to pass real estate;" [R. W. Walker, J.]

*Roney v. Winter,* 37 Ala. 277, January 1861. " Jan. 1, 1855. Twelve months after date, we promise to pay . . three hundred and ninety dollars, for the hire of Jim and Jerry for the present year. We are to feed the . . negroes, and furnish them with the usual clothing; . . For the Montgomery Iron Works,"

*Stone and Best v. Watson,* 37 Ala. 279, January 1861. In March 1857 Stone and Best sold to Watson [283] " a seamstress woman, about twenty-four years old;" and warranted her sound and healthy. In May or June Dr. Jones [284] " found she ' had a slight disease of one of her lungs,' which, he thought, must have existed . . [in] March; . . some time after the sale . . agreed that, if . . negro was unsound at the time of the sale . . defendants would take her back, and would pay plaintiff $1250 . . and her stage fare . . afterwards, while she was in the plaintiff's negro-house in Montgomery, . . she received a burn

upon her left arm, by the explosion of a fluid lamp . . kept in . . negro-house by . . Ball [plaintiff's agent], . . and all the evidence tended to show, that her permanent value was thereby decreased one-half or more. . . [285] after she was . . burned, . . [she] was tendered to the defendants, who refused to receive her, . . Ball testified . . 'that the negro was not allowed, by a rule of the house, to use said lamp, . . that Dr. . . Jones . . treated the burn several days;"

*Connor v. Trawick,* 37 Ala. 289, January 1861. In 1851 Trawick, a resident of Mississippi, conveyed a slave to each of his three grandchildren, reserving the use for himself for life, and appointing a trustee to manage them after his death [290] "until said children become of age or marry; giving unto each negro, at the end of the year, . . five dollars, for the proceeds of their labor."

*Tillman v. Chadwick,* 37 Ala. 317, January 1861. "action . . brought by Tillman . . to recover damages for injuries inflicted on a slave [hired to defendant]. . . [318] court . . [refused] to give, at the instance of the plaintiff, the following charge:— 'If the jury believe . . that the punishment inflicted by the defendant . . was . . beyond what was . . proper under the circumstances, the *onus* is on him to prove that he was authorized by the slave's conduct to whip him thus severely, and beyond what would have been right and proper;'"

Judgment affirmed: [319] "Should the slave prove rebellious, . . legitimate punishment may sometimes be carried much beyond what the offense in the first instance would seem to render necessary. . . Under no state of case could . . [the slave's conduct] justify correction beyond what was right and proper. The charge . . [320] was calculated to confuse . . the jury,"

*Webb v. Kelly,* 37 Ala. 333, January 1861. [334] "action . . by . . Kelly . . to recover . . [his] slave named Wash, . . The slave . . was employed by him as a cab-driver in . . Mobile, but was permitted to retain . . about one-half of his wages. The defendant procured . . Williams to negotiate with plaintiff for the sale of the slave; the plaintiff sold him to Williams, . . [335] 1857, for one thousand dollars, . . the next day, Williams executed a similar bill of sale to . . Brooks, who . . paid over the purchase-money to the plaintiff. A part . . was paid by the draft of . . Landermilk for $500, which he had given to the slave for borrowed money; . . [defendant] had himself furnished a portion of the residue. The plaintiff contended, that the purchase . . was made at the instigation of the defendant, under an agreement between him and the slave that the purchase should enure to the benefit of the slave, and that the money was in fact furnished by the slave. . . Williams . . [had] represented, 'that he lived in Texas, where the slave had relatives, and intended to leave . . with the slave, so soon as the purchase was concluded.' A witness . . 'heard plaintiff say . . he would not have sold Wash, if he had known that he was not going to Texas, where he had kin.' . . [336] deposition . . 'Wash pretended to be lame, in order

that he might induce Mr. Kelly to sell him. . . He often talked of how he was trying to fool Mr. Kelly.' . . The defendant had proved, that the plaintiff . . permitted the slave . . to employ counsel to defend himself, when prosecuted for an infraction of the city laws, . . and, ' for the purpose of showing that the plaintiff . . permitted him to have, use and dispose of [money] . . as he pleased,' had read in evidence a receipt, signed by plaintiff, . . ' Received from . . Wash and his mother, Clarissa, four hundred dollars, for safe-keeping;' . . endorsed . . ' Paid on the within, two hundred dollars.' "

Held: [341] " if the purchase was in fact made with money furnished by the slave, without the knowledge of Mr. Kelly, and this change of title was procured . . in reality . . for the benefit of the slave himself, . . Mr. Kelly would have the right to retake the possession of his slave."

*Sterrett v. Kaster,* 37 Ala. 366, January 1861. [367] " Abb, the property of plaintiff's testator, was . . in . . [Tucker's] restaurant . . [as] a waiter . . had purchased . . and paid his own money " for " chattels, consisting principally . . of household furniture . . and they had been delivered to him;" Afterwards " Tucker . . had said goods in his possession, using them in . . his . . business, and claiming them as his own property." Kaster, " who had an execution against . . Tucker, had said goods levied on and sold . . brought forty dollars " An action was brought against him to recover damages.

Held: [370] " A slave cannot be the owner of property: . . the property becomes at once the property of the master; and no subsequent act or contract of the slave, without the master's . . consent, can divest the latter of his title."

*Thomas v. Barker,* 37 Ala. 392, January 1861. " the plaintiff sold a negro girl to the defendant at . . $1100, and the latter agreed to pay . . in addition . . ' one-half of what he might get . . on a re-sale, . . above $1100;' . . resold . . for $1400 "

*Schwartz v. State,* 37 Ala. 460, June 1861. " The indictment . . was founded upon the act of February 6, 1858, . . [462] evidence . . that gangs of negroes, from three to twenty in number, were frequently seen in front of his [grocery] store, . . witness testified, that he had twice seen the defendant try to drive the negroes away "

*Patterson v. Flanagan,* 37 Ala. 513, June 1861. [514] " she was . . drowned . . in attempting to walk across a foot-log over a creek, on returning with other negroes from the field in which they worked."

*Manly v. Turnipseed,* 37 Ala. 522, June 1861. [523] " In . . 1838, the widow . . removed [from Georgia] to . . Alabama, bringing the slaves "

*Devaughn v. Heath,* 37 Ala. 595, June 1861. Action brought by Heath to recover damages for a trespass on his land. " one of the Devaughns suspected the plaintiff of trading with one of his slaves, and laid a snare to catch him, by sending the slave to the plaintiff's house by

night, with a piece of meat to sell, while the defendants lay hidden . . The slave, however, sent information of the plot . . Hammond . . secreted himself . . near the path . . and recognized the defendants . . and when the slave knocked . . and said . . he had . . meat to sell, the plaintiff . . ordered him off. The plaintiff's dogs were aroused . . the defendants ran off; . . [596] The defendants proved, that the plaintiff . . or his wife had given two or three pairs of old pantaloons to Devaughn's slave, who had formerly belonged to Mrs. Heath's first husband. The court charged" [597] "that Mrs. Heath had the legal right to give . . the slave . . old pantaloons, without the knowledge" of his owner. Affirmed.

*Jones v. Jones's Executor,* 37 Ala. 646, June 1861. "will . . of Edward S. Jones . . 1858 . . made provision for the emancipation of several slaves, directing their removal to a non-slaveholding State, and the payment of a pecuniary legacy to each of them." Held: [651] "The act of 25th February, 1860, entitled 'an act to amend the law in relation to the emancipation of slaves,' does not affect the bequest"

*McGehee v. Rump,* 37 Ala. 651, June 1861. [652] "they had swapped negro girls, . . bills of sale . . executed at the same time," [653] "Received from . . McGehee ['a negro-trader, living in . . Georgia'] six hundred dollars for . . Myra, twelve years old." "Received from . . Rump . . Myra . . and two hundred dollars . . for . . Viney, thirteen years old." "The trade was made in . . Alabama; and . . [McGehee] had obtained no license to sell,"

*Heath v. Devaughn,* 37 Ala. 677, June 1861. Slander. "You [Heath] have been trading with my negroes, you old rascal," Held: the words are not actionable.

*Gimon v. Baldwin,* 38 Ala. 60, June 1861. "slave . . was drowned while working as a deck hand . . worth $1,500."

*Foster v. Holly,* 38 Ala. 76, June 1861. [77] "Sunday, the negro [slave] . . got into a skiff, with a white man, to whom the skiff belonged, and went out . . to fish; . . the skiff was fastened . . to a snag . . [78] a collision between . . schooner and the skiff occurred . . negro was drowned;"

*Bragg v. Massie,* 38 Ala. 89, June 1861. [92] "he bought Amy for [one of his daughters] . . in 1834, from a negro-trader, whose camp was near his house, and, at the same time, bought another girl for his [other] daughter . . that his daughters went to the camp, and each picked out for herself a negro girl, . . [93] Amy was only five or six years old . . 'too small to do anything, and just knocked about the house and yard like any of the other little negroes, and did anything that any of the family told her to do;'"

*Hall's Heirs v. Hall's Executor,* 38 Ala. 131, June 1861. The will of Adam Hall, providing [134] "for the emancipation of . . slaves" was [132] "admitted to probate . . 1858,"

Held: [134] "the act of January 25, 1860, 'to amend the law in relation to . . emancipation'[1] . . has no application,"

*Davis v. Hubbard,* 38 Ala. 185, June 1861. [186] "The bill of sale . . 1854 . . recited the payment of two hundred and fifty dollars[2] as the consideration, . . The defeasance . .: 'I have . . received from Mrs. Nancy Davis a bill of sale of . . Anna Sylvia, about four years of age, of yellow complexion; which girl I . . oblige myself to reconvey . . at the end of one year . . provided the . . girl should then be living, and provided also that . . Nancy Davis shall . . pay . . all that she now owes to me,'"

*Humphries v. Dawson,* 38 Ala. 199, June 1861. [202] "in 1841, she and her husband removed [from South Carolina] to this State, and brought the slaves with them;"

*Isham (a slave) v. State,* 38 Ala. 213, January 1862. [214] "on the night the deceased [George M. Hagood] . . was killed, . . [witness,] in company with the deceased and two other white men, went . . to watch Capt. Hanby's house . . by . . agreement with him" "(all the white family being absent,) for the purpose of catching a runaway slave, . . said to be lurking about . . and of detecting the prisoner in harboring [him] . . if guilty of so doing; . . disguised themselves, by blacking themselves, putting on old clothes, and having a budget tied up in a handkerchief; that they went near the negro house, and made a noise there, and then . . struck on it with a stick; that the dog barked fiercely . . and the prisoner hissed on the dog; . . asked, 'Who are you?' that the deceased replied, 'A partner,' . . the prisoner fired, and killed the deceased; that he (witness) then said, 'Don't shoot, you have killed Mansfield;' that the prisoner replied, 'Lord, Massa George, why didn't you speak?' and that the prisoner remained until morning, assisting to wash and lay out the deceased, and was arrested in the morning. . . testimony . . that some person had been seen by night . . while Capt. Hanby was absent in camp drilling his company; that on the night before the killing, the prisoner had taken the gun, in the presence of his mistress, . . [215] and shot (as he said) at some person. . . that the prisoner, on the morning before the killing, asked his mistress for the gun, to carry to the field; . . refused . . and that he took the gun . . on the night of the killing, without the knowledge . . of his master or mistress, . . The prisoner asked the court to charge . . 'If the jury believe . . that the prisoner . . believed that the deceased was a runaway . . slave, and, under that delusion, . . killed the deceased, . . he is neither guilty of murder, nor of the voluntary manslaughter of a white person, nor of the involuntary manslaughter of a white person in the commission of an unlawful act.' . . refused . . The verdict . . was, 'Guilty of voluntary manslaughter,'"

[222] "The judgment of the court below is affirmed, and its sentence must be executed," [221] "A slave, who kills a white man, intending

[1] Acts of 1859-1860, p. 28.
[2] "much less than the real value" Headnote.

to kill a negro, is guilty of a criminal homicide in the degree in which he would have been guilty if the person slain had been a negro; and he is subject to the punishment prescribed for the commission of the offense upon a white person." [A. J. Walker, C. J.]

*Cheek v. State,* 38 Ala. 227, January 1862. Indictment founded on sections 3297 and 3298 of the Code. Snelgrove testified that [229] " while he was overseer . . slaves were each allowed, by the direction of the defendant, only one quarter of a pound of bacon per day, and no other meat, and were not allowed any bacon at all on Sunday; . . also allowed as much corn-meal as they wanted, and, during the summer, a very few vegetables and roasting-ears, and about a pint of butter-milk per day, and sometimes a little butter. . . that less than three pounds, or three and a half, per week, was not . . sufficient . . for a plantation slave; . . that all the meat on the . . plantation was consumed by midsummer, 1859, and that meat was afterwards carried there from the defendant's house," The defendant offered to proved that, " in December, 1858, he had thirty-three hogs killed . . for the use of the plantation, and that the meat . . was kept on the place." The court rejected this evidence." [236] " For this error, the judgment . . must be reversed."

*Lawson v. Hicks,* 38 Ala. 279, January 1862. " action . . for defamatory words written . . [280] by the defendant [Lawson] . . in filing cross-interrogatories . . ' state fully . . anything about the Evans' having said that Hicks, about the time of his early settlement in . . [281] county, murdered one of his negroes, after taking him out of jail, before he got him home;' "

*Williams v. Pearson,* 38 Ala. 299, January 1862. Will of Zealous Taylor of Pickens County, who died in 1851: [301] " that her guardian hire out her negroes, publicly or privately, as he may see proper, and for them not to be hired out on the west side of the river, nor in the prairies any where, as I want good care taken of them, and want them well clothed, shod, and good bed-clothes procured for them."

*Fowlkes v. Railroad Co.,* 38 Ala. 310, January 1862. " action . . for the loss of a slave . . killed by . . engine and cars."

*Crockett (a slave) v. State,* 38 Ala. 387, June 1862. Convicted of the murder of another slave. A. J. Walker, C. J.: " We are not informed, either by an argument,[1] or by an assignment of errors, of the points which those representing the appellant designed should be examined by us. After a most careful examination of the record, we have been able to find no error . . [388] Murder, committed by a slave, is not divided into degrees;"

*Wilson v. State,* 38 Ala. 411, January 1863. " The indictment . . charged that the prisoner ' persuaded a slave . . to leave the service of her

[1] "No counsel appeared for the prisoner."

mistress, with the intent to go . . where such slave might enjoy freedom.' [1] . . 'proved that the defendant . . had promised to make her his wife, and to take her to a free state . . [412] where should could not be cuffed and kicked by damned southerners, and where she would be treated as a white woman. . . But there was, also, evidence . . that . . the prisoner's object was to obtain an immediate gratification of his carnal appetite. . . The last interview, which was shortly before day, was made after an arrangement with the slave, by which the witness was allowed to get under her bed . . [to] hear the conversation when the defendant returned. . . defendant repeatedly begged the slave to allow him to go to bed with her then . . until at last both got into the bed; and the witness . . thereupon got up, and arrested the defendant. The slave was proved to be of wanton character, and had been kept by white men.' 'no proof of any preparation on the part of either to leave. . . the defendant represented himself to the slave as having just come from the Yankee fleet; . . false. . . The defendant asked the court to charge . . [413] That if the slave knew she was not going to be taken . . away, and if the defendant was not intending to take . . her away, he must be acquitted.' . . refused" [415] "for that error, the judgment . . is reversed, and the cause remanded,"

*Joe (a slave) v. State,* 38 Ala. 422, January 1863. [423] "The entrance into the house was effected by raising a plank in the floor. Mrs. Crawford testified, that . . it was so dark she could not see, . . discovered [him] to be a negro by putting her hand on his head; . . tracks were discovered . . leading in the direction of the plantation on which the prisoner lived. . . the only grown negro man on the plantation, and his tracks were found . . to correspond . . Pickett . . testified, that on Monday (the burglary having been committed on Saturday night) he, as constable, . . went into the field where the negroes were at work, and arrested the prisoner . . and told him he must go . . to jail; . . tied the prisoner; that as they went along, witness and the prisoner's master riding side by side, and the prisoner walking a little in front . . he asked the prisoner, 'what he went into the house for;' that the prisoner replied, 'to get or steal some clothes;' . . The prisoner objected to the admission of the confessions . . and, for the purpose of showing that they were not made voluntarily, . . 'Robertson testified, that on the morning after the burglary . . the men in the neighborhood collected at the house of Mr. Bush, the prisoner's master, to have an investigation as to what would be best to do with the prisoner; that Bush had him tied to a tree or post . . witness . . told him . . that the punishment would be much lighter if he would confess . . the prisoner replied, "Master, I am not guilty, and if they punish me it will be wrong;" that the crowd soon . . carried him some distance from the house, and tied him down across a log; that the prisoner, while in this condition, . . was told ["by one of the crowd"], that the punishment would be lighter if he would confess the truth; that the prisoner then said, that he went

[1] Code, sect. 3128.

in to get or steal some clothing; and that they then whipped him. Bush . . testified, that his invariable rule with his slaves was, if any of the grown negroes committed any offense, or disobeyed his orders, to tie them up, and whip them until he made them confess . . that he had frequently treated the prisoner in this way; that he seldom whipped his slaves, and never on suspicion only, but, when he knew them to be wrong, he whipped them severely. . . that the prisoner was turned loose after the whipping on Sunday.' On this evidence, the court refused to exclude . . the confessions made to . . Pickett;" Judgment reversed and the case remanded: [425] "The confessions . . were clearly inadmissible" [Stone, J.]

*Foster v. State,* 38 Ala. 425, January 1863. "The indictment . . charged, 'that Nancy Foster did sell, give, or deliver, to a slave . . vinous or spirituous liquor, without an order in writing," Judgment against her affirmed.

*Ex parte Hill, in re Willis, v. Confederate States,* 38 Ala. 429, January 1863. [430] "Three persons . . detained in custody under the conscript law . . petitioned the probate judge for writs of *habeas corpus,* predicating their prayers for a discharge upon the ground of exemption . . on account of physical disability; and the writs were awarded"

Held: the probate judge has no jurisdiction. Chief Justice A. J. Walker: [436] "The analogy . . between our government and that of the United States enables me to draw from the history of the past an illustration . . The fugitive-slave law was passed to protect . . a clear constitutional right of a class of citizens in the United States, whom the fluctuations of time had localized in less than a moiety of the States. In most of the other States, an antagonism of sentiment to that right gradually intensified into fanaticism, . . A right of subordinating the authority of the officers deputed to execute that law, to the control of local State tribunals, infected by the feeling prevalent in those States, was asserted and maintained . . In many localities, the execution of the law was . . prevented; . . The powers of the Confederate government are given to it for the benefit . . of all the people in all the States; and the historic lesson teaches us, that the execution of the laws, passed by virtue of those powers, can not be safely left to the control of local tribunals. . . The supreme court of the United States, faithful to the constitution, while every other branch of the government seemed to conspire its overthrow, through its venerable and illustrious chief-justice, announced an opinion upon the assumption by the court of Wisconsin of the authority to thwart the execution of the fugitive-slave law in that State.[1] . . [437] that a State court . . has no right of control over the

[1] Abelman *v.* Booth, 21 Howard (U. S.) 506 (1858).

conduct of the officers of the general government," [1] Judge Stone concurred: [450] "the acts of [the Confederate] congress give to the surgeon, and to the board of examination, the exclusive right to pass on the question of mental or bodily incapacity; and that takes from State courts all right to inquire into the question. . . [456] Chief-Justice Taney . . felt and expressed the necessity of preventing encroachments of one jurisdiction upon the other; but his counsels came when fanaticism had well nigh matured its parricidal plot, the culmination of which is now converting portions of our rich domain into a desolation. . . Let us not weaken or destroy our Confederate power, by embarrassing that government in the manly exercise of those functions with which the States themselves have clothed it. This will neither destroy nor impair the sovereignty of the several States. They are not despotisms. For certain general purposes, they have conferred on the Confederate government certain attributes of their sovereignty; . . They have thus become constitutional, instead of absolute sovereignties." Judge Stone declares, however, that he [454] "would not hesitate to exercise jurisdiction" in cases which "may arise under the regulations which permit the putting in of substitutes." Such a case was *Ex parte* Hill, *in re* Armistead *v.* Confederate States [2] decided at this same term, in which Judge R. W. Walker [3] concurred with Judge Stone. Chief Justice A. J. Walker dissented, in an opinion of twenty-eight pages. He contended that Ableman *v.* Booth "ought to have settled the question; and in all probability the point would never again have been agitated, if we had continued to occupy our former relation to the United States. *Tempora mutantur, nos et mutamur in illis.*"

*Crutcher v. Railroad Co.*, 38 Ala. 579, January 1863. [580] "Defendant was anxious that the road should be speedily completed, . . [Its agent was] authorized . . to hire hands . . at any price less than thirty dollars per month, . . [582] 'Sept. 6, 1856. Hired of . . Crutcher . . John and Clem, to work on the . . railroad . . until the 25th December next; . . I agree to pay . . twenty-five dollars per month each, and . . also . . to feed, and pay all medical expenses, if any; and . . Crutcher loses all runaway time, if any.'" John was accidentally killed while working on the road.

[1] "It has been objected to the authority of this opinion [by Chief Justice Pearson of North Carolina, in Bryan's Case, 1 Winston 1 (33)], first, that the court and the great jurist who delivered it did not really mean what is said; and secondly, that it must at all events be treated as an *obiter dictum*—as the opinion of an able lawyer on a question not presented by the facts before the court. . . it is inconceivable that the language of so important an opinion should have obtained the unanimous sanction of such a tribunal, unless it afforded a true index of its opinions. . . [495] In order to cover both cases [Abelman *v.* Booth and U. S. *v.* Booth] . . the supreme court of the United States . . have laid down the only principle which could have controverted the State jurisdiction . . The great doctrine stated . . was applicable to the cases decided, and controlled their decision. It is, therefore, not an *obiter dictum.*" Chief Justice A. J. Walker, in *Ex parte* Hill, *in re* Armistead, 38 Ala. 458 (494, 495).

[2] 38 Ala. 458.

[3] Judge R. W. Walker did not sit in the former case, "being detained at home by providential causes." 1 Winston (N. C.) 33.

*Bell v. Chambers,* 38 Ala. 660, January 1863. [661] "action . . to recover damages for the loss of a slave . . transported on the defendants' . . steamboat without the written authority of the plaintiff;[1] . . [663] 'defendants . . offered evidence . . that the man . . was a white man in . . every appearance, . . had hired himself on board as such, slept in the white apartments with the white people,' . . [and] requested the court to instruct . . 'that if the boy was in fact a white man in . . every appearance, . . and the defendants . . had no . . suspicion of his being a slave, they must find for the defendants.' . . refused"

Reversed and remanded: [665] "To hold . . [the case] within the statute, might cast on railroads, owners of steamboats, etc., liabilities in cases where the greatest diligence, short of requiring proof of freedom in every case, could not bear them harmless." [Stone, J.]

*Martin v. Foster,* 38 Ala. 688, January 1863. Will, 1859: [689] "I . . devise to my husband . . all . . [my] interest . . in . . the plantation . . now occupied by our negroes, and cultivated by" him.

*Aaron (a slave) v. State,* 39 Ala. 75, June 1863. See same *v.* same, p. 246, *supra.* [76] "May term, 1863 . . he was put on his trial . . [77] The prisoner . . objected to the certified transcript of the record . . forwarded by the clerk of . . Baldwin [County, on change of venue], because it showed, in its caption, that the circuit court of Baldwin was held . . 'November, 1858,' . . two other transcripts . . stated . . October. . . [78] 'the court, without any correction . . of the record, other than that . . furnished by the two other transcripts . . ruled, that the prisoner should be tried on the indictment set out in the original transcript; . . excepted. . . [A witness] testified, . . that . . he . . asked the prisoner, how he came to tell about the murder; that the prisoner replied, "he had had a dream last night, and saw the old man (referring to the deceased) so visibly that he thought it best to tell; . . [85] I am convinced I am to be hung, because I dreamed last night that my . . hands were fastened together, and were on fire; . . there was a book suspended before them, and it caught fire, and burned all the leaves. The book had a leather cover, just like the one you swore me on yesterday." . . that all he had to do with it was, that he . . hit the old man in the head twice with a spade, after Ranty had cut him; that Ranty got some whiskey . . and some money . . [86] gave him eleven dollars,'" Verdict of guilty.

Judgment thereon reversed and the cause remanded: [87] "the confessions . . were competent evidence . . [89] [but] the conviction must be reversed. When the venue, in a criminal case, is changed, . . it [is] the duty of the clerk to make out a transcript, and forward it . . it may be . . rectified under the direction of the court to which the case is transferred," but not by producing other transcripts which show the mistake.

*Broadhead v. Jones,* 39 Ala. 96, June 1863. "action . . against . . Broadhead and . . Dunlap . . founded on a promissory note for two hundred and twenty dollars, . . payable . . 1855, to . . Davis, . . Dunlap

[1] Code, sect. 1010.

died pending the suit, . . Broadhead pleaded . . ' 3d, set-off; . . [97] 6th, that said note was [given] for the services of . . Dick, who . . was permitted by the plaintiff [his owner] . . to go at large, and hire himself out, contrary to the statute,' . . a witness . . testified, ' that . . Dick Herrington, commonly known as " Free Dick " . . had belonged to John Herrington, who died . . in 1850, or 1851; that said slave, since the death . . had . . hired himself out, made his own contracts, and received the money that he earned . . that he followed ditching for a considerable portion of the time, and made a good deal of money in that way; . . had a shoe shop . . during a part of the time, and had hands employed under him in making shoes, which he sold to the community at large; . . also . . a shop . . where he sold candy, cheese, tobacco, etc.; that he also purchased . . two negro boys; that . . Davis . . acted as a sort of agent or guardian for . . Dick in the transaction of his business . . and had a little wooden box, known as "Dick's box," in which he kept all of Dick's papers; . . and that . . Dick, during all the aforesaid period, was generally . . recognized as a free man ' . . Forshee [administrator of Davis] . . [98] ' saw the note sued on in said box, . . did not claim [it] . . as the property of said estate; . . the note was . . delivered up to Dick . . who offered to trade it to him, but witness declined . . until he could see . . Dunlap, . . Dunlap told him, that the note was given for money borrowed from . . Dick, that he had paid it, and that Dick was then owing him a balance.' . . a brother of . . Dunlap . . testified . . that Dick was indebted to . . Dunlap, at . . the death of the latter . . about one hundred and fifty dollars, for the board of his hands, the price of a rifle . . and other items. . . The court . . excluded the evidence;"

Held: [102] " This note . . is void, if the money was loaned by the slave. If, however, . . Davis . . loaned it out on his own account, . . the case is presented of one man's converting to his use the money of another [the owner of Dick.] . . [103] The matters of account against Dick, his *status* as a slave being established, were incompetent as evidence for any purpose " [A. J. Walker, C. J.]

*Whitman v. Revels,* 39 Ala. 121, June 1863. In 1855 a note for $1250 was given for a female slave. [122] " the two children of the girl . . only one of whom was then born, were expressly excluded from the sale;"

*Twelves v. Neville,* 39 Ala. 175, June 1863. [177] " carried the slave out of the State, with the consent of [the tenant for life] . . sold her in New Orleans, for less than her full value,"

*Young v. State,* 39 Ala. 357, June 1864. [358] " April 7, 1864. The defendant . . having been convicted, under an indictment for buying [1] . . wheat from a slave . . and a fine of one hundred and thirty-three 33-100 dollars assessed against him; it is considered by the court, that the defendant be imprisoned ten days in the common jail "

*Dinah (a slave) v. State,* 39 Ala. 359, June 1864. The indictment charged that [360] " slave of . . Murphree . . did administer to . .

[1] Code, sect. 3285.

Amanda [his daughter] . . a large quantity of the seed of the Jamestown weed, it being a deadly poison." The state proved " that the prisoner . . was the nurse of . . Amanda . . between five and six years old, and a younger [child] . . that she fed them . . in the presence of [their mother] . . that . . Amanda became very sick . . vomited . . more than a drachm of the seed . . that . . physician gave it as his opinion . . that the quantity was sufficient to kill. Mrs. Murphree . . told the prisoner . . that she would be whipped for it, and that she had poisoned the child. The prisoner ran away . . and was caught . . by . . Carr . . he asked what she ran away for; . . she replied, ' for her meanness;' . . he then slapped her on the face several times severely, and told her she should tell him . . she then said, ' for poisoning her mistress' child.' The court excluded this evidence . . [361] Garrett, whose mother was the jailor, testified, that he was in the habit of going to the jail to feed the defendant . . asked her [about three weeks after the charge of poisoning] . . ' what she was put there for;' that she replied, ' for poisoning her mistress' child; . . was put up to do so by an old negro woman,' and ' that she wanted to get rid of nursing the child and putting it to sleep.' . . The court . . allowed the . . testimony to go to the jury;"

Judgment reversed and the cause remanded: [364] " She seems to have been a young negro girl, . . A girl of this age, and a slave, having made the confession . . to Carr, would always be under the temptation to repeat the same substantially, from a fear that she would be punished for falsehood, if she should materially deviate from the statement she first made." [Phelan, J.]

*State, ex rel. Dawson, in re Strawbridge and Mays,* 39 Ala. 367, June 1864. Strawbridge and Mays were, on January 1, 1864, overseers on plantations where there were [368] " more than fifteen able-bodied field-hands, slaves, between the ages of sixteen and fifty years;" They were enrolled as conscripts in the Confederate army, and application was made in May 1864 for their exemption.[1] In July they [369] " were ordered out . . as a part of the second-class militia of the State, . . each . . is between eighteen and forty-five years of age. . . the chancellor . . ordered them to be discharged."

Reversed: they are [386] " liable to the lawful control of the State militia officer." [377] " The ' twenty-negro ' law,[2] as it was commonly called, caused great dissatisfaction, both with the country and army. . . At the same time that congress repealed those clauses, they framed . . the law of 1st May, 1863, which allowed ' overseers ' . . to be exempted, for the benefit of certain helpless and highly meritorious classes . . [378] the legislature [of Alabama], in passing its exemption law of August 29, 1863, meant only to respond to the recent action of the congress, . . they did not design . . to invite . . a return to that policy of general exemption for overseers (and others having the management of slaves) which congress and the country had just *repudiated*; . . [384] [Straw-

[1] Under the act of the Confederate congress of Feb. 17, 1864.
[2] Act of the Confederate congress, Oct. 11, 1862.

bridge and Mays] are *exempts proper* . . and as such liable to serve in the State militia." "There need be no such great alarm about the supervision of the labor of the country. If the holy cause of liberty requires it, many more farms or plantations can be pretty well managed, as thousands now are, . . without the supervision of able-bodied men. The heroic women, with their barefooted boys and girls, the old men, the convalescent or disabled soldiers, and though last, by no means least, the experienced and faithful negro, will do the business." [Phelan, J.]

*Harrison v. Harrison,* 39 Ala. 489, June 1864. [514] "the carpenter Jack . . was publicly hired out for that part of the year 1843 which remained after intestate's death [in March], for fifty-five dollars; . . In fixing the hires of the women, allowance is made for abatement of the price-value, caused by pregnancy, or the encumbrance of nursing infants;"

*Martin v. State,* 39 Ala. 523, January 1865. [524] "The indictment . . charged that the prisoner . . 'inveigled, stole, carried, or enticed away . . Fred, the property of . . Peasley, with intent to convert [him] . . to his own use, or to enable . . [him] to reach a State or country where he would enjoy freedom.'[1] Peasley testified, 'that on a Saturday night in September, 1864, about eleven o'clock, he was aroused from sleep by a negro woman who stated that "there was a white man trying to steal Fred;" . . Fred lived on an adjoining lot . . with the negro woman as his wife; that when he arrived . . he saw the defendant have Fred in the yard, standing over him, with a stick raised, . . and heard him say . . "Put on your shoes, and come quick, or I will drop you;" . . [that witness asked him what he was doing there; that the defendant replied, "he was an impressing officer, and was impressing negroes." Witness said, "You know that is not so; that will not do this time of night." . . [525] Defendant [said] . . that he "was going to take said slave to the front," and that there were eleven others engaged in the same business. . . that Fred always went to bed about nine o'clock; . . that . . [witness] took the defendant by the collar, and led him out of the yard; that Fred picked up two brick-bats, and perhaps threw one at the defendant; that the defendant appeared to be intoxicated,'" Judgment affirmed.

*William (a slave) v. State,* 39 Ala. 532, January 1865. Indictment for murder. "the owner of the prisoner . . stated . . on the day of the homicide [in 1863], before . . [he] had got out of bed, the prisoner . . sent word in to him that he desired to see him; and he sent back word, asking what he wanted. The prisoner did not say . . but again requested that witness should come out . . refused . . again repeated; and witness then . . dressed himself hastily, caught up a loaded whip, with which he usually whipped his slaves, went out . . where the prisoner was, and, in an angry . . manner, said . . 'What in the hell do you want with me?' . . The prisoner said, 'Master, I have killed Clarissa [another slave].' Witness exclaimed, 'What! where did you kill her?' The prisoner

[1] Code, sect. 3130.

answered, ' At the gin-house.' Witness then asked, ' How did you kill her? ' and the prisoner answered, ' I cut her throat.' . . [533] the prisoner . . was going on to make other statements . . when witness . . would not hear anything more from him, . . The court . . allowed the confession to go to the jury as evidence;"

Judgment reversed and the cause remanded: [535] " A partial and unfinished statement . . should not be received in evidence."

*Smith v. State,* 39 Ala. 554, January 1865. " The indictment . . 1864 . . charged that the defendant . . ' a white woman, did live in a state of adultery or fornication with a negro man ' . . testimony . . that the prisoner owned a negro man . . who was hired to . . Arant; that said negro came to the house of . . Hinson, with whom the defendant was boarding . . about a half-mile from . . Arant, ' frequently, perhaps two or three times in the week;' that . . [555] Hinson caught the slave in the defendant's room, at 9 o'clock at night, when the window . . was open, and the door locked; and that the bed . . showed the impressions of two persons "

*Carter's Heirs v. Carter's Administrators,* 39 Ala. 579, January 1865. Carter's will, dated 1853: " I give . . unto . . children of Robert D. James, all my estate . . on this condition . . that . . James . . immediately after my death, manumit . . [580] seven certain negro children owned by him, . . [three] yellow boys, and also Milly, Mary, and Alabama, (all . . children of Ellen, now dead,) and . . a child of . . Milly, and also all the children that any of the said negroes may hereafter have. And if . . James shall fail to give . . their freedom, as far as the laws of the State will permit, or so that they may enjoy their liberty, and the profits . . of their own work . . or should said slaves be kept at work, against their own will, . . or should they ever be . . in any way disposed of . . so that they are deprived of liberty of working for themselves, and of disposing as they please of their own time, under the laws of the State; or should they hereafter ever be taken for the debts . . and put into a state of slavery,—then this devise and bequest to be . . utterly void, . . The true intent of this will is, to give all my property for the . . freedom of the said negroes, so that they may enjoy the same as far as the law of the land will allow, and good conscience, honesty and right will protect." James died in 1860, leaving a will, dated 1858: " Whereas . . Carter . . by his will . . did provide that . . certain property . . should vest in [my children] . . upon certain conditions . . [583] I give . . unto my son, Francis . . the slaves . . John Carter, Albert Carter [and the rest] . . and their increase . . in trust . . that . . after the death of . . Carter, . . Francis . . his heirs, or assigns, shall, in no case, and upon no pretext . . whatever, . . require personal service or labor, or the hires . . thereof, . . from the said slaves; but that the said slaves shall be allowed their own time . . with . . free privilege . . to go, return, live and reside whithersoever they may desire . . and that they shall, under all circumstances, . . be allowed the rights, immunities and privileges of free white citizens, when . . not inconsistent with the laws of the State;"

[582] "Carter died about the 24th April, 1861, and left no widow, children, or descendants of children, so far as is known." Under order of the probate court his property was divided among the children of James, [581] "and a return of the division was made . . to the court . . December, 1861. . . 1863, a citation was ordered to . . [Carter's] administrators, requiring them to file their accounts . . for a final settlement; . . a petition was [later] filed . . by . . [Carter's] heirs-at-law and next of kin . . alleging that the provisions of the will were void, and praying that, on the final settlement, all the property of the estate might be divided among them. . . [582] On the trial, . . 'the trustees of these Carter negroes appeared in court, and insisted on their right to hold said negroes under the directions of . . will [of James]; and that said negroes had been treated with kindness, and given as much liberty as was permitted by law;' . . [583] the court dismissed the petition of the distributees and heirs-at-law;"

Held: I. [585] "the dispositions of . . Carter's will, in favor of the children of . . James, are inoperative, because they depend on a condition precedent which is illegal . . [586] The remedy of the heirs-at-law and next of kin . . is in chancery."

*Burt v. State,* 39 Ala. 617, January 1866. "The indictment . . 1863, averred that the prisoner, . . 'a slave, . . with malice aforethought, killed . . a white man [[618] "with the intention to rob the deceased"] by beating him with a stick,' or . . 'by . . stabbing him with a knife.' . . the trial . . took place on the 27th September, 1865, . . [618] The verdict . . was 'guilty . . of murder in the first degree, and sentence him to be hung.' The court . . ordered the execution to take place . . November . . but . . suspended, on account of the bill of exceptions reserved"

Judgment reversed, [626] "ordering that the sentence be not executed upon the prisoner, and that he be discharged from custody" [620] "When the ordinance of the convention abolishing slavery was adopted on the 22d September last, there remained not a slave in . . Alabama; . . [622] the statute providing for the punishment of *slaves* . . for murder, was repealed by the ordinance of the convention." Judge Judge concurred: [628] "It is to be regretted that, in cases like the present, offenders escape merited punishment. . . The discharge of the prisoner is one of the evils resulting from the war, and is not by any means the greatest that has been brought about by that calamity."

*Jeffries and Jeffries v. State,* 39 Ala. 655, January 1866. [656] "that the defendants . . carried away the mules . . August, 1865; . . were slaves . . up to the time of the general abolition of slavery in Alabama."

Held: [658] "The act approved October 7, 1864 [under the provisions of which the defendants were tried], was not in force between the 20th July, 1865, and the 21st day of September thereafter. . . [659] Under the provisions of [General Orders, No. 100, approved by the president of the United States on April 24, 1863] . . the act . . was

suspended by the occupation of the State by the United States army, and the surrender of General Taylor, in May, 1865. . . The president of the United States . . appointed . . provisional governor . . who, on the 20th day of July, 1865, issued a proclamation . . that, 'from . . this date . . the . . laws of Alabama, as they stood on the 11th January, 1861, except that portion which relates to slavery, are . . in full force' . . This declaration very clearly . . excludes the idea, that the laws enacted after the 11th January, 1861, . . were to be in force after the date of the proclamation; . . [662] The people looking at the proclamation, would very . . properly come to the conclusion, that the act of the 7th October, 1864, was not in force during the time indicated; and it would be . . illegal to visit the severe penalties of that law, upon an offense committed during that period; especially, when there was a law in force,[1] and put in force, too, by the proclamation, under which another . . [663] punishment can be inflicted, if the defendants shall be found guilty on another trial. We are of opinion, that the defendants were free persons of color at the time the offense was committed, . . We hold, that the ratification of the act of October 7th, 1864, on the 21st September, 1865, does not repeal section 3180 of the Code; and that both statutes are in force,—the first, as to offenses committed since the 21st September last, and the Code as to offenses committed prior to that time and subsequent to the proclamation." [Byrd, J.]

*Nelson v. State,* 39 Ala. 667, January 1866. "The indictment . . December, 1865, charged that . . 'Nelson . . formerly a slave, the property of . . Bethea, . . did [in February 1865], while he was a slave . . kill Annice, *alias* Annice Bethea, . . the property of . . Bethea, by strangling . . or by throwing her into a well;' . . circumstantial evidence which tended to show that the crime was committed by the prisoner. . . The jury . . found the defendant 'guilty of murder in the first degree,' and sentenced him to death; and judgment was rendered accordingly."

Judgment reversed, [671] "discharging the prisoner from custody," Judge, J.: [673] "section 3312 of the Code, which declares, that 'every slave, who is guilty of murder, shall, on conviction, suffer death' . . was abrogated with all the other statutes of the slave code. . . [675] he could be punished under no law, . . It is not pleasant to the Chief-Justice and myself to be forced to this conclusion;"

*George v. State,* 39 Ala. 675, January 1866. "The prisoner was indicted, in 1862, as a slave, under section 3311 of the Code, which provides, that every slave who robs, or commits an assault and battery with intent to rob, any white person, must, on conviction, suffer death. On the 27th day of September, 1865, he was tried and convicted; . . [676] sentenced by the court to imprisonment . . for . . twenty years. . . under section 3104 . . which . . had been made applicable to 'free persons of color,' by section 3505 of the Code."

[1] Code, sect. 3180.

Judgment [679] "must be reversed, and the appropriate order made in this court, for the discharge of the prisoner" [677] "the constitution of this State, as amended, [is] repugnant to the criminal statutes relating exclusively to slaves . . [678] there can be no judgment, in a case like the present, unless the law that was infringed is in force *at the time of the indictment, and of the judgment.*" [Judge, J.]

*Eliza v. State,* 39 Ala. 693, January 1866. Judge, J.: [696] "The fact that this class have not become free by their own seeking, but by a political convulsion, . . can not affect their amenability to the laws." [697] "A. J. Walker, C. J., dissents from any expression in the opinion, . . intimating that slavery was abolished in the State otherwise than by the action of the convention,"

*Ferdinand* [*Smith*] [1] *v. State,* 39 Ala. 706, January 1866. [707] "The indictment . . described the prisoner as a free negro, and charged him with obtaining goods under false pretenses . . evidence . . that the offense was committed . . 16th September, 1865; . . that, for twenty years or more, prior to the 12th April, 1865, when the military and naval forces of the United States took Mobile, the defendant had been . . the property of Rives, Battle and Co.; that he left their service on that day, without their consent, and never returned to them; and that they never . . admitted his right to freedom, until the adoption of the ordinance of the State convention on the 22d September, 1865, by which slavery was declared to have been abolished. . . the defendant requested the court to instruct . . that he was a slave at the time of the commission of the offense, . . refused"

No error: "It is not denied that slavery has had no existence in this State, since the 22d day of September, 1865, on which day the State convention . . [708] acted on the subject; but it is argued that it did exist in law, if not in fact, until that action was had. This position amounts to a denial of the legality of the destruction of slavery by the act of war, a question it would be utterly . . useless to discuss. It is a historical fact, that the consummation was effected by the act of war, anterior to the action of the State convention; and whether justly or unjustly, legally or illegally, are not now practical questions. This was the view, in effect, taken by the State convention, . . That body was not guilty of the absurdity of abolishing slavery, which did not then exist; but it gave a . . solemn sanction to the truth of the fact, before well known, that the institution of slavery had 'been destroyed in . . Alabama,' by expressly so declaring," [Judge, J.]

*Frank v. State,* 40 Ala. 9, June 1866. "the prosecutor . . was the owner of the prisoner . . up to the time of his emancipation; . . August, 1865, . . a little before sunrise . . [he] told him to 'go on to the brickyard, as he wanted a good day's work done there;' . . The prisoner appeared somewhat sullen. Witness . . returned in about fifteen minutes, . . said, 'If you don't go, I'll see if I can't make you go;' and catching

[1] 40 Ala. 733.

up a paling . . he struck the prisoner . . The prisoner . . stabbed him . . and left."

*Fuller v. Fuller,* 40 Ala. 301, June 1866. In 1855 [305] "some of the sons . . in the night-time . . carried off forty-one of his most valuable slaves, for the purpose of preventing . . the sale;"

*Modawell v. Holmes,* 40 Ala. 391, January 1867. [394] "a witness . . testified, that negro men, good field-hands, hired in 1858 and 1859, at from one hundred and fifty to two hundred dollars per annum, and women at from one hundred to one hundred and twenty-five dollars; that he hired a negro woman who was a fair field-hand, in 1864, for seventy-five dollars, payable in Confederate money; . . [395] a witness . . testified, that he hired a negro woman for the year 1863, for forty dollars; . . two women and a man, in 1864, for three hundred dollars, and a man, a woman, and girl, in 1865, for four hundred dollars; that these prices were payable in Confederate money; that said negroes were fair field-hands, . . and that negroes were worth, during the war, about what was necessary to feed, clothe, and support them, and pay their doctor's bills and taxes. . . another witness . . testified that, in 1863, he hired two women and a plow-boy, for two hundred and fifty dollars; that in 1864, he hired two women for one hundred and sixty dollars . . fair field-hands, and the prices . . were reasonable,"

*Bates v. Vary,* 40 Ala. 421, January 1867. [424] "that in 1864, and up to the time of the surrender, he owned upwards of one hundred slaves; . . [425] that [his brother] Robert had, at the time of his death [in October 1864], . . twenty-seven slaves, old and young, . . [426] that as negroes were selling in January, 1865, for Confederate money, the negroes alone of . . [Robert's] estate would have sold for, or were worth, about one hundred and fifty thousand dollars in Confederate money."

*Neilson v. Cook,* 40 Ala. 498, January 1867. [502] "note . . given for the hire of Lewis in 1862, . . collected on the 7th May, 1865, in Confederate notes, . . 'and interest, $103.25.' . . 'Cash received . . hire of Lewis, 1863, $100,' . . dated January 1, 1864. . . [503] The deposition of Harriet Barringer . . 'About the 1st January, 1865, . . Cook . . hired a negro woman to me for the year 1865, at two hundred and fifty dollars, clothing, and taxes. . . I had . . the Confederate money, and was ready to pay in advance,' "

*Leslie v. Langham's Executors,* 40 Ala. 524, January 1867. [525] "the plaintiffs, as executors, claimed . . three hundred and ninety dollars, 'due by promissory note made . . 2d day of January, 1865, . . for the hire of a . . slave . . for the year 1865.' . . 'slave . . remained in . . [defendant's] possession until the 1st day of May, 1865, when the military authorities of the United States took possession of the country; . . the negro then left . . of his own accord . . and returned to that service no more. . . [526] The defendant . . read in evidence President Lincoln's emancipation proclamation, . . offered parol evidence, tending

to show that . . it was understood . . that the [note] . . was to be paid . . in Confederate currency or treasury-notes; . . admitted;"

Held: I. [528] "the hirer must bear all the losses . . [II.] [529] slavery in this State was destroyed in May, 1865. Whether the State was in or out of the Union at the issuance of the proclamation of President Lincoln . . makes no . . difference. If in the Union, he had no constitutional authority . . to issue and enforce it at that time; and if out of the Union, *in either case,* it could have no force or validity until the Federal government was enabled by conquest, or the power of arms, to enforce it. . . [III.] A parol understanding to receive Confederate treasury-notes in payment . . is not a part of the contract, and . . not obligatory" [Bryd, J.]

*Horton v. Pool,* 40 Ala. 629, January 1867. [630] "This agreement, made . . November . . 1865 . . witnesseth, that whereas . . Horton, . . February . . 1863, sold nine negroes to . . Pool, for . . seven thousand dollars, . . and whereas, a difference of opinion exists . . as to the obligation . . to pay . . and the amount . . Horton and . . Pool agree each to select a man for the purpose of arbitrating . . and if the men . . selected . . cannot agree, they shall select a third man, as umpire" The two arbitrators, not being able to agree, [631] "selected . . umpire . . [who] decided, that . . Pool should pay . . Horton . . six thousand dollars in gold or silver," Held: [632] "not a statutory award."

*Logan v. State,* 40 Ala. 733, June 1867. "This action was brought by Mrs. Frances L. Logan, against the State of Alabama, to recover the value of . . slaves . . alleged to have been emancipated by the act of the defendant, without the consent of the plaintiff, and without an offer or tender of compensation.[1] . . The rulings of the court . . were adverse to the plaintiff's right of recovery;" Judgment affirmed: [734] "We decline to disturb the decision" in Ferdinand Smith *v.* State.[2]

*Glover v. Taylor,* 41 Ala. 124, June 1867. "action . . brought by . . Taylor and Co. . . to recover damages for the breach of a warranty of the soundness of a slave; . . commenced by original attachment, which was sued out . . 1859. The attachment was levied . . on two slaves . . of the defendant, which were replevied by him on the same day. The condition of the replevin bond . . [125] proceeded thus: 'Now, if . . Glover shall fail in the said action, he or his sureties shall . . return the . . negroes' . . On the trial . . 1866, . . the defendant . . offered . . as a witness, . . one of the sureties . . The plaintiffs objected . . sustained"

Held: [128] "We judicially know, that before the trial . . slavery ceased to exist in . . Alabama, and that a compliance with the bond had become, by the law of the land, alike impossible and illegal. . . the surety could not be liable for a failure to deliver the property, and was, therefore, not incompetent from interest." [A. J. Walker, C. J.]

[1] Alabama Constitution of 1819, art. VI.
[2] P. 264, *supra.*

*Beasley v. Watson,* 41 Ala. 234, June 1867. [237] "owned nine negroes, being a woman and her eight children, none of whom were able to work except the two oldest, and they could do but little;"

*Hall v. Heydon,* 41 Ala. 242, June 1867. "In 1855, or 1856, . . [Mary Keiffer] owed him . . a note for three hundred dollars, given for the hire of a slave, to work in a blacksmith-shop, which was carried on by [her] . . and he was surety for her on another note for about three hundred dollars . . for the hire of another slave to work in the same shop. He took possession of said blacksmith-shop . . in January or February of the same year, . . [243] and received the proceeds thereof; out of which, at the end of the year, said two notes were paid,"

*Jones's Administrator v. Shaddock,* 41 Ala. 262, June 1867. "The bill . . was filed . . 1859, by the five youngest children of Martha Shaddock, . . Dick . . was conveyed to . . Martha Shaddock, . . 1852 . . by . . Herndon . . [263] in trust for the use . . of the complainants, . . [Two weeks later, Dick] . . was sold . . by Martha . . to . . Jones; and the bill alleged, that Jones . . had notice of the trust . . The slave was allowed by Jones to . . act as a freeman; and . . by his earnings . . he bought . . Turner and Wash, and had the bills of sale . . taken in the name of Jones. . . 1857, Jones . . conveyed the three slaves to . . Thomason, by whom they were carried out of the county. . . Jones . . denied all knowledge of the alleged trust . . but asserted that he was told by . . Martha . . that she held the slave under an absolute deed of gift . . but had promised Herndon that, so soon as the slave paid her eight hundred dollars, she would emancipate him; and that he bought the slave from her at the slave's own request, and with the intention to emancipate him so soon as he had paid for himself. He admitted that Dick had . . paid for the boy Turner, and had also paid him five hundred dollars for Wash, who belonged to him; . . he . . had filed a petition in the probate court for the purpose of emancipating [Dick;] . . that Martha Shaddock having afterward instituted an action . . against him for said slave, he transferred all his interest in the slaves to Thomason . . to rid himself of all further trouble . . witnesses proved the parol trust . . communicated . . a few days afterwards, to . . Jones."

Held: I. [265] "Jones, having converted Dick to his use, in violation of the trust, was chargeable as a trustee . . [II.] We have had more trouble with the question as to . . Wash and Turner. . . The acquisitions of slaves, even though made with the owner's consent, belong to their owners, who may assert their rights thereto; but the owners can not assert their claims to such acquisitions after they have been disposed of by the slaves, . . [266] We do not think that Jones . . was bound to appropriate the acquisitions . . to the benefit of the trust . . Jones . . did not, until he sold the slaves, assert any title to the earnings of Dick, or title to Turner . . or to Turner's earnings. . . the court erred in charging the defendant on account of the earnings of any of the slaves, not claimed by him. In 1857, Jones . . not only asserted his title [to Dick and Turner] . . but transferred them . . His duty . . was to

hold the slaves, after he asserted his title, for the benefit of the trust . . he . . is chargeable with the value of these slaves . . [III.] the title to Wash did not pass out of Jones . . But the five hundred dollars, the fruit of Dick's earnings, received by Jones, must be clothed with the same trust as was . . Dick. . . [267] the chancellor correctly held the defendant liable for the five hundred dollars . . and refused to make him liable for the value of Wash." [A. J. Walker, C. J.]

*Sowell v. Sowell,* 41 Ala. 359, June 1867. [361] "in October, 1863, most of the slaves were bid off by the petitioner . . and went into the possession of his wife . . and remained under her control until the close of the war;"

*Glenn v. Glenn,* 41 Ala. 571, January 1868. [572] "the widow administered on . . estate, . . 1858, and kept it together . . cultivating the plantation, until the emancipation of the slaves in the spring of 1865,"

*Kirksey v. Kirksey,* 41 Ala. 626, January 1868. [632] "Kirksey, in 1861, . . offered to buy . . a negro man, who was then a runaway, . . [His owner] replied, that he would not sell . . as the balance of his negroes would run away if he did, just to be sold,"

*Rose v. Pearson,* 41 Ala. 687, January 1868. "This action . . was commenced on the 3d April, 1861. . . 'for the recovery of chattels in specie,' . . twenty-four slaves . . [688] October term, 1861, the defendant filed a plea of *non detinet*; . . October term, 1866, a trial was had . . the court . . rendered a judgment . . 'that the plaintiff recover . . the said property' . . (specifying the slaves by names,) 'or . . twenty thousand dollars, their alternative value,'" Held: [692] "The plaintiff . . has a right to the alternative value."

*Railroad Co. v. Watson,* 42 Ala. 74, January 1868. "action . . brought by . . Watson [who had hired to the defendant] . . from the 1st January, 1861, to the 1st January, 1862, certain slaves, . . among them . . Spencer, to work on defendant's road, . . [76] Spencer . . was taken sick, . . 'sent . . to the hospital at the depot at Montgomery,'" and died there.

*Waller v. Taylor,* 42 Ala. 297, January 1868. [298] "was possessed of a large estate in negroes . . but that in consequence of the war, etc., the estate has become insolvent; and the plantation is not now kept up,"

*Madden v. Hooper,* 42 Ala. 397, January 1868. "an execution . . against Wade Madden . . was levied . . March, 1860, on a slave . . [398] May following, John Madden made claim . . and gave the required bond. . . 1867, . . a trial . . was had, . . The plaintiff proved the negro . . worth, at the time of the levy, $1000."

Held: [399] "The quality of property in the slave having been destroyed before the trial by emancipation, . . it was competent for the plaintiff to prove the value at the time of the levy. . . The emancipation . . would not preclude a recovery by the plaintiff" [A. J. Walker, C. J.]

*Ivey v. Coleman,* 42 Ala. 409, January 1868. Will of Benjamin Ivey, who died in 1858: [411] "I direct my executors . . so soon after my death as practicable, to take charge of, and convey my slave Harriet and her [four] children . . from . . Alabama, to . . Indiana, or Illinois, or Ohio, . . and I hereby bequeath to my executors . . $5000, on trust, . . Out of the said sum is to be paid all expenses . . in conveying Harriet and her children . . the balance . . is to be . . safely invested for the benefit . . of . . Harriet and children, so that the interest . . may, and shall be, regularly paid over to [them.] . . Upon the faithful carrying out the provisions of this item . . I hereby discharge my executor . . from all responsibility . . for the slaves and money herein mentioned." The executor's account contained the following credit: [413] "By amount of extra compensation for carrying slaves to a free State, and carrying out the provisions of the will . . $500 00" It was not allowed. [417] "We hold, too, that the executor is required to show the execution of the trusts . . before he can claim exemption from liability to account for . . the . . five thousand dollars,"

*Jones v. Howard,* 42 Ala. 483, January 1868. "$130, for the hire of negro woman . . for the year 1864,"

*Weaver v. Lapsley,* 42 Ala. 601, June 1868. Action founded on a note. Eliza and Caroline were sold [604] "to the highest bidder at public outcry . . on the 1st day of February, 1865" for $2,172.00. It was announced "that the sale was for coin." [605] "The defendant . . proved . . facts tending to show that in . . 1864, the said slaves were worth in Confederate States treasury-notes, about $5,000, . . in gold, about $250; that after that time, slaves declined in value, and in February, 1865, it was difficult to sell slaves at any price; that there were no sales of slaves, so far as witness heard, in 1864 or 1865." [613] "it is contended that the effect of the act of congress of July 17th, 1862, and of the proclamation of President Lincoln, of September 22d, 1862, was to render the sale . . illegal and void."

Held: I. [614] "The record does not disclose that Eliza and Caroline . . were of either of the class of slaves designated by the act of congress; . . [II.] As to the proclamation . . it was manifestly nought but a war-measure, and of no operative effect, until carried into execution by force of arms." [Judge, J.]

*Witter v. Dudley,* 42 Ala. 616, June 1868. [619] "removed with his wife and the slaves . . to Mississippi, in . . 1849,"

*Morgan v. Nelson,* 43 Ala. 586, June 1869. [589] "they continued to work the . . negroes on the . . place . . from 1859 until they were lost by emancipation of the slaves, by the result of the war, except . . Jack, who died in 1862;" He [591] "was valued at . . $1300"

Held: [592] "The abolition of slavery in Alabama, and other rebel territory embraced in the president's proclamation of January 1, 1863, was . . authoritatively proclaimed as the will of the nation, and it was consummated by the final triumph of the national forces . . [593] the

intermediate lapse of time is not regarded, and the whole relates to the first moment, so as to make [the abolition of slavery] . . operative therefrom." [1] [Peters, J.]

*McElvain v. Mudd,* 44 Ala. 48, January 1870. Suit founded on a promissory note given on February 1, 1864, for three slaves. Held: I. [61] "that slaves, notwithstanding the proclamation, nevertheless, until the rebellion was suppressed, and the said proclamation became effectual to control the people of the rebel States, continued during the period between the date of the proclamation, and the end of the war, to have an *uncertain and contingent value in said rebel States,* and that contracts made *between citizens of said States,* in reference to that species of property, are sustained by a lawful . . consideration. . . [II.] the third section of the ordinance of the convention of 1867 . . [62] impairs the obligation of contracts, and is, therefore, unconstitutional and void." [Peck, C. J.] B. F. Saffold, J.: [63] "I concur . . Slavery in Alabama ceased, in fact, in the spring of 1865 . . If it should ever become important to decide the precise time when the abolition . . was effected by law in this State, I am satisfied it will be referred to the date of the adoption of the 13th amendment to the federal constitution." Peters, J., dissented.

*Buford v. Tucker,* 44 Ala. 89, January 1870. [90] "action on a promissory note, executed . . January, 1865, for the hire of a negro woman . . and several children, for the year 1865. . . said slave was taken . . by the presence of the Federal army, in the spring of . . 1865,"

Held: [91] "the plaintiff was only entitled to recover what, at the date of the note, the services . . were worth . . in the legal currency of the United States. He was, however, entitled to recover for the services for the entire year 1865." [Peck, C. J.]

*Fitzpatrick v. Hearne,* 44 Ala. 171, January 1870. [172] "note was made [in 1856] for the purchase-money of . . slaves, . . the title . . was warranted . . for the life of said slaves," Held: I. [173] "The third section of . . ordinance No. 38 [of the constitutional convention of Alabama, passed December 6, 1867], which refers to notes . . given . . in consideration of slaves, has been decided . . to be unconstitutional" [2] II. The warranty that the negroes were slaves for life did not protect [175] "the vendee against the abolition of slavery by the government. Such a contingency did not enter into the contemplation of either the vendor or vendee . . nor did it form any element in the contract of warranty." [Peck, C. J.]

*Ex parte Vaughan,* 44 Ala. 417, June 1870. Application for bail. "The killing occurred . . on the 2d of April, 1865. The prisoner is a white man, and the person slain was a colored man, occupying the status at that time of the colored people of the State, who were . . [418] slaves, . . The prisoner offered no evidence in his own behalf, while against him

[1] But see McElvain *v.* Mudd, *infra.*
[2] McElvain *v.* Mudd, *supra.*

were the findings of the grand jury, and his admission that he did the killing. . . The application is denied." [B. F. Saffold, J.]

*Turner v. Turner,* 44 Ala. 437, June 1870. In 1856 or 1857 [445] "she found him engaged in adulterous association with . . Sally, his slave, . . in the house in which oratrix and her husband resided. . . [446] she made up her mind that she could not, with self-respect, remain his wife, and so informed him. Thereupon, the defendant . . asserted that he had been overcome in a moment of weakness, and that it was his first departure from a virtuous life, and . . would be the last. . . oratrix thought it was her duty to forgive him, and did so. . . Sally, who was a house servant, was still retained . . about the house, notwithstanding oratrix requested her husband to have her removed; and she supposes, that the servant, finding herself supported by the authority of her master, became insolent to oratrix, whereupon she chastised her. Oratrix's husband complained at her . . and forbade her to do so. Oratrix told [him] . . that as long as he retained her about the house . . she would punish her for any insolence . . and the temper of her husband being roused, he threatened to whip oratrix, and made . . Sally, go out and get switches . . He forbore to strike her, however,"

*Stikes, Administrator, v. Swanson,* 44 Ala. 633, June 1870. [634] "Cassius Swanson was originally a slave in . . Florida; he was there emancipated . . under the laws of that State, and removed to . . Mobile . . shortly after his emancipation . . he died intestate [in 1860] . . leaving considerable estate, consisting of slaves and other property, . . Stikes became the administrator . . made final settlement [in 1868] . . when . . there remained . . unexpended . . $556 18 . . This fund was claimed by . . sons of Cassius Swanson, . . children by two mothers; . . the mother of Martin . . remained a slave till her death . . before 1859. After the death . . Cassius [before his emancipation] married a second wife . . also a slave, and by her he had . . Abraham and William . . all born slaves"

Held: [635] "The cohabitation . . with each of his two wives, was . . a *quasi* marriage. . . [637] the appellees are not bastards, and emancipation has restored their heritable blood." [Peters, J.]

*Billingslea v. Glenn,* 45 Ala. 540, January 1871. "Glenn died . . 1858 . . [541] the administratrix . . kept the slaves . . under her control . . and employed them in making crops . . up to the time the slaves were emancipated by the United States armies;"

*Mosely v. Tuthill,* 45 Ala. 621, January 1871. Micael Prieto's will, 1860: [624] "I request that my two servants, Margueritte and Babert, in consideration of their faithful services to me, may remain with and take care of my children, and that they may be treated with kindness and consideration, and their wants amply supplied." "The petition of . . administrator with the will annexed . . shows, that there has not come into his possession any personal property . . except slaves, and that there have been presented . . debts in amount to upwards of six thousand

dollars; . . states that . . the sale of the land . . will be more beneficial . . than the sale of the slaves, by reason of the fact that the slaves are family servants, and are needed for the use of the family, and because the servants constitute a family which it is not desirable to break up and separate."

*Meadows v. Edwards,* 46 Ala. 354, June 1871. [357] "firewood which he cut and hauled in 1864, with the slaves and wagon"

*Dudley v. Witter,* 46 Ala. 664, June 1871. [667] "About 1847 or 1848 . . husband . . removed her and the . . slaves . . to . . Mississippi."

*Napier v. Jones,* 47 Ala. 90, January 1872. Wallace's will, 1858: [91] "I request that my executor shall give my three boys, George, Ell, and Tom, the choosing of their own masters, and that he shall sell them to the one whom they may choose at a fair price, making the debt secure."

*Jay v. Mosely,* 47 Ala. 227, January 1872. [228] "Ben Dolphin, his favorite negro servant, waited upon him continually, and was with him when he died (in . . 1866). . . Ben Dolphin testified that the decedent kept his gold in a bag, and his paper money in a book, both of which he was accustomed to carry to him when he wanted them, and to put away ['locking and unlocking the bureau drawer for the purpose']. He is confident that he had not more than forty dollars in gold about the close of the war."

*Gaines v. Shelton,* 47 Ala. 413, January 1872. [414] "28th January, 1860. For the present year's hire of a negro man, . . we promise to pay . . on the 1st of January next, two hundred dollars, and to provide . . two suits of summer clothes, one suit of winter clothes, two pairs of shoes, a hat and blanket; also, to pay his taxes, and return him . . the 25th of December, 1860. This negro is hired to work on the plantation now occupied by . . Gaines, and not elsewhere."

*Waller v. Ray,* 48 Ala. 468, June 1872. [469] "The testator, at the time of his death [January 1864], was possessed . . of two large plantations and ninety-odd thousand dollars worth of negro slaves,"

*Hill v. Smith,* 48 Ala. 562, June 1872. A note for $2955, dated February 10, 1863, was given for two slaves sold under an order of court.

*U. S. v. Huckabee,* 16 Wallace (U. S.) 414, December 1872. "In . . 1862, . . Huckabee and three other persons, formed . . a corporation . . its object was the working in iron; its particular machinery being such as made it capable of manufacturing cannon, and other munitions of war. Rolling-mills were erected, and lands, slaves, and mules bought. . . [415] the rebel powers possessed an almost despotic power over the whole body of skilful laborers in the region."

*McConico v. State,* 49 Ala. 6, January 1873. Held: [7] "The Ordinance [No. 23] of the Convention adopted on the 30th day of November, 1867, entitled 'An ordinance relative to marriages between freed-

men and freedwomen,' . . [8] had only the effect to legalize the marriages existing between freedmen and freedwomen before emancipation. It was not designed to dissolve, nor to permit these marriages to be dissolved by the parties themselves."

*Clark v. Hart,* 49 Ala. 86, January 1873. In 1863 [87] "negro, mules, and dray were partnership property"

*Marsh v. Richardson,* 49 Ala. 430, June 1873. Will, dated 1857: [434] "I give to . . King the following . . servants, . . woman Henrietta, [three boys and two girls] . . also . . all the . . residue of my estate . . for the use . . of the six . . servants," Peters, C. J.: [435] "The learned counsel for the appellees insinuate . . that the 'woman Henrietta' was the wife of the testator, and that the other persons . . were his children, and that King . . had married 'the mulatto daughter' of this woman and the testator. If this be so . . the effort to aid her in her servitude, and to maintain her and her children . . can hardly be denounced as inhumane or unlawful, in one who had shared her bed . . The will was, therefore, not void,"

*Brevard v. Jones,* 50 Ala. 221, January 1874. [240] "In 1855, the appellee received from her mother . . Allen and Polly, which her husband sold for $2,100."

*Millsap v. Stanley,* 50 Ala. 319, January 1874. [320] "on December 18, 1861, . . representatives filed their petition . . asking an order for the sale of . . [321] Martha, Mary, Jack, and Dick . . granted . . On December 20, 1861, . . another petition . . praying for an order to sell . . children of . . Martha, . . and also girl Elvira, . . granted . . and they were sold . . on February 3, 1863, for . . $6,287.00,"

*Fail v. Presley,* 50 Ala. 342, January 1874. In 1867 Dr. Presley [343] "commenced suit against . . Fail . . in an action of trespass *vi et armis,* for damages for killing . . [his] slave . . by whipping . . 1862. . . [346] Dr. Presley . . sent the slave to the manager of his plantation, who was then . . Fail, . . for chastisement, for an offence which he was suspected to have committed." Held: "if Fail went beyond the infliction of a proper chastisement, he took the peril of his abuse of his power upon himself."

*Hightower v. Maull,* 50 Ala. 495, January 1874. "January 2, 1865. On the 25th day of December, 1865, we promise to pay . . guardian of . . a lunatic, two hundred dollars . . for the hire of a negro man, a slave, as a farm laborer." [496] "Evidence . . that in January, 1865, negroes were hired only for Confederate money, . . The court charged . . 'That the court would judicially know, unless the contrary was shown, that . . promise . . was made with reference to Confederate money;'"

Held: "This charge was erroneous. The intendment of such a note is, that it is payable in lawful money, and the contrary must be proved. . . not necessary that this presumption should be overcome by proof of an express agreement to receive payment in some other money. Proof that it was so understood . . is sufficient."

*Raines v. Raines' Executors,* 51 Ala. 237, June 1874. [240] "The complainants and their mother, who were the testator's slaves, were bequeathed to the executors, in trust, to provide for their remaining in Alabama free, if practicable; and, if not, to send them to one of the free States . . After such disposition . . a bequest in trust to the executors, of the whole estate, for the benefit of the children, was to take effect. The executors were empowered to appoint a trustee for these legatees, who should secure for them comfortable maintenance and education, and provide for the . . [241] proper management of their property, and its final settlement upon them, protected from the marital rights of husbands." [240] "The will was admitted to probate . . January, 1859, after a fierce contest by the heirs-at-law . . [241] The estate was sold in 1859, and about $75,000 was realized. No attempt was made to carry the beneficiaries beyond the State, or to procure permission for them to remain in Alabama, as free persons. The mother . . was sent on a visit to Ohio; but, on her return, she objected to being removed from this State. The war came on directly . . They became free . . with perfect right to remain here. . . May, 1860, an annual settlement was made by the executors . . there remained in their hands, subject to distribution, about $25,000. . . this settlement was assailed by the complainants only in respect to allowance of $20,000 paid to the heirs-at-law . . in compromise and abandonment of their contest. A credit of $16,000 for counsel fees was objected to . . but the objection is abandoned. The probate court allowed the executors $7,561, as commissions and extra compensation. This was in addition to $1,000 each, granted by the will. . . The above . . $25,000 was divided between themselves by the executors, they proposing . . to be responsible each for the share he received." [237] "The bill in this case was filed . . 1870, by the appellants . . and sought an account"

Held: I. [242] "The proof . . shows, that the appellant legatees were in imminent danger of losing the probate of the will, and, with it, their freedom. In addition to a strongly aggressive public sentiment against the provisions of the will, the testator was suffering from apoplexy, and the testimony was very contradictory in respect to his mental capacity. The facts and the authorities cited establish the correctness of the credits for the compromise and services of the counsel. . . [II.] [243] The executors . . had managed the property about two years when the allowance was made to them, . . we do not think the charge was excessive; . . [III.] [244] Let the $25,000 of balance be accounted for." [243] "The executors explain that . . in dividing the [$25,000] . . between themselves, they merely so disposed of the debts due from the purchasers of the property. . . a large portion . . were paid . . in Confederate money, . . [244] The commingling of the trust funds with their own is a strong point against the executors. Nevertheless, . . if they show clearly that the debts were adequately secured . . and that due diligence . . would not have availed to collect them, . . they should receive credit for such portions as would have been unavoidably lost." [B. F. Saffold, J.]

*Trimble v. Isbell,* 51 Ala. 356, June 1874. The jury "find that the girl Julia . . [357] was unsound and valueless at the day of the sale [1859] . . and that she was . . sold, at $1,100; and that the woman Mary . . was sold . . for . . $1,125; and that she was unsound . . and that said unsoundness amounted to one half of her estimated value."

*Haden and Downing v. Ivey,* 51 Ala. 381, June 1874. A witness testified: [383] "I have heard John J. Ivey [a free man of color] speak of Tempy as his wife, and my understanding has always been that he bought her for his wife ['about . . 1827 '],"  [382] "There was not any license, but there was a marriage ceremony, administered by a regularly ordained minister" He removed with her from South Carolina to Alabama about 1830, and "prior to July, 1838, [she] had acquired some money and other property; . . Downing [her former master's son], . . 'with her own means,' purchased the land in controversy . . but . . always recognized it as hers, . . [383] In the will of . . Ivey . . 1860, . . he speaks of Tempy Ivey as his wife, . . who has been a faithful helpmate . . and has helped him to accumulate his property; bequeaths and devises the whole of his estate, with some inconsiderable exceptions, to Mrs. . . Alford . . in trust, . . that, 'out of the proceeds . . or the principal if necessary,' she will support . . Tempy in comfort, and allow her to live wherever she may choose, free from labor or control;" Ivey's administrator sold the land to Haden.

Held: [384] "It was clearly such a marriage as would have been sufficient at common law. . . [385] And the public policy of the State since emancipation has been to give such marriages, as between the parties themselves, full validity. . . the husband might permit the wife to use her own earnings . . and invest . . in land. . . the title to the land . . never belonged to . . Ivey," [Peters, C. J.]

*Du Bose v. Carlisle,* 51 Ala. 590, June 1874. [592] "the father of Mrs. Du Bose, and . . a near relative . . independently . . executed two deeds, whereby they conveyed,—the first [in 1849], thirty-three slaves, and the other [in 1843], twenty-nine slaves,—in trust that the trustee . . would 'allow . . [593] Du Bose to possess the . . slaves . . for the maintenance of himself and family,' . . If Mrs. Du Bose survived . . she was to have the absolute estate. If he survived . . each child . . was to have a separable share . . Du Bose had about thirty slaves of his own. In 1850, he and his family emigrated [from South Carolina] to Alabama, and all of their property was brought with them. The *corpus* of the gifts was destroyed in 1865, by the emancipation of the slaves. . . [594] The annual expenses of the family are said to have been about four or five thousand dollars. The value of the net hire of the slaves is computed at about the same. The probability is, that the expenses were greater, and the profits less, than estimated."

*Donovan v. Pitcher,* 53 Ala. 411, December 1875. "The appellees are children of William Pitcher and his wife Pherady. William Pitcher . . had been a slave, permitted by his master to go at large, retain and dispose of his earnings, to acquire property, make contracts, and in all

respects to conduct himself as a free man. In 1851, with the knowledge of, and without dissent from his master, he . . went to Ohio, remaining there until 1854, . . returned to Alabama, remained until 1857, and then returned to Ohio, and died there in 1859. . . Pherady was . . born in North Carolina, . . purchased by her father, a free man of color, and brought to Alabama. She was permitted . . to accompany her husband to Ohio, where she has since lived. . . William, in 1854, purchased of . . [412] Cleveland the premises in controversy . . widow sold [in 1859] . . to . . Donovan, and subsequently a conveyance . . was made directly to appellant by . . Cleveland."

Held: [414] "The capacity of the appellees to take the premises . . by descent must be determined by the law as it existed in 1859. . . [416] The law[1] . . prohibited them from acquiring a residence here. . . It remained on the statute book for more than thirty years, was born of a necessity generated by the continued unconstitutional assault from abroad on the domestic institutions of the State, and contributed to preserve its peace and order. . . [417] it would have been an absurdity to cast on the appellees the descent . . and yet have said, if you come to hold . . it is at the peril of becoming felons" [Judge, J.]

*Nelson v. Beck,* 54 Ala. 329, December 1875. [330] "the slaves . . continued on the plantation . . until freed by the results of the war in 1865."

[1] Act of 1832, incorporated in the Code of 1852, sects. 1033-1044.

# MISSISSIPPI

## INTRODUCTION

### I.

The Mississippi constitution of 1832 contained the following paragraph: "The introduction of slaves into this state as merchandise, or for sale, shall be prohibited . . after the first day of May, eighteen hundred and thirty-three: *Provided,* That the actual settler or settlers shall not be prohibited from purchasing slaves in any state . . and bringing them into this state for their own individual use, until . . eighteen hundred and forty-five." Various reasons were given for incorporating this prohibition in the constitution. According to Anderson, counsel for the appellees in Green *v.* Robinson,[1] Mississippi, "for some time immediately preceding the formation of the . . constitution [of 1832], had been peculiarly the theatre of the unfeeling cruelty [of slave traders] . . until all good men no doubt had become disgusted and possessed of a strong wish to exclude from the country this class of speculators, at least the spectacles which had offended their feelings, so often arising from this species of commerce." W. Yerger, counsel for the appellants in Glidewell *v.* Hite,[2] asserts that "the Southampton insurrection had just occurred, and negro traders had brought large numbers of the slaves concerned . . into the state, and it was thought that the prohibition [in the constitution] would prevent a recurrence of similar evils." Robert J. Walker of Mississippi, counsel for Groves in Groves *v.* Slaughter,[3] attributed the insertion of the prohibitory clause to the danger of permitting slave traders to introduce slaves from the border states "whom the doctrines . . of abolition have now reached," and also to the necessity of excluding "the wicked and abandoned slaves, the insurgents and malefactors, the sweepings of the jails of other states," with whom the slave traders had "inundated" Mississippi, "notwithstanding her previous restrictions, . . But even if they could repose for the character of the slaves upon the traders, there was that in the very mode . . of introduction ['transporting these slaves in chains from state to state'] which rendered nearly all . . dangerous to the tranquillity of the state. . . Such slaves would seek for vengeance, not only by their own deeds, but they would endeavour to inflame the passions of all other slaves in the state, who but for their contaminating influence would have remained useful and contented." Still another reason for the prohibition is given by Judge Harris in 1859:[4] [253] "about the period of the adoption of our new Constitution . . various causes combined to precipitate upon the Southern States, Georgia, Alabama, and Mississippi especially, a most unusual number of slaves from the border States. The idea had become prevalent that the abolition feeling . . was induc-

[1] P. 289, *infra.*
[2] *Ibid.*
[3] 15 Peters (U. S.) 449 (App. I.-LXXXVIII.).
[4] Mitchell *v.* Wells, p. 361, *infra.*

ing Virginia, Maryland, and other States, to dispose of their negroes, with a view to follow the example of some of their neighbors. . . Mississippi intended, by the prohibition . . to compel these border States to stand firm by the institution of slavery, by cutting off their market. . . It was feared that if these border States were permitted to sell us their slaves, . . *they too* would unite in the wild fanaticism of the day, and render the institution, thus reduced to a few Southern States, an easy prey to its wicked spirit. In addition . . high tariffs, and other measures of partial legislation, bearing on Southern industry; the low price of cotton, and the consequent depression in the value of slave labor, and reduction of their price, with other causes, alarmed the fears of the border States for the safety of the institution, and inclined them to sell, at tempting rates, to our people, who, by the extraordinary fertility of our soil, still found them profitable in producing cotton."

No legislative action was taken to enforce the prohibition till 1837. Meantime "slaves were imported for sale from every slave holding state in the Union." [5] Henry Clay declared, in his argument in Groves *v.* Slaughter, that "the questions to be decided in this case, involved more than three millions of dollars, due by citizens of . . Mississippi, to citizens of Virginia, Maryland, Kentucky, and other slave states." [6]

The question "whether the constitution be considered as merely directory, or as containing within itself an absolute prohibition" was held immaterial by the High Court of Errors and Appeals of Mississippi, in Green *v.* Robinson.[7] Judge Trotter declares: "In either case it fixes the policy of the state . . and renders illegal the practice designed to be suppressed." And in the later case of Glidewell *v.* Hite,[8] decided in December 1840, he asseverates: "I have seen no reason to change the opinion then expressed, but on the contrary, have been strongly confirmed in it by subsequent examination." In January 1841 [9] the same court declared that a contract to pay for negroes introduced for sale in 1836 was "absolutely void, as against public policy. It is not necessary again to go into the reasoning on the subject." But Mississippi was destined not to be the sole interpreter of her own constitution, for simultaneously with this last decision appeared that of the Supreme Court of the United States, which held the contrary. In Groves *v.* Slaughter, a suit brought by a resident of Virginia against a resident of Louisiana, founded on a note given for slaves introduced into Mississippi for sale in 1835 or 1836, the opinion of the court was, that "the construction of the constitution in [Mississippi] . . is not so fixed and settled as to exclude us from regarding it an open question. . . [500] Legislative provision is indispensable to carry into effect the object of this prohibition." [10]

[5] Holt, counsel for the appellees, in Glidewell *v.* Hite, p. 289, *infra.*

[6] P. 535, *infra.* Counsel for Rowan and Harris declared, in 1843: "Under the shelter [of the 'negro plea,'] . . the citizens of the State have been protected in the enjoyment of thousands of slaves, imported from different portions of the republic without paying for them." P. 296, *infra.*

[7] P. 289, *infra.* Reported in December 1840, but "decided at a former term."

[8] P. 289, *infra.*

[9] Cowen *v.* Boyce, p. 293, *infra.*

[10] 15 Peters (U. S.) 449 (499). Justices M'Kinley and Story dissented, [315] "both . . considering the notes sued on void."

However, the High Court of Errors and Appeals of Mississippi was not feezed by this pronouncement, but held in 1843 [11] "that the prohibitory provision in the constitution was not only binding and operative as such *per se,* but that it also established the policy of the state, and cannot be defeated either by legislative act or by contract." Like decisions were made by the High Court of Errors and Appeals in 1845 [12] and in 1846.[13] But the Supreme Court of the United States persisted in its own interpretation of the constitution of Mississippi and upheld, in 1847,[14] in 1848,[15] in 1849,[16] and in 1851,[17] its former decision in Groves *v.* Slaughter. By this time the question had become merely academic in Mississippi, so far as it concerned the introduction of slaves for sale; for the prohibitory clause in her constitution had been superseded by the amendment of 1844-1846: "The legislature shall have . . power to pass such laws regulating or prohibiting the introduction of slaves into this state, as may be deemed . . expedient." The legislature very promptly (on February 23, 1846) deemed it expedient to repeal the prohibitory act of May 13, 1837.

But in its broader implications as to the policy of Mississippi concerning emancipation in general the question of the prohibitory clause was revived in 1859,[18] in an impassioned opinion of Judge Harris, twenty-eight pages in length, from which Judge Handy dissented in twenty-four. One of the leading cases involved in the argument was that of Ross *v.* Vertner.[19] Isaac Ross, by his will made in 1834, had given his slaves the privilege of choosing [20] whether they would go to Africa, and had made the American Colonization Society his residuary legatee, [307] "provided they will agree . . to pay the expense of transporting my slaves to Africa; and . . to expend the remainder for the support . . of said slaves when there." In 1840 the High Court of Errors and Appeals upheld the decision of Chancellor Buckner, that "Mississippi has no concern with the question of manumitting slaves elsewhere than within her own limits." [21] Judge Trotter declared: "It is not the policy of Mississippi to augment her slave population. In her written constitution, she has spoken her will in unequivocal language, and the fiat there made of the future policy has been seconded by the sternest legislative sanctions." But, in spite of the fact that Ross's will was upheld,

[11] Brien *v.* Williamson, p. 295, *infra.*

[12] In the case of Hope *v.* Evans (p. 302, *infra*) the court declared: "This provision in itself amounted to a prohibition, without any legislative enactment."

[13] Collins *v.* McCargo, p. 306, and Wooten *v.* Miller, p. 308, *infra.*

[14] Rowan and Harris *v.* Runnels, p. 313, and Truly *v.* Wanzer, p. 314, *infra.*

[15] Sims *v.* Hundley, p. 317, *infra.*

[16] Sadler *v.* Hoover, p. 321, *infra,* Harris *v.* Wall, 7 Howard (U. S.) 693, and Hardeman *v.* Harris, *ibid.* 726.

[17] Justice Wayne declares, in Harris *v.* Runnels, 12 Howard (U. S.) 79: [87] "We . . now say again, that the clause in the constitution of 1832, prohibiting the introduction of slaves into the State as merchandise, was inoperative to prevent it until the legislature acted upon it. We have read all that has been officially written in opposition to that conclusion without having our confidence in its correctness at all shaken."

[18] Mitchell *v.* Wells, p. 360, *infra.*

[19] P. 290, *infra.*

[20] The question of their capacity to choose was not brought up.

[21] Ross *v.* Duncan, Fr. Miss. Ch. 587 (602).

his executor, Wade, to whom the other executors had resigned the superintendence of the estate, refused to carry out "the benevolent intention" of Ross. Accordingly, the American Colonization Society filed a bill in November 1842 praying for the appointment of a receiver and "that the court compel a full . . execution of the trusts created by the will." The prayer was granted by the chancellor, and his decree was affirmed by the High Court of Errors and Appeals in 1846,[22] though it was [697] "insisted that this society is prohibited by its charter from . . holding property except for one purpose, that 'of colonizing with their own consent upon the coast of Africa, the free people of color residing in the United States.'" The court held that, though the slaves "are not now free, . . they have an inchoate right to freedom. As soon as they are taken beyond the limits of this state that right is so far consummated that by the terms of the charter they may be transported and colonized." The will of James Leech, which also came up to the High Court of Errors and Appeals in 1846,[23] and which provided that "his negro woman . . and her four children . . should be set free, and sent to . . Indiana or Liberia, whichever they might choose," was also held valid on the ground of an inchoate right to freedom. Judge Clayton declares: [98] "The mere collocation of words,[24] if their meaning be the same, cannot vary their construction. . . [99] The right to freedom under the will is inchoate, and becomes complete, when the subjects of it are removed."

"At the earliest period, after the announcement of . . [the] opinion [in Ross *v.* Vertner], . . and in express reference to [it], . . the legislature declared *anew* the public policy," according to Judge Harris,[25] "by the Act of 26th February, 1842."[26] That act provided that thereafter it should not be lawful, "by last will . . to direct that any slave . . shall be removed from this state for the purpose of emancipation elsewhere;" Judge Harris, in delivering the opinion of the court in Mitchell *v.* Wells in 1859,[27] repudiates the conclusion drawn by the court in 1840, [255] "that our policy only looked to the prevention of the increase of free negroes in our State, and was not opposed to emancipation generally; . . [258] it *now is* and *ever has been,* the policy of Mississippi . . to prevent emancipation generally of Mississippi slaves. . . [261] The laws of other States cannot confer *rights* in this State in opposition to our policy. . . [263] comity is terminated by Ohio, in the very act of degrading herself . . by the offensive association" with free negroes. Accordingly Nancy Wells, a slave who had been taken by her white father to Ohio in 1846 and "domiciliated" there, was denied the right "to acquire, hold, [or] sue for" the watch, bed and money bequeathed to her

[22] Wade *v.* American Colonization Society, p. 309, *infra.*

[23] Leech *v.* Cooley, p. 305, *infra.*

[24] The "collocation" was held material in Georgia. See introduction to the Georgia cases. Judge Harris declared in 1859: "I should also differ with the court in the construction of the language . . by the *rule of inversion* applied to it, were that a question before me;" Mitchell *v.* Wells, 37 Miss. 235 (243).

[25] *Ibid.* 255.

[26] How. and Hutch. 539, sect. 11.

[27] P. 360, *infra.*

by her father in Mississippi,[28] Judge Handy "dissenting widely from the opinion of the majority of the court." He declares that [270] "the statute of 1842 prohibits emancipation only *by wills*, . . [271] The mischief plainly contemplated . . was the manumission of slaves held in this State, by will, to take effect out of the State. That was the extent of the policy of prohibiting emancipation, declared by the act, . . [285] according to the doctrine here asserted by the majority of the court, . . the inhabitant of one of the States has . . less means of redress of a wrong against a citizen of another of the States, than the subject of Great Britain, France, or Russia would have, . . such a theory . . proves the union . . to be a . . miserable failure. . . [286] Whilst the confederacy continues, we cannot justify ourselves . . in violating its . . principles, because other States have . . been false to their . . obligations. It may justify us in dissolving the compact, but not in violating our obligations whilst it continues." Judge Handy's views prevailed in 1871.[29]

The High Court of Errors and Appeals of Mississippi held in 1867[30] that the constitutional convention of August 1865 abolished slavery within the state; but this decision was overruled in 1870,[31] the court holding that "freedom is personal to each particular slave . . a question of fact in the individual case or as to localities." This decision was followed in 1872,[32] when the court held that, even though Cowan's plantation was, at his death in April 1864, "not inside the picket lines of either of the forces," freedom had "long before" come permanently to his slaves, for that locality "remained subject to the general control . . of the federal authorities." Consequently his slaves had the capacity at his death to take his entire residuary estate which he had bequeathed to them, and they were "discharged of the necessity of removing to Liberia," as provided in the will; for such removal was held to be merely "a mode of giving freedom, a pre-requisite imposed" "by a prior law since abrogated."

## II.

Under the constitution of 1817 and the acts of 1818 and of 1822 a Supreme Court was organized, "composed of four judges, who are also circuit riders at *nisi prius*, and each . . holds annually from ten to twelve courts of law . . without chancery jurisdiction. . . two of them . . constitute a court of errors and appeals to revise . . the decrees of the superior court of chancery" which "is composed of but one judge . . Selected on account of his great experience and learning in practice and theory . . [who] is almost constantly conversant in matters to which the judges of the courts of law are practically strangers."[33] This was "a radical defect in the judicial system of the state," according to Judge

[28] Overruling the decision in Shaw *v.* Brown, p. 354, *infra.*
[29] See Berry *v.* Alsop, p. 385, *infra.*
[30] McMath *v.* Johnson, p. 381, *infra.*
[31] Whitfield *v.* Whitfield, p. 384, *infra.*
[32] Cowan *v.* Stamps, p. 385, *infra.*

Child's opinion in 1826,[33] and was remedied by the constitution of 1832, which provided for the establishment of a High Court of Errors and Appeals, consisting of three judges, having "no jurisdiction but such as properly belongs to a court of errors and appeals." The constitution of 1869 substituted a Supreme Court, consisting also of three judges.

[33] Walk. Miss. 224.

*Harry et al. v. Decker and Hopkins,* Walk. Miss. 36, June 1818. Petition for freedom. " the three negroes were slaves in Virginia; . . [in 1784] they were taken by John Decker to the neighborhood of Vincennes; . . remained there . . until . . July, 1816;"

Held: [43] " the petitioners are entitled to have the verdict [in their favor] confirmed, and the motion for a new trial overruled." [39] " according to the construction of the defendants' counsel, those who were slaves at the passing of the ordinance [of 1787], must continue in the same situation." I. [37] " the treaty of cession from Virginia . . provides, that the French and Canadian inhabitants, and other settlers who profess themselves citizens of Virginia, shall . . be protected in the enjoyment of their rights " " there has been exhibited no evidence to show that the laws of Virginia were ever extended to that country . . or that Great Britain . . ever changed the laws . . existing in the province, . . I think then that it is undeniable, that the laws as they existed while it was a province of France, were the municipal laws of the country. [Under those laws, slavery was permitted.] . . [II.] [38] is the clause in the ordinance prohibiting slavery . . a violation of the treaty of cession. . . Preceding the sixth article [containing that clause], it is . . declared, that the six articles shall be considered as articles of compact, between the original states, and the people . . in said territory, . . [39] the people of the territory were parties . . [and] their condition was changed from absolute subjection ['as a provincial appendage' of Virginia], to the condition of free men, . . a valuable consideration for the concession . . in the sixth article, the privileges . . of freemen, for the freedom of their slaves, . . [III.] But it is contended, that the treaty of cession is . . not to be altered not even by the people themselves. . . the provision guaranteeing their . . rights . . is . . merely a personal benefit, and as such they have a right to dispose of it. . . [IV.] [42] If old Decker was not a party to the articles of compact, it cannot be denied but what he was, or those who claim under him were parties to the constitution of Indiana [adopted June 29, 1816]; . . Does not the first article . . declare the condition of the people of Indiana free, . . and by the 7th section IX. article . . the sixth section of the ordinance is adopted, . . [V.] But it is contended that . . the constitution . . is prospective, and to give it the meaning its language imports, would violate vested rights. . . Slavery is condemned by reason and the laws of nature. It . . can only exist, through municipal regulations, and in matters of doubt, . . courts must lean '*in favorem vitae et libertatis.*' "

*State v. Jones,* Walk. Miss. 83, June 1820. Jones was convicted of the murder of a slave. Clarke, J.: " The question in this case arising on motion in arrest of judgment . . is, whether in this state, murder can be committed on a slave. . . [84] In this state, the Legislature have

considered slaves as reasonable and accountable beings and it would be a stigma upon the character of the state, and a reproach to the administration of justice, if the life of a slave could be taken with impunity, or if he could be murdered in cold blood, without subjecting the offender to the highest penalty . . in vain shall we look for any law passed by the . . philanthropic legislature of this state, giving even to the master, much less to a stranger, power over the life of a slave. . . [86] shall this court, in the nineteenth century, establish a principle, too sanguinary for the code even of the Goths and Vandals, and extend to the whole community, the right to murder slaves with impunity? The motion to arrest the judgment must be overruled." "The defendant was sentenced to be hung on the 27th July 1821."

*Phebe et al v. Prince,* Walk. Miss. 131, December 1822. Petition for freedom. "the plaintiff . . assigns for error . . The court erred in rejecting Mrs. Duggen as an incompetent witness, because she declared she felt interested; having exchanged one of the petitioners for another negro." Held: no error. Judgment affirmed.

*Texada v. Camp,* Walk. Miss. 150, June 1824. [151] "Texada sold a negro to Camp for 475 dollars, . . 1821, warranted her to be sound" "Camp . . sold the negro for 325 dollars to . . White, . . negro, soon after . . died with the venereal disease. . . According to the finding of the jury, she was worthless . . on the day of warranty,"

*Connell v. Lewis,* Walk. Miss. 251, December 1827. In 1823 the sheriff levied on [252] "Rebecca and child, which two, sold for $500."

*Farrar v. Gaillard,* Walk. Miss. 269, December 1827. "November . . 1818 . . Winter agrees . . to deliver to . . Gaillard, on or before the first of February next, ten negroes [mentioned by name] . . for each . . Gaillard agrees . . to pay fifteen hundred dollars,[1] at the expiration of four years from . . delivery . . Winter obliges himself to exchange negroes . . for June, July, Spencer and Hannah, or either of them, if . . Gaillard should wish it within . . one year . . Gaillard further binds himself to treat [them] . . [270] well—the negroes to be given in exchange . . shall be of the same sex, and between fifteen and thirty-five . . to be judged good field hands by . . Conner and . . Smith," On the first of February, 1819, "Gaillard went over to Mr. Winter's and made a demand of the negroes . . Winter replied . . that there were nine of them at the gin, . . but that the tenth was runaway, and was then in Baton Rouge jail, . . but . . he would either send for him, or pay the expenses of sending . . or . . Mr. Gaillard . . might choose in his place, any negro at the Natchez landing; or . . he would purchase for him . . [271] Joe, well known in the neighborhood, as a smart and very valuable young slave. . . Gaillard . . would not"

Held: Gaillard [280] "never contracted to receive nine slaves, and an equivalent for the tenth, and the court cannot enforce such terms upon him."

[1] [278] "This cannot be construed to signify that the slaves were of equal value, and that if any one was delivered . . he should be [so] valued"

*Hutchins v. Lee,* Walk. Miss. 293, December 1827. "action of detinue for a runaway slave, by the original owner against the vendee at sheriff's sale."

Held: [296] "by the expiration of six months, and due publication made, during that period of the apprehension, incarceration and description [1] . . the absolute title . . (analogously to the doctrine of estrays) vested in the county. . . [297] those provisions of the statute, (which prescribe the terms of sale . . ) are purely directory . . and should any of the minutiae be omitted by the sheriff, it will not invalidate the sale, but, if it sell for a less amount, on account of such omission, indemnification may be obtained upon his official responsibility."

*Miller and Nelder v. Doxey,* Walk. Miss. 329, December 1829. [336] "1814, . . Daniel S. Swearingen, of the then territory of Missouri—sent his agent Mr. Bird, . . negro man . . Stephen, to New Orleans for sale. . . March 1814 . . sold to Pearse and Nelder, for . . 425 dollars, . . in the winter of 1814-15, the slave escaped . . and in attempting to reach the lines of the British army, then encamped below that city, was intercepted by the American troops under the command of general Jackson and confined to labor at the breastworks erecting by order of that officer, for the defence of the town. . . [Thence he] was taken by . . a deserter from the army . . and conveyed to the neighborhood of Natchez, who . . sold him to . . Miller . . for $367.50: shortly after . . Stephen, being found at the landing below . . Natchez, passing as a free man, by the name of William, was hired by . . Doxey . . as a boat hand . . to . . New Orleans—at this latter place he was reclaimed by . . Nelder, . . October 1815, an action of trover was instituted by . . Miller, against . . Doxey, for the conversion . . 1821, recovered a verdict and judgment for . . 1000 dollars. . . the supreme court . . on the law side . . affirmed. . . [Doxey] filed [a bill] in the superior court of chancery, praying relief against the judgment" [332] "The Chancellor decreed a perpetual injunction . . Miller appealed" Decree reversed and injunction dissolved. Child, J., dissented.

*Fowler v. Austin,* 1 How. Miss. 156, July 1834. On March 15, 1828, an agreement was made that Austin "would take charge of four good hands of [Fowler] . . and would make a fifth hand on . . [Fowler's] plantation . . [Fowler] promised . . to find him sufficient support for one hearty man during the year" [157] "a house for him to live in, and give . . [Austin] one-fifth part of everything that should be made on the plantation, during . . 1828, and also . . give the cotton free of toll." Austin also agreed that his two sons should help to make the crop.

*Byrd v. State,* 1 How. Miss. 163, July 1834. [164] "Byrd, a free person of color, was indicted . . as an accessory to a slave . . in the murder" of his master. [165] "Four of the jurors tendered . . declaring . . that they were neither householders nor freeholders, the counsel for the defendant objected to them . . overruled" Reversed. A change of *venue*

[1] Rev. Code 376-377.

was had and the new trial also resulted in a conviction. Judgment affirmed.[1]

*Penrice v. Cocks,* 1 How. Miss. 227, January 1835. "Levied [in 1832] . . on . . Maria, Eliza and her child, estimated at 580 dollars, 17 and a-half cents,"

*Taylor v. Matchell,* 1 How. Miss. 596, January 1837. "in 1827, he bought . . a negro man . . for . . 650 dollars,"

*Fisher v. Allen,* 2 How. Miss. 611,[2] January 1837. [615] "the claimant, and her mother, and the family are Indians of the Chickasaw tribe . . the property in question [a negro boy] was claimed by virtue of a deed of gift executed [in 1829] by the mother . . by which she gave separate property to ten of her children,"

*Williams v. Harris,* 2 How. Miss. 627, January 1837. "ten negroes . . purchased [in 1833] . . for 3580 dollars; . . That one . . was unsound . . though valued in said sale at 1100 dollars"

*Hinds v. Brazealle,* 2 How. Miss. 837, January 1838. [841] "Brazealle . . in . . 1826 . . took with him to . . Ohio, a negro woman and her son, John Munroe Brazealle, . . executed . . deed of emancipation . . and returned [immediately] with the negroes to his residence . . By his will executed after the deed, he . . declared his intention to ratify it, and devised his property to the said John Munroe, acknowledging him to be his son."

Held: [842] "No state is bound to recognize . . a contract made elsewhere, which would . . exhibit to the citizens an example pernicious and detestable. . . [843] the contract had its origin in an offence against morality, . . But above all, it seems to have been planned . . with a fixed design to evade the rigor of the laws of this state. . . As . . the validity of the deed must depend upon the laws of this state, . . John Munroe and his mother, are still slaves, . . They have not acquired a right to their freedom under the will; for, even if the clause in the will were sufficient . . their emancipation has not been consummated by an act of the legislature.[3] . . John Munroe being a slave, cannot take the property as devisee; and I apprehend, it is equally clear, that it cannot be held in trust for him." [Sharkey, C. J.]

*Edwards v. Williams,* 2 How. Miss. 846, January 1838. "action of trespass brought to recover . . 1200 dollars for shooting a negro man slave."

*Ingraham and Baker v. Russell,* 3 How. Miss. 304, January 1839. "The action was covenant for a false warranty in the sale of three negroes, the price of which was 2550 dollars, and the amount of the verdict, 2200 dollars. . . [305] that the small pox was in Vicksburg, at the time the negroes were purchased by Russell, . . 19th of December." "Hinson had ran away two or three days afterwards, and was out a day

[1] Same *v.* same, 1 How. Miss. 247.

[2] The first two volumes of Howard's Mississippi Reports are paged consecutively, as if two parts of one volume.

[3] Rev. Code 385, sect. 75.

or two. That he was taken sick a few days after he was bought, and that on the day he went off, he was a fine looking fellow worth nine hundred dollars." [304] " Doctor Smith . . on the 7th of January, 1836, . . was called in . . found him laboring under an attack of small pox, . . Doctor Barnett . . visited the same negro about the 12th or 13th . . [305] he could not say whether he had been infected . . more than eighteen or twenty days . . He also spoke of another boy named Anderson, and thought he was evidently idiotic. . . was subject to fits, though he had the appearance of being ordinarily healthy. . . no other case of small pox in the neighborhood, . . Anderson was exhibited to the jury." Held: " the damages assessed by the jury were certainly greater than justice demanded."

*Vick's Executor v. M'Daniel,* 3 How. Miss. 337, January 1839. "John Vick died without children . . by his will, he emancipated . . [three] slaves " [339] " the intention of the testator, as clearly and emphatically expressed, was to emancipate the slaves . . and have them transported, either to . . Ohio or Indiana." [337] " It was admitted, that the direction of the will with regard to the emancipation . . was invalid,"

Held: the testator's [341] " intention is defeated by the operation of our fundamental law, and the settled policy of the state, . . [The slaves are] thrown into the residue." [Trotter, J.]

*Friar v. State,* 3 How. Miss. 422, January 1839. Friar was charged with the crime of negro stealing and convicted. Judgment affirmed.

*Peter (a slave) v. State,* 3 How. Miss. 433, January 1839. "an indictment for murder, . . the prisoner, at the time of making the confessions, was in custody, and surrounded by an exasperated crowd, . . [434] The witness simply told him to tell all he knew . . He then, without any compulsion, or any promise, made his statements." It was held that the confessions were properly admitted; but the judgment of the court below was reversed because the name of a prosecutor was not endorsed upon the indictment, [434] " and, as the indictment is merely defective in point of form, and affords *prima facie* evidence of the guilt of the prisoner, he must be remanded for further proceedings." [Trotter, J.]

*Kinley v. Fitzpatrick,* 4 How. Miss. 59, December 1839. Bill of sale: " Received . . $2,200 in full payment of . . Sam . . about 27 . . James aged about thirteen, sound in mind and body, and slaves for life. And I . . warrant the title " The defendant's counsel objected to the reading of the bill of sale " on the ground, that the same did not contain a warranty of soundness in body, . . sustained " Reversed.

*Tewksbury v. Tewksbury,* 4 How. Miss. 109, December 1839. Bill for a divorce. A witness [110] " stated that he saw defendant in the company of a negro woman on one night."

*McMurran v. Soria,* 4 How. Miss. 154, December 1839. " January was the property of . . Ball . . [who] resided in . . Louisiana . . at . . his death," His widow married McKnight who sold the slave in Missis-

sippi. [155] "After the sale . . the negro ran away and returned to Louisiana, and was detained by the heirs of Ball."

*Mitchell v. Sherman,* Fr. Miss. Ch. 120, 1839-1842. "The bill . . charges that . . [121] three sections of land [were] located for Beckey Locklier . . of the Chickasaw tribe, as her reserve under the treaty; that . . [she] died, and . . Eli Locklier, a negro, who called . . himself . . [her] husband . . executed his deed, purporting to convey [the land] . . 1836, . . that . . Beckey . . left five children, three by Locklier and two by her former husband, an Indian . . that at the death of . . Beckey . . said lands descended, under the 6th article of the treaty of Dancing Rabbit creek, to the husband and children . . in case the husband was an Indian; and, by the 7th article . . if the husband was a white man, absolutely in the children; and in case the husband was a negro, no title rested in him; . . Respondent . . [122] does not admit . . Locklier to be a negro, but was a white man, resident in the nation"

*Briscoe v. Thompson,* Fr. Miss. Ch. 155, 1839-1842. "30th . . April, 1833, . . Fisher, of Virginia, sold to . . Hughes, of Mississippi, a lot of slaves; and on the following day Hughes sold a part to . . Thompson, and received a note . . dated April 30th, . . for . . eight thousand dollars."

*Kent v. Allbritain,* 4 How. Miss. 317, January 1840. [318] "Hire was allowed at the rate of $100 from . . 1830, to . . 1838."

*McRea v. Walker,* 4 How. Miss. 455, January 1840. [456] "the complainant has averred that this is a family slave, and that no compensation in damages merely would be an adequate relief." The chancellor dismissed his bill, praying for a specific delivery of the slave.

Decree reversed and the cause remanded: "This is an indulgence which has long been extended to the claims of attachment which may have grown up between the slave and his owner." [Trotter, J.]

*Brock v. Luckett,* 4 How. Miss. 459, January 1840. [466] "proposed to exchange with his son . . a negro he had owned, who had formed a connection with a free negro, on the ground that his son was young and could better keep off the free negro."

*Cook v. Bay,* 4 How. Miss. 485, January 1840. [500] "high price of slaves in 1836 . . compared to their price in 1827."

*Rentfrow v. Shaw,* 4 How. Miss. 651, January 1840. "Barber had sold . . Shaw a negro man, named Scott, on the 14th of November, 1836, for . . $1,100, . . [652] warranting said negro to be about 27 . . sensible, sound and healthy, . . physician . . was called in . . a short time after . . Scott . . was consumptive . . incurable . . that he would not have such a slave." "some time in the spring or summer of . . 1837, . . Shaw sold Scott for a tract of land . . worth about $400; . . [653] Moore . . said that . . Moseley [a negro trader] . . about . . October, 1836, offered to sell . . Scott to him, as an unsound negro; . . and informed witness that Scott was diseased with asthma. . . offered to sell . . for 800 dollars,

. . refused; . . then offered to take 700 dollars . . and permit witness to take him on trial, which witness refused, not wishing to purchase a diseased slave."

*Daingerfield v. State,* 4 How. Miss. 658, January 1840. "Jones was presented by the grand jury, for stealing a negro woman . . and her child . . of the value of $1200, . . admitted to bail, . . was called to appear . . but wholly failed to do so,"

*Overaker v. State,* 4 S. and M. 738, January 1840. [740] "a presentment . . charging that . . grocer . . 1837, did sell and give to . . slaves, naming their owners, spirituous liquors, without the permission of their master,"

*Green v. Robinson,* 5 How. Miss. 80, December 1840.[1] "the consideration of the note sued on, was slaves imported into the state, since 1st May, 1833, for the purpose of sale, and without the requisites required by the act of 1822." Anderson, counsel for the appellees: [90] "I do not attempt . . to prove the wide differences between a slave holder and a slave trader; such an attempt before this court, who are slave holders, I would consider insulting to their feelings. Mississippi, for some time immediately preceding the formation of the late constitution, had been peculiarly the theatre of the exhibitions of the unfeeling cruelty of the latter class . . until all good men no doubt had become disgusted and possessed of a strong wish to exclude from the country this class of speculators, at least the spectacles which had offended their feelings, so often arising from this species of commerce."

Held: [101] "immaterial . . whether the constitution be considered as merely directory, or as containing within itself an absolute prohibition. In either case it fixes the policy of the state . . and renders illegal the practice designed to be suppressed." [Trotter, J.]

*Glidewell v. Hite,* 5 How. Miss. 110, December 1840. "Hite and Fitzpatrick sold to Glidewell and Griffin . . land, together with a number of slaves, executed their bond, dated 20th March, 1837, . . An action of debt . . on the bond, . . verdict . . for Hite and Fitzpatrick, . . Complainants exhibited their bill in chancery praying for a perpetual injunction upon this judgment, . . That the slaves had been introduced . . as merchandize, since May, 1833, . . [111] granted by a circuit judge . . dissolved by the chancellor, . . the present appeal was prosecuted." W. Yerger, for the appellants: "the introduction and sale of slaves as merchandise, or in common language, 'negro-stealing' was intended to be prohibited by the . . constitution. . . the Southampton insurrection had just occurred, and negro traders had brought large numbers of the slaves concerned . . into the state, and it was thought that the prohibition would prevent a recurrence of similar evils. . . [112] Any person therefore, who did introduce slaves . . as merchandise, and . . did sell them, . . has made a contract . . forbidden by the laws and policy of the state, . . manifest from the constitution . . and also by the act of 1837, passed

[1] [109 n.] "decided at a former term, but omitted in the reported decisions."

a few days after this sale" Holt, for the appellees: [141] "That the legislature, courts, and people of Mississippi, considered the prohibition in the constitution as insufficient without further legislation, is well known, and under this construction, which every where obtained, slaves were imported for sale from every slave holding state in the Union."

Decree affirmed: [144] "This cause involves the same questions that were decided . . in . . Green *v.* . . . Robinson. . . I have seen no reason to change the opinion then expressed, but . . have been strongly confirmed in it by subsequent examination." [Trotter, J.]

*Jane B. Ross et al. v. Vertner et al.,* 5 How. Miss. 305, December 1840. "The appellants, as heirs of Isaac Ross, and Margaret A. Reed, filed their bills [1] in chancery, to set aside certain bequests of the testator and testatrix," Will of Isaac Ross, dated August 26, 1834: "I give . . to my grand daughter, Adelaide Wade, . . ten thousand dollars . . and . . my . . cook, named Grace, and all her children . . unless . . Grace should elect, of her own free will . . to go to Africa, . . [306] I also . . desire that my grand daughter . . shall . . maintain comfortably during the remainder of their lives, . . Hannibal and his three sisters . . and I . . bequeath to Hannibal . . one hundred dollars annually during . . life, and to his . . sisters . . fifty dollars each . . annually . . and . . if . . Hannibal and his . . sisters . . should elect to go to Africa . . they shall be permitted to do so, . . [but] if they do . . the legacies . . to them, are to be . . void. . . I . . desire that . . Enoch and his wife Merrilla and her children be, within twelve months after my decease, conveyed to such free state as Enoch may elect, free of expense to them, and . . there legally manumitted, and . . five hundred silver dollars paid to . . Enoch, . . [but] if . . Enoch should elect to go to Africa, he with . . Merrilla and her children, shall be sent there . . and . . the . . five hundred silver dollars be paid him . . at the time of his departure. . . it is my will . . that . . within ten days after the complete finishing of the crop, or if at . . my decease the crop shall have just been gathered . . then within ten days thereafter, all my slaves of . . twenty-one years and upwards, except [those above mentioned] . . [307] be called together . . and the provisions of this will . . explained . . and the question put to them whether they will go to Africa . . If a majority . . shall elect to go . . it is my will . . that *all* of those thus called together, and all my other slaves, excepting always Grace [*et al.*] . . shall be sent to Africa, under the . . superintendence of the American Colonization Society. And . . in that event, that the entire balance of my estate . . excepting always Grace [*et al.*] . . be exposed to sale . . that the proceeds . . together with any money . . on hand . . and any . . owing to me, after deducting . . legacies . . and . . expenses . . be paid over to the American Colonization Society, provided they will agree . . to pay the expense of transporting my slaves to Africa; and . . to expend the remainder for the support . . when there, . . If, however, . . a majority . . should refuse

[1] Against Vertner *et al.*, executors of Isaac Ross, and against Butler and Duncan, executors of Margaret A. Reed.

to go . . all of my slaves, always excepting Grace [*et al.*] . . [308] shall be exposed to sale, at public auction, . . in such lots as . . to command the highest prices, and with this . . most express . . provision, that the families are not to be separated. . . in this event, it is my will . . that the proceeds . . together with any money . . on hand . . and any . . owing to me, after deducting . . legacies . . and . . expenses, be paid . . to the American Colonization Society, . . to bring in not less than six per cent. . . which interest is to be applied . . to the establishment and support of one single . . institution of learning in Liberia. . . for . . one hundred years . . at the expiration of which time I desire that all that remains may be given up to any government that may be in existence . . in Liberia, to be appropriated . . in the same manner . . But if . . there should be no government in Liberia, then . . to the government . . of Mississippi, to be . . appropriated to the establishment or support of some one institution of learning within the state," Codicil, dated October 17, 1834: [309] "if . . Grace shall elect to go to Africa with her children, it is my will . . that . . two thousand dollars be paid . . to my granddaughter . . in addition to the . . ten thousand" Codicil, dated February 24, 1835: "I now desire that those who wish to go to Africa, be allowed the privilege . . and those who elect to remain, be suffered to remain, and be sold . . [310] and the proceeds . . applied . . for the benefit of those who . . go to Africa. . . that the privilege of electing to go . . be withheld from . . [five] negroes I bought . . in 1833 and 1834. And from Jeffrey the son of Harry . . that if Hannibal elect to go . . he shall be paid at the time he starts, . . five hundred silver dollars. And . . if my man Dunke, elects to go . . he shall also receive at . . his departure, . . five hundred silver dollars." Codicil, dated March 16, 1835: "it is my will . . that my daughter, Margaret A. Reed, have the uncontrolled use . . of . . all the yard and house servants, for . . her . . life, or until she shall think proper . . to relinquish [them.] . . And . . that the sale of my estate . . be postponed until after the death or relinquishment" Codicil, dated June 17, 1835: [311] "I . . revoke . . that portion . . relating to . . Enoch and . . Merrilla and her children; and I do now will that . . Enoch, be absolutely sold . . that Merrilla and her children be . . allowed a choice between going to Liberia, or . . being sold" Statement signed January 27, 1836, and attested by three witnesses: "We [Margaret A. Reed and Isaac R. Wade] . . certify that during the last illness of captain Isaac Ross, . . about three or four days previous to his death [on January 19, 1836], he called us to his couch, and stated . . that in the event of . . Enoch, serving Mrs. Margaret A. Reed, faithfully . . during her life, . . that portion of the codicil . . which deprived Enoch . . should be . . void," [312] "Margaret A. Reed died before the commencement of this suit, . . [313] [Her] will . . [was] published on the 14th June, 1838, in which all her estate . . was devised and bequeathed to appellees [Butler and Duncan]. Also, a codicil thereto, published . . September, 1838, in which was devised to said appellees, all . . [her] interest . . in . . the estate of her father . . in case . . [his] will . . should be declared invalid." [312] "Appellants then filed their bill in the court

of chancery, as sole remaining heirs of Isaac Ross, to set aside the principal devises and bequests in his will, and to enjoin his executors from proceeding further . . [313] The bill . . avers . . that all the [one hundred and twenty-three] slaves have expressed their desire to be transported to Africa, . . a general demurrer . . By consent, a decree was entered below sustaining the demurrer, and the case now comes up upon appeal . . In the case of Mrs. Reed, the bill was filed by appellants, as [her] heirs at law . . to set aside . . [her] will . . [314] It was averred that the estate . . was given *in secret trust* that . . Butler and Duncan should convey all the . . slaves . . to Liberia, *there to remain free.* In support . . appellants exhibit . . a letter from testatrix to appellees, dated 14th June, 1838, which they say points out the secret and illegal trust. To the bill there was a general demurrer, which was sustained by the Chancellor [Robert H. Buckner], and a decree of dismissal entered,[1] from which an appeal was taken,"

Affirmed: [359] "The act of transporting them to Africa, *there to remain free,* does not seem to be an act of manumission within the meaning of the statute,[2] or its spirit or policy. . . [361] Since the opinion in this case was delivered, I have met with the case of Frazier *et al. v.* Frazier's executors,[3] . . [362] The importance of the [present] case to the parties and to the country, the zeal [4] with which the able counsel who argued it, resisted the conclusions of the court, as well as the agitation it has produced in the country, . . have induced me to adduce this superadded authority to support the judgment of the court." [Trotter, J.] See Wade *v.* American Colonization Society, p. 309, *infra.*

*Martin v. Broadus,* Fr. Miss. Ch. 35, 1840-1842. The complainant [38] "purchased from . . Broadus, a number of . . slaves, which were introduced by him into this state for sale, as an article of merchandise, since the first of May, 1833," Held: "If the contract in such a case is void, (and the Supreme Court [High Court of Errors and Appeals] have

[1] "Mississippi has no concern with the question of manumitting slaves elsewhere than within her own limits." Ross *v.* Duncan, Fr. Miss. Ch. 587 (602).

[2] Act of June 18, 1822, sect. 75.

[3] Vol. II. of this series, p. 359.

[4] J. B. Thrasher, counsel for appellants: [336] "So certain as the heavens afford indications of the coming storm, so certain will scenes of blood be the concomitants of such testamentary dispositions in this state. . . it is said that . . Liberia is an object worthy of all philanthropic encouragement. What! that germ whence spring the elements of discord and dissatisfaction among the slaves of the country—that nucleus that fosters insubordination and leads to insurrection—that institution from which *reverend agents,* thrust themselves among the slave population . . and proclaim the advantages . . of Liberia: for it is charged in the bill, that some such persons visited Mrs. Reed." D. Mays for appellants: [792] "Is it not part of the policy of Mississippi, to protect her citizens against fanaticism in religion, and a morbid sensibility on the subject of slave holding? And does it not war with this end to proclaim to the world, 'come here, all ye who seek the destruction of slavery, . . endeavor to disturb the consciences of our women, our old men, and others, whose sickly sensibilities are easily operated on. Impress on them . . the peril in which their souls stand if they do not disinherit their offspring by emancipating their slaves! Declare to them . . that there is no obstacle . . but may be readily removed by . . a provision, that the slaves be removed from the state; and you have virtually made that proclamation, and thrown open the doors to the abolitionists, and invited them to . . revel in the destruction of the slave property of the state."

so declared,) it would seem to follow . . that the title to the negroes at least remained in the seller." [Buckner, Ch.]

*Moseby v. Williams,* 5 How. Miss. 520, January 1841. "1836 . . Williams moved Tucker and his family and the negro [from Tennessee] to Marshall county, in this state,"

*Davidson v. Moss,* 5 How. Miss. 673, January 1841. [674] "Complainant averred, that . . Lewis and Rose . . were both unsound at the time of the sale, and . . were not worth their support. That Lewis died crazy,"

*Cowen v. Boyce,* 5 How. Miss. 769, January 1841. "the negroes were introduced . . for sale . . since the 1st day of May, 1833, one of them being above fifteen . . and . . sold in 1836" *Per curiam*: "The question . . was fully discussed in . . Green *v.* Robinson,[1] . . contract . . absolutely void, as against public policy. It is not necessary again to go into the reasoning on the subject."

*Carter v. Graves,* 6 How. Miss. 9, December 1841. [14] "brought all the negroes ['upwards of twenty'] . . from . . South Carolina, in . . February, 1836;"

*Isham (a slave) v. State,* 6 How. Miss. 35, December 1841. Indictment for the murder of Welford Hoggatt. "In the progress of the trial, . . the master of Isham, was offered as a witness [to prove an alibi] . . but he was excluded . . on the ground of interest." Counsel for the prisoner: [39] "the strongest circumstantial evidence against Isham was, that his shoes and pantaloons had blood on them, . . the investigation was . . progressing, and . . a proposition had been made in his presence to buy and hang him, and some of the company were actually punishing Dick with great severity to make him confess, and his groans and prayers were distinctly heard by all . . His [Isham's] shoe being a common size, and such as were usually worn by negroes and laboring white persons, it was natural he should deny they were at home, for fear they might fit the tracks . . where Hoggatt was hid. When the shoes and pants were found, with the marks of blood . . no opportunity was given Isham to explain . . but those slight circumstances were considered by the company sufficient evidence of his guilt to justify immediate punishment; and but for the moderation of Philip Hoggatt, equally creditable to his heart and his head, no doubt the defendant would have fallen a victim to the blind fury of this excited company. A part of this same company took him . . away from his comrades and his master, . . and continuing his shackles so severely as to cramp him, and cause great pain . . he made a confession. . . There is abundant evidence . . to show that the confessions were . . the result of fear that his punishment would . . perhaps end in his destruction, unless he could say . . something to direct the attention of the multitude to some other object. . . Dick . . by accusing him, had been relieved altogether, and the whole weight of public indignation had centered on him. . . what was more natural than for him

[1] P. 289, *supra.*

to suppose that if he could satisfy them that he had done the act under the orders of his master, he would be excused, . . [40] his words were, 'you know we must do whatever our masters tell us.' . . frequently subjected to unjust and severe punishment, upon slight suspicion, it is not to be expected they will show that firmness . . when accused . . which is usually displayed by the weakest . . freeman."

Held: [42] "In prosecutions for offences, negroes are to be treated as other persons; and although the master may have had an interest in his servant, yet the servant had such an interest in the testimony of his master as will outweigh mere pecuniary considerations; nor could he be deprived of the benefit . . by the mere circumstance that, in a civil point of view, he was regarded . . as property. . . As the judgment, for this reason, must be reversed, . . not . . necessary to examine the other grounds taken." [Sharkey, C. J.]

*Philbrick v. Holloway,* 6 How. Miss. 91, January 1842. "The bill of sale bears date . . September, 1837. . . a physician was called in . . November, 1837. He found her afflicted with a chronic sore leg, . . He was a second time called in . . opened the ulcer . . it was necessary that it should not be permitted to heal up suddenly, and that her value was thereby depreciated one third. . . Mayes . . testified that . . 1838, the plaintiffs had proposed to sell him the negro, . . sent her on trial. He soon discovered the affliction, and refused to buy. He thought her of no value."

*Peter (a slave) v. State,* 6 How. Miss. 326, January 1842. "convicted . . of the murder of Samuel Harvey. The presiding judge . . having formerly been . . counsel, . . McClure, Esq. was selected, under the statutes of 1840 and 1841," Judgment reversed and a *venire de novo* awarded: "in capital cases no such substitution can take place." See same *v.* same, p. 301, *infra.*

*Freeman v. Finnall,* S. and M. Ch. 623, June 1842. "The bill . . stated, that Finnall was a citizen of Virginia; that, in 1834, the complainant and Finnall commenced business . . in copartnership, for the period of three years, in the purchase and sale of negroes;"

*Pulliam v. Pulliam,* Fr. Miss. Ch. 348, 1842. [349] "1837 . . she found the place of her residence a low, swampy wilderness . . with a miserable log shanty, far less comfortable than the log cabins of her father's slaves; . . [352] 'In 1839 he kept a yellow girl at the same place' . . [353] In December, 1839, Pulliam told witness that he was one of the Murrell gang,"

*Brien v. Williamson,* 7 How. Miss. 14, January 1843. "an action of assumpsit on a promissory note for twelve hundred dollars, dated . . 1836, . . for a negro man slave . . introduced into . . Mississippi, as merchandise and for sale . . 1836, . . plaintiff not being at the time an actual settler . . [15] judgment . . for the defendant."

Affirmed: "We had regarded this question as entirely settled,[1] . . [16] Since [the decisions by the High Court of Errors and Appeals] . . the same question has been made before the Supreme Court of the United States,[2] . . the contract being there held to be valid, whilst we had held it . . void. . . amongst the dissenting members [of the Supreme Court] there were some who have established for themselves imperishable monuments of judicial fame.[3] We hold the contract void . . [30] the supreme court has said that our policy was unsettled. If a . . fundamental provision in our constitution does not settle our policy, it is difficult to imagine how public policy could be settled. . . [31] we conclude that the prohibitory provision . . was not only binding . . *per se,* but that it also established the policy of the state, and cannot be defeated either by legislative act or by contract." [Sharkey, C. J.]

*Hamberlin v. Terry,* 7 How. Miss. 143, January 1843. [144] "By his will, the testator [John Pickens] directed that three of his slaves should be emancipated, and that his executor should appropriate five hundred dollars for that purpose. . . that each of these slaves should be paid five hundred dollars, and sixty acres of land, to be laid out from the west end of the tract on which he then resided." [143] "The appellants . . charged fraud on the part of the executor; that he well knew the insanity of the testator, and concealed the same, and that he repaired to the probate court and secretly procured the probate . . [144] They . . prayed that the probate . . might be annulled . . demurrer . . sustained"[4] Affirmed: [149] "courts of equity cannot interfere to set aside a will . . Such questions . . belong to the probate courts"

*Emanuel v. Norcum,* 7 How. Miss. 150, January 1843. Sharkey, C. J.: [154] "an administrator would be bound to take care of the health of the negroes by procuring medicines and medical aid, if necessary, although the statute does not expressly authorize these things."

*Peck v. Webber,* 7 How. Miss. 658, January 1843. "ten slaves, now in the jail . . levied on"

*Suzett v. Buckels,* 7 How. Miss. 663, January 1843. "action . . in the circuit court of Franklin county, for unlawfully enticing away and harboring a . . slave, . . who had absconded . . in January, 1838, and was recovered . . in August of the same year, in Franklin county. . . seen . . on the defendant's plantation"

*Rowan and Harris v. Adams,* S. and M. Ch. 45, January 1843. Rowan and Harris introduced negroes after May 1, 1833, as merchandise, and sold them to Runnells, who assigned to them, in payment, the notes of Adams, payable to Runnells, secured by a mortgage on land.

[1] Green *v.* Robinson, and Glidewell *v.* Hite, p. 289, *supra.*
[2] Groves *v.* Slaughter, p. , *infra.*
[3] Story and M'Kinley.
[4] Chancellor Buckner: "There is one ground taken by the bill . . which demands notice. That provision . . which seeks to emancipate some slaves and gives them a pecuniary legacy, is clearly void, . . a residuary bequest to . . Gupton . . excludes the complainants from all claim whatever, under the void bequest." Same *v.* same, S. and M. Ch. 591.

[49] "Runnells resists the foreclosure of the mortgage, by answer and cross-bill," [46] "he protests against a decree in favor of complainants, on the ground . . that the consideration of the transfer . . of the notes was the sale of slaves . . introduced as merchandise, since 1st May, 1833. . . prays that his assignment of the notes may be vacated, and the notes . . redelivered to him." Counsel for complainants: [47] "Universal as is the 'negro plea,' and fondly as it is hugged to the heart of the moral code of Mississippi, it has never been regarded as broad enough to cover the ground assumed in this case. Under the shelter of that plea, the citizens of the State have been protected in the enjoyment of thousands of slaves, imported from different portions of the republic without paying for them. But . . it has never been supposed that it would enable the purchaser, who had paid for the slaves, to recover back the purchase-money, and hold the slaves, and the earnings of their labor also;"

Held: [49] "The illegality of the consideration for the transfer does not invalidate the mortgage, with which it has no connection." See Adams *v.* Rowan and Harris, p. 312, and Rowan and Harris *v.* Runnells, p. 313, *infra.*

*Palmer v. Cross,* 1 S. and M. 48, July 1843. [64] "In . . 1808, Ann Michie, of . . Virginia, . . settled upon her daughter . . certain slaves . . [65] 1835 . . [the daughter] removed [with the slaves] to Tennessee, and in 1836 to . . this State."

*Mount v. Harris,* 1 S. and M. 185, July 1843. [191] "On or before the first day of January next, I promise to pay . . Gallaway $900, or return him a negro girl, Matilda. March 17, 1840."

*Baines v. McGee,* 1 S. and M. 208, July 1843. [217] "a negro man . . May, 1838, . . [was] sold . . at public sale, and . . McGee, the administrator, became the purchaser at $1601, . . on a credit of twelve months. McGee afterwards sold . . to Matthews . . and Matthews sold to . . Ford."

*Murphy v. Clark,* 1 S. and M. 221, July 1843. [232] "The great objection, urged to the exercise of jurisdiction by the chancery court, is, that . . the *pretium affectionis* is not set forth." Held: [236] "from the peculiar character of slave property, a bill will, in all cases, lie to recover them in specie,[1] unless, perhaps, . . [236] [when] the owner has treated them as merchandise, and bought with a view to sell again." [Clayton, J.]

*Rowley v. Cummings,* 1 S. and M. 340, July 1843. [342] "the attachment was levied on a female slave, and her child, and they were put in jail."

*Munn v. Perkins,* 1 S. and M. 412, July 1843. [413] "Barr . . proved that in March, 1836, he was overseer for . . Meek, . . that Perkins . . brought an order . . from Meek, . . 'Mr. Little or Mr. Barr, will de-

[1] Following the Tennessee decisions.

liver to William P. Perkins or order, one of my two girls, giving him choice—either Lucinda or Charlotte.'" [416] "Perkins . . examined both the girls . . and was informed by the witness that they both had bad colds, and . . Lucinda had a difficulty of breathing; . . Perkins . . selected . . Lucinda;" "Meek . . had received . . in exchange . . a girl of the name of Mary, and . . had sold her [before his return home] for $1500, . . he had paid Perkins $200 boot, in the exchange" [414] "That some short time after this, the witness . . went to live with Perkins, as overseer. . . he found the girl engaged in scraping cotton in the field . . still afflicted with a bad cold and difficulty of breathing. Soon after this she was . . put to doing light work about the house; that the services . . were worth her board and clothes the first eighteen months; that, after that time, she was an expense . . that she continued to get worse . . until she died [[418] 'some two or three years after the . . exchange']. That . . a short time before the girl's death, Perkins . . wanted Meek to take her back; that Meek replied . . that he . . was not in a condition to take care of her, and that he would pay all expenses, and if the girl died, she should be his loss. Perkins' family physician . . [415] discovered that she was laboring under a confirmed case of consumption, . . That his bill . . was about $100; . . a witness for the defendant below, proved that the woman, Mary, was not very saleable, because she was too white;" [421] "There have been three concurring verdicts in favor" of Perkins, the plaintiff. Judgment affirmed.

*Comstock v. Rayford,* 1 S. and M. 423, July 1843. [424] "that . . Chilton, was the owner of the seven . . slaves . . that when the executions . . came to the hands of the sheriff . . Chilton 'secretly . . removed and run them off' [from Alabama] into . . this State,"

*Luckey v. Dykes,* 2 S. and M. 60, July 1843. [66] "William Johnson . . bequeaths 'to each . . of his . . heirs one dollar a-piece.' To his wife, he bequeaths 'all his negroes as long as she lives; at her death all . . to be . . set free.'" [62] "my executors to be paid for their trouble about my slaves. As I particularly charge my executors to have my slaves attended to, have their freedom, and settled on the land left to them, except they should wish to go to some other state; in that case, sell their land, and see them removed and settled;" [69] "Its understood, at my wife's death my negro woman Winny draws twenty-five dollars per year out of the sales of my property, to go to any person she should make choice of living with," Clayton, J.: [68] "It is admitted on all hands that this bequest ['that his slaves . . be emancipated'] is void, because in opposition to our state policy."

*Pleasants v. Glasscock,* S. and M. Ch. 17, December 1843. [21] "delivered . . six of the negroes . . to one of her husband's relatives, who carried them off to Texas."

*Stacy v. Barker,* S. and M. Ch. 112, December 1843. "Lee departed this life in Mississippi, in 1836, leaving a large estate . . in Louisiana, as also some estate in Mississippi. . . a sale of a certain portion . . was

made . . March, 1837, by virtue of an order of the Parish Court of Concordia [in Louisiana]; . . described as belonging to the succession of . . Lee, . . and to the community therefore existing between him and his wife . . residing in said parish; . . Barker [purchased] . . Ephraim, [at] $1500; Peter, $1960; Jim, $1625; David, $1125; Washington, $1785; Oscar, $1915; Charles, $1645; Jerry Kendrick, $625, . . [113] '7 per cent. . . cash on the day of sale—the balance in four equal annual instalments;' . . that Barker . . removed the slaves . . into . . Mississippi . . is insolvent, and has gone to parts unknown; . . [114] Complainant [Lee's administrator, appointed in 1840,] charges . . That said slaves would not now sell for half the sum due,"

*Steger v. Bush,* S. and M. Ch. 172, December 1843. [175] "Some four or five months after . . the judgment [[177] 'with a stay of six months'], the witness was at the house of Andrews; he then had some twenty-five negroes: some time after, he . . found no negroes: he understood they had been run off."

*Speight v. Brock,* Fr. Miss. Ch. 389, 1843. "one of the negroes became sick, and the testator nursed and furnished medicine . . for about one year, which together with the physician's bill was worth $100,"

*Newman v. Meek,* Fr. Miss. Ch. 441, 1843. "1835, . . Newman purchased of Meek forty . . slaves, for thirty eight thousand dollars, . . Newman was to pay . . in three instalments," They were sold at public sale in 1839. A witness testified [452] "that the negroes were in bad condition and badly clothed; that their condition was such as to endanger their health; . . Andy and Grace were sold as they run; that they afterwards came back, but run off again; . . [454] that good negro men were selling for about eight hundred dollars or a thousand, and women from six to eight hundred."

*Sevier v. Ross,* Fr. Miss. Ch. 519, 1843. Chancellor Buckner: [531] "as a general rule . . where the personal property of a third person is seized under an execution, he will be left to his remedy at law. But the importance which has been attached to slave property, in the slave-holding states, has induced the establishment of a different rule in regard to that species of personal property, even without any allegation of peculiar . . value;"

*Swisher v. Fitch,* 1 S. and M. 541, January 1844. "May, 1840, he employed . . Swisher to oversee for him at . . nine hundred dollars per year,"

*Noonan v. State,* 1 S. and M. 562, January 1844. [563] "the witness tasted the liquor and asked the negro where he got it, who replied that Noonan let him have it, which Noonan denied, looking down, however, and coloring in the face. . . Hoyle . . said that Noonan did let the negro . . have the whiskey."

*McCoy v. Rives,* 1 S. and M. 592, January 1844. "Levied on one negro boy . . about sixteen . . and one boy . . about nine . . and one girl . . about eight . . 1840."

*Shattuck v. Young,* 2 S. and M. 30, January 1844. Will of Frances Beazley: [31] "The very faithful and meritorious services of my negro boy Jim, I cannot consent to pass unrewarded; my will, therefore, is that . . Jim shall be forever set free, and I hereby charge my executor to set forth the said meritorious services . . with this part of my will, in a petition to the legislature . . and procure an act of emancipation . . with the least possible delay, and further that my executor take charge of . . Jim, give him the exclusive benefit of his own labor, until he can procure the passage of the said act." [34] "Seven years have elapsed since the death of the testatrix . . An application [to the legislature] . . has been made, and failed. See Journal of the House of Representatives, Session of 1839, p. 151."

*Bank v. Barnes,* 2 S. and M. 165, January 1844. "The . . Bank recovered judgment against . . Barnes, and . . Spencer, . . Execution issued . . 1841, which was levied on 'one pleasure carriage,' as the property of . . Spencer. Mrs. . . Spencer . . [166] states that she purchased the said carriage herself, . . that in 1840, her father . . conveyed to her, in her own right, ten negroes . . and the money paid by her . . was . . allowed her by her husband, for the hire . . and contends . . that the carriage is her separate property." J. H. Maury, counsel for appellants: [172] "to maintain . . some traces of the portraiture of an English family having a man at the head, seemingly engaged in the provinces of husband and father, the capacity of the wife to hold a separate property, is limited by the statute [1] to her property in such slaves as she may have at the time of her marriage, or may acquire afterward, together with their natural increase. . . [173] [In] the fourth section . . it is ordained, 'That the control . . and the receipt of the profits . . shall remain to the husband,'" Held: [186] "the productions of the slaves . . were the property . . of the husband."

*Scott v. Peebles,* 2 S. and M. 546, January 1844. "The declaration . . averred that . . the defendant . . [547] had, in . . 1840, . . said that the plaintiff 'had negro blood in him.' . . that the plaintiff's brother had mixed blood in him, and had been whipped for stealing, . . The defendant . . filed two special pleas of justification, that he had heard Buckner Lanier and Starlin Lanier . . of North Carolina, speak the words, . . and that when he repeated them, he stated his authority . . and that he did so without malice . . verdict in favor of the plaintiff for five hundred dollars." Judgment thereon affirmed.

*Tunstall v. Walker,* 2 S. and M. 638, January 1844. Senator Robert J. Walker [643] "went, with his family [in 1836], to Washington, leaving his slaves on . . plantation . . Mrs. Walker . . gave various directions . . particularly in regard to the comfort and supplies for the slaves, and their humane treatment, and to remove the overseer if they were otherwise treated, and procure a humane one."

[1] Act of 1839. How. and Hutch. 332, sect. 23.

*Simmons v. North,* 3 S. and M. 67, January 1844. "October, 1839, North purchased of . . Simmons and Co. a negro woman and child, for whom he executed his . . note for . . $1200, . . [68] The note was not paid . . and . . November, 1840, . . [they were] sold . . at public auction . . [for] $606,"

*Young v. Thompson,* 3 S. and M. 129, January 1844. "The declaration [averred] . . that the plaintiff [Thompson] hired to the defendant a slave, named Marsh, for . . one year, commencing . . first of April, 1837 ['at thirty-two dollars per month']; and that in consequence of the . . cruel treatment of the defendant, the slave ran off, and was lost . . On the trial, the plaintiff read the deposition of [a witness] . . that just before Christmas, in 1837, deponent heard . . defendant [say] . . he did not care to know where the negro was; . . that before the negro left, he had his knife into his breast a piece; and assigned as a reason for stabbing him, that the negro tried to keep out of his way; . . [130] that at the time the negro ran away, he would have sold for thirteen or fourteen hundred dollars in the then currency of the country; but he would not now (at the time of trial [in 1841]) sell for more than six or seven hundred dollars. . . The defendant then read . . the depositions of . . Everett . . [his] overseer . . and Chilson the superintendent . . of his mill; that . . defendant and Everett went out into the field where . . [Marsh] ought to have been at work; shortly after . . Marsh made his appearance . . defendant called him, and he attempted to run off, when the defendant drew a pistol, and told him if he did not stop he would shoot him. Marsh, however, continued to walk off until defendant . . overtook him," [Counsel for plaintiff:] [136] "seized the negro by the throat, [and struck] . . [137] Marsh on the side of his head with a cane;" Depositions of overseer and superintendent of defendant's mill: [130] "He was then tied and taken to the mill, and whipped by the defendant with a cowskin, in the presence of Everett, Chilson, and others. The whipping was not severer than is usual in such cases; no blood was drawn, nor was the boy at all injured. . . [131] when he was whipped, . . he was naked, and no wounds were visible on his person." "Deponents considered defendant a good master; he clothed and fed his negroes well, and never whipped them cruelly." About four weeks later, Marsh [133] "absconded in the night . . during Young's absence," and Edmund, Scott's slave, [131] "ran off at the same time; and they carried with them two guns" [130] "from . . Young's mill, one of which has since been found [[133] 'near one hundred miles . . from Young's residence'] . . where the negroes were . . shot at by some white persons; that Marsh had not been taken, . . [131] that a month or two afterwards, it was ascertained that . . Edmund . . was in jail in Alabama, . . brought . . home," [136] "verdict for $1000." New trial granted. *Per curiam*: [142] "The testimony shows no improper conduct on the part of Young."

*Green v. Green,* 3 S. and M. 256, January 1844. Will, 1826: [257] "To the 'infant his wife was then pregnant with' . . four negroes.—Lucy, Charles, Malinda, and Washington."

*Hardy v. Smith,* 3 S. and M. 316, November 1844. "a writ of *habeas corpus ad subjiciendum* issued upon a petition . . to recover the possession of a negro boy . . The petition alleges that . . [William and George W. Hardy] took the slave . . by force, one being armed with a gun, and the other with a knife."

*Bank v. Walker,* 3 S. and M. 409, November 1844. [411] "that the reason why all the negroes mentioned in the deed of mortgage were not sold on the day of sale was, that three . . [412] had run away, some . . had died, and the remainder not able to travel to . . the place of sale."

*Kelly and Little v. State,* 3 S. and M. 518, November 1844. [519] "indicted jointly, for the murder of . . 'a negro man, the slave of . . Kelly.' . . convicted . . of manslaughter in the first degree, and . . sentenced to confinement in the Penitentiary for seven years. . . The record . . does not show that the prisoners were present in Court pending the trial, or when the sentence was pronounced . . [521] It was proven . . that at the time of the acts charged . . both the prisoners were drunk." [528] "judgment . . reversed, without disturbing the verdict, and the cause remanded, with directions to the Court below to pronounce" a correct judgment.

*Dowell v. Boyd,* 3 S. and M. 592, November 1844. [603] "an action [of debt] against the defendant, to recover a large sum," [592] "The declaration . . alleged that . . 1840, the defendant was the owner . . [of] a slave . . which slave had . . stolen . . from the plaintiff $5390 . . that . . said slave was . . proceeded against, by a warrant . . issued by . . a Justice of the Peace . . on the charge of grand larceny, and . . convicted before said Justice;" Held: the master is liable for the value of the stolen property.[1]

*Rankin v. Holloway,* 3 S. and M. 614, November 1844. [617] "Ford . . asked him privately if he came to purchase . . he answered, that he had come for that purpose; whereupon . . Ford told him, that the slaves were not to go out of the family, but that the sale was made for the purpose of screening his son . . from the judgment of a certain debt,"

*Hunter v. Talbot,* 3 S. and M. 754, November 1844. "bill of sale or receipt . . 'Received of . . Chalmers, five thousand dollars . . for . . John Williams, blacksmith, aged about thirty years; also John Oliver, striker, aged about twenty-one' . . [755] the defendant [vendor] . . proved that the sale . . was made in Tennessee [in 1839], . . [756] that Chalmers . . could not pay . . that the defendant had always retained the possession of the slaves, and brought them with him to Mississippi when he moved to this State;"

*Peter (a slave) v. State,* 4 S. and M. 31, November 1844. "indicted for . . murder . . 1837, . . [32] Stewart testified, that he was an examining justice of the peace, when the prisoner, shortly after his arrest . . was brought before him; when the prisoner confessed that he and . . Tom, agreed to kill the overseer for Tom's master; that the deceased,

[1] How. and Hutch. 164, 165.

with a gun on his shoulder, passed through the woods . . Tom killed him, by beating him to death with his own gun; he, the prisoner, . . standing by, ready to assist . . that it was not necessary, Tom killing the deceased without difficulty. That he (the prisoner) did not know the overseer . . or . . the deceased, and did not know Tom had killed the wrong man, until informed by Tom. The witness . . informed him that he had a right to ask any questions . . but gave no other . . caution; . . that the slave was brought . . by several persons, who remained . . during the examination . . some of them armed with guns, . . part of a party who had gone to the master of the slave, had arrested the slave, and had in the prisoner's presence made preparations to hang him, if he did not confess; at which time . . [33] the prisoner had confessed to the same effect . . The prisoner was again sentenced to be hung" Judgment reversed and a *venire de novo* awarded: [39] "the confession was improperly admitted in evidence."

*Bogard v. Gardley,* 4 S. and M. 302, January 1845. [303] "For . . five hundred dollars, I [Blackwell] have . . sold to David S. Wyse . . Milly, thirteen years old; . . 1835." [308] "deposition of James Wyse . . that he bought the negro . . with his own money, and caused the conveyance to be made to his infant child, then some four or five years of age." [304] "that he had given to his older son one negro, and wished to do the same to the younger;" [310] "James Wyse . . was indebted . . three thousand dollars at . . the date of his purchase" He brought Milly [303] "to Marshall county, in the fall of 1840, . . and sold [her] . . in the spring of 1841, together with her infant child, born in Marshall county, . . that Milly was worth four hundred and fifty dollars, and the child one hundred and fifty, at that time; and that Milly's hire was worth forty dollars a year." Held: [310] "Such a gift [to his child] . . cannot . . be upheld to defeat a prior creditor,"

*Hope v. Evans,* 4 S. and M. 321, January 1845. [326] "bill filed . . by the appellant, alleging that in . . [327] November, 1836, he purchased of the appellee . . land and . . slaves, for . . $36,000. . . that the contract was entire, though . . the slaves [were estimated] at $17,000," [321] "he conveyed the same . . to the defendants, Pope and Hamer, in trust, to sell . . in case of his default," [327] "all of . . purchase-money has been paid except . . $9000, . . [The bill] charges that five of the slaves [1] were introduced . . by . . Evans in 1836, as merchandise, . . prays for an injunction to restrain the sale [by the trustees], and for a rescission . . prays that the money paid may be refunded. . . The answer positively denies that any of the slaves were introduced . . as merchandise, . . The defendant . . became a citizen of Mississippi in 1831, . . [328] Cusack states that in the spring of 1836, Evans informed him, that he had purchased of . . Edwards a plantation . . [and] a portion of the hands, that he would visit Tennessee . . and would purchase some additional negroes . . and place them on the plantation, when he thought he would be able to sell the plantation and negroes at a profit. . . Evans returned

[1] [322] "Abner, Patsy, Terry and Silsy, and her child Jane,"

from Tennessee . . October, 1836, placed the negroes . . upon the plantation with his other hands, . . After he took possession he applied to [Edwards] . . to release him from the contract, . . that he had not hands enough . . and [Edwards] . . sold him six more hands. . . [In the same month] he told [Edwards] . . that he had seen . . [329] [another] place . . which suited him better . . and that he wished [Edwards] . . to let him off the contract. . . refused, . . After he had sold the place to Hope, . . Evans moved up to the [other] place" [327] "injunction granted . . 1842."

[331] "The decree of the Chancellor, dissolving the injunction,[1] will be affirmed." [329] "This contract . . must . . be governed by the prohibition of the constitution alone. . . This provision in itself amounted to a prohibition, without any legislative enactment,[2] . . If . . [a settler] bring slaves into the state . . with the bona fide intention to apply them to his own use, and afterwards change his intention and sell them, it does not . . amount to an infraction of the law.[3] . . [330] there is no evidence that they were ever offered, except in connection with a large tract of land" [Clayton, J.]

*Randal v. State,* 4 S. and M. 349, January 1845. "indictment . . for stealing a negro man . . Sam ran away from his overseer in February or March, 1844, . . and was absent about five months, when . . [his owner] caught him in the woods, up in a tree." [351] "neither of the two witnesses who testify to . . seeing the plaintiff in error in company with a negro . . speak positively as to the identity . . judgment . . reversed, and a *venire de novo* awarded."

*Thomas v. Phillips,* 4 S. and M. 358, January 1845. "bill . . alleging that . . Siebe bought . . negroes, . . 1835, . . imported . . for sale, . . That notes were executed . . amounting to about fourteen thousand dollars, . . That . . [Phillips] sued at law and obtained a judgment, which . . [Thomas] prays may be enjoined." Held: [429] "the contract might have been avoided, by plea at law, but by his failure to make such defence, the complainant has placed it beyond the reach of the courts."

*Goodwyn v. State,* 4 S. and M. 520, January 1845. [532] "the deceased was a deputy sheriff . . and was in the act of executing a *fi. fa.* on defendant's slave at the time the killing took place." [521] "witness . . heard the report of two fire-arms; . . and heard . . the deceased, setting his dogs on some one. . . [522] Deceased owned a large pack of dogs, twelve or fifteen, and used to run negroes with them; they were very fierce. . . [526] he kept dogs to hunt negroes, and white persons also; . . [The sheriff] sent deceased to levy on the negro, because the negro knew him . . and his other deputies. . . He never knew the dogs to bite a white person, unless set on."

[1] Same *v.* same, S. and M. Ch. 195.

[2] See Green *v.* Robinson, p. 289, *supra,* Glidewell *v.* Hite *ibid.,* and Brien *v.* Williamson, p. 294, *supra.* The decision of the Supreme Court of the United States in Groves *v.* Slaughter (p. 533, *infra*) is disregarded.

[3] Brien *v.* Williamson, p. 294, *supra.*

*Hill v. Anderson,* 5 S. and M. 216, January 1845. [218] "Exum was armed, and carried off the negroes against her remonstrances."

*Moore v. McKie,* 5 S. and M. 238, January 1845. [242] "1838 . . they moved [from Tennessee] to Mississippi . . bringing with them these [four] slaves with others,"

*Price v. Sessions,* 3 Howard (U. S.) 624, January 1845. Smith's will, 1836: [633] "the property is to be kept together, and the force worked on the plantation, until my . . [634] daughter . . arrives at the age of eighteen" "The proceeds of the crops to be [in]vested in young slaves, in the mean time."

*Nations v. Alvis,* 5 S. and M. 338, November 1845. [339] "A mortgage upon the slaves, given by . . Alvis to . . Nations, in . . 1840, . . [340] Alvis . . moved . . to . . Tennessee . . taking . . negroes, . . 1843 . . Nations came, and by stratagem seduced the negroes . . by night, and run them off to Mississippi. That pursuit being made . . Nations . . refused to give them up, and threatened violence if they were taken"

*Thornton v. Demoss,* 5 S. and M. 609, January 1846. "Demoss, sheriff . . 1838 . . offered at public auction, . . a negro boy named Jim, to satisfy executions . . Thornton . . purchased . . for . . $730; . . [611] Some time afterwards, the negro obtained a writ of *habeas corpus* against [Thornton] . . and on the hearing, the judge decided that the negro was free, and ordered his discharge from the custody of [Thornton.] . . This action was instituted . . for the recovery of damages, on the averment . . that the defendant knew, at the time of the sale, that the negro was not . . property . . At the trial the plaintiff offered as evidence the proceedings in the *habeas corpus* case, . . ruled out"

Affirmed: [618] "the record was incomplete evidence for want of jurisdiction in the judge who tried the *habeas corpus,* . . The 48th section of the act in relation to slaves,[1] . . provides the mode by which any negro . . who claims to be free, shall establish his freedom. And it is the only remedy which he can pursue." [Sharkey, C. J.]

*Dowling v. State,* 5 S. and M. 664, January 1846. [665] "indictment charged . . 'that . . Dowling [the overseer] with both his hands and feet . . Dick Smith, negro man slave, . . against the ground . . did . . throw; and . . with a . . wooden paddle' inflicted . . mortal bruises and wounds upon the head, stomach, back, sides and legs . . of which . . he . . died [two months later] . . and so the grand jury pronounced him guilty of murder. . . [666] On the trial, . . a witness on the part of the state . . stated that the prisoner told him, his usual habit was to punish slaves with a paddle, . . a piece of white oak timber about two and a half inches thick, and as broad as his hand. . . verdict . . 'guilty of manslaughter in the second degree.' . . [667] The court . . sentenced Dowling to five years imprisonment" Judgment reversed and a new trial awarded: [686] "The customary manner of the prisoner's pun-

[1] How. and Hutch. 166.

ishing slaves . . was not the point in issue, nor . . any part of the transaction" The evidence should not have been admitted.

*Falconer v. Holland,* 5 S. and M. 689, January 1846. [691] "The negroes . . were obtained by Mrs. Newsom, as a legacy from a relative in Virginia. . . Mrs. Newsom lived . . in Tennessee. . . [One of her sons lived] on a plantation in Mississippi, where all her negroes were, except her family servants." He delivered the three negroes in controversy to his brother, who took them "in 1837 or 1838, to Tennessee. . . Two other negroes [who] were delivered to [him] . . [692] were sold . . to raise money . . to pay off debts . . She preferred to have these negroes sold, rather than dispose of her favorite family servants." [699] "In 1839, he removed with the slaves to Mississippi,"

*Leech v. Cooley,* 6 S. and M. 93, January 1846. Will of James Leech, 1836: "that his negro woman Delilah and her four children . . should be set free, and sent to . . Indiana or Liberia, whichever they might choose, and that the balance of his property, (except a lot . . [94] which was willed separately to Delila [*sic*]) should be sold, and the proceeds equally divided between Delila and . . three of her children;"

Held: [98] "The mere collocation of words,[1] if their meaning be the same, cannot vary their construction.[2] It is the policy of this state . . to prevent the increase of free persons of color therein. . . [99] if the executor, in good faith and with strictness, comply with the terms of the will, we see nothing in the law to prevent its execution. The right to freedom under the will is inchoate, and becomes complete, when the subjects of it are removed . . The bequest to the slaves is not void either, for want of capacity . . If they do not comply with the terms of the will, the whole bequest is void; if they do, it will be valid." [Clayton, J.]

*Atchison v. Potter,* 6 S. and M. 120, January 1846. "On the 28th day of June, A.D. 1842, . . Potter made oath before a justice of the peace, . . that Emma, the slave of . . Atchison, . . did steal . . one gold ring . . besides other articles . . the justice issued his warrant for the apprehension of the slave, to appear before him on the day following, . . Pulling and . . Patterson . . were sworn as jurors . . who, upon hearing the cause, returned the following verdict, and rendered the following judgment, . . [121] 'We . . find the prisoner guilty of petit larceny, . . and order the prisoner to receive fifteen lashes, well laid on, upon the bare back, at the common whipping-post.' . . Whereupon the following judgment was entered . . 'that . . Atchison, the master of . . Emma, be taxed with costs of prosecution.' . . The judgment of whipping was executed on the 29th June, . . on the 1st July, the justice issued an execution" against Atchison. [122] "it was admitted by Potter, that he

[1] Ross's will, p. 290, *supra,* "directed the slaves to be sent to Liberia, there to remain free. . . This will directs the slaves to be set free and then sent off;"

[2] But held otherwise in Georgia. See p. 2, *supra.*

was the employer of . . Emma, at the time of the commission of the offence charged."

Held: [126] "The act[1] evidently designs to annex the liability for costs to the master, employer or overseer, accordingly as either has the care of a slave at the time of his commission of the offence. The object of the law is to render the immediate controller of the slave watchful over his conduct,"

*Collins v. McCargo,* 6 S. and M. 128, January 1846. "McCargo sued . . on a writing obligatory, . . [129] bill of sale . . 'Natchez . . Dec'r 16, 1836. Received of . . Collins, thirteen thousand dollars . . for . . eight negroes,' . . note given . . [130] Holden testified that . . he rented to McCargo a house near the race track; that McCargo informed him that he had brought on a lot of negroes ['by land'] from Virginia for sale, and wanted a house to accommodate them in; . . that McCargo was a negro trader, and had for many years previous sold a lot of negroes in Natchez, and had returned to Virginia; . . that McCargo had tents, wagons, and other arrangements for travelling," Held: [134] "The . . contract was beyond all question void." [Sharkey, C. J.]

*Grover v. Gaunt,* 6 S. and M. 317, January 1846. A negro woman was hired, for the year 1841, for $144.

*Hazlip v. Leggett,* 6 S. and M. 326, January 1846. [327] "the plaintiff had attended on the family of Galtney as physician . . that Galtney's family, white and black, numbered near one hundred persons, and they were often sick;"

*Buckels v. Cunningham,* 6 S. and M. 358, January 1846. [362] "Maria and her . . infant . . sold [in 1840] for $825."

*Anderson v. Burke,* 6 S. and M. 475, January 1846. "Burke sued . . Anderson . . for . . four hundred and fifty dollars due to him as overseer" [477] "Anderson . . filed a special plea of set off . . a promise to pay him" [475] "by reason of the destruction of . . his . . slave Jim, done and caused by the . . plaintiff, . . what . . [476] Jim was reasonably worth; . . that . . Jim was reasonably worth one thousand dollars,"

*Hariston v. Sale,* 6 S. and M. 634, January 1846. "I am to give . . Sale $650 [as overseer] for the year 1840, and, if I am satisfied with him, to add $25 more." The "two following agreements . . were written on the same paper . . [635] 'I, . . Sale, . . have . . agreed to oversee for . . Hariston, for the year 1839, . . [who] binds himself to pay . . five hundred dollars . . and also to board . . Sale; and . . if . . Sale makes one hundred and eighty bales of cotton, . . to pay him . . one hundred dollars extra' . . 'if . . two hundred bales . . to pay him the further sum of twenty-five dollars extra'"

[1] How. and Hutch. 164, sect. 40.

*Petrie v. Wright,* 6 S. and M. 647, January 1846. [656] "1838. . . I make the following statement of . . money expended in the construction of the railroad . . For [about 140] slaves purchased, . . $159,000"

*Benoit v. Brill,* 7 S. and M. 32, January 1846. "Bernard Benoit, jr., averring himself to be a free man of color, filed his petition in the probate court . . setting forth that Bernard Benoit, sen., . . a free man of color, died intestate . . 1841, and without legal heirs. That . . he was possessed of a considerable estate, consisting of negroes and other personal property. That petitioner is the natural son . . and that in . . 1844, the legislature passed an act for his relief, by which the state relinquished to petitioner 'all claim to said estate, by escheat;' and provided that 'said estate should vest in petitioner . . as though inherited . . or bequeathed' . . [33] and prays for distribution, . . The administrator . . denied that the petitioner is a free man, . . The petitioner on the hearing, read an instrument in the French language, of which the following is a translation: . . '1808,[1] the widow of Antoine Bayard and Master Bernard Benoit, here appeared in my office of syndic and notary, attended by two witnesses . . of said woman, . . who sells to . . Master Bernard Benoit, a young mulatto, aged fourteen . . whom . . Benoit claims as his son, for . . 400 piasters, cash . . The said woman . . sells . . to . . Benoit, on the condition that on the moment of sale, he shall acknowledge him free.' . . duly signed . . The instrument of manumission by . . Benoit . . signed by two witnesses, provided . . that from that moment he acknowledges the freedom of his son, . . The petitioner then produced the certificate of registry of the petitioner, as a free mulatto, in the probate court of Hancock county, and proved that he was recognized by . . Benoit, sen., as free, and that the administrator had not attempted to restrain his liberty, . . The court dismissed the petition, on the ground that the rights of the state had not been ascertained,"

Judgment reversed, [37] "the petition directed to be reinstated . . and the prayer . . allowed, upon petitioner executing bond . . [38] unless the other party require an issue to the circuit court. . . the judgment . . is no bar to any proceedings . . instituted hereafter by the administrator . . to obtain possession of the appellant as a slave, . . and . . it is not conclusive of the freedom of the appellant in any issue that he may hereafter be called upon to make or cause upon that inquiry." [Thacher, J.]

*Berry v. Bland,* 7 S. and M. 77, January 1846. Counsel for appellee: [81] "The property levied upon . . consisted wholly of slaves, the separate property of Mrs. Bland. By our statute,[2] a married woman who is the owner of slaves, can only dispose of them by the joint deed of herself and husband, 'executed, proved, and recorded agreeably to the laws . . [82] in relation to the conveyance of the real estate of *femes covert,*' . .

[1] [35] "the Spanish law [was] then in force in the country comprising Hancock county. . . For the Spanish law, the court is referred to 1 Moreau and Carl. Partidas, 587-591."

[2] The Act of 1839, commonly known as "the woman's law." How. and Hutch. 332, sect. 26.

A private examination of the wife, previous to any conveyance of her slaves, is thus rendered necessary,"

Held: [84] "There is no more reason to decide that her personal estate can be subjected to the payment of debts under this act, than that her real estate may be, under the previous law. Both are now upon the same footing."

*Brown v. Clarke,* 4 Howard (U. S.) 4, January 1846. [11] "absconded, and carried off the remaining slaves" to Texas.

*Murdock v. Hughes et al.,* 7 S. and M. 219, November 1846. [223] "he sold . . Julia to Mrs. Hughes [in Alabama] in 1818, for $600, . . Mrs. Hughes refused to buy . . unless . . complainants [her children] would assist in paying for her, . . which they did by picking out cotton."

*Leggett v. Simmons,* 7 S. and M. 348, November 1846. "an action of trespass, to recover the value of . . Solomon, the property of the plaintiff [Simmons], alleged to have been killed by . . Moses, the property of the defendant. . . the defendant . . [350] stated . . on the coroner's inquest, and before the committing magistrate, that on Saturday evening, about dark, . . 1843, . . Solomon came to his house and asked him for a drink of spirits; that he directed a dram to be given . . and also to his own boys; and afterwards another dram was given to them, and Solomon . . went to his, defendant's, negro-house; that . . he was aroused by a fuss in the negro-house, where the negroes were gambling; that he went out with his gun to stop it, and . . Solomon . . seized the gun, and fired it off in defendant's hands, and then ran off; but . . peace was restored, and Solomon was permitted to return; that defendant then returned to bed, and . . was again aroused by another fuss in the house of Moses; . . he saw Moses and Solomon coming out . . engaged in a struggle; that Moses broke loose . . and ran round an oak tree . . Solomon . . striking at him with a knife, and swearing he would kill Moses, if he was the last negro in the world. In that manner they ran round the tree several times, when suddenly the fuss ceased, and the defendant again returned to his bed; . . next morning . . he found Solomon dead, with a knife lying by his hands. . . Witnesses understood defendant to say his object was to make peace; but he did not say he commanded peace, or used any means to make peace. The defendant also stated . . that Solomon was a bad negro, and he had previously ordered him not to come to his house. . . Solomon was worth about one thousand dollars" [354] "The jury found a verdict for the plaintiff below, in $1180, of which . . the plaintiff remitted $180."

Judgment thereon reversed and a new trial granted: [355] "The defendant was doubtless censurable . . for want of care . . and resolute . . interference between the slaves at the outset . . but his conduct seems hardly to warrant the finding of the jury,"

*Wooten v. Miller,* 7 S. and M. 380, November 1846. "Miller . . of North Carolina . . in 1837 . . delivered to . . Wooten, then about to move into this state, his negro man . . to sell or hire here . . Wooten

brought the slave here and sold him . . for $1050, and took . . note therefor, . . The bill prays that the money might be decreed to be paid. . . [381] The vice-chancellor decreed that the defendants should pay" Reversed: the note was void as the transaction was in violation of the constitutional prohibition.

*Pearson v. Moreland,* 7 S. and M. 609, November 1846. [611] "When the first lot of negroes was offered, five in number, he bid one thousand dollars for the lot, which appeared to create much surprise among those present. Mary Seybourne [one of the family] then bid one dollar more, and became the purchaser; she cried, . . [612] That before another lot was offered . . Moore . . did hand him a . . note . . for the debt due his brother. . . he bid on the balance of the property very small prices, but he did not attempt to force it to bring its fair value;" [615] "Notwithstanding that the administrator had been informed that bidders were on the road, . . he hurried on the sale, and had twenty-two likely negroes sold, at an average of seventy-eight dollars per head, in fifteen or twenty minutes, being an average of about one minute to a negro, . . and all before the bidders could arrive." Sale set aside.

*Wade et al., Executors of Isaac Ross, v. American Colonization Society,* 7 S. and M. 663, November 1846. See Ross *v.* Vertner, p. 290, *supra.* [672] "the executors . . took immediate possession of the . . estate . . which consisted of a large and highly improved plantation containing about five thousand acres . . and . . [another] tract . . and negroes and other personal property . . appraised at $103,665; . . and agreed . . that Wade should superintend the plantation and negroes . . [674] instead of executing the benevolent intention of the testator, . . [he] converted [the property] . . to his own . . private gain, raising crops . . with the work . . of the slaves," [665] "November, 1842, the American Colonization Society filed a bill . . against . . executors . . alleging . . [674] that the defendants would not deliver up the slaves to be sent to Africa . . [675] that they had at different times sent an agent . . to take charge of the slaves, and they then had an agent residing in Adams county, who was fully authorized at any time to take charge of the slaves . . and to secure . . the residue of the estate . . Complainants further aver that on the 26th day of February, 1842, the legislature . . passed an act [1] which . . enacted, that 'in all cases of wills heretofore made . . whereby any slaves have been directed to be removed . . for the purposes of emancipation elsewhere, . . unless such slaves shall be removed . . within one year after the passage of this act, it shall not be lawful . . so to remove such . . slaves; but the same shall . . be distributed among the heirs . . as if . . testator had died intestate: *Provided, however,* that if such executor . . shall be prevented . . the time . . [of] such restraint . . shall not be . . computed' . . Complainants charge that the mother of . . Wade is an heir . . that . . Wade will endeavor to . . continue the

[1] Pamphlet Acts of 1842, pp. 69, 70.

slaves in bondage under the act of 1842, unless the chancery court should interpose . . [676] The bill prayed for an injunction, the appointment of receiver, and that the court compel a full . . execution of the trusts created by the will. . . an injunction was granted . . [677] [The other executors] averred their entire willingness . . to carry out to the fullest extent all the provisions of the will . . whenever it shall be legally decided that they were entitled to the control . . of the personal estate. . . The chancellor . . appointed a receiver " in June 1844.[4]

Order of the chancellor affirmed: [696] " The provisions of the will constitute both the executors and the colonization society trustees. . . If a part of the trustees . . interpose obstacles . . clearly a court of equity may enforce the performance. . . [697] It is . . insisted that this society is prohibited by its charter from . . holding property except for one purpose, that ' of colonizing with their own consent upon the coast of Africa, the free people of color residing in the United States.' . . these slaves are not now free, but they have an inchoate right to freedom. As soon as they are taken beyond the limits of this state that right is so far consummated that by the terms of the charter they may be transported and colonized. . . [698] The bill shows the use of every means in the power of the complainants . . to comply with . . law [of 1842]. . . These objects of the testator's . . bounty have been detained here against their will, against the will of the society, and that of all the executors except one. . . this was such a fraud . . that neither he nor anyone claiming in virtue of his acts acquired any right. . . How far . .[the act of 1842] is constitutional might be a grave question, but that we do not now touch." [Clayton, J.]

*Whitney v. Whitney,* 7 S. and M. 740, November 1846. [750] " 1838, the defendant delivered into the probate court his inventory of all the estate of complainants [his children], . . to wit; Chancy, aged twenty-seven . . valued at $1200; John, eleven years, valued at $600; Dorcas, six years, valued at $450; Malsa, four years, valued at $400; and Ann, nine months, valued at $250." The complainants charged [741] " that by . . [his] neglect . . four children, being the whole of the natural increase of their slaves, had died; . . that . . their father was . . [742] always cruel to his slaves; . . [743] prayed that . . [he] be . . compelled to account . . [He] denied that the hire . . was worth more than the taxes, physician's bills, and other . . expenses incurred in the support . . of the negro children and petitioners; and he denied . . cruelty . . [744] Ballard testified that he hired Chancy and Dorcas for . . 1842, . . worth . . about one hundred and forty dollars, . . having a child as Chancy did almost every year, he did not believe they would have hired during . . 1838, 1839, 1840 and 1841, for more than their taxes, clothing, medical bills and support. . . Moore testified . . that from 1835 to 1842 inclusive, . . Chancy, with her children, was worth forty or fifty dollars per year,

[1] Same *v.* same, 4 S. and M. 670 (671). See American Colonization Society *v.* Wade. p. 312, *infra.*

the hirer feeding and clothing her and her children, and paying their taxes and doctor's bills; that in 1835, John was worth about twelve dollars above ordinary expenses; in 1836 . . about twenty . . in 1837, thirty dollars; in 1838, forty dollars; in 1839, he hired for twelve dollars per month; in 1840, he was worth fifty dollars; in 1841, sixty dollars; and in 1842, he hired for eighty dollars; . . [745] Boatner testified that in 1836, he . . knew . . Chancy, and . . her children, and he did not believe they were then worth more than their support; he considered the expense of feeding and clothing and raising a negro child, from its birth till . . ten years of age, about twenty-five dollars a year; that a negro woman with a suckling child, during the years 1835, 1836, and 1837, would hire for forty or fifty dollars a year less than a woman without one; . . [746] he considered the slaves always suitably clothed . . did not think Chancy worth more annually than the support of her children; . . Anderson . . always thought the defendant treated his slaves as well as they deserved to be treated; they had plenty to eat and wear; . . the expense of clothing, feeding and raising a child under seven . . he thought was about thirty-five dollars a year. . . a practicing physician . . in 1841, visited and prescribed for Chancy and four of her children . . and was paid twenty-four dollars" [751] "Chancy was the principal cook in the hotel establishment of the defendant." Held: [752] "the probate court should have decreed an account against the defendant"

*Jolly v. State,* 8 S. and M. 145, January 1847. [148] "an indictment framed upon the act of 1842," [145] "Armstead . . suspecting the defendant of unlawful dealing with slaves, . . he and several others went at night to the house of the defendant . . [146] taking . . John, who belonged to one of the party, and some spun thread and other articles . . concealed themselves. The negro roused the defendant from his sleep, and proposed to trade . . for the liquor; but the defendant refused . . lest it should bring him into trouble with the neighbors; but . . would sell it . . John went off to get the money from one of the party in the presence of his master, and was told to take the jug and get some whiskey"

Held: [149] "It is a traffic which is hard to detect, and it would be singular, if a resort to almost the only means of detection should have the effect to legalize the transaction. . . [150] the consent must be to a sale of the liquors, not merely to an experiment to detect a violation of the law."

*Stovall v. Bank,* 8 S. and M. 305, January 1847. [308] "Jenkins . . stated, that at the sale he requested several persons not to bid, and that Quarles did the same . . that the negroes were worth about twenty-two hundred and fifty dollars, and sold for twelve hundred and eighty."

*Harmon v. Short,* 8 S. and M. 433, January 1847. [435] "before the execution of the bill of sale, nothing was said about redemption, . . about an hour afterward, Rutledge remarked to Short, the slave was a family servant, and he disliked parting with him; and Short replied, that he could redeem him;"

*Brown v. Forbes,* 8 S. and M. 498, January 1847. [499] "an execution . . 1839, levied on . . Aggy, aged forty-five years, . . 1840, the negro was . . purchased by . . Brown, at . . eighty-five dollars and fifty cents, . . Witness believed the negro, on account of her age, to be worth little or nothing."

*Covey v. State,* 8 S. and M. 573, January 1847. [574] "Covey was indicted for horse-stealing; . . it was proved that he had passed himself on the community for a free man of color. Prisoner excepted [*sic*] to this evidence . . overruled." [573] "found guilty . . brought to the bar to have sentence passed . . his counsel entered a motion in arrest of judgment . . 'Because the court, from inspection . . will find that he is a descendant from the African race, and therefore *prima facie* a slave. . . Because the [circuit] court cannot pronounce the judgment of the law upon a slave. . . overruled . . sentenced to two years imprisonment" Judgment affirmed: [575] "The grounds upon which the motion . . is made, have . . reference to matters *dehors* the record,"

*American Colonization Society v. Wade,* 8 S. and M. 610, January 1847. See Wade *v.* American Colonization Society, p. 309, *supra.* In July 1844 Wade "filed in the probate court . . a petition . . [611] stated, that from the decretal order [appointing a receiver] . . he had . . obtained an appeal . . still pending . . the probate court granted an injunction . . 1845, the American Colonization Society entered a motion in the probate court to dissolve the injunction . . overruled . . prayed an appeal" [612] "The order of the probate court is reversed, the injunction dissolved, and the . . petition dismissed." "Courts of probate have no power to grant injunctions."

*Adams v. Rowan and Harris,* 8 S. and M. 624, January 1847. See Rowan and Harris *v.* Adams, p. 295, *supra.* Decree reversed: [639] "The mortgage, being an incident of the notes, . . follows their fate. . . void, as well as the notes."

*Lewis* (*a slave*) *v. State,* 9 S. and M. 115, January 1847. [116] "Lewis was indicted for the murder of the slave David, and . . found guilty. . . On the trial . . Clark . . testified that he was the master . . of . . David . . that . . about ten o'clock at night, he was aroused . . by a cry of distress, and . . about a half of a mile from his house, he found his slave . . injured badly; that the deceased said 'O my people,' . . a practicing physician . . was called . . [that] night . . and saw him [again] . . the [next] morning . . then dead. . . found a ragged cut on the right jaw . . several small shallow stabs . . on the shoulders and back . . and one stab, the fatal wound, on the left side, . . [117] the district-attorney offered to prove by . . Clarke, what the deceased said . . as to the injury . . objected . . overruled"

Judgment reversed and new trial granted: [119] "The danger of impending death . . which justifies dispensing with the oath, will also

justify dispensing with the charge directed to be given by the statute.[1] . . [120] as to slaves, it is contended, the presumption ['of a sense of religious accountability'] does not arise ['as in regard to white persons'], because of a defect of religious education. . . We are not inclined to adopt the distinction." "The simple, elementary truths of christianity, the immortality of the soul, and a future accountability, are generally . . believed by this portion of our population. From the pulpit many, perhaps all who attain maturity, hear these doctrines announced . . and embrace them as articles of faith. . . It is lastly insisted that the preliminary showing of the declarant's . . sense of impending death, was not sufficient to justify the admission of his declarations. . . [121] For this reason a new trial will have to be granted." [Clayton, J.]

*Quine v. Quine,* 9 S. and M. 155, January 1847. [159] "In 1836, Mrs. Quine gave in one hundred and twenty-eight acres . . and six black polls, over five and under sixty. Henry Quine [her brother] gave in three hundred acres . . and twenty-eight slaves, and a town lot . . In 1837 . . five hundred acres . . thirty-one slaves, and the town lot, . . Mrs. Quine had a good weaver . . but that she would keep her in the field, and do the weaving herself; . . [160] Quine said he . . wished to settle in Texas, . . He would go there with a few hands he expected to buy in Virginia, and take nothing from the plantation [in Mississippi]."

*Rowan and Harris v. Runnels* [*sic*], 5 Howard (U. S.) 134, January 1847. [138] "This action was brought in the Circuit Court for the Southern District of Mississippi," [134] "Rowan and Harris were citizens of Virginia, and Runnels was a citizen of Mississippi. . . the defendant offered in evidence a transcript of the record of a suit pending in the Supreme [Superior] Court of Chancery of . . [135] Mississippi,[2] to show that the consideration for the notes was a sale of slaves by Rowan and Harris to Runnels" [138] "in Mississippi in . . 1836, . . imported into the State in [1836] . . as merchandise . . The Circuit Court held this contract to be illegal and void, under the . . constitution of Mississippi, adopted in 1832."[3] Judgment reversed and the cause remanded: "The question . . is precisely the same with that decided by this court in the case of Groves *v.* Slaughter,[4] . . And the court then held . . that the clause . . did not of itself prohibit . . and that contracts for the purchase and sale of slaves so introduced, made before the passage of the law of that State of May 13th, 1837, were valid and binding . .

[1] "if it be found . . that you . . give fake testimony . . you must . . have both your ears nailed to the pillory, and cut off, and receive thirty-nine lashes on your bare back" How. and Hutch. 165.

[2] See Rowan and Harris *v.* Adams, p. 295, *supra.*

[3] "The introduction of slaves into this State as merchandise, or for sale, shall be prohibited . . after the first day of May, eighteen hundred and thirty-three: *Provided,* That the actual . . settlers shall not be prohibited from purchasing slaves in any State . . and bringing them . . for their own individual use, until . . eighteen hundred and forty-five."

[4] P. 533, *infra.*

[139] It now appears . . that the question has since [1] been brought before the courts of the State [of Mississippi], and . . settled by its highest tribunals that the clause in the constitution . . did, of itself . . prohibit . . and rendered all contracts for the sale of such slaves, made after May 1st, 1833, illegal and void. . . as late as the beginning of . . 1841, when Groves *v.* Slaughter was decided, it did not appear, from anything before the court, that the construction of the clause . . had been settled either way, by judicial decision, in the courts of the State. . . we can hardly be required, by any comity or respect for the State courts, to surrender our judgment to decisions since made in the State, and declare contracts to be void which upon full consideration we have pronounced to be valid." [Taney, C. J.] Daniel, J., dissented: [140] " Since the decision in Groves *v.* Slaughter, decisions of the Supreme Court of Mississippi, giving an interpretation to the constitution of that State, have become generally known—they are familiar, unequivocal, uniform, numerous. That any or all . . may have been made posterior to . . Groves *v.* Slaughter, I hold to be perfectly immaterial, . . If these expositions establish the meaning of the constitution . . such meaning must have relation to the period of the consummation of that instrument."

*Truly v. Wanzer,* 5 Howard (U. S.) 141, January 1847. "the complainant . . asks the interposition of a court of equity, not only to protect him from the judgment and execution, but also to restore . . that portion of the consideration which has been recovered by due course of law . . because the negroes purchased by him [in 1836] were brought into the State of Mississippi for sale contrary to the provisions of the constitution of the State; . . And . . [142] because . . the vender . . held them as guardian . . ' and ran them off to . . Mississippi.' "

Held: the note " given for the purchase . . was not void,[2] . . But even if [so] . . it would be a strange abuse of the functions of a court of equity to grant an injunction against the recovery of a judgment at law, because a purchaser with a full knowledge of his defence had omitted or was ashamed to urge it. . . The complainant has had the undisturbed enjoyment . . for ten years; and it is with a bad grace that he now invokes the aid of a court of equity . . on the allegation that he had neglected to urge an unconscionable defence," [Grier, J.]

*Mahorner v. Hooe,* 9 S. and M. 247, January 1848. [248] " Nathaniel H. Hooe, late of . . Virginia, the father of the one, and the grandfather of the other complainant, died in the summer of . . 1844, . . [249] made his will . . May . . 1844, . . [254] ' I give to my man Willis and his son . . when they start for Africa, one hundred dollars each, besides a full share with the others of my slaves, for their better conduct. To old Lymous and his sister . . old Ambrose at Tetotum, and old Sally at the Neck, I give . . their freedom as far as I can, and the tenement

[1] Green *v.* Robinson (p. 289, *supra*) was decided in January 1840. It was followed, in December 1840, by Glidewell *v.* Hite (p. 289, *supra*); in January 1841, by Cowen *v.* Boyce (p. 293, *supra*); in January 1843, by Brien *v.* Williamson (p. 294, *supra*); in January, 1846, by Collins *v.* McCargo (p. 306, *supra*); and in November 1846, by Wooten *v.* Miller (p. 308, *supra*).

[2] Groves *v.* Slaughter, p. 533, *infra*; Rowan and Harris *v.* Runnels, p. 313, *supra.*

where Oliver now lives . . [255] to live on during their lives, and to be fed and clothed by my Ex'ors, and a cow to milk, Miller Joshua and his wife . . to remain at the mill until it is sold, and to receive ten dollars a year and clothed, and after the mill is sold to have the same privileges as . . Lymous, etc. . . I . . emancipate . . all my slaves in Virginia, . . excepting those designated by name in devises; . . to be sent to Africa by my Executors, and their expences paid . . and my Ex'ors may keep, at their discretion, as many slaves on the farms, until the farms are sold, to . . keep the farms from going to waste, and employ an overseer to keep order . . until they can be shipped to Africa. I do further emancipate . . all my slaves . . which I loaned [my son,] . . and when . . the slaves . . are sent to Africa, to each . . head of a family, on their landing and discharge, . . twenty five dollars, and to adults having no families ten dollars, and to each of my slaves . . decent clothing before they start . . I do also emancipate . . every one of my slaves in . . Mississippi, . . to be under the same restrictions of being retained for a short time, to be cloathed [*sic*], etc. . . before starting for Africa [[253] " which must be within three years next succeeding my death "], I also do emancipate . . all my slaves . . that I loaned to [my son-in-law] . . my Ex'ors to defray the expences of transporting . . to Africa, and paying them, . . [256] should there be a deficiency of money to carry out my design . . then the slaves . . under the care of . . Mahorner, may be retained on my cotton farms three or four years to make up the deficiency . . should Blacksmith Bill, Billy Monroe, and Bill Beverly, be unwilling to go . . they may be sold . . to the highest bidder, . . I . . appoint my friends . . Mahorner of . . Misspi. . . Hooe, Barnsfield, and . . Coakley of King Geo. City, my nephew . . Bernard, Mr. Gurley of the District of Columbia, executors . . My hand writing being so generally known I deem it unnecessary to call in witnesses to . . my . . will.' . . [257] 'recorded [November 1844] as the true last will' . . The bill . . avers that the complainants are the only heirs at law of the testator, who possessed . . [258] one hundred and fifty slaves . . in this state, . . [259] The prayer . . is for an injunction to restrain Mahorner . . also . . that the will may be declared void . . The answer of Mahorner . . [260] states . . That the testator had a deep-seated and growing aversion to the complainants, and did not intend they should inherit . . Depositions were taken to prove the validity of the emancipation clauses . . as to the slaves in Virginia; . . the vice-chancellor [in 1846] decreed the clauses . . emancipating the slaves in this state, void; perpetually enjoined Mahorner from executing those provisions "

Held: [282] " the testator died intestate as to the negroes in Mississippi, and they must go to the distributees." [272] " The disposition of the slaves is admitted to be valid by the laws of Virginia, but it is contrary to a statute of this state, passed in 1842,[1] . . [278] the law of 1842 is a valid prohibition, paramount to that rule of comity, which, in absence

[1] "Hereafter it shall not be lawful . . by last will . . to direct that any slave . . shall be removed from this state for the purpose of emancipation elsewhere;" How. and Hutch. 539, sect. 11.

of such prohibition, might sustain the bequest on the law of the testator's domicil." [Sharkey, C. J.]

*Bodley v. McKinney,* 9 S. and M. 339, January 1848. Will of William Pescod, who died in Cuba in 1837: [341] "I give the services of my servant Ben, to . . Benton, of the county of Warren, until he be twenty-one . . when it is my will that he be set free"

*Arthur v. Railroad Bank,* 9 S. and M. 394, January 1848. [400] "stipulated . . that all the slaves . . in possession of [the Railroad Bank] . . shall be . . retained . . for the purpose of finishing said road, . . after which time, said slaves . . shall be sold"

*Torrey v. Grant,* 10 S. and M. 89, January 1848. [96] "The [twenty-three] slaves were valued and purchased at $1,000 each," in 1838.

*Lewis v. Starke,* 10 S. and M. 120, January 1848. [127] "The sale took place [in April] in New Orleans, and the negroes were afterwards taken from Wilkinson county in this state, and delivered in Louisiana. . . In October . . the sheriff of Wilkinson county, by some stratagem, procured the negroes to be brought back . . and levied . . on them,"

*Gilliam v. Moore,* 10 S. and M. 130, January 1848. [133] "came [from Tennessee] . . to this state in 1840, with about eighteen slaves," [132] "to avoid certain debts"

*Keithler v. State,* 10 S. and M. 192, January 1848. [196] "Silas testified that . . Keithler was in the employ of . . Sims . . and employed Silas to oversee for Sims; . . [201] 'Sims fell out with me because he had been told that I was intimate with his girl Catharine. He said he would tell the planters, so that I could not get business in the country.'" [200] "'he told me to leave' . . [214] 'He said . . if he caught Silas prowling around his negro-quarters at night he would kill him. . . [215] Silas . . shot Sims,'"

*Cameron v. Cameron,* 10 S. and M. 394, January 1848. "the testator left about ninety slaves"

*Otts v. Alderson,* 10 S. and M. 476, January 1848. [477] "Alderson sued . . Otts in assumpsit on an open account for three hundred dollars, the price of a slave, . . Dr. Otts nursed the boy with great care, took him in his own room, and had become attached to him; the boy was twelve . . [478] and if sound, three hundred dollars would be a good price . . Dr. Monette . . testified that the boy was constitutionally diseased with scrofula, . . would not give anything for him; that one of the eyes . . was still diseased; . . the plaintiff introduced a letter from the defendant . . 'Enoch's belly is not quite as large as when he came from the swamp; he has passed some very large worms, and I do not think he is clear of them yet. If he only had size, I had rather have him than any body's boy; he has improved a great deal.'"

Held: the plaintiff is entitled to recover the full amount. [481] "the purchaser . . must charge his loss to a presumptuous reliance on his own

judgment, and his improvidence in failing to obtain a warranty against defects,"

*Meek v. Howard,* 10 S. and M. 502, January 1848. "February, 1837, . . executed . . note for . . $2,300, . . in consideration of a negro man"

*Bradley v. State,* 10 S. and M. 618, January 1848. "indicted for having, with a 'dirk knife, . . cut . . with intent, . . upon . . a slave of . . Cozart, . . to commit manslaughter.' . . McWilliam . . testified that he saw the prisoner run after the negro about ten steps behind him with an open dirk knife in his hand; witness called upon the slave to jump the fence; upon which the prisoner stopped the pursuit, stating that the slave might then escape, but he would catch him and have his blood;" "the jury found the prisoner guilty; and the court sentenced him to jail for . . two years." Judgment reversed and a new trial granted: [619] "The evidence is entirely insufficient"

*Anderson v. Pryor,* 10 S. and M. 620, January 1848. [621] "a brother . . was in a lawsuit and difficulty, from having shot a negro, for which he had been tried and acquitted; and had been sued also in a civil suit, for his value."

*State v. Wofford,* 10 S. and M. 626, January 1848. "to answer a charge of stealing a slave."

*Sims v. Hundley,* 6 Howard (U. S.) 1, January 1848. [5] "the notes [dated 1835 and amounting to $24,245.17] . . were . . in payment for slaves brought . . into . . Mississippi as merchandise, and there sold" Taney, C. J.: [6] "it is the settled law in this court, that contracts of this description, made at the time when these notes bear date, were valid, and not prohibited by the constitution of Mississippi." [1]

*Whitehead v. Ducker,* 11 S. and M. 98, November 1848. [102] "he bought the [ten] slaves in New Orleans" in 1841.

*Garrett v. Hamblin,* 11 S. and M. 219, November 1848. [221] "1840, Garrett obtained an attachment against . . Tinnin . . [222] deputy sheriff . . levied the attachment [on twelve negroes.] . . [225] at the instance of Tinnin he took the negroes out of jail;" [223] "as it was a bad and unsafe place to keep them; they would all die if kept there. Witness took them out and put them to work with his own . . believing it would be a year or two before the suit by attachment would be decided, . . [225] Witness lent Tom a month or two [to Tinnin], and getting uneasy, brought him home. The negro ran off [to Tinnin] the first night afterwards. . . [226] Hayman . . said plaintiff in May, 1841, hired him and . . Anderson to take care of the negroes, and they kept the negroes in the swamp several days. . . that plaintiff employed him and Anderson, because he had heard that Tinnin or his friends had threatened to take the negroes by force . . and plaintiff wanted able bodied men to prevent it."

[1] Groves *v.* Slaughter, p. 533, *infra*; Rowan and Harris *v.* Runnels. p. 213, *supra.*

*Garland v. Chambers,* 11 S. and M. 337, November 1848. [338] "he was keeping a public house; . . the negro woman . . was waiting about the house, and on the table."

*Bank v. Douglass,* 11 S. and M. 469, November 1848. Old testified: [513] "The quality of the negroes generally was very good. There were [in December 1839] one hundred and fifty-five effective working hands, including house servants, blacksmith and carpenter; seventy-four male working hands, eighty-one female, forty-five children; . . he estimated men at $700, women, $550, children, $150." Hill testified: [491] "The value of the negroes . . making Union Bank of Mississippi [money] the standard, was . . about $1200 to $1500 a pair for about such negroes. In the spring following, when bank notes of Mississippi banks ceased to pass, and Louisiana money became the standard of money, they would not have sold for more than $1000 per round, and if sold for cash, would have been difficult to sell." Prewitt testified: [510] "negro men . . [well worth] from $800 to $1000 in cash, and were selling at that price; negro women, from $500 to $700, on an average; and children, too small to work, from $150 to $200, on an average. . . [514] Perkins . . Thinks choice field hands, half men and half women, would have sold at that time (December, 1839) for $500 apiece under the hammer; and were intrinsically worth $600 apiece, on an average, in gold and silver. . . [515] Hoover . . does not remember seeing any sold in December, 1839, but in February, 1840, likely field-hands men were selling at an average of $800; women about $600; . . but little difference in the value of such property at that time, and in December, 1839; if any, it was worth more in the latter part of 1839. His estimate is based on Louisiana and Union Bank of Mississippi money, which . . with some Louisiana, Tennessee, Alabama, and Arkansas notes, constituted the chief circulation in Madison county; understood from inquiry that number one men were worth in New Orleans $1000. . . Witness has been engaged in selling several hundred negroes in Mississippi, and in 1839 and 1840 bought some twenty negroes." [506] "Slade, informed witness, . . in 1840, that from the best information he could get, Hudnall intended to run off the property, or at least he feared so; that he had a spy or spies there . . [507] told witness to hold himself in readiness" "in case any attempt was made." In 1841 Douglass [501] "moved his family and house servants [from Kentucky] to this state;"

*Lloyd v. Goodwin,* 12 S. and M. 223, January 1849. [225] "Goodwin has . . hired of . . James and Sarah Rowsey . . Mary, about sixteen . . for . . the lifetime of . . Sarah Rowsey, at . . one hundred dollars per annum, commencing the 1st of January, 1840."

*Rucker v. Lambdin,* 12 S. and M. 230, January 1849. Rucker's will, 1844: [232] "I wish ten of my negroes to be given to John Rucker Bisland, so divided as not to interfere with the family connections of the negroes;"

*James v. Herring,* 12 S. and M. 336, January 1849. [337] "Mary Herring sued John D. James for breach of warranty . . [339] Egerton . . in 1843 . . was sold with a warranty of soundness, in six months . . he was sold again with a warranty of soundness, . . employed . . as a farm hand, mauling rails, etc." "in Richmond, Va., in 1845, he was sold to Cochran and James . . with a warranty of soundness; . . the boy was entirely sound . . David D. James . . came out with the drove in which . . Egerton was; . . they left Richmond about the 21st of August . . and reached Natchez about the 3d or 4th of October following. Egerton was purchased about ten days before they left Richmond. . . The boy walked all the way" [337] "the sale [to Mary Herring] took place on the 5th day of February . . 1846; the bill of sale is dated at Vidalia, La.; the price . . was $650. . . [340] at the time he was sold he was examined thoroughly by plaintiff's agent, his coat was taken off, and his breast and back under his shirt were examined." [337] "he . . saw no sores or eruptions . . he selected this boy because he liked his countenance. . . the overseer . . put him to work for about three weeks at ploughing, then to mauling rails, afterwards to cutting timber for rails, at all of which he was awkward; about four or five weeks after the purchase, he was taken with the bowel complaint, . . he complained of not having enough to eat; his rations were doubled, and he still complained . . [338] On cross-examination, he stated that he whipped Egerton once, about three months after he came there, gave him about five or six cuts; he never whipped slaves when they were sick. Dr. . . Knapp . . examined Egerton the third day after his purchase . . He had . . a scar denoting a former scrofulous ulcer, . . was satisfied that the slave was unsound, . . He was called in [again] . . April . . found him emaciated; had diarrhoea . . he saw him again in about a week, and almost daily afterwards; the diarrhoea still continued; . . abdomen very much enlarged and hard, with enlargement of the mesenteric glands. . . a gradual decline until his death . . [in] June . . That Mrs. H. took him . . into her own or adjoining room, and showed him every necessary attention during his sickness. . . worth about thirty dollars a month to take care of the slave as Mrs. H. did. That his services . . were worth from seventy-five to one hundred dollars." Verdict for the plaintiff. [337] "the jury . . assessed her damages at $700."

Judgment reversed and new trial granted: [341] "The process of acclimation consequent upon a change . . to a southern latitude, sometimes gives rise to fatal diseases. . . But there is another point . . This sale took place in Natchez on the 5th of February, 1846. . . The law prohibiting transactions of this character, was then in full force,[1] . . By that law, the whole contract was void,[2] . . The date of the bill of sale in Louisiana, was an ineffectual effort to evade the laws," [Clayton, J.]

*Parker v. McNeill,* 12 S. and M. 355. January 1849. [358] "his slaves were carried off [in 1818], that they might not be subjected to

[1] Act of May 13, 1837, which was repealed Feb. 23, 1846.
[2] See introduction to the Mississippi cases.

the demands of his creditors. . . 1841 . . the defendant, and the slaves and their increase, came [from North Carolina] to . . Mississippi."

*Comstock v. Rayford,* 12 S. and M. 369, January 1849. [380] "Reizen R. said, 'We have a family of negroes [1] here [in Alabama], and there's an old debt owing against the negroes, and we want you to put them out of the way;' he wanted me to start in the morning [July 1, 1842]; after some hesitation, I consented;" "about four miles from Reizen R.'s house . . the negroes were brought through the woods by . . Baker, Reizen R.'s overseer, and Pelatiah Chilton [his father]; . . Baker told me to take them to . . Barbour county, 200 miles off, . . Pelatiah . . telling me to go 'pretty fast;' . . [381] returned . . 22d of July . . on the 24th Pelatiah . . told me . . he was afraid it would be found out where the negroes were . . wanted me to . . take them to Georgia and sell them; . . tried to sell them; failing . . left them" Reizen R. Chilton [375] "went to Georgia, . . and took them to Rayford in Mississippi," Asahel Chilton, son of Pelatiah, left with two other negroes on July 2, [384] "and went straight to Marshall county, Mississippi, distant 300 miles; . . eight days on the road; tried to sell them on the road; had power of attorney from Pelatiah," "placed the negroes with Rayford as the property of Pelatiah;"

*Sam (a man of color) v. Fore,* 12 S. and M. 413, January 1849. [414] "Sam . . filed his petition, charging that he is unlawfully held in servitude by . . Fore, and praying that he may be set at liberty. . . presented to Chief Justice Sharkey . . who . . ordered a writ of *habeas corpus* to issue against . . Fore, . . The petition . . sets forth the fact, that . . 1821, the . . petitioner was . . the . . property of . . Mary Kennedy . . of . . Kentucky. That, . . 1821 . . [she] executed . . her . . will . . by the provisions of which, petitioner was . . to be set at liberty, when he should arrive at the age of thirty-nine, . . until which time . . to remain in the possession of . . Beal. . . with the further provision, that . . Sam, should not be removed from . . Kentucky during the period of his servitude, on any pretence whatever." "That petitioner was sold to . . Lawrence sometime subsequently, and . . brought to . . Mississippi, . . sold under an execution as the property of . . Lawrence, and purchased . . by . . Fore, with full notice of the existence of the . . will, . . [415] To this petition Fore demurred, . . 1846, the demurrer was sustained, and the petition dismissed."

Judgment reversed and the cause remanded: "The proceeding was according to the statute [2] . . it is not easy to see upon what principle the decision . . by the court below, can be sustained." [Clayton, J.]

*Keirn v. Carson,* 12 S. and M. 431, January 1849. [433] "in Kentucky . . these two slaves were purchased by Carson and Griffin in the winter of 1833 and 1834;" [432] "March . . 1834, sold . . to . . Keirn, . . [433] Dr. Vallandingham . . saw them on April 29, 1834 [the day of

[1] "Old Letty, Eliza, Harriet, Newton, and Letty, a child,"
[2] Hutch. Code 523.

their death]; Harry was twenty-five or thirty, Ann about thirty; she was in a fit of mental derangement . . examined them after death; Harry was laboring under a pulmonary disease, . . supposed the boy diseased for several years; Ann presented traces of disease of long standing . . ventral hernia; . . [434] Harry was dead when witness arrived." [432] "In March, 1835, Keirn brought suit . . for breach of the warranty of soundness . . judgment . . recovered . . for $1650 damages, $56.12 costs;"

*Bank v. Conger,* 12 S. and M. 527, January 1849. [529] "Hughes had some negroes, nearly forty . . working on the railroad [in Mississippi] . . in 1837, . . part . . were removed . . to Arkansas" to the plantation of Hughes, were sold in 1838 to Conger and brought by him "from Arkansas, and landed at his plantation in [*sic*] the Mississippi river;"

*Simmons v. Cutreer,* 12 S. and M. 584, January 1849. [585] "Cutreer sued . . Simmons on his note for $300, . . given for a negro woman, . . evidence tended to establish the idiocy and worthlessness of the slave; . . bill of sale . . contained a warranty of title only. The court below . . excluded the proof of unsoundness." Held: [586] "there was no warranty [of soundness] . . But fraud may constitute a valid defence . . The testimony which the court ruled out was pertinent"

*Boggan v. Walter,* 12 S. and M. 666, January 1849. [668] "a son of the administrator . . had carried off the negro, and probably disposed of him, . . A reward was offered by the administrator . . but it does not appear that any further efforts were used" The slave [667] "was a stout, good looking boy, black, about twenty-five or twenty-six . . his upper front teeth decayed;"

*Stuart v. Swanzy,* 12 S. and M. 684, January 1849. [688] "removed with his . . family, and . . slaves, to Mississippi" from South Carolina.

*Mahorner v. Harrison,* 13 S. and M. 53, January 1849. [55] "Hooe . . of Virginia [[57] 'a man of great wealth'] . . furnished respondent [Harrison, his son-in-law,] with . . sixteen slaves, . . The defendant left Virginia . . and . . located in . . Alabama, . . [57] Hooe, in the meantime, had conceived the notion of having a place . . [58] in the vicinity of Harrison. . . He spoke frequently of Harrison's procuring a handsome estate, enough to work two hundred hands on; but . . evidently referred to the place in Alabama. . . he . . expressed his own desire to have a similar one [in Mississippi] on the Noxubee. . . [61] In November or December, 1833, he sent out twenty-three slaves, . . Harrison had . . commenced building on the Noxubee place, and placed the slaves there when they came. . . All the [forty-eight] hands subsequently sent . . were put on the same place."

*Sadler v. Hoover,* 7 Howard (U. S.) 646, January 1849. [647] "Hoover . . admits that . . [648] a few weeks previous to the sale [in 1836], he introduced into . . Mississippi, as merchandise, and for sale, a number of slaves, without any certificate of character,[1] . . Dinkins . .

[1] Miss. act of June 18, 1822. Hutch. Code 513, sect. 4.

rejects the offer of the bill to rescind the contract, as being manifestly unjust, since the great change in the value of this property, and because the complainants do not offer to account for the value of three slaves since dead. . . Chambers . . [649] insists that, as the contract was fairly entered into, without any wilful intent to violate the laws of Mississippi, should the court decree it to be void, he and his partners should be compensated also for the value of the three dead slaves, as there is no allegation of their unsoundness; and especially, as he charges, that they died from the cruel treatment of the complainants." The case went before the Supreme Court of the United States " on a certificate of division. . . the . . points upon which the justices of the Circuit Court differed . . are not distinctly stated; . . case . . dismissed for want of jurisdiction."

*McIntyre v. Whitfield,* 13 S. and M. 88, November 1849. [90] " admits his removal of the negroes to Texas [in 1842]; . . he has sold a part of them."

*Sam (a slave) v. State,* 13 S. and M. 189, November 1849. [190] " Sam . . was indicted . . for the murder of . . Barrow. . . the venue was changed . . found guilty, and condemned to be hung. On the trial . . [191] bills of exception were taken, . . To the action of the court overruling the challenge for cause to . . Rigby, tendered as a juror, who stated, ' that . . his mind was clearly made up from rumor; . . thinks it would require some testimony to remove the impression from his mind;' and . . McCombs . . who stated, that ' He had heard the argument of counsel in the case of Jack, who was tried on yesterday as an accomplice . . has formed and expressed an opinion; it will require testimony to remove his impression, but thinks he can give an impartial verdict ' " Judgment reversed and the prisoner remanded for further proceedings.

*Steele v. Shirley,* 13 S. and M. 196, November 1849. [197] " sheriff . . seized . . seven negroes and committed them to his jail, . . jail fees accrued to the amount of one hundred and forty dollars."

*Cicely (a slave) v. State,* 13 S. and M. 202, November 1849. " the grand jury indicted . . slave of . . administrators of . . Wells . . for the murder of Anne Longon. . . [203] Watts testified, that . . a messenger from Mr. Brown waked him . . that he, in company with . . [four] others . . entered the gate, . . discovered the body of Mrs. Anne Longon . . [and] footprints . . of a barefooted person, . . on entering the house, a large broad axe was discovered . . bloody . . [204] a bed upon the floor . . on which was found the body of Dr. Longon . . the body of an infant child . . [and] his girl child, about two or three years old, . . with a deep wound in her cheek, . . found what seemed to be similar footprints . . in the direction of Mr. Brown's; . . met the defendant and a negro boy belonging to Mr. Brown, and asked her who killed Dr. Longon and family; she replied . . five robbers, three white men and two negroes, . . that . . Mrs. Longon and herself ran . . that she . . escaped . . [205] the front part of her dress was spotted with blood, . . she . . [said] ' it came from the sore on her finger,' . . footprints corre-

sponded with those discovered . . [206] [Another] witness discovered something concealed in her dress . . a purse containing eleven half dollars, one Mexican dollar, one five franc piece, and two or three dimes. . . She [said] . . that Dr. Longon gave her the purse, and two dollars of the money, for a purpose which witness declined to explain from decency. . . that there was eleven dollars; that the balance had been given her by several persons . . for the same purpose . . defendant made contradictory statements . . [207] one of the pockets of [the pantaloons] . . was stained with blood, as by a bloody hand thrust into it, . . [208] that defendant may have had hold of some of the bloody clothes . . that the defendant was the servant of Dr. Longon, and slept in the same house with him and his family, . . but one room. . . the purse . . had no apparent signs of blood upon it; . . Perry, for the defence, testified, that . . about three o'clock on the morning of the murder . . she informed the inmates of Mr. Brown's house, that some robbers had murdered . . family; that she lingered about the negro quarters about fifteen minutes before she came to the house, . . [209] that he saw the defendant carry one of . . [the] children . . sent over to Mr. Watts; . . that the child was bloody; that he did not notice the blood on the defendant's dress until her return from Watts. . . Johnston . . testified, that . . the bloody footprints . . in the house . . resembled a stocking footprint," [207] " she [was] . . taken into custody, and was tied with a cord." Verdict of guilty; motion for a new trial overruled. Affirmed.

*Jolly v. State,* 13 S. and M. 223, November 1849. [224] " The prisoner was indicted for murder . . of . . Jim, the property of Downs. He was convicted of manslaughter in the fourth degree, and sentenced to two years imprisonment . . a witness for the prisoner . . [was] asked 'if . . Jim . . was insolent and impudent to white persons.' An objection was . . sustained "

Judgment affirmed: [225] " there was no effort to prove that the negro was dangerous . . there had been no previous threats or quarrels between the deceased and the accused. . . no ground . . [226] to draw an inference, that the deceased by insolence provoked . . the act." [Sharkey, C. J.]

*Coon v. State,* 13 S. and M. 246, November 1849. " indicted . . for the larceny of Caesar . . who ran away . . in February, . . Smith . . was employed [in June] . . to go to Mobile . . [247] after Caesar, . . went to the jail there, and found Caesar . . also went to the county jail near Mobile and found Coon " [251] " Coon . . said that the negro had been bought by him from a Kentucky horse-drover. . . [252] Prisoner desired to be taken back to [Mississippi] . . 'because he could not get a fair trial in Mobile; that they had arrested him upon the charge of stealing the negro' . . that he had sold the negro . . in Mobile for $350." Verdict of guilty and motion for a new trial overruled. Affirmed.

*Anthony (a slave) v. State,* 13 S. and M. 263, January 1850. [264] " an indictment under our statute,[1] . . for an assault and battery upon

[1] Hutch. Code 532.

a white person, with intent to kill. He was found guilty, and sentence of death pronounced . . It is objected in behalf of the prisoner, that sentence of death was improperly pronounced . . because the indictment did not charge the act . . done with express malice." [265] "We . . reverse the judgment, and . . give the judgment which the court below should have given." [1]

*Bond v. State,* 13 S. and M. 265, January 1850. [266] "convicted . . of selling . . liquor to a slave without the permission of the master . . Chew, the only witness for the prosecution, . . accompanied two of his negroes late at night, . . [267] the negroes taking . . peas and potatoes . . a person in the house [of the defendant] . . whom the witness, from his voice, believed to be the defendant . . said to the negroes, 'Leave your things . . and return in the morning or some other time, and I will settle with you.' Witness, with the negroes, returned . . between daylight and sunrise; he saw the negroes enter . . and come out . . bringing . . whiskey and tobacco,"

Judgment affirmed: [268] "the permission was to sell the articles which the slaves had . . and not to receive in payment whiskey, money, or any other specific commodity. . . we cannot say that . . [the verdict] was unauthorized by the evidence." [Smith, J.]

*Kirk v. State,* 13 S. and M. 406, January 1850. [407] "indictment . . for negro stealing . . found guilty, and sentenced to . . Penitentiary for ten years." Judgment reversed, indictment quashed and the prisoner remanded for a new indictment: "no prosecutor marked upon the indictment."

*Prewett v. Dobbs,* 13 S. and M. 431, January 1850. It was proved [439] "that this girl [about fourteen] . . was worth $550 [in 1845]; that her hire was worth $85 per annum, and that she was brought into this state in . . 1846."

*Johnson v. White,* 13 S. and M. 584, January 1850. [585] "came from Louisiana [about 1833] . . and brought . . the negroes"

*Weathersby v. Weathersby,* 13 S. and M. 685, January 1850. Will of Lewis Weathersby: [687] "I give . . to my son Ludovick, my servants Tom and Lucy, and their children, Matilda, Sylvester, Andrew, and Dicey, in trust and under the following conditions, *viz.*: I do . . enjoin it upon my . . son, to make the said slaves as comfortable in life as possible; . . furnish them . . with a house separate from others; . . a horse, farming utensils, and a small tract of land for their use; that he sell their crops, furnish them with a milch cow, and two hundred pounds of sugar, and one hundred pounds of coffee, yearly; and that, in consideration of these things, he require of them reasonable service, and should Tom and Lucy . . be able to raise . . say three hundred dollars for each of their daughters, Matilda and Dicey, then he shall give [them] up . . to . . Tom and Lucy, to serve and comfort them in their old age."

[1] "any number of lashes, not exceeding one hundred on each day, for three days in succession." 13 S. and M. 265.

Held: [688] "Ludovick Weathersby is invested with the absolute title . . discharged of all trust and condition. . . The slaves . . are not subject to distribution, as prayed for by the petition." [Clayton, J.]

*White v. Trotter,* 14 S. and M. 30, November 1850. [33] "Trotter . . of Tennessee . . held a plantation, containing [1760 acres] . . in . . Louisiana, on which he had near sixty slaves."

*Bibb v. Martin,* 14 S. and M. 87, November 1850. [89] "The slaves . . were removed to Louisiana, . . 1841, where . . the mortgagor, likewise removed."

*Wash (a slave) v. State,* 14 S. and M. 120, November 1850. [122] "an indictment which charged, first, the commission of a rape upon . . an infant under the age of ten years; and second, an attempt to commit a rape upon the same party, described as a 'free white female child under the age of twelve years.' . . a general verdict of guilty, and . . sentence of death"

Affirmed: [124] "we do not think that the evidence established an actual commission . . but only an attempt . . [126] The completion of the act . . necessarily includes an attempt . . but rape by a slave upon a free white woman . . or . . child . . is not made an offence by the statute law of this state. Hence the first count . . was bad. . . in this state . . in prosecutions for misdemeanors, where there is a general verdict of guilty, and there is any good count, it will be referred to that and supported. . . there can be no good reason why it should not be sanctioned as well in capital cases" [Smith, J.]

*Endicott v. Penny,* 14 S. and M. 144, November 1850. [145] "ran off with their [50 or 60] slaves to Texas," about 1836.

*Hull v. Clark,* 14 S. and M. 187, November 1850. [189] "took the negro . . to New Orleans, and sold him for cash."

*Bank of England v. Tarleton,* 23 Miss. 173, November 1851. [176] "to secure the payment of a debt due to the Bank of England, . . [he] executed a mortgage on the . . plantation and negroes,"

*Kilpatrick v. Bush,* 23 Miss. 199, November 1851. [202] "In 1826, the widow . . removed [from Tennessee] . . to Alabama, taking the negroes . . [Bush] purchased them . . in 1828 or 1829, and subsequently removed with them to this state,"

*Harris v. Runnels,* 12 Howard (U. S.) 79, December 1851. See Rowan and Harris *v.* Runnels, p. 313, *supra.* [80] "Rowan having died during the suit, it was prosecuted by Harris, the surviving partner. . . [81] Runnels plead . . 'that . . plaintiffs had not . . obtained a certificate signed by two respectable freeholders in the county of . . Virginia, from which . . slaves were brought, . . that the slaves . . had not been . . convicted of . . felony,'[1] . . The plaintiff . . demurred . overruled . . judgment for the defendant."

[1] Miss. act of June 18, 1822. Hutch. Code 513, sect. 4.

Judgment reversed and the cause remanded: [85] "The sixth section declares that both the seller and the buyer . . shall pay one hundred dollars for every slave so sold or purchased. The two sections, considered conjunctively, seem to imply that the penalty only, without any other loss to either the seller or the buyer, was to be inflicted. . . For aught that appears . . the defendant bargained for the negroes, knowing that they were brought . . as he says they were. . . he stands in *pari delicto* with the seller, with this difference . . [86] that he is now seeking to add to his breach of the law the injustice of retaining the negroes without paying for them. . . we do not think that public policy calls for the application [of the rule *pari delicto potior conditio est defendentis et possidentis*] . . in this case, . . [87] Our judgment . . is, that the contract is not void," [Wayne, J.]

*McAfee v. Crofford,* 13 Howard (U. S.) 447, December 1851. "an action of trespass brought by Crofford, who described himself as a citizen of Tennessee, but who had a plantation in Arkansas." A judgment had been [449] "rendered in one of the courts of Mississippi, . . against . . Crofford and . . McAfee [security for Crofford], for the sum of $4,143.93," [454] "an execution was issued, and levied on sundry slaves of Crofford, who owed the debt; McAfee, . . being his security, a delivery-bond for the property was executed," [449] "at the time of executing the delivery-bond . . Crofford promised not to remove his negroes from Tallahatchie county [Mississippi], until said debts should be paid." But he [454] "removed with his slaves across the Mississippi, and settled on a plantation on that river, in Arkansas, not far from his former residence in Mississippi." The delivery-bond "was forfeited . . 1841, by which forfeiture the bond had the effect of a judgment." [448] "About the last of October, . . 1846, the McAfees and Alford, assisted by several other persons, all armed, crossed the Mississippi River in skiffs, and forcibly carried off twenty-one slaves from Crofford's plantation [and wood-yard]. Crofford was absent. His overseer remonstrated, but the assailants replied that they intended to take all the negroes, and would kill any one who interfered. There were forty-two negroes, men, women, and children, on the plantation; but, as the assailants were engaged for several days in catching and transporting them to the opposite bank of the river, four women and seventeen men were so frightened that they ran off into the swamps and remained out five or six weeks. . . 1,800 or 2,000 cords of wood . . on account of the absence of the slaves, was either floated off or greatly injured by a subsequent rise in the river. . . the neighbor's hogs, cattle, horses, and mules broke into the plantation, and nearly destroyed 120 acres of growing corn; all of which was the consequence of the absence of the hands. . . [449] the slaves carried over the river, being twenty-one in number, were worth $12,580; wood worth $2.50 per cord, and corn 50 cents per bushel." "the slaves forcibly carried away . . were levied upon and most of them sold, producing the sum of $6,132," [455] "A verdict for $10,613 was rendered by the jury, on which a judgment was entered." Judgment affirmed.

*Lambeth v. State,* 23 Miss. 322, January 1852. [330] "I was staking for the negroes to put up the rails" of a fence.

*State v. Borroum,* 23 Miss. 477, January 1852. "bought of a slave seventy-five pounds of cotton, without the authority of the master . . in writing. See Acts December, 1850, p. 100, sect. 1."

*Green (a slave) v. State,* 23 Miss. 509, January 1852. [512] "indictment for an attempt . . to commit a rape upon a free white woman." [511] "Mrs. Conerly . . believes the assault was committed on her by Green, . . cannot unequivocally identify the defendant. Caroline Conerly . . swears that the person who assaulted her mother had on the same kind of clothes as the defendant, . . The proof of the two negroes shows, that it was Green's declared intention to make an assault on some white woman that night, and his own declarations show he could intend no one but Mrs. Conerly. . . proven to have dogs with him that evening; and Mrs. Conerly says there was a dog . . this is the second time a jury have found defendant guilty on this charge." Motion for new trial overruled.

Judgment reversed and a new trial awarded: [512] "It was tried in the circuit court of Pike county, . . [513] we find no proof that the offence . . was perpetrated within the county of Marion, as alleged in the indictment." [Smith, C. J.]

*Ike (a slave) v. State,* 23 Miss. 525, January 1852. "convicted of an assault with intent to kill . . [526] his overseer, while inflicting legal chastisement upon him, under the proviso to the 1st sect. [act of] 1829, Code 532. Sentence of death was pronounced upon him." Judgment affirmed: [529] "express malice is not an ingredient in the offence of which the prisoner was convicted."

*Tifft v. State,* 23 Miss. 567, January 1852. "convicted . . of a violation of the 8th section of the statute, passed February 26, 1842, . . [568] proved, that the defendant was the owner of the slave . . and that said slave did . . [569] reside on a lot which did not adjoin . . But . . for the defence, it is . . proved, that the slave . . was under the . . control of another person." Judgment reversed and new trial awarded.

*Talbot v. Norager,* 23 Miss. 572, January 1852. "action of assumpsit . . the defendant asked the court to instruct the jury, that if they believed from the evidence that the plaintiff was a negro, it was *prima facie* evidence that he was a slave, and therefore could not maintain the action; . . refused" Affirmed: "This . . should have been pleaded in abatement"

*Lindsey v. Platner,* 23 Miss. 576, January 1852. "Lindsey . . purchased at a sheriff's sale . . six slaves, at . . $800 or . . $1000 less than their value . . that the sheriff at . . [his] request . . instead of selling the slaves separately, sold them in a lot; that Lindsey stated to the persons present that he was purchasing for . . the widow . . and thus lulled competition."

*Buckingham v. Levi,* 23 Miss. 590, January 1852. "writ of *habeas corpus,* for the recovery of the possession of a slave, . . That the slave . . 'had gone illegally into the possession of . . Buckingham under a pretended contract for hire;'"

Held: [591] "The remedy by writ of *habeas corpus,* for the recovery of the possession of slaves, is confined to cases in which 'a slave has been taken . . by force, stratagem or fraud,'"[1]

*Doughty v. Owen,* 24 Miss. 404, October 1852. [405] "Owen owned a negro, charged with the commission of a rape in Jasper. To avoid arrest . . the negro was run to Kemper county, and sold to Doughty, who was cognizant . . and purchased him at a greatly reduced price, $400; $100 . . he paid, $100 he agreed to pay in cattle, and for the balance gave his note, on which this suit was brought." [406] "Owen . . cautioned the purchaser not to let the negro get back into Jasper county, as the sheriff . . had . . a warrant for the arrest . . Doughty replied, that he intended in two or three days 'to steal off and sell him.'" [405] "The negro . . escaped from Doughty, fled to Jasper, was apprehended . . put in jail, broke it, and Doughty has never heard of him since." Verdict for the plaintiff.

Judgment reversed and new trial granted: the note was void. [408] "It may be true that the owner was not so much influenced by considerations of mercy to the slave, or to defeat the administration of the criminal law, as by considerations of private gain. It is . . immaterial . . [409] The purchaser was but a new party added to those who originally set out to violate the law;"

*Van Buren (a slave) v. State,* 24 Miss. 512, October 1852. Indictment for burglary. [515] "Cooper . . proved that he had hired the defendant from Birdsong, . . [On Sunday night] he perceived that his horse had been ridden, . . Suspecting the prisoner . . he . . [on Monday] charged him with the fact, and also with having carried off a bag of potatoes. . . denied. He then whipped him, but obtained no confession. In the evening he . . threatened to whip him again, when he confessed . . he had . . two jugs of whiskey and two loaves of sugar, . . [516] and showed him the articles. . . without any threat, confessed that he had taken them . . from the store of Birdsong and Gary, which he entered by means of a false key. . . Tuesday, the witness informed Birdsong, . . the slave being called before them, witness said to him: 'Van, here is your master, who has come for the things you took;' and thereupon the prisoner . . voluntarily confirmed the confession . . This confession . . the court permitted to be given in evidence" [513] "He was . . convicted, and sentenced to be branded in the hand, and to receive twenty-five lashes each day, for four successive days. A writ of error was sued out, and . . the slave was brought before the Hon. C. P. Smith, chief justice . . by writ of *habeas corpus,* and admitted to bail in the sum of five hundred dollars."

[1] Hutch. Code 1002, sect. 19.

Judgment reversed and a new trial granted: [516] "So much . . of the confession made . . on Monday, as . . to the time and manner . . he had obtained the articles . . was properly excluded . . as it was manifestly obtained under the influence of fear, arising from . . whipping and the threat of further punishment. The confession . . next day . . the court permitted to go to the jury . . erroneously." [Yerger, J.] See Peter *v.* State, p. 301, *supra.*

*Presley v. Rodgers,* 24 Miss. 520, October 1852. [524] "in 1821 . . the widow, removed [from South Carolina] to Mississippi with the slaves"

*John (a slave) v. State,* 24 Miss. 569, October 1852. [570] "a physician . . examined the body of the negro killed by choking with a rope . . pocket had been rifled after death; . . He saw . . John . . after his arrest, and examined the wound in his head, and thought it was made by some sharp instrument, and defendant said it was inflicted by a blow from one of the wagon wheels in helping the negro that was killed to get his wagon out of the mud ['about supper time'] . . but witness did not think the wound could have been inflicted that way; . . one tooth had been knocked out, . . [571] Davy (a slave) stated, that he and John both worked on the railroad and slept in the same shanty, . . John . . came in, about an hour before day; . . said he was sick. John told witness a short time before . . that he thought he ought to kill somebody; but he thought this a mere foolish remark. . . when witness heard a man had been killed, he told Mr. T. that he had better examine John;" "Alfred (a slave) . . slept in the same shanty. . . at dinner time, he saw blood on the shirt collar and bosom of John's shirt, . . Willis (a slave) states, that about one o'clock on the night the murder was committed, John came to the shanty where they both slept, and . . called Nathan out to take a drink with him, and . . soon . . went off, . . that, on the day the inquest was held . . [572] he saw . . persons going toward the . . body, and John asked . . where . . he replied that they were going to have a jury and make all the railroad hands . . put their hands on the dead body, and that blood would follow the hand of the murderer; that John then took off his cap and asked Nathan to take care of it, took his hat . . and went off, running some at first; . . Austin, the negro killed, . . had been coming to the depot ever since the railroad was built, hauling cotton and other freight, . . The defence then introduced Jack (a slave) who stated, that . . about midnight, he, being then runaway from those to whom he was hired, met John . . one to two hundred yards from the wagon; . . he, the witness, was going towards the wagon to get something to eat, . . heard some noise in the direction of the wagon, and . . some one say, 'boys, my head is cut; I'll give up;' . . asked John . . he replied, they were quarrelling and fighting down there, he believed . . [573] convicted of murder; a new trial was moved for and overruled," [579] "reverse the judgment, remand the prisoner, and award a new trial" "all of the circumstances proved . . when united, were . . insufficient to . . warrant a conviction."

*Murphy v. State,* 24 Miss. 590, October 1852. " indictments . . for violations of the act . . of the 6th of March, 1850, ' to suppress trade and barter with slaves.' . . charged . . ' that . . Murphy . . [591] did . . unlawfully sell spirituous liquors to a slave, without the consent in writing of the master ' . . Vinson . . testified . . that . . he saw a negro man enter the storehouse of the defendant, . . defendant pointed to a barrel with a tumbler upon it, and the negro . . drew some liquid . . and having drank it, gave the defendant a half dime. . . did not know the name of the negro, or . . his master "

Held: [595] " indictments framed in the general manner indicated in the second section of the act, do not furnish to the accused ' the nature . . [596] of the accusation against him,' in the manner contemplated by the constitution."

*Westmoreland v. Walker,* 25 Miss. 76, October 1852. [77] " The evidence . . shows him to be unsound in body, and to possess a weak mind. The slave is represented in the bill of sale to be 27 . . The proof shows him to be 38 or 40 "

*Steppacher v. Reneau,* 25 Miss. 114, October 1852. " 1849 . . Reneau instituted an action of covenant . . [115] ' Received [in May 1847] of . . Reneau six hundred and fifty dollars . . for . . " Delia," about twenty or twenty-one . . I hereby warrant . . that she is perfectly sound,' . . she was a good seamstress and house servant; . . physician . . was called [in October] . . she had dropsical symptoms; thought her affected with ' amenorhea;' . . He had been applied to two or three months before . . to prescribe . . and did so according to plaintiff's description of symptoms; . . attended on her . . to April, 1849, when she died; . . [116] visited her some half dozen of times, (as often as he thought necessary,) and once a day or two before her death; . . that he (assisted by Dr. Harriford) made a ' post-mortem ' examination . . found the heart very much diseased and enlarged, the liver enlarged and adhered to the side; found the womb diseased. . . his medical bill was $25 or $30. . . her symptoms indicated the disease of longer standing than the bill of sale; . . [117] Reneau . . had the girl on trial a week or two before he purchased. . . [118] The jury found a verdict for Reneau for $827," Affirmed.

*Harmon v. Fleming,* 25 Miss. 135, October 1852. " the notes sued on were given for the hire of two slaves . . for one year, . . the slaves . . died during the year;" Held: [143] " as the defendant did not stipulate for an abatement of price in the event of . . death, we do not think he has any legal right to demand " it.

*State v. Borroum,* 25 Miss. 203, October 1852. [205] " unlawfully did buy . . from . . slave named Elleck . . seventy-five pounds of cotton,"

*Brian v. Davidson,* 25 Miss. 213, October 1852. Held: [221] " Under this act,[1] . . the officer is justifiable in levying on a slave, if he cannot

[1] Hutch. Code 701.

find other personal property . . If the defendant wish to exempt his slave he should point out other property."

*May v. Rockett,* 25 Miss. 233, October 1852. [235] " when . . Allen ran away, he . . told . . Rockett to sell . . Allen." " when Mrs. Rockett was about to depart, she observed to her mother, . . ' I wish you would let me have one of these little negroes,' pointing to . . Douglas and several other small ones. Mrs. May replied, ' Daughter, what do you want with it? ' Mrs. Rockett replied, ' Why, it can pick up chips and be company for me.' Mrs. May answered, ' well, you can take any one of them you please, and change them as often as you like.' "

*Sample v. Barnes,* 14 Howard (U. S.) 70, December 1852. [71] " 1836, . . Barnes . . introduced . . into . . Mississippi . . a number of negro slaves, for the purpose of being sold as merchandise. . . took, in payment, a bill of exchange, . . indorsed by . . Sample, . . not paid; . . [72] [Sample] prayed, that the original contract for the sale . . might be declared void as . . in violation of the constitution and laws of Mississippi; and . . the judgments and executions obtained for . . [Barnes's] benefit . . perpetually enjoined." Held: a court of equity will not grant relief, because he was *in pari delicto* with the other party.

*Downey v. Hicks,* 14 Howard (U. S.) 240, December 1852. [241] " The declaration . . contains eight counts. . . the second is *indebitatus assumpsit* for hire of forty slaves; the fourth a *quantum valebat* for the services of forty other slaves; . . [243] [Joseph T. Hicks] was, in 1836, the agent of plaintiff [Downey, a resident of North Carolina,] to receive the hires of certain slaves, owned by him in Mississippi; . . that he afterwards took the slaves into his own employment, as hirer, to execute a contract on the Mississippi Railroad; . . Dr. John R. Hicks, a neighbor of plaintiff's . . and a brother of [Joseph T. Hicks] . . visited Mississippi, in June, 1839, to collect hires due for his own negroes, and took with him a letter from plaintiff, desiring [Joseph T. Hicks] . . to send him whatever was due him, to the amount of $12,000, if possible. An account was then stated, showing a balance due plaintiff, 1st January, 1839, of nearly $10,000."

*Perkins v. Fourniquet,* 14 Howard (U. S.) 313, December 1852. [325] " Received . . in . . Louisiana [in 1828], . . Big Sarah Miambo, about 50 years;"

*Barker v. Stacy,* 25 Miss. 471, April 1853. " died in Mississippi, leaving a large estate in . . Louisiana, and some in Mississippi; . . in Louisiana, the parish judge . . ordered a sale of certain property . . 1837 . . purchased by . . Barker, . . [472] a special mortgage reserved upon the slaves until final payment; . . removed said negroes to Mississippi, . . [473] not more than ten miles below . . upon a large plantation,"

*Abram (a slave) v. State,* 25 Miss. 589, April 1853. " indicted for murder . . found guilty . . [590] new trial . . refused " Judgment re-

versed and the cause remanded: [591] "It does not appear by the record, that the grand jury were sworn."

*Johnson v. Nations,* 26 Miss. 147, December 1853. [149] "The [two] slaves . . were clandestinely taken from . . Tennessee, whither . . he had removed, . . brought . . within . . Mississippi."

*Laura (a slave) v. State,* 26 Miss. 174, December 1853. "indicted . . for conspiring and plotting with two other slaves the murder of John D. Watkins, was convicted . . and sentenced . . to capital punishment." Judgment reversed, indictment quashed, and the prisoner remanded: [176] "The record . . contains no statement . . that the indictment . . was found and returned into court."

*Miller v. Pickens,* 26 Miss. 182, December 1853. [183] "expenses incurred in removing . . slaves . . from . . South Carolina,"

*Bacon v. Tyner,* 26 Miss. 190, December 1853. [192] "About . . 1817 he removed [from South Carolina] to this State, and brought . . the slave and her increase."

*Cowles v. Pointer,* 26 Miss. 253, December 1853. [254] "extraordinary freshet . . [255] that defendants used every effort to get hands to assist in raising the cotton [in the warehouse] and in removing it, but that owners of negroes were unwilling to have them employed in such work, which was dangerous to health and life,"

*Garrison v. Fisher,* 26 Miss. 352, December 1853. In 1846 [353] "Rebecca, aged about seventeen," was sold for $450.

*Trotter v. McCall,* 26 Miss. 410, December 1853. [411] "a suit instituted by . . McCall, to recover damages from . . Trotter, for the detention of a slave hired by McCall, for the year 1850, from Trotter, . . McCall agreed to give $75" [412] "in . . May . . the slave threatened to run away . . for which he whipped her" [411] "in a very cruel manner;" "she ran away and went to Trotter. . . when McCall came . . to claim the slave, . . Trotter offered to restore her, if the plaintiff would agree to treat her better by not whipping her again, or, if necessary, to do so in a moderate manner, she being in a delicate situation incident to females, she having been injured by the whipping received; but McCall refused . . and threatened to give her a hundred lashes upon her return. Trotter refused to deliver the slave . . the detention of the slave was a material injury to McCall in the cultivation of his crop that year. The jury found a verdict for the plaintiff for $100, . . new trial . . refused"

Judgment reversed and the case remanded: [413] "the master would be justifiable in refusing to surrender the slave . . if . . already materially injured in value by the . . cruelty of the hirer, and there was just cause for believing that if given up, the same course of treatment would be continued" [Handy, J.]

*Calhoun v. Rail,* 26 Miss. 414, December 1853. [416] "when the division was made, on the 2d January, 1851, . . negro had run away, and was then out, but was recovered . . 31st January,"

*Shelton v. Baldwin,* 26 Miss. 439, December 1853. "The complainant . . was the owner of . . William, which slave had escaped from him in Louisiana, and run away to this State, and was committed to jail in the county of Claiborne. . . 1849, the negro, who had given his name as Edward, was . . sold out of the jail as a runaway by the sheriff . . for . . $680, . . By the act . . of 5th of February, 1838,[1] it was enacted, that . . Port Gibson Academy should be entitled to the proceeds arising from the sale of any runaway slave sold in that county, . . [440] sheriff . . after deducting the jail expenses, etc., paid over to . . agent of . . Academy, . . $420,"

Held: [443] "the act of 1822,[2] requiring the net proceeds of the sale of a runaway slave to be paid into the county treasury for the use of the county, but requiring the county to pay the money to the owner on his proving his property . . has [not] been repealed, so far as the county of Claiborne is concerned, by the 6th section of the act of 1838"

*Jones v. Donald,* 26 Miss. 461, December 1853. [462] "action . . to recover damages . . for harboring and secreting a slave . . and for removing [him] . . into . . Alabama. The damages sought . . consist mainly . . of money paid out . . in endeavoring to recapture the slave. . . The proof . . establishes about $120."

*Newman v. Elam,* 26 Miss. 474, December 1853. "Elam ['a negro trader'] filed his bill . . against . . tax collector of Adams county, to enjoin [him] . . from collecting a tax . . upon the amount of sales . . during . . 1852. The bill alleges that Elam is a citizen . . and is a regular and permanent . . vendor of slaves . . That he has a permanent depot ['near the city of Natchez'], and nowhere else makes sales of slaves;"

Held: [475] "the 16th section of the act of 1850 . . [476] was not intended to embrace a trader . . who had a permanent place of making his sales, and who sold only at that place."

*McCoy v. McKowen,* 26 Miss. 487, December 1853. "McKowen . . brought an action of trespass *vi et armis* . . against McCoy and Haywood, for beating a female slave hired of . . McKowen . . from the effects of which beating the slave died." [489] "McCoy had ordered the slave . . to get an early breakfast . . but she not having arisen in due time, he directed Haywood, his overseer, to go into the kitchen and arouse her. . . a noise was heard, . . It was between 4 and 6 o'clock . . McCoy . . went out into his gallery, when the woman ran to him for protection. He told her she must submit, which she did; and by his direction, the overseer whipped her with the lash of a whip, in a manner not cruel or unusual, or calculated to injure her seriously. . . she walked to the kitchen . . was seen to stumble once, but walked very well. Before

[1] McNutt's Code 812, sect. 6.
[2] Hutch. Code 518, sect. 34.

coming out of the kitchen, she had resisted the overseer. About 8 o'clock . . she died. She had two wounds . . one over the eye, and the other behind the ear, which might have been produced by a fall . . but were most probably inflicted by the overseer in the kitchen. On post mortem examination, they appeared to be contused wounds, made by a blunt instrument, and might have produced death. The scull was not fractured, but the bloodvessels of the brain were engorged with blood. The physician proved that the woman was of a habit predisposed to apoplexy, . . the wounds . . were not inflicted during the whipping ordered by McCoy, . . The suit was dismissed as to the overseer, and a verdict and judgment were rendered" for McKowen.

Judgment reversed and the case remanded: [490] "the jury . . must have concluded that the wounds . . were the cause of the death, . . There is no evidence whatever to show that these wounds were inflicted by the direction or sanction of McCoy,"

*Van Winkle v. Smith,* 26 Miss. 491, December 1853. [493] "the slaves . . were . . run off . . and sold in Louisiana;"

*Lyon v. Knott,* 26 Miss. 548, December 1853. In 1845 [555] "taking with them the slaves, [they] removed . . to . . Texas . . After the death of his wife, Lyon . . ['secretly'] removed the slaves into this State."

*Archer v. Jones,* 26 Miss. 583, December 1853. [587] "the slaves were brought . . from Virginia, she holding a life-estate in them,"

*Leiper v. Hoffman,* 26 Miss. 615, December 1853. "The complainant . . alleges . . that, in 1834, she purchased a vacant lot in . . Natchez . . for . . $175, . . and commenced improvements . . by erecting a dwelling-house, etc., at an expense of upwards of $1,500; . . that she paid the whole [[620] 'by her hand'] . . out of means of her own;" [621] "though not emancipated at that time, her former owner asserted no claim upon her, and expressly recognized her as a free person;" [616] "1836, when the deed . . was to be executed, . . her attorney . . advised her to have the deed made jointly to herself and some white person, as there was a great spirit at that time to remove from the State all free persons of color, so that, in the event she should be forced to remove, such white person could manage . . as a trustee for her. That, having great confidence in . . Winscott, then residing in New Orleans, . . she directed her counsel to draw the deed . . to . . Winscott and herself jointly, . . that . . Winscott . . never knew . . of the deed . . before complainant left Natchez," She [615] "paid all the taxes . . from 1834 to May, 1845, the time of her removal to Cincinnati, where she has since resided. . . [616] appointed . . her agent, to collect the rents . . That . . Malvina Hoffman, a next door neighbor . . procured . . Bemis to confederate with her, . . [617] procured . . Winscott . . September, 1845, to convey the lot to Malvina Hoffman for . . $100, . . defendant Hoffman . . sent word to her agent . . to send her the keys . . as she . . had purchased . . sent" The vice-chancellor dismissed the bill.

Decree reversed and the case remanded, [624] " with directions to have an account taken of the rent and profits . . since the delivery . . to . . Hoffman, and that she be decreed to pay the same to the complainant, that the deed . . to . . Hoffman be delivered up to be cancelled, and that . . Winscott convey . . to the complainant." [622] " Her right of present enjoyment might be prevented by her condition of slavery; but if the trust continued till that disability was removed . . [623] her rights as a *cestui que trust* would then immediately vest," [Handy, J.]

*Hoover v. Pierce,* 27 Miss. 13, April 1854. [15] " plaintiff came out [from South Carolina] . . fall [of 1833] with negroes, . . [Witness] thinks that this was the first trip plaintiff made to this State with negroes for sale." [14] " defendants acquired . . slaves from the plaintiff, worked them during . . 1835, and then sold them " [22] " for a sum greater than the price which they had agreed to pay for them."

Held: [26] " courts will not lend their aid to a party who has parted with his property on an illegal consideration [1] to regain possession of it. If then, the plaintiff was not entitled to invoke the aid of a court to recover back the slaves, . . he could maintain no action to recover the proceeds of the sale." [Smith, C. J.]

*Funchess v. Seibe,* 27 Miss. 26, April 1854. Will: [37] " it is my wish, when my negroes are divided, that the lot that Bordeau may be in shall not be drawn for while my wife remains a widow, or until my youngest child becomes of age or marries;"

*Prichard v. Martin,* 27 Miss. 305, April 1854. Action by overseer to recover wages. [308] " defendant requested [witness] . . to tell Martin [his overseer] that if he would abuse his negroes less and treat his teams better and show him more respect, he might remain, . . defendant stated to . . neighboring planters, that Martin was a good overseer, . . that he had been informed, before employing him, that he was a cruel man, but that he had been misrepresented, and was not as cruel as the defendant himself; . . [309] one witness . . thought the plaintiff severe on negroes, . . saw the plaintiff strike a negro with a stick."

*Downey v. Barnett,* 27 Miss. 409, April 1854. Barnett [410] " bound himself to remove [from North Carolina] to . . Mississippi . . and take charge of [a plantation] . . bring with him the negroes purchased [under execution] . . with the privilege . . of redeeming said negroes, . . [Barnett] was very reluctant to move . . that the sole . . inducement . . was to avail himself of the opportunity . . to redeem said negroes, who were family slaves . . to whom he was greatly attached;"

*Dozier v. Lewis,* 27 Miss. 679, October 1854. [680] " The slaves were run off in 1839. . . Lane . . purchased the slaves and . . sold them in Tennessee."

*Hairston v. Hairston,* 27 Miss. 704, October 1854. [717] " in 1836, the deceased removed a large number of his slaves [from Virginia], and

[1] See introduction to the Mississippi cases.

placed them upon lands which he had purchased in . . Mississippi, . . [718] that he frequently visited Mississippi . . but . . kept up his establishment in . . Virginia. In 1841, unpleasant relations sprung up between himself and Mrs. Hairston, and . . in a sudden fit of passion he left Virginia, . . [721] He had in operation in this State five plantations at the time of his death [in 1852]." [717] "devised his whole estate . . to one of his slaves, a child six years old, then in . . Mississippi." See same *v.* same, p. 339, *infra.*

*Raby v. Batiste,* 27 Miss. 731, October 1854. [732] "It is contended . . that [Augustine] . . was not the son of Antoine Krebs, but was a mulatto, and that his father was a negro, his mother after his birth having married Antoine Krebs, . . It is clearly proved that . . [Augustine] married a slave, that he did not claim . . the right to vote . . to act as a juror . . or to testify against white men . . and though several witnesses testify that he was considered to be a white man, yet from all the evidence we are satisfied he was a mulatto, and . . the subsequent recognition of him by Antoine as his son . . could not render him his legal heir."

*Shirley v. Shattuck,* 28 Miss. 13, October 1854. [21] "agreed . . that some reliable person was to be placed in charge of the slaves as a sentinel to guard against their removal; that therefore . . the alleged supernumerary overseer, was employed,"

*Jesse (a slave) v. State,* 28 Miss. 100, October 1854. [108] "indictment . . under the 55th section of the statute of 1822 [1] . . [109] charges that the plaintiff in error . . 'did . . feloniously set fire to . . barn' . . a verdict and judgment of conviction" Judgment reversed, the indictment quashed, and the prisoner ordered to be kept in custody for a new indictment: [110] "the statute does not dispense with the averment of malice,"

*Roach v. Anderson,* 28 Miss. 234, October 1854. [235] "1830 . . Presley Anderson . . of Missouri, sold to . . Duncan, of that State, the slave in controversy, to be a slave for fifteen years, and at the end of that time, to be set free; . . 1833, Duncan sold the slave to . . Chamberlain, of this State, to be a slave for thirteen years . . at the end of which time . . to be free. Both . . transactions took place in Missouri, . . evidenced by conveyances in writing . . not recorded . . the slave . . was removed by [Chamberlain] . . [236] to this State, and kept in his possession for more than three years; after which Chamberlain sold him" to Roach. [235] "1847, Presley . . conveyed all his right . . to John D. Anderson," who brought an action of replevin. Verdict for the plaintiff; motion for a new trial overruled.

Judgment reversed and the cause remanded: [236] "Such a case is clearly embraced by the statute of frauds.[2] The policy of that statute was . . to protect the rights of parties purchasing in good faith . . from

[1] Hutch. Code 521.
[2] *Ibid.* 638.

persons who had remained in possession . . apparently as owners, for the period limited by the statute." [Handy, J.]

*Sarah (a slave) v. State,* 28 Miss. 267, October 1854. [272] "The indictment[1] . . charges the . . 'malicious . . and felonious' administration, to certain persons . . of . . 'arsenic, . . by . . mixing . . in . . coffee' . . [273] after verdict the prisoner's counsel moved in arrest of judgment. . . overruled." Judgment reversed and the prisoner remanded: [277] "Neither count of the indictment charges the . . felony to have been committed with malice aforethought."

*Hill v. McLaurin,* 28 Miss. 288, October 1854. [289] "was, in his . . younger days, a liberal feeder of his negroes, . . but . . became so mentally and physically enfeebled . . as to cease making crops of any account, and so penurious and childish as not to feed his negroes, causing them to be a nuisance to his neighbors; . . that by way of convincing one . . of the family that something must be done . . [a son] took the pains to go . . to the old man's house, and attended at the meat house . . to see the food dealt out . . and reported . . that there were only thirteen pounds of newly killed beef, given out by the old man to seventy negroes,"

*Wanzer v. Truly,* 17 Howard (U. S.) 584, December 1854. [589] "guardian . . had run off with those slaves, from . . Alabama, and sold them" in Mississippi.

*Murphy v. State,* 28 Miss. 637, April 1855. [639] "prosecutor [the sole witness] . . proceeded to state that . . he saw a mule team-wagon . . loaded with cotton, stop near him, when its driver, . . Judge Love's Allen, . . took out of the wagon a bottle without a stopper, and that witness tried to take it from him, but . . [640] driver jerked away from him and went . . into the house of . . defendant's store, . . returned . . put a bottle from under his coat back into the wagon; prosecutor . . found whiskey in the bottle," Verdict of guilty.[2] Judgment thereon affirmed.

*Wells v. Treadwell,* 28 Miss. 717, April 1855. [718] "The bill shows . . That she and her husband . . removed [from North Carolina] to . . this State about . . 1835. That her . . husband sold a negro woman . . which she received from her father . . at the time of her marriage, to a negro trader . . Netherland. That . . 1845 . . Netherland brought said negro woman . . to . . this State, . . Netherland also owning two children of said woman, born after . . Netherland became the purchaser. Complainant being very anxious to purchase said negro woman and her children, bought them . . at the price of $1000, and to enable her to make . . payment, . . husband gave her $500 in cash, and she and her husband also gave . . Netherland another negro, which came by complainant from her father, valued at $500, . . and received a bill of sale . . in her own name. . . husband sold one of . . children . . to . . Wells."

[1] "under the provisions of the fifty-third section of the statute of 1822." Hutch. Code 521.

[2] Act of Mar. 6, 1850. Acts of 1850, p. 100.

Held: [727] "the act of 1839[1] . . recognizes the absolute property in the slaves in the wife, . . the legislature intended . . simply to give him the management of them, the direction of their labor, and the receipt of its proceeds,"

*Richards v. Fuqua,* 28 Miss. 792, April 1855. [793] "that the boy . . was drowned in very shallow water, and if April, the usual ferryman, had been there, or any other man of strength, the boy might have been saved. . . that the accident occurred by reason of the boy . . driving the loaded wagon down the banks of the river," [800] "the pin by which the boat was held to the landing was loose" [796] "judgment . . for the value of the negro . . and one of the mules." Affirmed.

*Cameron v. Cameron,* 29 Miss. 112, April 1855. Held: by the act of February 15, 1839,[2] the husband [113] "is entitled to the usufruct for life of the slave property of his wife, after her death, leaving issue of the marriage surviving."

*James v. Kirk,* 29 Miss. 206, April 1855. "suit brought by Kirk . . to recover . . the value of a negro slave sold by James . . [207] in Louisiana, warranted free from the redhibitory vices provided for by the law of Louisiana.[3] . . proved . . that the boy . . ran off the third or fourth day after the sale and was caught two days after, and again he ran off . . March, 1849 [[210] 'about fifteen months after the purchase'], and was never heard of afterwards, except that a boy answering his description was drowned from a skiff . . had received no unusual punishment, and . . had not been in Louisiana eight months before the sale. . . verdict for . . Kirk" Affirmed.

*Thompson v. Young,* 30 Miss. 17, December 1855. [18] "action of trespass, brought by . . Young . . for killing . . [his] slave . . the defendant pleaded . . that . . the slave . . was a runaway, prowling about the premises of the defendant in the night-time, and that defendant attempted to arrest him and restore him to his master; . . slave being armed with . . a large knife and club, . . resisted . . made it necessary for the defendant to shoot and wound . . The plaintiff filed a demurrer" Sustained.

Affirmed: [19] "The manner . . of the resistance . . is not stated . . Nor is it averred that . . [defendant's] person or life was thereby placed in the slightest danger. From aught that appears . . he was placed in no greater danger than . . if . . the runaway had attempted to avoid a capture by flying. . . homicide . . under such circumstances, cannot be justified by any principle of morality, of law, or of policy growing out of the institution of slavery." [Smith, C. J.]

*George v. Bean,* 30 Miss. 147, December 1855. Suit founded on a note for $1570, given for two slaves at administrator's sale. The auctioneer testified [148] "that the price of Mary was over $800;" The defendants proved that, previous to the sale, "Mary complained of debility, and had

[1] Hutch. Code 497.
[2] *Ibid.* 497, sect. 4.
[3] Civil Code, art. 2505, and act of 1834, sect. 3.

not strength to lift 'heavy vessels;' . . was of a delicate frame, but large enough to do house work. . . [149] Dr. Murdock . . [in May 1853] found her affected with some disease of the womb; . . thought her value reduced one half . . in 1854 . . Mary was several times sick, and confined at each time about a week; she was one of the house girls and seamstresses of Bean—he having two; . . She did washing once, but became sick shortly after; . . The plaintiff then proved by . . Davis, that he had . . Mary . . from January, 1853, to March, 1853, the date of the sale; that she complained once of being sick from over-work; . . that he had informed Bean that . . she . . could not stand exposure or heavy work. . . [150] Mrs. Oldshoe . . stated, . . that Mary was the most valuable servant she ever saw." [148] "verdict for plaintiff, for $1145; the jury allowing the defendants $435, for the unsoundness of . . Mary." New trial refused.

Judgment reversed and new trial granted: [151] "no proof of . . fraudulent representation . . As a general rule, an administrator warrants neither the title nor soundness"

*Noel v. Wheatly,* 30 Miss. 181, December 1855. [183] "that the boy was a runaway, and was only worth some $600. . . [190] that he ran away . . in Memphis, about twelve years ago." [183] "that Mrs. Bohannon . . brought the boy to this state for the purpose of selling him."

*Hairston v. Hairston,* 30 Miss. 276, December 1855. See same *v.* same, p. 336, *supra.* [298] "on the 6th of March, 1852, the testator . . [executed] a will, by which he devised to a negro girl, one of his slaves—having previously directed her to be manumitted—his whole property, with the exception of a landing on the . . river, his lands on the west side of the same, and a few slaves;" The plaintiffs, nephews of the testator, [279] "offered to prove by . . Brooks, that about two hours after . . he told . . testator that the said slave Chrimhiel . . could not be emancipated in the manner attempted in said will, under the laws of Mississippi, and . . testator replied . . 'Why, Major George says it can be done.' . . also offered to prove by . . Brown, that . . testator labored under a mistake . . as to his power to set her free, and as to the authority of the Probate Court to . . validate the devise . . by the appointment of a trustee." The next day he executed another will: [299] "I will Crimhiel to be made free, according to the laws of Mississippi. . . that she . . possess all my estate," "Crimhiel died in August, 1852;"

*Reed v. Manning,* 30 Miss. 308, December 1855. Zalmon Reed made his will in North Carolina in 1836. [309] "By the codicil, . . 1845, he says: 'N. B. I moved to Mississippi since I wrote this will. If my wife should marry, and have issue, then she can hold all my property; otherwise I will all my negroes to be free.'" "His wife . . married . . Manning, and died without issue."

Held: the act of 1842,[1] which provides that slaves emancipated by will, shall descend to the heirs at law [320] "has reference to wills made after

[1] Hutch. Code 539, sect. 11: "in all cases of wills heretofore made"

the passage . . as well as those existing and probated at the time of its passage."

*Sims v. Sims,* 30 Miss. 333, December 1855. [334] "$10, paid . . for catching a negro, and $43, paid to . . Marshall, for his cloak lost by . . Sims's negro boy. . . [355] 'boy . . was charged with stealing . . cloak, and was threatened with a criminal prosecution: . . Sims compromised . . by paying the amount claimed for the cloak.'"

*Deans v. McLendon,* 30 Miss. 343, December 1855. "Deans . . sued . . on two promissory notes, executed . . 1848, . . for $675 each. To which defendant filed . . pleas . . 1. That the notes were given . . [344] [for] 'Abram and Aberdeen,' over . . fifteen . . introduced . . as merchandise, from . . North Carolina . . without . . having first procured the certificate [1] . . 2. . . failed to have recorded [2] . . 3. . . that the slaves were brought into the state and sold, contrary to public policy. 4. . . that the plaintiff . . represented said slaves to be . . trustworthy servants, when, in truth, they both had been guilty of . . burglary; and one . . of an attempt to commit a rape; . . that . . plaintiff had run said negroes from North Carolina . . to avoid the infliction on them of the penalties of the law . . Plaintiff demurred . . [345] overruled."

Affirmed: [359] "There is . . not the slightest pretence for saying, that although the importation may be illegal, yet the subsequent sale is no violation of the law. . . [360] It is true . . that in . . Harris *v.* Reynolds [Runnels] [3] . . the Supreme Court of the United States have given a construction to the statute in direct opposition . . we . . will not yield our . . clear convictions, in reference to the construction of our domestic statutes, to the opinions of that tribunal." [Smith, C. J.]

*Adams v. Guice,* 30 Miss. 397, December 1855. The slaves [404] "had become unruly, and she could not manage them:"

*Jenkins v. State,* 30 Miss. 408, December 1855. "The prisoner was tried . . upon an indictment for the murder of a slave, and convicted of manslaughter in the first degree. . . the proceedings . . [409] had their inception in . . Jones county, . . change of venue . . to Jasper. . . sentenced to imprisonment . . [410] for twelve years." Judgment reversed: "Nothing appears in the record to show that the indictment was ever returned into court."

*Newell v. Cowan and Wife,* 30 Miss. 492, December 1855. "Cowan . . sued . . in trespass . . to recover damages for the loss of a slave . . [493] plaintiff proved . . by . . Marten, that . . he saw a number of negroes pursuing [plaintiffs' slave, Florence,] . . with much noise, toward the bayou . . That Florence jumped in . . That the slaves on shore, to the number of eight or nine, . . threw brickbats . . which fell near around him, but that he saw none strike him. . . that before the boy . . reached the opposite shore, he sunk and was drowned. . . defendant . . complained of plaintiff

[1] Hutch. Code 513, sect. 4.
[2] *Ibid.*
[3] P. 325, *supra.*

for having his . . negroes, put and kept in jail, for the accidental drowning . . that . . Florence had come to his quarter on Sunday, and got into a quarrel . . with his negroes, and that he had told his slaves to tie . . and bring him to him . . That the defendant then told the witness a long story about witchcraft, . . Watson, testified that . . defendant told him that . . he ordered his slaves to take and tie . . Florence, and bring him to him or kill him. McBean, testified that the defendant . . [494] said he intended to have him tied and sent home . . Overstreet, for defendant, testified . . That the defendant's standing orders to his slaves were, that when any disturbance was caused . . by other slaves, ' to bring such slaves to him.' " The court instructed the jury: [497] " That a master has no right to order his slaves to arrest other slaves when . . peaceable, in the absence of himself, or some other white person." [492] " verdict and judgment . . for the plaintiff for $1200."

Judgment reversed and new trial granted: [498] " It is immaterial whether the slave was peaceable or not;[1] . . The testimony of the plaintiffs, if credited to the full extent, might possibly uphold the verdict, . . If, on the other hand, the slaves acted merely under the general order, or under any order which the master might legally give . . [499] the master is not responsible."

*Holloway v. Armstrong,* 30 Miss. 504, December 1855. [505] " that in 1848, . . brother told her that if she would come to see him [in Louisiana], he would give her a little negro; . . that she would not have accepted her as a loan, she being small and weakly, and unfit for service; that she would not have consented to raise the negro, and be bound to give her up, when called for:" In 1852 " she was worth about $600, and was about ten years old."

*Merrill v. Melchior,* 30 Miss. 516, December 1855. " Melchior . . instituted suit . . against . . Merrill and . . Merrill, non-residents, for $1400, for damages occasioned by a breach of warranty of soundness in the sale of a slave . . [517] The defendants proved that the slave was introduced . . by them as merchandise, in . . 1853, . . and proved by [the probate clerk] . . that no certificate[2] in regard to the character . . was on record " Verdict and judgment for the plaintiff.

Affirmed: [531] " the purchaser . . can do no more than to require the seller to produce . . the certificate, and . . to rely upon the pledge of the seller, that after the sale . . he will have it registered, . . it should not lie in the mouth of the seller to deny . . [purchaser's] right to recover, by involving him in the disabilities incident to a transaction clearly illegal as to himself, but of doubtful illegality as to the purchaser. They could not . . be considered *in pari delicto.*" [Handy, J.]

*Sharp v. Maxwell,* 30 Miss. 589, April 1856. [590] " most of the money [for the purchase of a slave] . . was acquired by her . . as the price of services rendered by her in nursing a sick slave belonging to . . Dodd;"

[1] Hutch. Code 513, sect. 8.
[2] Act of 1822. *Ibid.* 513, sect. 4.

*Dick, Aleck, and Henry (slaves) v. State,* 30 Miss. 593, April 1856. The three slaves were indicted for the murder of their master. On the trial, Peter [599] "who, was jointly indicted with the prisoners and acquitted on a former trial," testified: [594] "That on the night his master was killed, he went with the prisoners to the house—they made him go with them. Henry went in first, Dick next, and Aleck stayed in the gallery. . . his master . . jumped out of bed: that Henry . . threw him on the floor and choked him till he got tired, then caught hold of him, (witness,) and pulled him down, and made him take hold of his master's neck. He, witness, choked his master, but the breath was nearly out of his body . . when he first took hold of him. They then took his master up and put him in the bed, laid his hands by his side, and covered him up. This was about two years ago." The next morning Aleck went to Johnson's house, [597] "and informed him that his master was dead;" [595] "the prisoners made no confessions until late in the evening, . . Nor did they confess until they were surrounded by eighteen or twenty white men, and after being arrested and chained," [597] "after the coroner arrived . . Dick [and Aleck] confessed to him . . [598] [Henry confessed when the ] coroner and jury were . . in the other room . . No warning . . was given . . of their rights, . . The confession of each appears to have been perfectly voluntary. . . [599] The judge . . charged . . 'that the confessions of the prisoners, made while in custody of the coroner . . are not evidence unless they were first warned'" Verdict of guilty.

Judgment thereon affirmed: "Assuming that this instruction . . was obeyed . . other evidence . . fully sustains the verdict. The testimony of . . Peter . . establishes every material fact" [Smith, C. J.] Handy, J., concurred. Fisher, J.: [600] "I disagree to so much of the opinion as holds, that the judgment must be affirmed as to the slave Henry."

*Dick (a slave) v. State,* 30 Miss. 631, April 1856. "indictment for an attempt . . to commit a rape upon a free white woman, . . [632] Murphy . . testified, that when the accused was brought before him as a justice of the peace, . . he acknowledged that he was guilty. . . that he heard the accused afterwards . . make other confessions to other persons, . . The accused, by his counsel, proposed to cross-examine . . in regard to the confessions made to other persons; but the court refused to permit such examination; . . [633] the prisoner requested the court to charge, that if the jury believed . . that the prisoner was a mulatto slave, and not a negro . . slave, as charged in the indictment, they should acquit him." Refused. Verdict of guilty and new trial denied.

Judgment reversed and the cause remanded: I. [631] "it was clearly the right . . [of] the prisoner, to cross-examine in relation to those confessions,—an imperfect . . reference to which, had been made to the jury. . . [II.] [634] The averment that the prisoner was a negro . . having been inserted, . . it became a part of his identity;"

*Barksdale v. Elam,* 30 Miss. 694, April 1856. "heirs of . . Carter . . filed their petition . . against . . Barksdale, . . the executor . . in which they sought distribution of . . Jane, William, Harriet, and Fanny. Barks-

dale claimed Jane and [her child] William, by virtue of a purchase . . He relied upon a deed excuted by himself and . . Carter . . 1853, by which . . Jane and William, and some other property, were conveyed to . . Barksdale, (. . Carter retaining possession . . during his life,) upon the condition, ' that . . Barksdale is, at the death of . . Carter, to take charge of a yellow girl, nearly white, named Harriet, aged twelve years, born of the house-woman Fanny, . . [695] and to keep . . Harriet in his house, as a free white person, and in no way to be treated as a slave, but . . to be fed from his table, in his house; to sleep in his house, and be clothed from the store, both fine and common; and . . Harriet shall have the full benefit of her labor, and also the full . . privilege of making complaint to her guardian, . . Wilkes, and his wife . . at any and all times. Now, if . . Harriet shall marry any free white man . . during the life of . . Barksdale, . . Wilkes and wife, and . . Barksdale, shall consult together, and if they deem it proper . . they shall give . . Harriet a portion of the above specified property, . . which . . shall be managed . . by . . Wilkes and wife, for the . . benefit of . . Harriet and her offspring, and the remainder shall be the property of . . Barksdale ' . . The deed provided, that if Barksdale failed to comply . . he should forfeit his right . . and . . ' should any of . . Carter's heirs attempt to enslave . . Harriet, it shall in no wise affect this deed for . . Jane and William, . . provided he faithfully carries out the requisitions ' . . The Probate Court decreed that all the slaves should be sold for distribution, and Barksdale appealed." W. Brooke, for appellee: [696] " It is evident, from the tenor of the will of Carter, and of the contract, and the evasive statements in the answer to the petition, that . . Harriet is the offspring of . . Fanny, by testator, . . [697] No court certainly would lend its aid to enforce rights predicated upon immorality of the grossest and most dangerous kind—dangerous, because the example of a negress, or mulatto, brought up in the . . style specified . . would necessarily exert a most baleful influence upon the surrounding negro population."

Decree reversed and cause remanded: " It may be conceded, for the sake of the argument, that every duty which the deed attempts to impose, and every condition annexed thereto, must be treated as absolutely void, yet, under the authority of . . Weathersby *v.* Weathersby,[1] . . the donee's title is not affected . . He takes the property discharged from the conditions, supposing them to be void." [Fisher, J.]

*Railroad Co. v. Patton,* 31 Miss. 156, April 1856. [176] " the slaves of Patton had ridden the horses to the place where they were at work in the woods, . . The animals appeared to have been turned loose " [168] " They did not ride them there for the convenience of the negroes, but to afford pasturage for the horses." [177] " The train . . consisted of the locomotive and tender, a negro car, a passenger car and five freight cars; and the persons in charge . . were the engineer, the conductor, and a negro fireman. . . [179] that the engineer . . did nothing to stop the train until the locomotive struck the first of the animals, and then the

[1] P. 324, *supra.*

fireman sprang to the *brake* . . that no order was given . . the fireman acting of his own accord,"

*Garland v. Stewart and Yerger,* 31 Miss. 314, April 1856. Stewart and Yerger brought an action to recover $600, the price of a slave sold to Garland in 1852, [315] " to be paid by a draft . . ' that this proposition was fully assented to by the plaintiff [in error] and the defendants [in error];' that at the time . . the slave was sick . . known to the defendant [Garland]; the woman being in fact unsound, and worth, if sound, as much as $1500. ' That defendant . . said, that he would send his little wagon to Stewart's for the slave, when she got well enough to be removed.' " [315] " she died at the house of the vendor." Held: [317] " the loss must fall upon " Garland.

*Cabaniss v. Clark,* 31 Miss. 423, April 1856. [424] " the slave waited upon the office of " " co-partners in the practice of medicine,"

*Greenwade v. Mills,* 31 Miss. 464, April 1856. Action brought by Mills for a malicious prosecution " in causing him to be . . imprisoned upon a charge of stealing a negro slave . . He . . read a bill of sale, dated in November, 1849, . . from Burnett to the plaintiff, . . proved that . . the defendant assisted an officer in pursuing the plaintiff with dogs. On the part of the defendant, it was proved that . . while the slave was an infant, [Burnett] had made a verbal gift of her to . . Mrs. Elliott, who . . held her for more than a year, and sold her to . . Cain, by whom she was given [in 1844] to his daughter, the defendant's wife; that . . December, 1849, . . the plaintiff . . clandestinely took the slave from the defendant's negro cabins [[471] ' while the defendant was absent from home '], and placing her behind him on his horse, rapidly fled, . . [468] no evidence, that Greenwade knew that Mills had any valid title "

*Scott v. State,* 31 Miss. 473, April 1856. [476] " indicted . . for inflicting cruel punishment upon . . [477] Bob . . [and] other slaves of . . [Henderson]. The prisoner being . . the overseer " Verdict of guilty. Judgment thereon affirmed: [479] " to exempt overseers . . would, to a great extent, defeat the benign and salutary purposes of the law." [1]

*Sam (a slave) v. State,* 31 Miss. 480, April 1856. [481] " The prisoner was indicted for murder . . [He] pleaded in abatement . . that the . . term of the court . . was illegal in this, that . . judge . . died . . that the governor . . appointed . . Moore " without first having ordered a special election to fill the vacancy. [482] " demurrer to the replication . . being overruled, he pleaded not guilty. Upon the application of the prisoner, the venue was changed . . tried and convicted . . He then moved . . for a new trial, . . [483] On the trial of this motion, he read . . affidavits . . that on the day previous to the trial of the cause, one of the jurors . . stated . . ' That if the evidence . . should be the same as . . on a previous trial, which he had heard, that the defendant was guilty of murder, and ought to be hung.' The prisoner and his counsel . . deposed

[1] Hutch. Code 519, sect. 44.

that they knew nothing of the . . declarations . . until after the trial . . the court overruled the motion." Judgment reversed and new trial granted.

*Jordan v. Thomas,* 31 Miss. 557, October 1856. [558] "Thomas . . sued . . in detinue . . for the recovery of . . Hannah, and her son John, and her future increase; . . [560] since the suit was commenced, . . Hannah had given birth to another child . . [561] Verdict and judgment . . for the plaintiff, for the recovery of . . Hannah and John, and the child born pending the suit," Affirmed: [563] "Having a right to recover the mother, the plaintiff could recover that which the mother produced pending the suit,"

*Joslin v. Caughlin,* 32 Miss. 104, October 1856. [105] "The plaintiff . . replied . . that the slave was sold . . [to] Caughlin, who made the purchase at the sale for his wife . . one of the legatees, . . and that she came to her death by the ill-treatment, neglect and violence of Caughlin and his wife."

*Hall v. Dickey,* 32 Miss. 208, October 1856. [210] "about . . 1840, . . he removed [from North Carolina], bringing with him the . . slave, to . . Mississippi."

*Lusk v. Lewis, Administrator,* 32 Miss. 297, October 1856. [299] "the testator [Robert Lusk] gave all his slaves 'to John H. B. Latrobe, Rev. William McLean, and W. W. Seaton, in trust for the American Colonization Society;' also . . three thousand five hundred dollars, to be paid after the bequest of the slaves should take effect;" The appellant filed a petition in the probate court. "the object . . was to have a reprobate of the will, declaring it invalid as to these bequests, and valid in other respects. The appellees, the administrator with the will annexed, and the trustees . . filed a demurrer . . sustained and the petition dismissed;"

Affirmed: I. [300] "The court . . had no jurisdiction . . [II.] we might stop with a mere affirmance of the decree. But the question of the validity of the bequests . . is raised by the petition, . . By the Act of 1842,[1] . . any bequest of slaves for the purpose of emancipation, or in order to be removed . . for . . emancipation . . is made unlawful . . [302] We are . . of opinion, that the society had not power under the term '*chattel,*' in their charter, to hold slaves as they are held . . under our laws, . . And . . that the society must be regarded as having no further . . interest in them than for the purpose of emancipation and colonization, . . the bequests must, therefore, be declared . . void. . . [303] the trustees . . [can not] take in their individual capacity absolved of the trust. . . They appear to have been mere strangers, . . [304] But the trustees are not entitled . . for another reason. The Act of 1842 . . places the slaves . . in the same condition . . as if the will had never been made." [Handy, J.] See Lewis *v.* Lusk, p. 357, *infra.*

[1] *Ibid.* 539, sect. 11.

*Jordan (a slave) v. State,* 32 Miss. 382, October 1856. [388] "The prisoner was a runaway slave, and the slave Aaron, acting under the command of [Mallory] a person who was not his master or overseer, was at the time he was killed, attempting to arrest the prisoner." Mallory testified, [385] "that after the killing . . and . . arrest . . he . . and . . Williams, went to the prisoner, . . that the prisoner refusing to answer their questions, they told him that if he did not talk, they would kill him; the witness having a pistol then cocked in his hand, . . and the other a stick, with which he threatened to strike, and did strike the prisoner one blow. . . the prisoner proceeded to state . . where he lost his knife, . . The court admitted this evidence"

Judgment reversed, and *venire de novo* awarded: [386] "The rule which excludes the whole confession must . . exclude all its parts. . . [388] the statute has not conferred upon a slave the power to . . [389] arrest a runaway slave, except on the premises of the master. . . another, who has no right to control the slave, cannot . . command him to assist in apprehending a runaway slave." [Fisher, J.]

*Brown v. State,* 32 Miss. 433, October 1856. Dying declaration: [439] "calling back to a negro boy who had bin in company with him [[435] 'hunting oxen'], to come on for he had killed the damed old raskell,"

*Jordan v. Roach,* 32 Miss. 481, October 1856. Will, 1847: [485] "that his four plantations should be kept up . . and that the money arising from that source should be invested in slaves,"

*Jones v. Smith,* 33 Miss. 215, April 1857. Hill testified: [217] "Lewelling was embarrassed in the spring of 1850. . . He wrote to Cheairs to run the slaves to Alabama, . . The crop was small in consequence of the slaves being run off." Jones testified: [219] "Purchased a woman for $600 in Memphis, in 1850; . . worth $650 or $750 [cash value] in April, 1851. Negroes commenced rising in 1850, and have gone up ever since. . . Negroes acclimated are more valuable than those imported;" Four [221] "men of wealth, negro property, etc. . . [one having been] a negro trader in 1851" "prove that . . [in 1855] they valued thirty-six of the negroes as of 1851 at $18,400. Seven . . they did not value, three being children and four being dead." Parham testified: [222] "Had a lot of forty-six negroes in 1851 and 1852 for sale; offered them for $24,000; could not sell; sold them to . . Clayton, in December, 1852, for $25,000, in six annual instalments, . . They were large and small; had been in the country several years; were above an average lot; . . price fair; would not buy them himself at that price. In 1851 bought negroes in Richmond and this State; all field hands; about equal in sex; all except two . . were number one, at an average of little over $800. Negroes were low in June, 1851; commenced rising shortly after, and have kept rising" Mull: "made a large purchase of slaves in 1851 . . Men were valued at $800, women $600, and children in proportion. . . Property was dull . . till next winter . . Negroes were lower in the summer than when he

bought. . . Negroes raised in families and acclimated are more valuable than imported ones." Lancaster: "sold a good medium-sized girl, fifteen . . in May or June, 1851, for $550. Had her on the market some time. Same girl would now sell for $700 or $800." Rogers: [223] "Heard Gibbons say he would like to purchase the young negroes; did not want the old; did not want the whole lot;" Cook: "Has been a negro trader for ten or eleven years. Bought negroes in Kentucky and Tennessee in 1850 and 1851; paid for men from $550 to $700; . . sold in Louisiana, women about $750, men $850 to $900. Market for field hands in Louisiana, better than in North Mississippi, but for women and children less; . . Negroes have advanced $250 to $300 per head. Negroes sold in large lots command less than in small lots. Acclimated negroes worth more than unacclimated." [266] "she was anxious that the property, which consisted mostly of family slaves, should not be sold and separated." Counsel for the appellees: [242] "It was a most disastrous period for the South. The agitation of the Compromise measures had opened the flood-gates of sectional strife. . . Few were willing to invest money in a species of property which threatened the integrity of the Union. . . The answer of Smith shows, that in his purchase [in June 1851], men were estimated at $800 to $825; women, from $600 to $800; that eleven . . were under ten years of age; four, over fifty, and two or three diseased. Nine of the witnesses . . concur . . that . . $800 was a fair price for men; $600 to $700 for women. . . [253] Craddock . . witness of appellant's, estimates the value of negro men, . . June 14, 1851, at $1000, and women at $800. This is palpably an exaggerated estimate, and is not supported by any other witness. . . on account of Craddock's manner of treating slaves, no humane person would have had anything to do with him on any terms."

*Sam (a slave) v. State,* 33 Miss. 347, April 1857. Indicted for [350] "burning a gin and cotton-house, . . The master . . testified that the prisoner was taken up about sixty miles from . . where the burning took place, and two or three days thereafter. . . [351] he chained his legs together, and brought him home in the stage-coach, along with him. That witness then asked him why he burned the gin-house, and he replied, . . because he wished to be hung; . . The prisoner objected to the admission . . overruled," Affirmed.

*Ned and Taylor (slaves) v. State,* 33 Miss. 364, October 1857. [365] "indicted . . for the murder of Ely, a slave. . . Pickett . . [366] was the owner . . found a pair of pantaloons, in one of the negro cabins, which Ned . . acknowledged were his; on them, were spots of blood. . . Sam . . about fifteen . . belonging to . . Pickett, testified . . that on the Sunday . . he . . and Ely went to the lake . . fixing the fish-trap. . . heard the report of a pistol. . . saw Taylor . . [who] laughed and said he had scared Ely; to which Ely replied, 'No, he had n't.' Taylor then bantered Ely to wrestle with him; . . [367] threw Ely on his face and cried out, 'Come on boys, I've got him.' Ned then run up with an axe . . struck Ely with

the sharp edge . . reversed the axe, and . . broke his skull. . . cast the body out in the water, . . and told witness that if he ever looked as if he knew anything about it they would kill him. . . did not inform . . until . . Tuesday. His master . . struck him one 'lick' to compel him . . but he denied all knowledge . . but afterwards his master tied him, and he confessed all. . . that the sun was not more than one hour high when he and Ely left the negro quarter. . . [368] Annie . . for the defence, testified, that she is a sister of Taylor; . . observed Taylor . . scraping an axe-handle . . until about an hour by sun, when the horn blew for the ploughmen to . . feed their horses; . . after feeding, returned to her cabin, and remained . . until called up late at night to search for Ely. She knew . . Taylor went . . to feed, for if . . not . . he would have been whipped, and he had not been . . Pickett . . testified, . . that he told his negroes that . . whoever did it should be hung. . . [369] Dixon . . testified, that several years ago he had overseen a plantation, on which the accused were, and that they were both well-behaved, obedient, and humane negroes. . . convicted . . sentence of death pronounced" Affirmed.

*Norris v. State,* 33 Miss. 373, October 1857. [375] "he had stolen the slave in . . Arkansas, and had brought him to . . this State;"

*Ogle v. State,* 33 Miss. 383, October 1857. [384] "convicted of the murder of . . West. . . [386] The prisoner . . stated . . that he had been hired to oversee for West that year. . . That he had borrowed . . Griffin's watch, and that some of deceased's negroes had stolen it, and that deceased had protected them in it."

*Garnett v. Kirkman,* 33 Miss. 389, October 1857. [393] "A letter, written by S. Hurd . . 1846 . . in which he states, that he desires all his slaves sent to Africa; that they are now working to pay a debt; that Mrs. Hurd also 'willed her slaves to Liberia;[1] but if my life is cut short, her debts will take most of them.'"

*Fox v. Matthews,* 33 Miss. 433, October 1857. [438] "A few days before the levy . . the terms of the compromise were discussed, . . ten negroes and their offspring, to be selected by herself, were to be conveyed to her,"

*Stamps v. Green,* 33 Miss. 546, October 1857. "executor of Dr. Wilson, sued Seletha Stamps . . upon an open account for medical services rendered . . 1847 and 1848, to the defendant and her family, and slaves. . . the defendant was a *feme covert* . . and owned slaves as a separate estate, under the provisions of the Act of 1839." Held: "the husband . . would be alone liable"

*Warner v. Warner,* 33 Miss. 547, October 1857. [548] "1849 . . he deserted her, taking with him from Arkansas . . Eliza and Maria and a child of one of them, which he brought to this State and sold or delivered to . . Lum"

[1] [391] "in accordance with a long-cherished and favorite plan of hers of Christian benevolence."

*Mount v. Brown,* 33 Miss. 566, October 1857. " 1855, the plaintiff . . as administrator : . exposed to public sale . . a slave . . defendant became the highest bidder, for . . two hundred and ten dollars, . . afterwards refused to receive the slave, . . the plaintiff thereupon . . again exposed the slave for sale, when another person became the highest bidder, at . . eighty dollars," Held: the defendant must pay the difference.

*Magee v. Catching,* 33 Miss. 672, October 1857. " Magee, in May, . . 1840, was indebted to . . Bank on a note for about $6360, . . secured by a deed of trust on . . [eleven] slaves. . . Magee being unable to pay it, . . [674] Catching became the purchaser . . at public auction, . . but at what sum is not stated." " He gave his note to the bank for $6360, in discharge of Magee's debt, or in payment of the slaves. . . Magee, confiding in the promise of Catching to purchase the slaves for him, did not make any effort to induce other persons to bid . . sold in one lot. . . remained in the possession of Magee until September " Counsel for appellees: [687] " There were three children under twelve years of age, and two under fifteen; some old negroes, and some young ones. The average price was above five hundred dollars. The statistical tables of that period will show, that this is above the average value of such property at the time."

*Clark v. Slaughter,* 34 Miss. 65, October 1857. [66] "upon a division of the estate of . . the father of Mrs. Slaughter, this slave was allotted to her and her sister Malinda; . . Malinda married . . Lawrence, . . and sold the one-half interest to . . Alexander [once her guardian, who] . . had possession . . about ten years." [67] " in . . 1855, [Clark] purchased . . the slave soon thereafter absconded . . and . . went into the possession of . . [Mrs.] Slaughter, and . . Smith. . . she and her husband [had] sold her interest to Alexander . . The bill of sale . . is not acknowledged, as required by law," Held: Clark [68] " acquired the interest of Lawrence and wife . . entitling [him] . . to the relief prayed for,—a sale of the slave, and a division of the money."

*Holman v. Murdock,* 34 Miss. 275, October 1857. [284] " Mallory had, for some time, been engaged in the traffic of slaves, making Black Hawk, in Carroll county, the centre of his operations. . . in the autumn of 1854, he left . . with the intention of buying negroes in Virginia, or elsewhere, . . in the spring of 1855, he returned . . bringing with him " [277] " a drove of negroes " In the fall he sold one of them, Ellen, who was over fifteen, to Holman without a certificate of character.[1] Holman gave his note for $1001, [276] " payable to Mallory, or order, and indorsed by him to the plaintiff [Murdock], . . Holman . . resisted the collection of the bill . . [277] proved . . that Mallory, in the spring . . gave as a reason . . for not offering to sell the slaves included in the drove, that the market was dull, and that it would be better in the fall, and that the yellow fever was then all over the lower country. . . The plaintiff then proved . . that . . just on the eve of his departure for Vir-

[1] Act of 1822. Hutch. Code 513, sect. 4.

ginia, . . [witnesses] had heard Mallory declare . . that he was going to purchase negroes to settle on a plantation . . and that after his return . . he refused to sell . . The plaintiff then proved, by several members of the bar, residing in Holmes, Carroll, and Yallabusha counties, that they were not aware that the Act of 1822, in relation to the introduction of slaves, was in force, until the publication of the decision . . in . . Deans *v.* McLendon [1] . . in . . 1856, and that previous to that time it was generally considered . . in that section of the country, that it was not illegal to introduce slaves for sale without certificates of character."

Held: [287] "It is very clear that this testimony was incompetent." Also [285] "the statements of Mallory, made in 1854, . . that he intended to buy negroes . . for the purpose of cultivating a plantation" Judgment for the plaintiff reversed and the cause remanded. [288] "reconsidered, and a decree of reversal only as to Holman entered, and affirmance as to . . Mallory."

*Bridges v. Maxwell,* 34 Miss. 309, October 1857. The administrators removed slaves to Louisiana and sold them there.

*Sprott v. Baldwin,* 34 Miss. 327, October 1857. Will: [328] "Crops to be raised . . and the proceeds invested either in the purchase of slaves or loaned"

*Newell v. Newell,* 34 Miss. 385, October 1857. [392] "a symbolical delivery of the slaves . . the hand of one being placed in his hand . . Charles [Newell, who claimed an interest in the slaves,] had secreted the slaves in his crib; . . had good cause to do so; that the sheriff was accompanied by armed men, who spoke of running and selling the slaves; and that an attachment had, shortly before, been levied on them, and the sheriff had refused to Charles the privilege of bonding them, as he had the right to do. . . on this occasion, Charles produced the slaves so soon as he was informed that he could bond them."

*Shewalter v. Ford,* 34 Miss. 417, October 1857. [420] "September, 1855, . . she was purchased by the defendant [Shewalter], in Virginia." She was sold to the plaintiff on January 5, 1856, for $1050, of which $300 was paid in cash. [419] "A witness . . testified that the slave had a hacking cough . . and appeared . . unhealthy . . he asked [Ford] . . if he had had her examined by a physician, . . he had not, because he relied on the warranty . . on the first or second day after . . the slave . . was . . laboring under a coarse, deep-toned cough; . . About the 26th January . . in bed, and quite sick, but . . in comfortable quarters, and well nursed, being attended from that time by a regular physician, until 1st February, when she died . . [420] of pneumonia, . . which . . supervened an attack of chronic bronchitis,"

Held: [421] "it is sufficient to render a party liable upon his warranty, if the slave be at the time laboring under a disease which though not mortal . . conduces to, and results in a disease which proves mortal."

[1] P. 340, *supra.*

*Patterson v. Kirkland,* 34 Miss. 423, October 1857. "action brought by Kirkland . . to recover damages for a breach of warranty of soundness . . August, 1853, . . [424] [of] a negro woman and her infant child, . . represented to be sound in body and mind; . . the plaintiff . . paid . . $900. . . the plaintiff proved, by . . Grubb, . . that she sometimes had fits; and that, in the spring of 1853, she was taken, 'all of a sudden, in a strange way,' . . She was dangerous, and he put her in jail. . . sold her, soon afterwards, to Patterson, for $600 ($100 of which he afterwards remitted), and . . refused to warrant her soundness. . . [425] Patterson then refused to take a bill of sale, saying that it would injure the sale . . and that he did not believe she was crazy,[1] but that it was all deceit. . . Witness . . for defendant . . believed her sound; . . had seen her . . scraping cotton,—at Patterson's. She scraped one row by herself, and hurried up a small negro to beat a larger one, and would occasionally help the smaller one. . . [426] owned by Patterson about four months, and during the time was delivered of a child, . . worth about $150. . . Rankin, for the defendant, testified that, on the day after plaintiff bought . . he said, 'that if the people about there had any mean negroes to sell, that then was the time to sell them.' Witness asked . . if he did not think that Patterson had got his finger in his eye? Plaintiff said not; . . Plaintiff also stated, that he talked some with the negro, and that she talked with tolerably good judgment. . . the child died soon after" [429] "the woman soon became worthless, and died." [425] "the value of the woman, if sound, was $900. . . [426] The plaintiff had verdict and judgment for $884 50, and costs," Affirmed: [431] "The defects here were latent, and, if known to the vendor, he was bound to disclose them."

*Lindsey v. Lindsey,* 34 Miss. 432, October 1857. "The plaintiff . . sought to recover damages for . . fraudulent representations as to the soundness of the slave, . . January . . 1854, . . [the defendant as] administrator . . sold the slave at public auction . . for $895. . . Staples . . was authorized to bid $1100 for the boy[2] . . [433] but, upon examining him, he saw that he had an unhealthy appearance, and declined to bid more than $800. Witness asked auctioneer if Prince was sound, and he replied . . . in a loud voice to the crowd . . 'Look, and judge for yourselves;' and that plaintiff immediately replied, 'that he was sound, for he had once owned him [about seven years before the sale].'" "The plaintiff was standing near by, and the defendant . . said to witness, that the boy was sound, and had not lost a day's work on the farm during the past year. . . The plaintiff was blind" [434] "Dr. Atkins . . a few weeks after . . found his lungs much diseased" He died about two months after the sale. Verdict for the defendant. Judgment thereon affirmed.

*Exum v. Canty,* 34 Miss. 533, October 1857. Deed of gift, made by John Williams in 1850: [535] "in consideration . . that . . [General and Mrs. Canty] will during my life support me . . one-half of . . [twen-

[1] Counsel for Kirkland: [430] "His declaration, that he believed her sound, was only intended to justify himself."

[2] Not necessarily a youth.

ty-five] negroes, and one-half of their future issue . . and Jacob and old Amy (from the last of whom no service . . shall be required by compulsion), . . for the use of . . [Mrs.] Canty . . and . . heirs . . forever." The heirs-at-law filed their bill, charging that [536] "Williams was *non compos mentis*; . . that . . he was wholly . . under the control . . of an old negress . . Amy; . . [538] For the complainants . . [539] one of [the witnesses] . . speaks of 'old Amy' interpreting for Williams ['partially paralyzed']. . . [541] Another witness [hired a negro from Williams.] . . A short time afterwards, the negro run away; and in a few days . . witness saw [him] . . cutting wood near J. W.'s house. When the negro saw witness, he ran into the house, where J. W. was lying in a bed. . . J. W. denied knowing anything about him. Witness . . found the negro hid under the bed . . unable to capture the negro, who ran out. Witness pursued . . about the premises . . he went into the house again; . . J. W. . . again denied any knowledge . . Witness . . found the negro concealed in the box under the bed . . Witness then said . . he would whip the negro in his presence; and J. W. told witness that if he would not do it, he would take the negro back and release witness from any liability for the services which the negro had rendered, to which witness assented. . . [542] J. W. . . would frequently commence talking, and call on 'old Amy to finish the conversation.' . . Williams said . . that he did not intend to give old Ben [his brother] and his boys anything. . . 'Old Amy,' . . said 'd—d old Ben.' . . 'He could only get [whiskey] . . when old Amy would let him.' . . His slaves, Jake and Elias, could also influence him. He carried these slaves with him to South Carolina. He did not start with Jake, but Jake followed him, . . He applied to witness to borrow $2000. Witness agreed . . if J. W. would give a lien on his property. . . He consulted with [old Amy] . . and finally agreed . . [544] The defendants took the depositions of . . [545] the Governor . . of South Carolina" and others. [544] "Believed him to be of sound mind, . . [550] Never saw . . any undue influence exerted . . [556] the vice-chancellor dismissed the bill," Affirmed.

*Farr v. Farr,* 34 Miss. 597, October 1857. "bill . . seeking a divorce . . upon the ground that the defendant . . [598] 'has been guilty of adultery with a servant-woman of complainant, and with other females,'"

*Coppage v. Barnett,* 34 Miss. 621, October 1857. [628] "in 1825 . . complainant was the owner of fourteen slaves [in South Carolina], of which seven were working hands, and also of a plantation," [623] "That in 1831 or 1832, complainant and his [father] . . had a settlement in . . Tennessee, . . That in part payment of . . [his] indebtedness, . . [his father] conveyed . . [thirteen] slaves [to him.] . . That in 1834 . . [they] settled the said slaves . . in this State; . . [626] three of the negroes and their offspring . . [were] sold . . and the proceeds applied to the payment of . . debts . . [630] His property consisted of negroes, stock, farming utensils, etc. . . [631] used the property for the support of his family and raising negroes. . . that Eliza and her children . . were pur-

chased [in 1838] with the proceeds of cotton raised on the plantation in Tennessee, . . [633] in 1844 . . [complainant] was speaking of the sickness among the negroes at home in Tennessee, and said to [his half sister] . . that she ought to go home and attend to them, . . [639] Clark, for complainant, proved that in 1849 negroes were low; men were worth from $650 to $700; women from $600 to $650; ploughboys about $525 to $550. . . Turner states, that men were worth from $700 to $800, . . Bradford stated, that . . women [were worth] from $500 to $600."

*Bullitt v. Taylor,* 34 Miss. 708, April 1858. Taylor was [710] "the owner of negro slaves worth about $10,000, and a plantation worth about $3500."

*Lusk v. Swayze,* 35 Miss. 155, April 1858. "his mother dying soon after his birth, Mrs. Swayze [the life tenant] . . gave the child to her daughter . . during her life, upon the condition that she would raise him."

*Hoover v. Wells,* 35 Miss. 159, April 1858. "sold the slave, alleging his vicious and dangerous habits as the reason"

*Hamilton v. State,* 35 Miss. 214, April 1858. [215] "indicted . . for stealing a slave. . . McGill testified that . . March, 1856 . . his overseer had given the slave a pass to go to St. Joseph, Louisiana, on the steamer . . witness being at St. Joseph at the time, but that the slave did not go there; that the accused . . was employed . . on his plantation as a clerk, . . that in April . . witness received a letter from Richmond, Virginia, giving a description of a slave then in jail there . . and stating . . that the accused had been arrested; that witness went to Richmond . . and found [them] . . in jail . . that the slave was a very smart and keen negro, and had a good deal of money about him when he left, belonging to witness. . . McAlister testified, that he went to Virginia with the governor's requisition to bring the accused . . to Natchez; that the accused told him that he had got into the skiff with the slave at Old River; that they went to New Orleans and to Mobile, where the accused had to pay something to the custom-house; that they proceeded through the States to Richmond . . [216] A verdict of guilty was returned," New trial refused.

Affirmed: [221] "It is not improbable that he held out hopes of freedom . . but if so, it is exceedingly improbable that he really intended to set him free, or to take him to a State where he would become free;" [219] "instead of taking him to such a State . . by the Mississippi River, . . [221] he took him in a directly contrary direction, to . . Richmond, well known as a large slave mart," But [220] "it makes no difference . . whether he was actuated by the motive of false philanthropy, or of private gain." [Handy, J.]

*Magee v. Keegan,* 35 Miss. 244, April 1858. In 1856 complainant's father-in-law and son-in-law [245] "came to complainant's plantation about daybreak, and clandestinely removed . . slaves,"

*Shaw v. Brown,* 35 Miss. 246, April 1858. [248] " bill filed by John Brown against . . Shaw, executor of . . James Brown . . The complainant alleged that he was a brother of . . James . . who died without any lawful issue, . . that he possessed, among other slaves, a mulatto woman, . . Harriet, who had . . two children, . . Francis and Jerome, whom the testator claimed to be his sons; . . that . . Brown, in . . 1856, . . died, leaving a . . will . . dated . . 1853; . . [249] provides, that . . executors shall sell the land and slaves . . and, after paying the debts . . deposit the surplus in the Bank of Louisiana, subject to the order of Francis M. Brown; and, in case of his death, subject to the order of Jerome B. Brown. . . prayer . . for an injunction against the executors, restraining them from executing . . and for a decree declaring said bequests void. . . Shaw . . answered . . states that in 1849 . . testator started to . . Ohio . . to emancipate them; but that, owing to the low stage of the river, he could not reach . . destination; . . that in the spring of 1850, . . testator did carry . . Francis and Jerome to Cincinnati, . . executed and delivered to them . . [250] deeds of emancipation; and that, without returning with them . . did . . settle them in . . Indiana, where they have ever since resided. . . that Brown, while on a visit to . . Francis and Jerome, and . . Harriet . . departed this life, . . The testimony for the complainant . . Francis and Jerome returned to . . Amite county . . in the fall of 1850,[1] and went back to Indiana in the spring of 1851; . . that the principal object of their absence was to acquire an education . . between April, 1850 and 1854, Francis was in Amite county four or five times,[2] and Jerome three times.[3] . . [251] Brown emancipated . . Tom, Malinda, and Sarah; the two last are now on Brown's plantation, as slaves, and Tom has gone to parts unknown. Brown said he had torn up the free papers of Sarah. . . Harriet had four children, which Brown acknowledged to be his, . . 1852, he had a will written in favor of Harriet and her four children. . . On the return of Francis and Jerome . . Brown . . considered them as slaves, with the exception that they lived in the same house with him, and eat at his table, in company with witness, and the neighbors, who chanced to be there. He said he had emancipated them, . . He paid taxes on them in 1851. . . Francis was born in 1833, and Jerome is about thirteen . . [252] that he had thought that he could emancipate . . through the agency of the Police Jury of Louisiana, but finding that the law in that respect had been changed, he had carried them to Ohio, . . [253] 'he intended this [state] to be their home until his death, as he did not enjoy his health in Indiana, and wished them to be with him.' . . Testimony for defendant: . . [254] In 1853, Brown stated . . that some of them . . had returned to Mississippi, contrary to his wishes. . . that his object in sending them out of the State was to prevent his relatives from forcing them into slavery. He referred to the

[1] Handy, J.: [306] "it is clearly established, by numerous witnesses . . that they did not come to this State until September, 1852,"

[2] "Francis first came back to this State about December, 1852, . . and returned with [Jerome] . . he was subsequently in this State, in . . 1854, but never since" 35 Miss. 246.

[3] "but once . . from September, 1852, until May or June, 1853," *Ibid.*

. . Weathersby case,[1] which originated in Amite county. . . [255] Brown had told Francis, that if he would come back, he would buy him a place in Louisiana, and remove his (Brown's) slaves to it, and that Francis could hire them. . . [256] that the control exercised by Brown over Francis was that of a father, but he exercised the same sort of control over other negroes on the place. . . Smith stated, that . . [Francis] came [in 1853] with a lot of flour, which he . . sold there as his own. . . Francis went, when and where, he pleased, hunted, fished, exercised authority on the place, as any young man would on his father's plantation, ordered the negroes to do what he considered necessary. . . [257] called Brown 'father.' . . After the death of Brown, Shaw, the executor, wrote to Francis, advising him not to come to Mississippi. The depositions of . . residents of . . Indiana, . . that Jerome went to school most of the time, . . Francis . . a part of the time . . worked as a carpenter; . . [258] that Francis owns a farm there. . . The will, . . 1852, . . disposes of all his property to Harriet and her four children, whom he describes as 'free persons of color, all of whom now reside in . . Indiana.' . . the chancellor granted a perpetual injunction against the payment of the legacies bequeathed in the will [of 1853] to Francis and Jerome" W. P. Harris, counsel for appellant: [264] "the leading cases in which the courts have undertaken to pronounce upon the question of condition . . of persons situated as these, are cases where the slaves had returned to, and were within the State, whose courts adjudicated the question. Such was the case of Dred Scott *v.* Emerson,[2] . . Strader *v.* Graham,[3] . . Lewis *v.* Fullerton,[4] . . [265] But it will be urged, doubtless, that . . [Francis's] going to Indiana, subsequent to 1851, could not have the effect legally, of constituting him an inhabitant . . because of a provision of the Constitution of that State, adopted in 1852, absolutely prohibiting negroes and mulattoes from coming . . to reside. . . [266] It seems to us that we do not dignify our policy, nor fortify our institutions, by prying with too much jealousy into the manner in which the difficulty was settled between the mulatto and the State of Indiana. . . he had resided for a time in that State in 1850, and every fair presumption is that that has been adjudged by Indiana to be sufficient. . . [268] The family of Brown was distinctly marked as mulattoes, for . . their color caused his rejection at a hotel in Cincinnati. . . [271] when he placed them at school for an indefinite time in . . Indiana . . he could not compel them to return to Mississippi to reside. . . They visited Mississippi afterwards at their own peril,"

Decree reversed and the bill dismissed: I. [311] "it was his intention . . to locate them permanently . . where they could be free, . . [312] Brown unquestionably had the right . . [313] The only restraint upon that right is, that he shall not emancipate them with the intent to bring

[1] P. 324, *supra.*
[2] 15 Mo. 577.
[3] Vol. I. of this series, p. 365.
[4] *Ibid.*, p. 135.

them back . . as free persons; which intent is carried out by their being brought back in connection with, and as a part of, the act of emancipation. . . [II.] [321] the bequest was not void," [320] " free negroes are only debarred, by our laws, of the rights secured to them by the laws of other States where they are domiciled, so far as the exercise of those rights may be positively prohibited, or may be directly dangerous to the conditions of our slaves, by exposing them to improper interference, or to . . mischievous example " [Handy, J.]

*Crowder v. Shackelford,* 35 Miss. 321, April 1858. [330] " that from 1835 to 1841, Crowder was a small planter, working from ten to fifteen hands, and owning from twenty to twenty-five slaves; . . that he was an unsuccessful farmer, generally buying his corn and meat, but that he succeeded very well in raising young negroes;"

*Simon (a slave) v. State,* 37 Miss. 288, April 1858. Handy, J.: [292] " the accused and the deceased were the slaves of Lot W. Ellis, . . early in the morning of the 23d of June, 1857, the deceased was found . . on the floor of the cabin . . having four severe wounds on the head . . of which he soon died; . . A boy, named Hiram, belonging to the same master, had been run away for several days, and another boy and the accused had also run away on the night previous, or early in the morning, on which the deceased was found wounded. Pursuit was immediately made with dogs . . Andy was caught about four miles from the place, and the accused . . two miles further, when he was found in the Bayou Pierre, up to his chin in the water, and having a scythe blade in his hand, which, by direction of the person in pursuit of him [[291] ' a negro hunter '], he threw from him . . and obeying the order of the same person, came out. . . he was struck upon the head a severe blow [[290] ' with the butt of a negro whip '], and was seized and bitten by the dogs. About the time the dogs were taken off from him, Willis Ellis, a brother of his master, came up . . and . . was told . . that Hiram was suspected . . Willis Ellis . . asked the accused why he had run away, . . not answering, he struck at the accused with his fist, and said . . he would knock him down if he did not talk . . asked him ' what he knew of Hiram's killing Norvell;' adding . . before he answered, ' It will be better for you to tell the whole truth about the matter,' . . and the accused thereupon said: ' Hiram did not kill Norvell; I killed him;' . . [293] with an axe helve . . soon after George Ellis came; and . . inquired . . why . . he replied . . because the deceased had told lies on him. . . then taken to his master's place, . . met by him and two other persons, and Hatley, who had pursued and taken him, told them that there was the murderer, . . he made substantially the same confession [[289] ' without . . any caution as to the consequences '] . . All these statements were made . . in the presence of Hatley, who was armed, and had with him his negro dogs. . . the Court . . permitted them to be given in evidence;" The prisoner was convicted of murder and sentenced to be hanged.

[295] "For the erroneous admission of the confessions, the judgment is reversed, and the cause remanded for a new trial." See same *v.* same, p. 359, *infra.*

*Lewis, Administrator, v. Lusk,* 35 Miss. 401, October 1858. Will of Robert Lusk, who died in 1855: [417] *Fifth.* . . The surplus proceeds of my estate . . or so much thereof as . . necessary . . I direct to be used in the purchase of any slaves who may have wives or husbands belonging to my estate, it being my object . . [418] to keep families together: . . my executors are to exercise a discretion, as it is not my wish that exorbitant prices should be paid. *Sixth.* I direct that provision be made . . for the comfortable support of any of my slaves who may be superannuated, who, from any cause, would be likely to prove a burden to those who might have them on their hands. *Seventh.* At the death of my wife and mother, . . I give . . to John H. B. Latrobe, Rev. Wm. McLean, and W. W. Seaton, Esq., in trust for the American Colonization Society, all the slaves . . except such as it may be necessary to have supported in pursuance of the sixth clause . . *Eighth.* All the property . . exclusive of slaves . . shall be sold . . I will [to the above trustees] . . three thousand five hundred dollars . . after the foregoing bequest of slaves to them . . shall take effect. The balance . . to be equally divided between the Board of Education, and the Board of Domestic Missions, of the Old School Presbyterian Church in the United States," The widow renounced the will and "was allowed one-half of the personal estate . . and her dower in the real estate;" Lusk's mother [419] "prays distribution . . of her share . . A decree was . . made . . ordering distribution to the petitioner, of the slaves in the hands of the administrator,"

Affirmed: I. "the holding of slaves, not for emancipation, is irreconcilable with the policy and true spirit of the society, and hence . . this bequest was not valid.[1] . . [II.] [421] the pecuniary bequest must fail, because the contingency, upon which it was to be paid, can never arise. . . [III.] [422] the Board of Education and the Board of Missions are the residuary legatees of the entire estate . . except the slaves, which were not to be sold. . . [423] these boards take the . . $3500, . . The slaves . . were subject to distribution . . both by force of the Statute of 1842,[2] in relation to illegal emancipations, and under the general rules of law applicable to the circumstances of the case," [Handy, J.]

*Shewalter and Co. v. Brown,* 35 Miss. 423, October 1858. [424] "the plaintiffs being engaged in the business of trading in horses, mules, and slaves . . during . . November and December, 1856, and January, February, and part of March, 1857, sold slaves to the amount of seventy thousand dollars, and on the 2d of February, 1857, the act . . taxing such property so sold, was passed; and . . the defendant, immediately . . required them to pay . . $511 87," Held: [425] "the collection . . was

[1] Lusk *v.* Lewis, p. 345, *supra.*
[2] Hutch. Code 539, sect. 11.

without legal authority. . . [426] there could not have been an assessment . . at the time"

*Wallace v. Seales,* 36 Miss. 53, October 1858. [57] "an attachment against . . steamboat . . to recover the value [$1500] of a slave, hired . . [58] to the proprietors . . to go on a special trip from Greenwood . . to Vicksburg, and to return to Greenwood, . . [but] the slave was taken . . to New Orleans, in consequence of which he contracted a disease of which he died." Verdict and judgment for plaintiff. Affirmed.

*Beck v. Beck,* 36 Miss. 72, October 1858. [73] "the appellant was indicted for stealing a slave, . . convicted . . 1853, . . sentenced to confinement in the . . penitentiary for . . five years"

*Meek v. Perry,* 36 Miss. 190, October 1858. In 1855 [200] "they were about the following ages and values . . Chaney . . about fifty . . worth $300; Cherrylane . . ten or twelve . . worth $700; Dina . . twenty-five or thirty . . worth $800; Letty Ann . . four . . worth $400; . . William . . twelve . . worth $850; and Sam . . eight . . worth $550."

*Block v. Cross,* 36 Miss. 549, October 1858. [559] "brought Mrs. Cross and her children to this State, in . . December, 1851. About the same time, or shortly thereafter, the slaves . . were brought . . [560] no means by which to support herself and family, except the income to accrue from the hire"

*Watson v. State,* 36 Miss. 593, April 1859. Indictment for the larceny of six slaves. [595] "Watson brought the slaves [from Alabama;] . . removed them from place to place clandestinely; . . when he offered them for sale, he stated that his title was not good, and the purchaser would have to risk it, but that he would sell so low that a speculation could be made out of them."

*Emanuel and Giles (slaves) v. State,* 36 Miss. 627, April 1859. [628] "the slaves were committed upon an indictment charging that 'they did . . conspire . . with other slaves . . to resist the . . authority of . . the overseer . . by arming themselves with . . clubs, sticks, axes, hatchets, scythe-blades, and rocks;'" "in the Circuit Court . . a demurrer was filed . . sustained, as to . . two counts, but overruled as to the third; and in that condition . . the indictment was pending" when they were brought before a circuit judge [627] "by writ of *habeas corpus* sued out by their owner. . . [628] the judge dismissed the writ . . and remanded the prisoners to custody," Affirmed.

*Bob Minor (a slave) v. State,* 36 Miss. 630, April 1859. [631] "This cause was . . commenced under the Act of February, 1854 (Session Acts, 126), and tried before the justices and slaveholders, . . The plaintiff in error was convicted . . of grand larceny, and an appeal was prosecuted . . to the Circuit Court, under the provisions of the eleventh section . . again found guilty . . new trial . . refused. . . a writ of error is now prosecuted *here,*"

Dismissed, for want of jurisdiction. [636] "otherwise, the whole . . object of our laws providing this new and inferior tribunal, would not only be defeated, but the very delay they were intended to prevent, would be thereby created."

*Simon (a slave) v. State,* 36 Miss. 636, April 1859. See same *v.* same, p. 357, *supra.* On the new trial a witness stated [637] "that the prisoner was brought to the jail on the 24th . . and was delivered to him as jailor, and that he . . chained him; 'that, on several occasions, when persons . . would go into the jail, they would ask the prisoner, "What he was there for?" His answers were, "that he was there for killing Norvall [*sic*] . . about some misunderstanding about molasses;"' "that no caution was given . . that witness was generally present . . [638] The prisoner was convicted, and he sued out this writ of error."

Judgment affirmed: [639] "The record showing that this testimony went to the jury after a preliminary examination as to the circumstances of the confessions, by direction of the court, there can be no pretence that *the court was not satisfied* that the confessions [made in jail] were perfectly voluntary. . . no *caution* is necessary when the confessions are made to persons having no judicial authority," [Harris, J.]

*Allen v. Miles,* 36 Miss. 640, April 1859. [641] "To labor of three slaves . . from April, 1854, to January, 1855, $300 00 . . To labor of three women and three boys, in making cotton . . $600 00"

*Heirn, Executor, v. Bridault and Wife,* 37 Miss. 209, April 1859. Petition against the appellant to set aside Hall's will, dated 1854, by which he gave all his estate to Marcelette Marceau, widow Chatteau, [220] "of Pass Christian, . . Mississippi," [211] "and to recover the property . . for Mrs. Bridault . . [212] Combe, a witness for petitioner, . . stated . . [213] Hall and wife both recognized her as their child; . . widow Chatteau . . was a bright mulatto, and witness understood her to be a free woman of color; her son is still darker; her hair is kinky. She acts as mistress of Hall's house, . . She wanted witness to call her Mrs. Hall, which he refused to do, and this made her very mad. . . [214] Hall told witness that he was obliged to pass Mrs. Chatteau off as a white woman, in order that she might be allowed to stay at Pass Christian; . . [217] The defendant read the deposition of the following witnesses, . . [219] parish priest . . [states that Hall] told him he had been married to a French woman, who was dead, and that he never had any children by her. . . perceived . . painting . . asked whose portrait it was, and Hall replied . . a scamp of an Irish orphan girl . . he adopted . . Hall told witness he had been married to Madame Chatteau by Father Moise of the St. Louis Cathedral, New Orleans. . . [220] [Witnesses] stated that 'Mrs. Bridault had a family resemblance of Hall which was rather remarkable.' . . decree in favor of the petitioners".

Affirmed: I. [221] "Does the proof show that the appellee is the child and heir of the decedent? . . a case of conflicting testimony, in which the preponderance of evidence cannot be said to be greatly in

favor of appellant. . . therefore . . settled, that petitioner is the child" II. "Is a 'free woman of color' capable of taking property by devise in this State? . . [224] the negro or African race have no *status,* civil or political, in this country, save such as each State may choose to confer . . because this race are *alien strangers,* of an inferior class, incapable of comity, . . [232] Under our statutes, they are divided into three classes: 1st. Slaves, . . 2d. Free negroes, . . 3d. Mulattoes, . . embraced in the 2d article of the 1st sect. of the [New] Code, chap. 33, or such as are descended from *free white mothers,* but have one-fourth or more of negro blood. . . It is . . the policy of this State to interdict all intercourse, commerce, and comity with [alien free negroes or mulattoes] . . and by law, expressly provided,[1] we enforce the strictest doctrines of the ancient law, as applicable to *alien enemies,* except as to life or limb, against them. We enslave them for life, if they dare to set foot on our soil, and omit to leave on notice in ten days. And this not upon the principle . . of . . inhumanity . . but on the great principles of self-preservation, . . the African can neither take nor hold property in this State . . except those free persons of color who are residing here *permissi.*" [Harris, J.] Smith, C. J., concurred. Handy, J., dissented: I. [233] "there is a . . very decided preponderance of evidence showing that she was not the daughter . . [II.] [234] It does not clearly appear whether Marcelette . . is now a resident of this State or of Louisiana. . . She is alleged to have been a citizen of Louisiana, and the presumption is, that her rights . . as such continue. The question, then, . . is the same as that decided in Shaw *v.* Brown;" [2]

*Mitchell v. Wells,* 37 Miss. 235, April 1859. [236] "The appellee filed her bill . . as a citizen and resident . . of Ohio, against the appellant, formerly executor of . . Wells, . . Appellee alleges that she is a free woman of color, and daughter of testator, who died in . . [237] Mississippi, in . . 1848. . . bequeathed to complainant a watch, bed, and three thousand dollars, . . That the defendant retains the legacy on the pretext that complainant is a slave. That in 1846 her father took her to Ohio, and domiciliated her there, and ever afterwards . . treated her as a free woman; . . The bill admits that Samuel Watts, her reputed husband, is a slave, and that she lived with him, but denies that she was legally married to him. . . The answer . . charges . . that complainant remained in Ohio only about eighteen months, and did . . return and reside . . with her former owner, and as a servant . . until September, 1848, when she married Watts, a barber, then residing in Jackson . . a free man, . . lived with him until . . 1851, when she went to Cincinnati; . . [238] the cause . . was determined in favor of complainant."

Decree reversed and bill dismissed, at the cost of defendant in error. Harris, J., delivered the opinion of the court: "while the policy of the State seems to me, especially since 1842, to have been declared . . with greatly increased stringency, the judicial department has adhered to the

[1] New Code, art. 80, sect. 12.
[2] P. 354, *supra.*

case of Ross *v.* Vertner,[1] . . which was virtually disapproved, as an exposition of the policy of this State, at the next succeeding legislature.[2] . . [244] The decision in [Wade *v.* American Colonization Society[3]] . . constitutes the crowning error of these misconceptions of our public policy, . . [245] In Lusk *v.* Lewis,[4] . . Wade *v.* The American Colonization Society, may . . be considered as expressly overruled. . . [252] Mississippi came into the Union . . *with this institution,* . . protected . . by the express provisions of . . ['our Federal'] Constitution . . Her climate, soil, and productions . . *require slave labor.* . . [253] Nor is it believed that the revised Constitution of 1832 . . can be regarded (as indicated in Ross *v.* Vertner) as evidence that our policy is limited *to the prevention of the increase of free negroes in this State,* . . about the period of the adoption . . various causes combined to precipitate upon . . Georgia, Alabama, and Mississippi especially, a most unusual number of slaves from the border States. The idea became prevalent that the abolition feeling, which had just before . . revolutionized the Old World, and had inaugurated its . . mad career in the Northern States . . was inducing Virginia, Maryland, and other States, to dispose of their negroes, with a view to follow the example of some of their neighbors. . . Mississippi intended . . to compel these border States to stand firm by the institution . . [254] by cutting off their market. . . It was feared that if these border States were permitted to sell us their slaves, . . *they too* would unite in the wild fanaticism of the day, and render the institution . . thus reduced to a few Southern States, an easy prey to its wicked spirit. In addition . . high tariffs, . . the low price of cotton, and the consequent depression in the value of slave labor . . inclined them to sell, at tempting rates, . . It . . passed only after a long struggle . . by a majority of nine votes. . . 1837 . . when speculation in land and negroes had covered the State with debt . . the legislature . . passed the act referred to in Ross *v.* Vertner,[5] and there relied on . . as evidence that it is not the policy of Mississippi to prevent emancipation. . . [255] At the earliest period, after the announcement of this opinion, . . and in express reference to [it,] . . the legislature declared *anew* the public policy, by the Act of 26th February, 1842, . . But to leave no misconception . . February, 1857, the legislature declared . . [256] 'Nor shall it be lawful for any . . person . . to remove any slave . . with the intent to emancipate'[6] . . [262] The State of Ohio . . afflicted with a *negro-mania,* which inclines her to *descend* . . [263] in the scale of humanity, chooses to take to her embrace, as citizens, the neglected race, who . . were regarded, at the formation of our government, as an inferior caste, . . comity is terminated by Ohio, in the very act of degrading herself . . by the offensive association, . . [264] Suppose that Ohio . . should . . claim to confer citizenship on the chimpanzee or the ourang-outang . .

[1] P. 290, *supra.*
[2] Act of 1842.
[4] P. 345, *supra.*
[5] The act of 1837.
[6] Code 236, art. 9.

are we to be told that 'comity' will require . . States not thus demented, to forget their own policy . . and lower their own citizens . . Ohio . . can neither confer freedom on a Mississippi slave, nor the right to acquire, hold, sue for, nor enjoy property in Mississippi."

Handy, J., delivered a dissenting opinion of twenty-four pages: [276] "*in every case in which the question has been presented to this court, emancipations by deed, or other legal act, made in other States, bona fide, and not for the purpose of evading our laws, by the return of the slave here, have been held to be valid, and not in contravention of our laws and policy*; and . . it has been invariably held, that free persons of color, so manumitted . . might sue . . in our courts. . . [285] according to the doctrine here asserted by the majority of the court, . . the inhabitant of one of the States has . . less means of redress of a wrong against a citizen of another of the States, than the subject of Great Britain, France or Russia would have, . . such a theory . . renders that which was designed 'to form a more perfect union,' . . the instrument of strife, . . It proves the union formed by the Constitution to be a short-sighted and miserable failure. . . [286] Whilst the confederacy continues, we cannot justify ourselves . . in violating its . . principles, because other States have . . been false to their . . obligations. It may justify us in dissolving the compact, but not in violating our obligations under it whilst it continues."

*Alfred (a slave) v. State,* 37 Miss. 296, October 1859. "indicted . . for the murder of . . Coleman, . . [297] Stubbs was tendered by the State . . as a juror. . . asked, 'Whether . . the rumors he had heard had made such an impression . . in his mind . . that it would require testimony . . different from the rumors . . to remove such impression?' . . he answered, 'That it would' . . the prisoner challenged . . for cause, . . disallowed . . [298] On the trial, Dr. James testified . . 'That . . February . . about dark, he, . . with two other gentlemen, . . attracted by a noise . . went from Fondren's house to his stable lot, . . saw the prisoner standing near the gate, . . asked him "What was the matter." The prisoner replied, "I have killed the overseer." ' . . [299] The prisoner introduced as a witness in his behalf a slave named Charlotte, who stated that she was the wife of prisoner, and [also] belonged to . . Fondren. Prisoner's counsel then proposed to prove, by Charlotte, that about nine or ten o'clock in the morning . . Coleman 'had forced her (witness) to submit to sexual intercourse with him; and that she had communicated that fact to the prisoner before the killing. The district attorney objected . . sustained' . . The prisoner was convicted, and sentenced to be hung, and therefore sued out this writ of error." Trimble, counsel for plaintiff in error: [307] "the humanity of our law . . regards with as much tenderness the excesses of outraged conjugal affections in the negro as in the white man. The servile condition . . has not deprived him of his social or moral instincts, and he is as much entitled to the protection of the laws, when acting under their influence, as if he were free . . and the white man degrades the species to which he belongs in denying them to him."

[316] "For the error in the rejection of the challenge of the juror Stubbs, let the judgment be reversed, cause remanded, and a *venire de novo* awarded." "there was no error . . in the rejection of the testimony of Charlotte." [Harris, J.]

*George (a slave) v. State,* 37 Miss. 316, October 1859. [317] "indicted . . for a rape on a female slave [under ten years of age]. He moved to quash the indictment, which was refused. . . convicted, and . . sentenced . . to be hung."

Judgment [320] "reversed, and indictment quashed, and defendant discharged." "This indictment cannot be sustained, either at common law or under our statutes. It charges no offence known to either system." "With the exception of [Fields *v.* State,[1] in Tennessee,] . . [two] cases [2] . . in our State, and one or two very early cases in North Carolina,[3] founded mainly on the unmeaning twaddle, in which some human judges and law writers have indulged, as to the influence of the 'natural law,' 'civilization and Christian enlightenment,' in amending, *proprio vigore,* the rigor of the common law, and on a supposed analogy between villanage . . and slavery . . the cases and text-writers are uniform in declaring that slavery, as it exists in this country, was unknown to the common law . . and hence its provisions are inapplicable . . there is no act ['of our legislation on this subject'] [4] which embraces either the attempted or actual commission of a rape by a slave on a female slave. . . Masters and slaves cannot be governed by the same common system of laws: so different are their positions, rights, and duties." [Harris, J.]

*Jeff (a slave) v. State,* 37 Miss. 321, October 1859. "indicted . . for an assault and battery on . . Ballentine, a free white person, with intent to kill, and in resistance of legal chastisement. . . Ballentine . . testified . . I had cause to correct the prisoner, . . told him I wanted to have some talk with him. He replied that he had done nothing to be whipped for. I caught him by the collar of the coat, and he scuffled with me, and I struck him on the shoulders with a walking cane . . a good sized stick, and I could probably have killed him with it by striking him on the head, if I had desired . . [322] The prisoner put his hand in his pocket and I drew a pistol, and told him I would kill him if he drew his knife. . . I told him I would whip him or die. . . my wife came running out . . and I asked her to tie him with a rope . . A moment after he had his [jack-knife] drawn and commenced cutting me. . . two slight wounds . . I then let him go, and he ran off. . . the blade was about three or three and one-half inches long, and about three-fourths of an inch wide. . . 'I am Dr. Laird's son-in-law; and the plantation . . belongs to [him.] . . Dr. Laird lives in Memphis, . . and I have full

[1] Vol. II. of this series, p. 494.
[2] State *v.* Jones, p. 283, and Kelly and Little *v.* State, p. 301, *supra.*
[3] State *v.* Tackett (vol. II. of this series, p. 39) and State *v.* Reed (*ibid.*, p. 44).
[4] "Note.—By Ch. 62, p. 102, of the Session Acts of 1860, the actual or attempted commission of a rape by a negro or mulatto on a female negro or mulatto, under twelve years of age, is punishable with death or whipping, as the jury may decide."

management . . over . . negroes which are near by to my house. . . The prisoner . . was sent from Memphis to dig a cistern, and paint a barn' " [325] " The first charge given for the State . . substantially instructs . . that if [the prisoner] . . 'made an assault . . [326] upon his master or employer, with a deadly weapon, and not in necessary self-defence, . . they will find him guilty,' . . whether he intended to kill him or not," He excepted, and on conviction a new trial was refused.

Judgment reversed, cause remanded, and a *venire de novo* awarded: the instruction excluded the plaintiff in error " from the benefit of all testimony tending to rebut the legal presumption arising from the use of a deadly weapon." [Harris, J.] See same *v.* same, p. 374, *infra.*

*Wesley (a slave) v. State,* 37 Miss. 327, October 1859. " indicted for the murder of . . [328] Ford. . . the widow . . proved that her husband had been overseeing for Walker, the owner of the prisoner, for about one month . . that about sunrise, on Sunday morning . . the deceased brought a negro man (who is admitted to be the prisoner) to the . . smoke-house, and called for the key, and for a strap with which he usually tied negroes. . . tied the prisoner and put him in . . locked the door, . . In a very short time, not exceeding five minutes, witness wanted to get out some meat . . deceased opened the door, and as it opened . . she heard deceased fall over some cotton baskets that were near the door. The prisoner sprang so rapidly past her . . that she could not identify him. . . She told some of the negroes to go for a doctor, but they said they did not know where the doctor lived. . . He had a very bad wound on . . his head, and died that day . . It was in proof that the prisoner . . ran to his owner's house . . and not finding his owner . . left, and soon afterwards, being hunted with dogs, he went again to the owner's house. . . The prisoner, soon after his arrest, stated that he did not know with what instrument he struck the blow, but thought it was a piece of timber 'like a hoe-helve.' It was also in proof . . [329] by three slaves, that just immediately preceding . . the deceased had conceived that the prisoner had not executed properly a command to curry a mule, had become very much enraged, and had beaten with his fist, and kicked the prisoner with great violence, and . . told [him] . . 'that he would know how to curry a mule when he had done with him.' The prisoner's character was proven to be that of an obedient and submissive slave. The general character of the deceased was also in evidence. He was proven to be cruel and violent in his treatment of slaves; and one witness, who . . had discharged him for cruelty to his slaves, stated that his violence to slaves seemed to be a constitutional infirmity." [337] " Walker . . proved . . that when he first applied to him for the situation, he declined to employ him, knowing him to be a violent, severe, and cruel man; being unable to find another to suit him, he afterwards sent for defendant [deceased], told him he should have to employ him, but was afraid of his violence and severity; defendant [deceased] said he thought he had now learned to govern himself measurably." [346] " the prisoner offered to prove the gen-

eral management of the deceased on the plantation where he was the overseer, 'with reference to violence and cruelty;' and (also) to prove 'specific acts of unmerciful severity' . . excluded" [329] "The prisoner was convicted, and upon his motion for a new trial being overruled, he excepted and sued out this writ of error." Counsel for the plaintiff in error: "That a knowledge of the violent . . character of the deceased may be adduced in behalf of a white man, by whom the death was occasioned, needs no authority. . . Why should it not apply to a negro? He is permitted to strike in defence . . in protection of his life or limb, . . [330] He knows he must yield to great personal suffering, ere he do aught but supplicate. He feels that, at some point, he may strike to save life or limb; and when . . he sees . . that . . preparations for deadlier assaults are made . . his fear . . fills his mind . . what more reasonable ground could exist for his believing that his life or limb was in danger, than a knowledge of the 'violence and cruelty' of the man by whom he was then threatened, 'in his management' of his fellow-slaves . . [331] The error was not cured by admitting testimony of the 'general character of the deceased as an overseer.' The prisoner may never have heard of his 'general character as an overseer.'" Wharton, attorney general: [338] "greater latitude was allowed than the law authorized, in permitting the witness to speak of the known cruelty . . before the question which was objected to was propounded; but as this . . was not controverted by the State, I do not stop to consider it. . . [340] general character . . upon a particular plantation . . it is paradoxical, in legal sense, to speak of . . as general character."

Judgment affirmed: [348] "that a slave . . may . . justify . . upon the ground that . . from the known . . cruel character of the deceased in the management of slaves, and from . . particular acts of great cruelty upon other slaves . . he . . did believe, that some great bodily harm would be inflicted upon him, or that his life would be taken . . is utterly untenable. . . [Such] a rule . . would produce the most disastrous consequences. . . [349] the slave population . . [would] be incited to insubordination and murder, . . But the principle . . when applied to homicides committed by white persons, is equally untenable." [Smith, C. J.]

*Newcomb v. State,* 37 Miss. 383, October 1859. [386] "witness started . . to tell the negroes cutting timber it was dinner-time, . . [388] the deceased . . had some conversation with the negro, about the negroes whipping his teams,"

*Montague v. Gaddis,* 37 Miss. 453, October 1859. [455] "that he had a valuable plantation in Louisiana, where he had removed some of his hands, and that he intended to remove all his field hands there, but did not remove himself nor his household servants; . . that he did not then intend to remove . . [456] seventeen slaves, valuable house-servants and mechanics,"

*Dunlap v. Hearn,* 37 Miss. 471, October 1859. [472] "a negro boy . . the property of the plaintiff [Mrs. Dunlap's father], was placed in her

possession, . . remained . . about three years, when he ran away, and upon being captured by the efforts of the plaintiff, the negro girl was sent . . and the boy was retained by plaintiff. . . his wife . . stated, that . . the plaintiff said . . ' They have ruined one, and I am willing to have another ruined.' . . and that the [son-in-law] . . was a cruel master, and had ruined the slave."

*Cheairs v. Smith,* 37 Miss. 646, October 1859. Will of William H. Cheairs: [662] " All the residue . . I give . . to my nephew Lucius . . on the . . trusts following, to wit: I will that my mulatto boy Pillow and girl Mary are to be free, and are to have five hundred dollars each when they arrive at the age of eighteen; . . to remain under the care of my brother Calvin until Lucius shall be of age; that they are never to leave the family, nor be subject to the control of overseers; and that Mary be made a seamstress, and Pillow a barber. . . that the offspring of . . Mary shall be free, and that . . Lucius shall take care of them during his lifetime. Now, if . . Lucius and his father shall do . . as herein willed . . the gift to him of my estate . . to be . . absolute; but should they fail . . the property . . shall be equally divided between the heirs of Lemuel Smith and David B. Cheairs, they paying to . . Pillow and Mary the five hundred dollars . . Believing my right to dispose of my property as best suits me, to be absolute, I affirm that no law or equity shall set aside this my last will and testament;" [646] " The testator made his will, and died, after the 1st of November, 1857, . . when the Revised Code [New Code] took effect; . . ' It shall not be lawful . . by will, deed, or other conveyance . . to make any disposition of any slave . . with the intent to emancipate . . [647] But all such wills . . intended to accomplish the emancipation of any slave . . after the death of the owner . . shall be . . held entirely . . void,' " [1] [662] " Mary . . is about thirteen . . and . . Pillow about eleven . . and . . Lucius, about fourteen . . the residuum of the estate consisted of seven hundred acres . . and thirty-two slaves, exclusive of Mary and Pillow, and horses, . . etc., . . [663] One of . . [testator's] brothers and the sister filed the petition . . alleging that the residuary clause . . is illegal . . the court sustained the petitioner[s] and decreed distribution of the slaves . . including . . Mary and Pillow;"

Held: [667] " the decree holding the entire residuary clause . . to be void, is erroneous, except so far as it emancipates . . Mary and Pillow." [663] " It is admitted . . that the bequest of emancipation . . is contrary to the statute . . [664] There is nothing in it indicating an intention . . to do more than to frustrate his attempt at emancipation. . . [665] their freedom did not depend on the act of Lucius, . . not . . a condition precedent to the vesting of the estate in him. . . [667] the legatee is something more than a mere trustee . . In such a case, the condition being void, . . the legatee . . takes the estate absolutely." [2] [Handy, J.]

*Williams v. Brickell,* 37 Miss. 682, October 1859. [683] " Dr. A. B. Cabaniss . . testified . . The yellow fever was then prevailing . . Moses

[1] New Code 236, sect. 3, art. 9.
[2] Lusk v. Lewis, p. 345, *supra.*

belonged to Mrs. Saunders, and he attended said negro at her request, and so did Dr. Hubbard."

*Cason v. Hubbard,* 38 Miss. 35, October 1859. [37] " 1855, he purchased . . Charles . . for . . $1100,"

*Fairly v. Fairly,* 38 Miss. 280, October 1859. [282] " Margaret . . resided in North Carolina, . . [283] gave . . money to Archibald Fairly, who went to Virginia to buy a negro with it, for her; . . after . . return . . he stated, that he had bought a negro for Margaret, and he had run away; he sold him and bought another, and he also ran away, and he therefore sold him, and with the proceeds he bought the girl Nancy."

*Kelly v. Miller,* 39 Miss. 17, February 1860. [19] " Miller . . principal legatee . . under the will [of Kelly] . . was at his house in the night, visiting as a physician some sick young negroes; Kelly said they were of much trouble, and would never be of much service to him, . . Kelly told witness . . that his boy Bill was so devilish he could not manage him, . . his influence was bad, and insisted on witness buying him. Witness asked . . what he would take. Kelly said $900. No trade was made, but . . Kelly sent Bill to witness. . . [20] A few days before Kelly died . . Kelly told him . . that he wanted to give witness his property; . . did not want his negroes scattered, and his relatives would scatter them. . . opposed to his brother having the negroes; that he was a hard master and a dissipated man. . . [21] Bill was worth . . $1,200, and he would not have bought him but for the fact he was a bargain. . . [28] Williams . . has often heard Kelly speak about witches and conjurers. Kelly said that the conjurers would not let him go to his bottom-land. . . would not let him go to his horse-lot. . . when he could not go into his bottom-fields the negroes managed it as they pleased. . . [29] had not seen the inside of his crib for four years; that he was conjured so he could not do it. . . his horses were conjured so they would not plow. . . [31] wanted to keep his negroes together. Said he would set them free if he could; . . [32] said his gun was conjured. . . [34] When the negroes cut up his cotton, or anything went wrong with him, he laid it to the conjurers. . . When his negroes stole any thing or ran away, he said it was the witches. . . When his negroes misbehaved, he said they were not to blame; that the conjurers made them do it." Letter written by Kelly in 1850: [35] " Them conjuring creatures have got me at such a pass that I can't go in my plantation. . . They make my hogs eat up my chickens and turkeys, and sometimes the sows eat up all their pigs, and they bewitch and conjur nearly everybody I have any thing to do with. They have conjured up such a condition for Douglas that I can't keep him at home. Right or rong, he could see no peace, and one of my neighbors was going to Texas, and I gave him his choice to go with him, and he went. Two fellows had whiped him nearly to death and he made a start to the North, and got in Oxford jail. . . One of the fellows who whiped him has since been shot, and the other broke jail and is in the Mississippi bottom. . . [37] Emma has eleven children, seven of them

in the field. The girls about a month before they had their first children, that conjuring devil gave them a fall, and each was about a month like to die . . The youngest has another about a year old as likely as I ever saw, and will have another in a few days. . . [38] I directed to put Douglas to blacksmithing or bricklaying, . . Douglas is strong, active and intelligent. . . I came back from Georgia . . and gat my head a little out of their conjur bag; . . [39] when I got home that night from Howelton. She ['the plague'] had her conjuration with the negroes. I had not heard one call another a liar in a year, and as good a boy as I ever saw was cursing and swearing. . . One of the tavern boys . . had just such a fit. . . I told [his master] . . he must break him or sell him. If it was to do over again I should tell him to give them conjuring devils their dues, and then the negroes would behave themselves. . . [40] We have a man in Granada teaching conjur school. They say he can make a man puke at his pleasure." Nulter testified: [45] "On one occasion a negro woman was plowing; she stopped and rolled up her eyes, and pretended to be bewitched. Witness . . punished the . . woman, and Kelly ran off, saying, the witches would kill us all. . . Kelly was frequently imposed on in this way. . . [48] witness saw . . a medical almanac and a New York paper, that witness supposed belonged to Kelly's negro man, Douglass [*sic*], as his name was on them. . . [51] Witness observed that he was always secretly watched and listened to, when visiting Kelly in his sickness, by Kelly's negroes." Kelly's will was sustained. Affirmed.

*Garnett, Administrator, v. Cowles,* 39 Miss. 60, February 1860. Petition [61] "filed by Mrs. Cowles, the heir of Samuel Hurd, for the purpose of procuring distribution to be made to her of all" Hurd's slaves. Letter from Hurd to R. S. Finley, dated April 28, 1846, and published by Finley in the *Liberia Advocate*: "I received the third number of your colonization paper. I enclose $1.00 for two copies of the first volume . . I wish my slaves (forty or fifty in number) to be sent to Africa in a few years. Now they are working to pay a debt, while I trust I am preparing them for liberty. By the law of Mississippi no slaves can be emancipated by will under any circumstances. This I presume is not generally known among the people, but ought to be widely published. In my will I direct my executor to sell all my slaves, as well as other property, and to pay the proceeds to the trustees of the American Colonization Society. I wish the trustees to be purchasers of all that are suitable to go to Liberia, and the money arising from the remainder and other property to go to their benefit. . . *in connection with the other trustees and the executor* do what seems best. My wife willed hers to Liberia . . [62] but if my life is cut short her debts will take most of them. Some of hers are more suitable for Liberia than some of mine. . . therefore . . buy such when sold, and let a corresponding number of mine be sold, such as are less fit for freedom. Most of mine came by my wife. They are married together in families, and I desire the families to remain together. . . I have long loved the cause of Africa, and may yet

live to promote it through those of her sons committed to my care. But my health seems exceedingly precarious, and for years I have been debarred by it from all active duties of the ministry. Your brother in Christ," Hurd's will, dated May 31, 1846: [65] "12. 'All my property . . not otherwise disposed of in my will, I direct my executor to sell, and to pay the proceeds to H. H. Means, Esq., Memphis, Rev. J. H. Gray, Memphis, and Rev. R. S. Finley, St. Louis, in trust, for the . . benefit of the American Colonization Society. . . The property which might fall to my heirs out of the separate estate of Mary Hurd, deceased, . . I . . direct my executor to dispose of according to this clause. 13. While my slaves remain unsold I wish them to have the benefit of religious instruction by catechism, and by intelligent and sound preaching—Presbyterian if practicable. For these purposes my executor is authorized to apply out of the proceeds of their labor annually . . two thousand dollars. 14. . . I desire him to purchase any negroes, that may be sold out of the estate of Mary Hurd, that he may think proper, so as to keep families together. 15. I earnestly request my executor to cause the administration of the government and discipline of my slaves to be conducted upon principles of humanity, discretion and Christianity; the virtuous to be encouraged, and the vicious corrected or removed from corrupting the rest. . . 18. I request T. N. Waul, Esq., to execute this my last will,' . . codicil [June 7, 1846] . . 'I desire my nephew . . to retain the management of my branch farm, to catechise all my negroes on the Sabbath, . . [66] I make my executor my residuary legatee, intending he shall take all my property . . that by invalid disposition, or in any other manner, shall come into the residuum'" [64] "last clause of his codicil, dated June 23, 1846, . . 'the $1,000 intended for my sister [Polly Cowles] is to draw interest at six per cent., but may not be paid till the negroes are sold.'" "The preamble to Hurd's will states that it 'was drawn up by himself the last week in April, and rewritten the last week in May, 1846.' The will and codicil were probated . . September, 1846." [62] "The answer of . . Waul . . 'Denies most positively that there was any secret agreement . . that he . . would emancipate the slaves and remove them to Africa. . . [63] believes . . that the . . testator . . fearing . . some obstacle . . resolved, as a secondary object, to place said slaves with one whom he believed would . . [be] a just and humane master. . . Admits his resignation of the office . . of executor;' . . On the trial . . the following admission was made . . 'that General T. N. Waul, about . . 1848, . . at a public sale made by him at the residence of the testator, made a public speech . . in which he said, "That any person who charged that he . . [64] had claimed or ever would claim any interest . . in opposition to the American Colonization Society or its trustees, was a scoundrel and a liar."' . . [66] The court below decreed the slaves to Mrs. Cowles, . . the American Colonization Society, Garnett, the administrator . . with the will . . annexed, and Waul appealed." Counsel for appellees: [83] "No directions are given as to the mode . . of sale; the trustees might sell them singly in the slave mart at

Richmond, Charleston, or New Orleans—thus separating husband and wife, mother and infant, and consigning them to such associations, corrupting or otherwise, as fortune or fate might provide. . . [91] African slavery . . is the bond which binds scarce less than half the States in a sisterhood more close and intimate than the compact of Union, for their mutual protection and preservation; and the remainder in a league of offensive war against the States which tolerate and sustain it. It is our policy—our interest—that not one State should emancipate its slaves, and that more slave States should be admitted into the Union. . . Would this court hold valid a . . bequest to the Massachusetts Emigrant Aid Society—a corporation organized to expel slavery from the Territories of the Union? And if not, will it sustain a bequest to a society which . . seeks to emancipate slaves . . in the States themselves"

Judgment reversed and the cause remanded: I. [104] "under the Act of 1842 this will, so far as it attempts to constitute the American Colonization Society a legatee, is void. . . [II.] [108] We think there is nothing in . . [Waul's] declaration [of 1848] tending to show the purpose of Hurd or . . of Waul, before Hurd's death, . . to violate or evade the Act of 1842, . . [109] There is not a particle of evidence showing that Waul ever knew . . of the testator's design to make him executor or residuary legatee, until after the testator's death, . . he is entitled to the property in dispute . . the heir at law can take nothing" [Harris, J.]

*Cocke v. Board of Police,* 38 Miss. 340, April 1860. [341] "action . . to recover of the plaintiff in error $172 50, for failure to work on the public road with [his] twenty-three slaves, . . subject to road duty, five days,[1] . . [342] the overseer of the road . . gave personal notice to . . [Cocke's] overseer" Held: [344] "the overseer, and not the owner . . was liable to the forfeiture,"

*Otey v. McAfee,* 38 Miss. 348, April 1860. [349] "in 1848, the defendant [Otey] came from North Carolina . . with a lot of negroes for sale;"

*Still v. Corporation,* 38 Miss. 646, April 1860. [647] "1856, the testator came [from Mississippi] to . . Louisiana, bringing . . some slaves; he had rooms fitted up at the house of Mr. Irvine, and asked witness to rent a house for his negroes in the town."

*Matthews v. Sontheimer,* 39 Miss. 174, October 1860. [177] "Sontheimer . . sought the aid of . . Milly—a confidential servant of said Hugh, and promised her her freedom if she would induce her master to bequeath to him his slaves."

*Fondren v. Durfee,* 39 Miss. 324, October 1860. [327] "evidence tending to show . . that the slave . . was, at the time of the sale, not free from the effects of an attack of the scarlet fever which he had recently had . . and that, by exposure in travelling before the sale, the incipient stage of consumption, of which he subsequently died, supervened." [326]

[1] Rev. Code 174, art. 18.

" The witness [plaintiff] was asked ' whether or not the slave complained to him (his master) of being sick, and what the slave said . . upon that subject;' . . defendant objected, . . overruled, and the witness stated that the slave ' told him he was sick and had a pain in his chest.' "

Held: " the declarations . . must be regarded as *verbal acts,* and are hence free alike from the objection of being hearsay and of being the testimony of a slave." [Handy, J.]

*Mizell v. Sims,* 39 Miss. 331, October 1860. The vendor [331, headnote] " represented that the slave was not a runaway, but of good character, and was an ' A. No. 1 boy.' " [333] " that the plaintiff purchased . . but that, shortly afterwards, the slave ran away . . and . . became wholly lost to the plaintiff; averring that the slave was a vicious and worthless slave, and a habitual and dangerous runaway,"

*Lamar et al. v. Williams et al.,* 39 Miss. 342, October 1860. [343] "defendants, Lamar and Kersh, came to the house of . . Williams, plaintiffs' intestate, and stated . . that another slave had charged . . [Williams's] slave with harboring a runaway slave belonging to . . Lamar, and asked permission of Williams to carry his . . slave to a neighbor's house to confront the slave so charging . . Williams granted the permission . . and thereupon defendants carried the slave to a neighbor's and gave him a very severe whipping for the purpose of extorting . . information concerning the . . runaway . . in consequence of the whipping and of exposure he suffered in reaching home . . [he] was confined to his bed about seven weeks, and required the attendance of a nurse and medical assistance. No permanent injury was done to the slave. The physician's bill was one hundred and five dollars. . . verdict . . for two hundred and sixty-five dollars," Judgment thereon affirmed.

*Cocke v. Hannum,* 39 Miss. 423, October 1860. [432] " admitted, *when sober,* his carnal intercourse with slaves, and avowed his purpose to continue it, ' when he pleased.' "

*Smith v. Allen,* 39 Miss. 469, October 1860. [471] " Elijah was the property of . . Allen [[473] ' a preacher of the Methodist church '] . . when the conveyance was made by him to his wife . . he had raised him, owned him for years,"

*Oliver v. State,* 39 Miss. 526, October 1860. [527] " indicted . . for the murder of his slave John. . . It appears from the evidence that the deceased was a violent, turbulent, and rebellious slave, and that . . he with several other slaves was put to shelling corn . . that, in working . . corn-sheller, a stick, about five feet long, about two and a-half inches in diameter at the large end, and gradually tapering to the other, was used . . and that it was the business of . . Dick . . to use this stick, and that deceased was never allowed to use it on account of his awkwardness. . . [528] The witness [Bramel, the overseer,] . . heard . . [Oliver] say, in a quiet . . tone, ' Give up the stick;' and then in a short time . . violently, . . He saw deceased and accused struggling together for the posses-

sion . . The countenance of the deceased . . had a very vicious . . look. Very soon the accused succeeded in wresting the stick from . . deceased, and . . struck deceased . . on the head, and deceased . . almost immediately expired. . . The deceased had been guilty, on the day before, of an act of disobedience, which was usually punished . . by whipping. . . Testimony . . on behalf of the accused . . tended to show that he was subject to fits of mental derangement," [530] "In the first place the court allowed the State to prove by [two witnesses] . . that Bramel told them . . that Oliver had killed his negro; and when they asked why . . he replied, 'for nothing'—'that the negro . . did not seem to work fast enough, and Oliver told him to work faster and the negro didn't do it,' . . after . . argument to the jury . . [531] The court . . allowed the testimony . . to be withdrawn" The prisoner was convicted of manslaughter.

Judgment reversed, cause remanded, and a *venire de novo* awarded: [539] "If it is a case of resistance and rebellion, then the authority . . of the master is only to be limited by the *necessity* occasioned by *unlawful* resistance . . [540] the master may use just such force as may be requisite to reduce his slave to obedience, even to the death of the slave, if that become necessary to preserve the master's life, or to maintain his lawful authority." [Harris, J.]

*Cothran v. State,* 39 Miss. 541, October 1860. [542] "hired a . . negro boy . . for the year 1860 . . for . . one hundred and fifty-five dollars and twenty-five cents . . another person had offered one hundred and fifty-five dollars"

*Munford* (*a slave*) *v. State,* 39 Miss. 558, October 1860. [568] "indicted . . for the murder of . . Valentine Ashley, not alleging that he was a white man. . . verdict of guilty of *manslaughter* . . judgment was arrested, . . [569] indictment quashed, and the prisoner held to answer a new indictment. At the next term . . indicted for the manslaughter of Valentine Ashley, *a white man*; and in his defence . . relied on the plea of a former acquittal for the same offence, . . district attorney demurred, . . sustained, . . verdict of guilty, and judgment."

Affirmed: "no conviction of manslaughter could have been legal under the first indictment. . . the court could not know what judgment to pronounce. The manslaughter of a slave by a slave . . is not a capital offence, while the manslaughter of a white man by a slave is made capital by statute."

*George* (*a slave*) *v. State,* 39 Miss. 570, October 1860. [571] "The plaintiff in error . . and . . Josephine . . belonging to . . Jones, were jointly indicted for murdering, by poison, Lelia Virginia Jones, [[629] 'about twelve months old,'] . . a severance in the trial was granted; . . proven for the State, by . . Jones, that he had owned George about twelve years; that for the last two or three years he had been an invalid [[627] 'from rheumatism'] and had not worked in the field, but had done little jobs about the house and yard; that . . Sunday preceding the poisoning he had ordered his overseer to direct George to go to laying off corn-rows on

the next morning, but George, being sick next morning, was not put to work . . That . . 27th February, 1857, . . he . . and Mrs. Jones and Lelia Virginia Jones drank tea; . . taken violently ill . . [572] That Lelia Virginia . . died that night . . that George had always been a good and obedient and humane servant. That he had purchased . . Josephine but a few weeks previously, in New Orleans; that she seemed a good deal dissatisfied at the purchase." [627] " by crying and ' taking on considerably.' . . she said some of the negroes in the yard had stolen some of her jewelry. Witness and Josephine came from New Orleans on different boats. . . She did not move about at witness's house with the life and sprightliness she did in New Orleans. . . [628] Mrs. . . Jones, for the State, testified the breakfast was cooked badly . . [629] 27th February . . and she talked mildly to [Josephine] . . about it, who replied impudently . . She informed her husband . . and he whipped her. Shortly afterwards witness . . called [Josephine.] . . She did not reply, and turned her back . . and made a face at witness, and turned over a chair. Witness then procured the overseer to whip her. In an hour or two . . witness . . asked [her] . . to go with her to the smoke-house to get out dinner, which she did, and then seemed to be in a good humor." [572] " Rhodes . . testified that he was overseer . . George said . . that his master was tighter on him than ever before, and that witness was the cause of it. George did not refuse to lay off the corn-rows, but grumbled, not more than negroes who had been indulged a good deal usually do. . . [573] next morning—had fever . . never had been put to that work. George was a good negro for fidelity and obedience. . . Dixon . . testified that he was overseer . . in 1854 and 1855. In . . 1854 George told witness that he had found a vial with some white stuff in it, and asked witness what he should do with it. . . Dr. Mason . . had no doubt they had taken arsenic, . . The State then introduced Josephine, . . She . . testified . . That about a week before the poisoning she went, about nine or ten o'clock at night, to George's cabin to carry him his supper. George said . . that the overseer had ordered him to lay off corn-rows . . and that he could not do it; . . that it was master's day now, but it would be his after a while; that he was going to take care of number one. . . went to his chest, . . took out a vial . . and said it was ratsbane or strychnine . . and that he would have use for it after a while. Witness can read a little, and seeing a small part of a label . . thought she could make out ' arsenic.' George put it back . . [574] On the day of the poisoning George came into the kitchen a short time before dinner; . . reached up as if to put something on the . . joist of the kitchen, and said, ' Don't let anybody disturb this.' Witness had her back to George most of the time, . . After the poisoning, . . the overseer, arrested her and tied her to the bed in a room between the dining-room and parlor. . . George . . spoke to her through the broken pane [of the door], and asked her if she had removed the bottle . . She told him she . . knew nothing about it. She asked him if he had put anything into the dinner. He said, ' Not enough to hurt,' . . Shortly after he . . told her he had thrown the vial in the fire . . and said, ' For God's sake, say

nothing about it.' . . Before dinner . . she saw one of her handkerchiefs . . which seemed to have been used in straining starch. . . [575] washed it, and hung it . . to dry." [626] " when she was coming up from New Orleans on steamer . . she took from a girl on the boat some free-papers." [575] " Eliza,[1] a slave, testified for the defendant . . Josephine . . asked George for [the vial] . . and put it in her pocket. . . George and Josephine had been sleeping in the cabin about two weeks." [631] " were all that slept in the house." [576] " Maria, a slave, about eleven . . testified that on the day of the poisoning, shortly before dinner, she . . saw Josephine straining something through a handkerchief into the tea-pot;" On cross-examination her statements as to the time were contradictory. " Abram, a slave, . . stated . . [577] he . . heard two of the women . . asking her why she did it, and they kept on asking her . . she was crying. She said, ' For God's sake, people, hush. You keep more fuss about it than the white people. I'm not the first that's ever did a crime, by ten thousand.' . . Witness had been put there by the overseer to keep guard. Becky, a slave, . . testified: . . Josephine . . said, ' I did not tell uncle George to give me the strychnine; if you can all clear George by talking, do it.' Witness had been George's wife seven or eight years before; lived with him two or three years; had no children by him. Witness is the mother of witness Maria, who usually slept in the dwelling-house." [628] "George was without a wife at the time." [2] [577] " Dr. Mason . . found in the fire-place the fragments of a vial, . . [578] a little fused; . . [579] Professor . . Moore . . submitted the pieces [of Josephine's handkerchief] . . to chemical tests, . . found no . . trace of arsenic." Verdict of guilty. New trial refused. Judgment affirmed. See Josephine *v.* State, *infra.*

*Jeff (a slave) v. State,* 39 Miss. 593, October 1860. See same *v.* same, p. 363, *supra.* On the second trial, the prisoner was again found guilty. New trial refused. Judgment affirmed.

*Josephine (a slave) v. State,* 39 Miss. 613, October 1861. See George *v.* State p. 372, *supra.* [615] " At the May term, 1857, the plaintiff in error was indicted jointly with . . George . . At the November term, 1857, . . the plaintiff in error was tried separately, and the jury failing to agree were discharged, and a mistrial entered by the court five minutes before the expiration of the term . . [616] prescribed by law. At that term another indictment was found against both [[643] ' charging Josephine as principal '] . . upon which they were . . tried separately. A *nolle prosequi* was entered on the first indictment . . 1858. . . [625] At the April term, 1861, the defendant was put on her trial [3] . . [626] Jones . . testified . . [627] Witness whipped Josephine after breakfast . . She appeared vexed . . throwing her head around to her shoulder to see a cut made by the whipping. Witness don't know whether he whipped her with a cow-hide or switch. Cross-examined. . . Witness employed counsel to prose-

[1] See Josephine *v.* State, *infra.*
[2] Testimony of his owner.
[3] See evidence in George *v.* State, p. 372, *supra.*

cute defendant—*viz.,* Gov. F. and Messrs. B. and S. [Brooke and Smedes]— and to defend George. Witness's wife treated Josephine kindly. Defendant never disobeyed witness. . . [628] Witness . . owned . . Elsey . . since 1838. . . had been witness's cook, and had been turned out into the field but a short time before 27th February, 1857. Elsey was mother of witness's slave Lethe, who was mother of a mulatto child about eighteen months old on 27th February, 1857. . . the whipping was not severe. Witness was married to his present wife . . in 1855. Witness was asked . . 'Did you, shortly after . . have . . Elsey . . tied, and so kept for several days, upon a charge made by you that she had poisoned your first wife, and that Elsey had said . . "I have put my first mistress under the ground, and will soon put the new one there;" . . deliberating whether or not you should deliver [her] . . to the officers of the law for prosecution?' 'Have you . . for some years been in the habit of sexual intercourse with . . Lethe . . and are you the father of her mulatto child?' 'Have you . . for some time been in the habit of sexual intercourse with . . Eliza,' . . 'Did you, in New Orleans, and on the afternoon of the day before . . you whipped defendant . . have sexual intercourse with her?' . . To which . . questions the State objected. . . sustained . . defendant excepted. Mrs. . . Jones . . testified [1] . . [629] Cross-examined. Mary (a slave) was sick . . Witness waited on her; . . Elsey and Lethe were planting potatoes with the other negroes. Witness gave prisoner five new dresses—four of calico and one of lawn. . . [630] The admissions made by defendant to [Dr. Mason] . . were excluded because . . procured upon his assurance that, if she would tell all she knew . . witness would get her off on a steamboat; . . Eliza, (a slave,) for the State. . . George was looking in his chest for tobacco and took out a vial, . . He said it was ratsbane or strychnine, or something that would kill rats, and that he had no use for it. Prisoner . . put it in her pocket, . . [631] George . . jointly indicted with defendant and under sentence of death, testified for the State, . . Josephine took [the vial.] . . The night before the poisoning the witness . . heard Josephine and Charles talking . . outside of his house, about how they would get off. . . Charles said he did not know how to fix the papers, and Josephine said she would have them fixed, and they would get a skiff and go to Napoleon or go up the river. . . When the lamentation was going on . . [632] defendant . . said, 'Charles, now I have ruined myself;' and he said, 'Yonder's the overseer,' . . Raney, . . on cross-examination, . . stated that the remark made by prisoner [2] . . was . . [633] '*Even* if I had done it, I am not the first one' . . Witness . . was the wife of . . Abram, and on the day of the poisoning she was in the field ploughing, the trash-gang picking up corn-stalks. The field-hands were not allowed to go about the kitchen. . . Defendant . . proved by . . Rogers that he had been acquainted with her many years in Paducah, Kentucky; that she had been nurse in the families of witness's brother-in-law and father-in-law for some years,

[1] *Ibid.*
[2] P. 374, *supra.*

and that her character for kindness, humanity, and amiability was good. . . Charles . . denied the conversation testified to by George as having taken place . . [634] the night before . . and also on the day of the poisoning . . [635] the jury were charged . . that if they were satisfied . . that the said murder was committed by . . [636] George as principal and defendant as accessary before the fact, they should convict. . . [640] The verdict was, 'Guilty as charged in the indictment.' . . [641] The court . . pronounced judgment."

Judgment reversed and cause remanded for a new trial: I. [647] "By the law in force at the time . . she was not subject to conviction as an accessary before the fact, upon the indictment charging her only as principal, . . [II.] [649] With respect to question as to . . [Jones's] intercourse with the prisoner, . . it is insisted, in behalf of the plaintiff in error, that the testimony sought . . was relevant . . and tended to show that if the witness was in the habit of sexual intercourse with her . . she was not discontented with her condition and could have had no malice . . [650] we think that the question . . should have been allowed by the court," [Handy, J.]

*Frank* (*a slave*) *v. State,* 39 Miss. 705, October 1861. [706] "indicted for burglary. . . Morgan . . testified that . . a day or two after his house had been entered . . he found prisoner in the calaboose . . In the presence of the witness and several others prisoner confessed . . [707] that the confession was not obtained by any inducement . . 'but that they were whipping another negro in the calaboose-yard for matters connected with the offence of prisoner.' . . The tracks appeared to have been made by one shoe with a heel and another without . . one of [prisoner's] . . had a heel and one was without" Verdict of guilty.

Judgment thereon affirmed: [711] "to destroy the force of the prisoner's confession . . it would have to appear that the circumstances were such as to put the prisoner in such terror . . as plainly to destroy his free volition," [Handy, J.]

*Caleb* (*a slave*) *v. State,* 39 Miss. 721, October 1861. [722] "indictment . . for the murder of . . Moore . . overseer of . . William Kidd" "The prisoner had, on a former trial, been convicted, and a new trial had been granted . . On the second trial the proof was . . Moore . . resided on his employer's plantation . . there being no white person but him . . The residence and negro quarter . . were all in the same enclosure, and were distant from the residence and quarter of . . Vaughan about six hundred yards, and from the residence of A. Kidd, a son of William Kidd, about one-half mile. There were nine negro men . . besides women and children. Moore had, during his employment, had occasion to correct all . . except the prisoner and two others. . . [723] On Friday night . . Moore . . was last seen . . in his house smoking . . On the next morning . . the door [was] open, and the bed . . undisturbed, . . Moore kept . . the key to the crib and mule-lot, and hence it was impossible for the slaves to go to work . . (it being ploughing season) without getting

the key. . . many . . including the prisoner, commenced looking for tracks . . Not finding any, the prisoner [[733] ' foreman on the plantation '] went to A. Kidd's . . and said to him ' that the shepherd is gone and we are scattered.' . . On Sunday about thirty of the neighbors continued the search, and all the negroes about the place, and . . the body was discovered in a wood . . about two hundred and forty yards from the house. . . [724] his boots were pulled off, and the leg of one . . was under his face . . His clothes . . were smooth. His pistol . . recently discharged, lay near . . There were no tracks . . nor . . sign of a conflict . . a wound was discovered under the vest and shirt, . . No blood whatever . . on . . clothes. . . [725] a coroner's inquest was held, and all the negroes on William Kidd's plantation were arrested and confined, and examined separately; but no clue . . was discovered other than is herein stated. . . the prisoner had a wife at Vaughan's, and . . had permission to visit her on the nights of Sunday, Wednesday, and Saturday; but . . he frequently visited her on other nights . . about nine o'clock, prisoner was in a chair asleep in the cabin nearest to Moore's house. . . not . . usually occupied by prisoner. . . late in the night, prisoner came to the cabin which he usually occupied and said he was going over to see his wife. . . woke her up . . and stayed till daylight . . proven by her also that, on Wednesday, she had asked prisoner for a dollar to send to Columbus by her master on Saturday to buy a sifter and pot, and that he had promised to bring it on Friday night, and . . when he got up on Saturday . . gave it to her. . . prisoner reached home soon after light . . not . . as early as usual . . because he was afraid, he having heard from the cook that a man had travelled the road . . [726] late Friday evening, making a *great noise*. . . proven by . . slaves that the prisoner had said that, if Moore undertook to whip him, he would whip Moore. . . slave Eliza . . met prisoner on Sunday before . . and asked him ' how he was getting on;' he replied, ' Not at all.' Witness asked what was the matter; he replied, ' they had such a damned overseer.' Witness asked . . if the overseer had whipped him; and he said ' No; if he whipped him he would kill him.' . . contradicted . . by other witnesses. . . after midnight on Friday night . . some of the slaves . . heard a gun fire in the direction of the place where the body was found. . . Moore was a strict disciplinarian, and usually visited the quarters on at least two nights of the week, and sometimes twice a night, to ascertain if the slaves were all at home; . . He did not visit the quarters on Friday night. . . Caleb was of good character and obedient, and never had been whipped since he was sixteen " Neilson [731] " was asked . . whether the wound . . had the appearance of a gun-shot or pistol-shot wound, or of having been made with a knife . . objected to . . overruled . . The witness stated . . ' with a knife.' " Verdict of guilty. [727] " defendant moved for a new trial: 1. Because the verdict was contrary to law and evidence. 2. Because the court erred in permitting . . Neilson to give his opinion as to the character of the instrument with which the wound was inflicted. . . [728] The court overruled the motion,"

Judgment reversed, new trial awarded, and cause remanded: [732] " There was not a particle of evidence . . except the statements of . . [Neilson] himself, which tended to prove that he possessed the knowledge . . requisite . . to form an intelligent opinion on the subject . . [736] the proofs were insufficient to authorize a conviction." [Smith, C. J.]

*Wells v. Mitchell, Executor,* 39 Miss. 800, October 1861. [801] " That . . certain property and a considerable sum of money was bequeathed to certain negro slaves belonging to testator [who died in 1848], . . That . . executor was allowed to retain the possession of said slaves, together with the bequests to them, under the supposition that the testator had the power to make the dispositions . . in their favor; but that . . [802] executor has appropriated . . slaves and . . legacies . . to his own use, and refuses to account "

*Moseley v. Anderson,* 40 Miss. 49, January 1866. [51] " 1859 . . suit by attachment against Moseley, which was levied on . . slave, . . Moseley . . made an affidavit that she was . . ' allowed to him by law, exempt . . from execution [1] . . and that he held no other slave under such claim ' . . thereupon the officer had restored the said slave . . Final judgment was rendered against the defendant . . and . . the court . . dismissed the said claim, . . [52] and ordered the slave to be sold to satisfy the judgment. . . Anderson, the sheriff . . seized the . . slave . . and Moseley then brought this action of replevin. . . The defendant . . offered proof . . that . . two days before the attachment was issued, the plaintiff was the owner of twelve or fourteen other slaves, . . made a bill of sale . . to his son-in-law, who carried them in the night time to . . Alabama, and there sold them, and brought back the money . . to the plaintiff; . . that he had stated that his object . . was to avoid the payment of a debt to a bank, for which he was bound as surety." Held: [54] " The exemption is absolute and unqualified, . . granted without reference to the merit or demerit of the debtor,"

*Vining v. Hall,* 40 Miss. 83, January 1866. The two sisters of John L. Harris filed their petition for the probate of his will, which they allege was destroyed by his three brothers. [84] " A memorandum of the will is made an exhibit . . ' I, John L. Harris, . . of Virginia, . . set free my faithful servant Betsy and her seven children.' . . [85] testator . . said that Henry was at school in Philadelphia, to whom he bequeathed ten thousand dollars, and to the youngest child, Puss, ten thousand dollars, to Betsy, the mother, ten thousand dollars, and to each of the other five children . . seven thousand, five hundred dollars each. He also manumitted . . Susan and her two children, and gave them five thousand dollars each. . . That the proceeds from the sale of ' Snowden ' should go to the manumitted servants, and the sums bequeathed to them should first be paid. That James Harris . . should carry out his will and settle the servants on farms in Ohio; for which service he bequeathed him twenty-five hundred dollars. . . This memorandum was furnished by . .

[1] Rev. Code 528, art. 280.

Kenney, who wrote and witnessed the will. . . [89] made a memorandum . . the morning after" Verdict in favor of petitioners. [86] "An appeal was taken to the High Court of Errors and Appeals, the cause reversed on the ground, that the term at which it was tried was not a term of the Probate Court . . authorized by law; . . By agreement . . this cause was submitted to the probate judge for decision." Witnesses differed in their recollection of the sums bequeathed. The court decreed [91] "That said will, as far as the personal estate and choses in action [there being only two witnesses], . . be . . admitted to record as the last will . . an appeal was taken" Decree reversed: [103] "the testimony [as to the contents of the will] . . is most contradictory,"

*Magee v. McNeil,* 41 Miss. 17, January 1866. Letter, 1862: [18] "Your request respecting my being sent home if I die shall be complied with if possible. I will so instruct Dean, [Dr.] Bethea, and Cato,"

*Malone v. Mooring,* 40 Miss. 247, April 1866. Will, executed in 1857: [250] "I give to my son . . negroes to the amount of $3,350, negro men at $800, and women at $600, and smaller negroes in the same proportion. . . I give to my daughters . . [251] $3,000 [each] in negroes, . . It is my wish . . that the negroes given to my daughters be as much in families and as many of them females as circumstances will admit of."

*Whitfield v. Whitfield,* 40 Miss. 352, April 1866. [355] "in 1861, furnished shoes and clothing to the slaves"

*Calhoun v. Burnett,* 40 Miss. 599, October 1866. [601] "1859 . . ran off the slaves from Texas to . . Mississippi, . . and there sold four of them to defendants . . for an inadequate price; . . [602] They admit that the purchase was made in the night, and that the slaves were immediately carried to Carthage; and . . next morning . . to Neshoba, and thence to Winston county, and [that they] kept them concealed until they sold them"

*Haughton v. Brandon,* 40 Miss. 729, October 1866. Will of Thomas Brandon, made in 1857: [731] "I give . . to my . . friend . . a negro boy large enough to bear off brick, to be selected by my executors, so as not to separate the little boy from his mother if it conveniently can be avoided, . . [733] It is my will . . that Betsy Easley shall be free at my death, or so soon thereafter as she arrives at the age of forty-seven, . . All this is done for the great attention and kindness this servant has ever shown to me in the many severe spells of sickness I have heretofore passed through. I have a few other old servants, who having been faithful and kind, whom I would like to free; but on account of old age freedom to them would be a curse instead of a blessing. Therefore my will . . is, that my executors shall make ample provision for such out of my estate, or let each legatee pay so much annually for the comfortable support of these old servants so long as they may live." Codicil, 1859; [737] "my will is, that my . . wife shall have the right to select among all my negroes, with the exception of such as are mechanics, another one in place of" "Amanda, . . departed this life,"

*McCormick v. McCormick,* 40 Miss. 760, October 1866. [762] "on the 8th May, 1865, the ancestor died; his sons took possession of the . . [763] slaves (whom they hired for the remainder of the year)"

*Garnett v. Kirkman,* 41 Miss. 94, October 1866. [100] "If the plantation did not pay . . debt . . he designated which negroes should be sold to pay it, giving a list of the order in which they were to be sold,"

*Lee v. Portwood,* 41 Miss. 109, October 1866. [111] "plaintiff testified that . . 1857, he purchased a negro . . that afterwards . . Tindle . . alleged she had been stolen from him, and plaintiff . . gave her up to Tindle . . [who] afterwards sold her to him for $1000."

*Young v. Power,* 41 Miss. 197, October 1866. In 1860 [202] "he had sold her a negro woman at . . twelve hundred dollars,"

*Barker v. Justice,* 41 Miss. 240, October 1866. [242] "A plea . . that the bill of exchange was given . . for a slave . . which slave, being over fifteen . . was introduced into this State . . from Tennessee, as merchandise and for sale, . . without a compliance with the law of this State in regard to certificates of character,"

*Wade v. Watt,* 41 Miss. 248, October 1866. [250] "the slaves [three females] levied on in April, 1861, . . remained on the plantation . . one of them . . until the summer of 1865, when she left, . . the other two have ever since continued there."

*Mullins v. Cottrell,* 41 Miss. 291, October 1866. [293] "appellant presented the will of . . McQueen for probate, . . The will has date 3d September, 1863, . . Appellee . . filed her petition contesting the validity . . alleging that she was the only surviving child . . [294] The petition charges that, in reference to domestic relations, testator . . was insane . . That he . . killed a man . . and was killed [in 1865] in attempting to escape." [299] "all the property was left to . . [300] niece, and her . . children, . . [308] a subscribing witness . . testified . . that after attesting the will . . he told witness and others . . about his hanging the negro for going to the enemy during the late war; that it was the second time he had run away, and he had told him he would hang him if guilty a second time; and the witness states the particulars . . as detailed by the deceased, showing great cruelty; . . Coleman testified . . [309] that . . in 1863 . . he asked direction about the roads, and said he did not want to travel the public highway for fear of the enemy; he told . . about hanging the negro, and if the enemy caught him, they would hang him; . . that he had invited his neighbors to bring their negroes to see it for the sake of example, and to deter negroes from running away to the enemy; that he asked witness whether he had done right. . . The witness . . told him he did wrong;" [295] "The jury returned a verdict against the validity of the will." New trial refused. Reversed and the cause remanded: [322] "the testimony . . is not sufficient to show insanity."

*Bradford v. Jenkins,* 41 Miss. 328, June 1867. [329] "In . . 1857, Bradford purchased from Jenkins a plantation . . mules, corn, farming

implements, and one hundred and thirteen slaves, for . . $122,000; . . the slaves were estimated at $93,000, the land at $22,000, and the mules, etc., at $7000. . . the slaves . . [were] warranted to be slaves for life. Bradford paid $30,000 in cash, and gave his . . notes . . for the balance . . and to secure their payment executed a deed of trust . . In 1862, Bradford wrote to Jenkins, foreshadowing what would be the result if the South failed in the war, and pressed him to allow the negroes to be sold, which he refused. . . In 1866 . . Bradford filed his bill . . states . . that he had purchased the slaves, not for the purpose of sale, but as an investment; that most of them were young and their labor unproductive. The prayer is . . that Bradford be charged with the hire . . Jenkins, with the value of those set free" Bill dismissed.

Affirmed: [335] "By his covenant . . [Jenkins] only became liable for the condition of things as at the time of sale, and did not warrant that the policy of the government on the subject of negro slavery would never undergo a change." [Ellet, J.]

*McMath v. Johnson,* 41 Miss. 439, June 1867. [453] "on the 8th of January, 1863, . . [454] a negro . . [was] sold"

Held: the negro was not [459] "then a freeman by virtue of the acts of Congress and the proclamations of the President, . . [460] the [constitutional] convention of August, 1865 . . did not undertake to ratify . . the acts of President Lincoln, but . . by a new and original provision, . . abolished . . slavery within the State. That act had no retrospective operation, and it is from its date alone [1] that the emancipation . . took effect." [Ellet, J.]

*Herndon v. Henderson,* 41 Miss. 584, April 1868. [594] "The defendant in error . . stated . . The plaintiff [a negro trader] . . represented her . . as a good cook, seamstress and washerwoman, and ironer. She was not a good seamstress; . . not a very good cook—washed and ironed pretty well; . . a good, serviceable, likely servant, sound and healthy; . . She had two children while witness owned her, and is still with him. . . Witness contemplated paying the note at its maturity [December 28, 1862] in Confederate money. . . [595] Plaintiff at first asked witness $2000 for the girl; . . Witness made a good many objections to buying; . . said he was afraid the Confederacy would 'go up,' and witness would lose the negro; plaintiff told witness it would not, and if it did, witness . . should not pay a dollar for her. . . witness finally concluded to purchase. . . 'Bill of Sale. Received of . . Henderson, sixteen hundred dollars, in full payment of a negro girl . . about fifteen . . December 28, 1861.' . . The girl at the time of sale was worth one thousand dollars in gold. . . [596] Cook, testified . . 'The trade was made on Sunday. . . several overseers were at the camp, because it was an idle day. . . the parties . . walked apart from the persons assembled at the fire,'"

*Lewis v. State,* 41 Miss. 686, April 1868. [687] "at the October term, . . 1864, . . David (a slave) . . was indicted for an attempt to have carnal

[1] Overruled by Whitfield *v.* Whitfield, p. 384, *infra.*

intercourse with a female child, under . . fourteen . . At the April term, . . 1865, . . standing mute, the court directed the plea of ' not guilty ' to be entered for him. . . admitted to bail on the bond of his then owner, . . Lewis . . in the penalty of eight thousand dollars," [689] " after the surrender of the Confederate armies, . . [Lewis] had him at the court-house . . [690] David voluntarily appearing." [689] " being . . the October term, 1865; . . [but] there was no court held at that term, on account of the disturbed condition of the country; . . he surrendered . . David to the sheriff . . carried to the jail . . to await his trial . . forcibly released by the Federal soldiers quartered around . . jail;" Held: [691] " The responsibility of the plaintiff in error . . ceased when he surrendered David to the sheriff."

*Pollock v. Williams,* 42 Miss. 88, October 1868. [91] " this partnership . . was one of a limited nature, . . Calcote was to furnish the capital, to be invested in the purchase of negroes, for speculation. Hitchings furnished no capital, but was to do all the work [' at his own expense '] ; and the profits were to be equally divided " Deposition of Hitchings: [90] " October, 1858, they employed . . Williams to . . carry a lot of the firm negroes [from Nashville] to Natchez, . . Williams left with the negroes, and remained with them until the latter part of January, 1859. . . thinks $5 per day was enough . . ' The firm . . agreed to give him what was right.' "

Held: [92] " The presumption naturally arises . . that . . [Hitchings] was to buy, control, and forward to market the slaves he should purchase with the funds of Calcote."

*Railroad Co. v. Green,* 42 Miss. 436, April 1869. " action of assumpsit . . upon a written contract . . for the hire of negroes for the year 1863, dated . . [437] 21st day of January, 1863, . . [438] At the time the [emancipation] proclamation was to go into effect, the military forces of the United States did not occupy any portion . . of Mississippi, and had not occupied any portion . . permanently during . . 1863,"

Held: " the slaves in . . Mississippi, who were not within the lines of the United States army during . . 1863, were not emancipated by the proclamation . . on the first day of January, . . 1863." [Shackelford, C. J.]

*R. and B. Shotwell v. Ellis and Co.,* 42 Miss. 439, April 1869. Contract: [440] " At Jackson, Miss., March 1st, 1863, . . Shotwells [of Mississippi] agree to let . . Ellis and Co. [of St. Louis] have the present growing crop [of cotton] . . Ellis and Co. . . are to have an agent ready to receive it. . . guarantee . . Shotwells are not to be disturbed in gathering . . crop, nor their property of mules, stock, and machinery for ginning and bailing [*sic*] . . interfered with by the authorities of the United States, or be deprived of their present negro laborers, . . Ellis and Co. are to procure for the said plantation, and laborers and property . . a protection from the United States authorities, should they . . fall under the dominion . . of the same."

Held: [442] " grossly violative of the public policy of the United States " " The Government of the United States was at the time . .

or very soon thereafter, enlisting and conscripting into its military service those very men whom . . Ellis and Co. were covenanting should remain unmolested . . on the plantations of the Shotwells." [Jeffords, J.]

*Richardson v. Futrell,* 42 Miss. 525, April 1869. [526] "Futrell . . testified that in January, 1863, defendant was indebted to him . . for . . overseer's wages, from . . 1858, to . . 1863, and for money lent . . that . . defendant paid him $1000 for his services as overseer in 1862, leaving a balance . . of $6850, of which $2800 was for borrowed money, . . due in gold, or its equivalent; that . . defendant . . proposed to pay . . in Confederate money, but plaintiff . . was unwilling . . defendant . . stated . . that it could be . . safely invested in slaves, plaintiff agreed to give up . . the note . . and to take the receipt ['Received of . . Futrell . . [$6850] dollars, to be invested for him in negroes as my judgment may direct,'] . . [527] Some time afterwards, defendant informed plaintiff that he had bought a woman and children from Mrs. Bradford, in Alabama, for $2500; that the woman would soon be confined, and as soon as she was able to travel, she and the children would be sent to Mississippi, . . [529] not long afterwards, the Federal army occupied North Alabama, after which it was impracticable to get them to plaintiff's possession."

*Buchanan v. Smith,* 43 Miss. 90, May 1870. [96] "The claim is for work . . done . . in 1861, in sawing lumber for . . and building a gin house, servants cabins, and overseer's house."

*Herrod and Thigpen v. Davis,* 43 Miss. 102, May 1870. [107] "This suit was brought upon a note, . . 'On . . the first day of January next, we . . [108] promise to pay . . Davis . . two hundred and fifty dollars, for hire of negro boy named Jake, for the year 1865.' The defendants pleaded . . that said negro boy became free by virtue of the surrender of the Confederate forces in May, 1865, and long before . . by virtue of the [emancipation] proclamation . . [110] it is presumable . . that the dispersion of the Confederate forces, and the presence of the Federal troops, caused the refusal of the boy longer to serve defendants, under the contract" [108] "he was in the act of leaving the defendant when, in order to retain the boy . . he entered into a contract with him, agreeing to pay for his work during the remainder of the year, . . [110] The constitutional convention of 1865, in prohibiting involuntary servitude . . premised the prohibition with the declaration that slavery had long before then ceased to exist. Precisely when, therefore, the slaves became free, is undetermined," [Tarbell, J.]

*Jagers v. Griffin,* 43 Miss. 134, May 1870. [135] "The slave ran away soon after the . . sale [in January 1861], . . and staid away until after the war,"

*Storm v. Smith,* 43 Miss. 497, October 1870. [499] "sold . . March, 1860, at public auction, . . Joe, . . for . . $1,335,"

*Hoover v. Brem, Executor,* 43 Miss. 603, October 1870. Will of Thomas B. Hoover, probated in June 1855: [609] "It is my will . . and I do so direct my executors . . if it can be done in accordance with the laws . . of Mississippi, or if not, to have a special act of the legislature . . passed for that purpose; if that cannot be done in either of said ways, and if he should choose to do so, beyond the limits of . . state, . . and there give unto my faithful man servant, Asa, and his daughter Violet, their freedom . . and I do further give . . unto my executors . . in trust . . $1,000 to be paid to . . Asa, at the time of his freedom," Held: [614] "require the payment of the bequest . . with interest from the 25th day of August, 1865, without a refunding bond."

*Whitfield v. Whitfield,* 44 Miss. 254, October 1870. Tarbell, J.: [271] "Notwithstanding the decision in . . McMath *v.* Johnson,[1] . . we think the better rule is, that freedom is personal to each particular slave, or perhaps to sections, and to that extent a question of fact in the individual case or as to localities. If portions of the state, prior to the surrender, fell within the federal lines, and freedom thus came permanently to any slave, . . the fact and date . . ought to be recognized by the courts upon satisfactory proof . . though this rule should not be applied to fugitives."

*Jeffries v. Dancey,* 44 Miss. 693, October 1870. [699] "The . . attachment was levied in 1860 upon [Emily and her two children] . . valued at two thousand dollars, to secure a debt less than two hundred dollars."

*Mathews v. Springer,* 16 Fed. Cas. 1096 (2 Abb. U. S. 283), January 1871. "Mathews . . was in . . 1858, the owner of . . Harriet, the mother of complainants, who were then his slaves, and whom he also claimed as his natural children, and whom he was anxious to . . set free, Isaiah being then about seven, and Caroline about five years of age." He took them to Ohio and there, in 1858, in the court of common pleas, "executed a writing by which he declared them free . . and procured a decree of said court declaring them free persons of color, and remained with them in Ohio for some weeks, when he returned with them to [Mississippi] . . where they remained until shortly after the death of . . Mathews . . early in 1859; when by the directions of Springer, one of the executors . . they returned to . . Ohio, . . The testator, leaving no widow or legitimate children . . directed that his executors should sell and convert the residue of his estate . . into cash, and deposit the same in the State Bank of Louisiana; that complainants should be maintained and educated out of said funds until they were twenty-one . . when the remainder should be divided between them, the said Isaiah Jefferson receiving two-thirds, and Caroline Josephine one-third;" The probate court declared the bequests void, and its decree was affirmed by the High Court of Errors and Appeals of Mississippi. The complainants in 1868 filed a bill in the federal court.

[1] P. 381, *supra.*

Held: the complainants [1098] "were free persons, from and after they were so taken to . . Ohio, . . [1099] it was the intention of the testator that complainants should be returned to Ohio to remain, and that they should enjoy his bounty there, . . complainants were not the slaves of the testator at his death, but were free persons of color, temporarily in this state, just as it was contended by the Southern states, that slaves might be taken to a non-slaveholding state, and remain temporarily without becoming free. . . they were entitled to hold all the rights and provisions made for them by the will, which they could have done had they always resided in Ohio;" [Hill, J.]

*Berry v. Alsop,* 45 Miss. 1, April 1871. Will of Jesse Alsop who, [2] "several years before his death [in 1856] . . removed to . . Kentucky": [3] "I . . have heretofore emancipated [Mary and her six children] . . in . . Ohio, and . . [they] now reside in . . Ohio. It is my will . . that after all my just debts are paid, . . all the estate I own in . . Mississippi, shall be converted into money, and the money invested in . . real estate in Ohio, to be conveyed to Mary and her six children, equally, . . And I do hope that my executor . . will carry out my wishes . . as it is the great desire of my heart."

Held: [10] "the bequests and devises . . are valid;" "The adjudications of our predecessors, from 1838 to 1858, are in accord . . with the decisions national and state. . . we cannot . . yield our . . acquiescence to either the reasoning or the judgment of a divided court, in . . Mitchell *v.* Wells,[1] . . and Heirn *v.* Bridault"[2] [Simrall, J.]

*Cowan v. Stamps,* 46 Miss. 435, April 1872. Will of Abner B. Cowan, which was executed in 1850: [442] "it is my will . . that all . . of my negro slaves, . . with their increase, shall be sent to Africa, under the . . superintendence of the American Colonization Society, there to become and remain a free people. . . it shall be the duty of my executors . . to take charge . . and, if necessary, hire them out . . until a sufficiency of assets may be collected to defray their expenses to Liberia . . as well as . . for their support for six months after their arrival . . My slaves now amount to sixteen . . I give . . to my esteemed man, Frank, all my books and maps, but, to be held . . by my executors, as trustees, for his use, until . . [443] Frank shall be legally competent . . it is my will . . that my executors shall proceed immediately . . to sell all my property (my . . slaves, books and maps being . . excepted) . . to convert all the . . residue of my estate into suitable funds to be remitted to Africa for the use . . of my . . negroes on their arrival . . And I hereby . . bequeath such residuary part . . to . . my . . negroes, after . . their manumission in foreign parts, to be equally divided among them." It is admitted that [438] "the testator, died April 28, 1864, in De Soto county . . some eight miles from Germantown, . . held at that time and for a long time previously, by the federal forces; that the Confederate lines were at Cold Water river, some fifteen or twenty miles further south; that, every day or two,

[1] P. 360, *supra.*
[2] P. 359, *supra.*

armed bodies of cavalry scouts came out from Germantown, as far as Cowan's residence, scouting that neighborhood, and that this state of things continued from a period many months previous to Cowan's death till the final surrender of the Confederate forces. . . that parties of Confederate soldiers were frequently scouting through the same neighborhood, and that this territory was not inside the picket lines of either of the forces." [437] "The devisees [in 1868] . . set up their claim under the will, asking that the lands be not sold, but that they be set over, undivided, to them, freed of the condition of departing . . the debts . . are all paid, and . . they claim the entire estate as sole legatees."

Held: [449] "that . . the devise be sustained, discharged of the necessity of removal to Africa," [443] "The rights of the respective parties were fixed at the moment of death of the testator, by the law in force at that time. . . [444] This locality, while not then wholly within the federal lines, . . remained subject to the general control . . of the federal authorities. The military power of the Confederacy gradually receded . . and never returned. . . it may be said that long before the death of the testator, freedom had come permanently to his slaves. They remained upon the place, and remain there still, but they were as free to go as to stay. . . The constitution of 1865 [1] does not fix the date of emancipation, but it declares slavery to have been before then destroyed.[2] Hence, we sometime since . . declared the better rule to be, that freedom was practical to individuals and localities.[3] . . In this view, we are of the opinion, that the policy of freedom . . prevailed over the parties . . [447] the conversion of the property . . into money may be dispensed with, at the election of the beneficiaries, . . [448] In Liberia, and in receipt of the bequest . . their right to return and enjoy their fortune would be unquestionable. To require these people to remove . . would seem . . an unnecessary hardship, and . . it would be against a wise public policy to impose . . a condition of emigration in order to accept a bequest, not imposed by the testator, but by a prior law since abrogated. . . removal . . was not a condition precedent in the mind of the donor, but a mode of giving freedom, a pre-requisite, imposed by law," [Tarbell, J.]

*Jefferson v. Glover,* 46 Miss. 510, April 1872. [515] "He moved his family here . . and their slaves [from Tennessee] in 1860;" [510] "the slaves . . remained . . [511] on his plantation [in Bolivar County], until June, 1862, when they were dispersed"

*Dancey v. Sugg,* 46 Miss. 606, April 1872. Bill of sale: [613] "Canton, Miss., May 1, 1860. We [[607] 'partners in selling negroes'] have this day sold . . Dancey, . . Rachel, of dark complexion, aged about twenty-five years. We warrant . . sound . . [614] sold for . . $1,200," [614] "the defendant's counsel . . were prepared to prove that the negro . . was unsound and worthless to . . Dancey."

[1] Constitution of 1832, "as amended by the Convention held in August, 1865," Art. VIII.
[2] *Journal of the Proceedings in the Constitutional Convention,* pp. 44-165.
[3] Whitfield *v.* Whitfield, p. 384, *supra.*

*Clark v. Hornthal,* 47 Miss. 434, October 1872. Will, dated September 1860: [480] "the annual surplus . . shall be invested . . in . . lands and negroes"

*Dozier v. Freeman,* 47 Miss. 647, April 1873. Harriet was sold in 1860 for $1600. [649] "The object, in selling her, it seems, was to rid the family of a nuisance; for . . she was 'bad after men,' . . had 'varicose veins,'" [659] "Freeman brought suit, in 1862, upon the covenant of warranty [of soundness], and recovered . . a judgment for $1,300, or thereabouts."

*Allen v. Johnson,* 48 Miss. 413, April 1873. [418] "When the law of 1857 was passed, to a very large extent the plantations of married women were cultivated by their slaves. If they were leased, they were generally rented in a body."

*Aston v. Robinson,* 49 Miss. 348, October 1873. [351] "contract of sale . . of land . . was dated the 30th of January, 1865. The consideration . . was certain negroes (slaves) delivered at the time, and . . cotton,"

*Dickerson v. Brown,* 49 Miss. 357, October 1873. [367] "Susan Dickerson and Oliver Dickerson . . filed their bill . . 1871 . . setting forth that . . [they] are the children and heirs at law of . . Dickerson, . . who departed this life . . 1871, . . that their father . . and mother [his slave] . . 'were never joined in the bonds of matrimony by any ministerial performance of any marriage ceremony, . . [368] cohabited together as husband and wife; that the complainants . . were always recognized by their father as his children, . . that the intercourse . . continued . . until his death; . . that after he had seen the provisions of the constitution [of December 1, 1869], . . he rejoiced that a public ceremony of marriage would be unnecessary; . . that a brother of their father and . . Brown, have obtained possession of all the personal property, and . . an order to work the plantation, . . [369] the bill prays . . that restitution . . be made'" [363] "from the time the intercourse . . commenced, in 1855, to 1st December, 1869, marriage between a white man and a colored woman was prohibited by law. . . [365] They occupied different rooms. She went to his . . bed, and slept with him two-thirds of her time,"

Held: [375] "The provision [of the constitution of December 1, 1869] [1] is plainly for all cases, black, white or mixed, . . [376] if these parties were 'cohabiting as husband and wife,' at the time of the adoption of the present constitution, and if, with a knowledge of its provisions, they mutually assented to the relation, . . their marriage was consummated and their children legitimated." [Tarbell, J.]

[1] "All persons who have not been married, but are now . . cohabiting as husband and wife, shall be . . held . . as married, and their children, whether born before or after the ratification of this constitution, shall be legitimate," Art. XII., sect. 22.

*Irion v. Hume,* 50 Miss. 419, October 1874. [420] "the attachment issued was, . . March, 1861, levied on thirty-seven slaves, valued at $30,800."

*Still v. Davidson,* 51 Miss. 153, October 1875. A slave was bought in 1860 or 1861 for $1,499.

*Shacklett v. Polk,* 51 Miss. 378, October 1875. In September 1864 [381] "the parties both resided in . . Tennessee," which [388] "state . . was in the complete control . . of the United States forces," [380] "Mrs. Polk, constituted . . Shacklett, her agent to take charge of her cotton crop in Mississippi, . . [381] the plantation . . was then in armed occupation of the confederate forces," [392] "food and clothing for the negroes . . were from time to time purchased by Shacklett, at Memphis, and brought by boats to the plantation."

*Hall v. U. S.,* 2 Otto (U. S.) 27, October 1875. Findings of the Court of Claims: [28] "Hall is a man of color, of Indian and African descent, and claims to have been free born. His mother was of Indian extraction, residing at the time of his birth in . . Alexandria as a free woman. '8. Hall, with other slaves, was taken from a slave-market in Washington, D. C., . . to New Orleans, . . and . . was sold by a trader to the claimant Roach's father, who sent him [in 1844] up to the Bachelor's Bend plantation, in Mississippi. Hall . . remained there as . . slave . . until after the cotton in question [1] was seized in 1863 [by Lieutenant Barlow of the United States army]. He was treated all the time as a slave, . . [29] and worked . . sometimes as a field-hand, and at others as a stock-minder. 9. . . Hall now claims to have been a free man . . and that, as such, Roach was justly indebted to him on account of stock, hogs, pork, etc., which he had raised on Roach's plantation, and sold and delivered to him, and that the cotton now in suit was given him by Roach in discharge of his indebtedness. 10. Hall . . followed the cotton, after its seizure, to the river, and made affidavit that he was the lawful owner thereof. . . Hall afterward admitted to . . the overseer, that the cotton was not his, and that his oath . . was false. Afterward, however, Hall . . brought suit to recover the proceeds in this court.'" The court of claims held in 1873 [2] "that, under the laws . . of Mississippi, . . Hall, in his condition of servitude, could not lawfully contract with his master, or hold the property he claims to have given in consideration of the cotton, and that no title to it ever vested in Hall."

Affirmed: [30] "His color was presumptive proof of bondage. The law of the State provided a way in which he could establish his freedom. . . Until he had vindicated his right to freedom in the mode prescribed, the law regarded him as a slave; and it would not allow the question to be collaterally raised . . in any other proceeding. . . the slave was incapable of entering into any contract," [Swayne, J.]

[1] Seventy-four bales, which had "been secreted in a cane-thicket . . to prevent its destruction" 9 Ct. Cl. 171.

[2] *Ibid.* 170.

# LOUISIANA

## I.

### INTRODUCTION

The soil of France had more efficacy in bestowing freedom than that of England, according to the opinion of the Supreme Court of Louisiana. Lord Mansfield had decided in 1772 [1] that Somerset, having been brought by his master to England, could not be forced to leave, and Lord Stowell, in 1827,[2] that the slave Grace, not having been *forced* to leave England but going back voluntarily to Antigua, resumed there her *status* of slave. Writing to Judge Story in 1828, he says:

> How the laws in respect of . . the [slave] trade made in England and enforced by our courts of law, the King's Privy Council, and the Court of Chancery, to their utmost extent, can consist with any notion of . . [the] entire abolition [of slavery] here, is, in my view of it, an utter impossibility.[3]

But as to France, her law of 1791 left no doubt: "Tout individu est libre aussitôt qu'il est en France." Accordingly Josephine, who had been taken there by her owners and "placed . . under the direction of a hair-dresser, to learn his art" and imprisoned by them on her return, was held by the Supreme Court of Louisiana in December 1835 to be entitled to her freedom. "Being free for one moment in France, it was not in the power of her former owner to reduce her again to slavery." [4] Likewise Priscilla was adjudged free in 1839 after a sojourn in France with her owners, even though she returned to Louisiana "on her entreaty." [5] Her will was immaterial.

But the situation under the Constitution of the United States, before the adoption of the Thirteenth Amendment, was similar to that in England and her colonies before the final abolition of slavery in 1833. A mere sojourn in a non-slaveholding state could not *ipso facto* bestow freedom. Residence however in a state whose constitution prohibited slavery had that effect, provided the master had given his permission.[6] In the case of Elizabeth Thomas,[7] who had gone to Illinois at her own request to be "put under the care of an eminent physician" and had remained about five years in a house which her Kentucky master owned

[1] Somerset *v.* Stewart, vol. I. of this series, p. 14.
[2] The Slave Grace, *ibid.*, p. 34.
[3] *Ibid.*, p. 37.
[4] Marie Louise *v.* Marot, pp. 504, 509, *infra.*
[5] Priscilla Smith *v.* Smith, p. 520, *infra.*
[6] Lunsford *v.* Coquillon, p. 476; Louis *v.* Cabarrus, p. 502; and Frank *v.* Powell, p. 516, *infra.*
[7] Thomas *v.* Generis, p. 529, *infra.*

in Shawneetown, the defendant introduced as a witness Judge Scates, who, on being examined, "gave his opinion as a lawyer on the . . constitution of Illinois, says that 'in his opinion,' . . if the slave be held in *involuntary* servitude in Illinois, she becomes immediately free . . but that cannot be involuntary to which she *consents.*" The Supreme Court of Louisiana brushed this aside: [488] "It is . . perfectly clear to us, that . . she was under no obligation to serve him there; . . [489] The opinion of Judge Scates . . must yield to the principle so well recognized . . that a slave has no will, and cannot give any consent." They accordingly affirmed in 1840 the decision of the lower court, "that . . [she] became *ipso facto* free, by residing there with the consent [of her master] . . and being once free could not be made a slave." Thus the old maxim, "once free for an hour, free for ever," received full support in Louisiana;[8] but only until 1846. In that year an act was passed which spared Louisiana the possibility of any Dred Scott cataclysm. It provided that thereafter "no slave shall be entitled to . . freedom, under the pretence that he or she has been, with or without the consent of his or her owner, in a country where slavery does not exist, or in any of the States where slavery is prohibited." [9] However, the court held in 1847 that the act was not retroactive, so that Eugenie,[10] who was in France from 1830 to 1838, and Arsène,[11] who lived there from 1836 to 1838, were adjudged free though their suits were brought after the passage of the act. In these two suits however the *residence* of the master or mistress in France was stressed, a mere sojourn there, as in the cases of Josephine and Priscilla, evidently not sufficing by that time. Eugenie's mistress had married a French officer, who remained in France though his wife returned; but his residence established hers. Arsène's master contended that his two years' stay in France was a mere sojourn, but the court did not agree with him. Chief Justice Eustis declares:

> We cannot expect that foreign nations will consent to the suspension of the operation of their fundamental laws, as to persons voluntarily sojourning . . for such a length of time. As to those thrown on foreign coasts by shipwreck, taking refuge from pirates, driven by some overwhelming necessity, or perhaps those passing through . . their personal condition may remain unchanged; but this is the extent to which an immunity from the effect of a foreign law could be maintained under the law of nations.

He cites Marie Louise *v.* Marot, and declares the case of the slave Grace inapplicable as she "had not been taken out of the realm, but from one of the islands to England, within the same imperial jurisdiction." Five years later,[12] however, Judge Rost cites the case of the slave Grace as applicable, though France is again the place of sojourn, and Chief Justice

[8] See also Josephine *v.* Poultney, p. 578, *infra.*
[9] Acts of 1846, p. 163.
[10] Eugenie *v.* Préval, p. 580, *infra.*
[11] Arsène *v.* Pignéguy, p. 582, *infra.*
[12] Liza *v.* Puissant, p. 622, *infra.*

Eustis expressly dissents " from the opinion expressed in . . Marie Louise *v.* Marot " stressing the exceptions mentioned in Arsène's case. The " perhaps " of the last exception sinks into insignificance and Liza's stay of " two or three months " in France was held insufficient to set her free. In less vehement language than Judge Scott uses contemporaneously in Dred Scott *v.* Emerson,[13] he declares: [83] " A State may prohibit slavery within its limits, . . but this imposes no obligation on other States to hold the condition of persons domiciled there, as extinguished by reason of a presence in the State where the relation is not recognized."

Two suits for freedom evoked such sympathy from the judges of the Supreme Court of Louisiana that, *in favorem libertatis,* they seemed to stretch their discretionary power, in the one case by refusing to remand when, normally, they would have granted a new trial; in the other by remanding, though in so doing they had " to notice facts *dehors* the record." The former suit was that of Bernardine,[14] who swam from the shore of Santo Domingo to the vessel on which her mistress was fleeing when the negroes revolted. She accompanied Madame Goyffon to Cuba and later to Louisiana, where M. Goyffon, in compliance with his wife's dying request, made a will giving freedom to Bernardine and her two children; but his executor refused to liberate them, finally setting up a title in himself, in virtue of a purchase he had made from the collateral heirs of Madame Goyffon. The judgment of the lower court in favor of Bernardine was affirmed by the Supreme Court in 1827, because no proof had been given that " relations in the ascending line have ceased to exist." Judge Porter declares:

> If the case presented strong equitable claims on the part of the defendant . . we might . . send the cause back for proofs of heirship. But . . justice and equity . . are most emphatically with the plaintiff; and . . we cannot aid the defendant in making out a harsh demand, which has no foundation but in the strict rules of law.

In March 1835 the Supreme Court had been obliged to reverse the decision of the lower court in favor of the freedom of Josephine[15] as the ground sued on was untenable in law; but Judge Mathews, in giving the opinion of the court, declares:

> we do not consider ourselves bound to leave the wretched victim . . without hope. . . everything which may be done *in favorem libertatis,* should be done, even to notice facts *dehors* the record. It was stated at the bar . . that she was taken by her owners to France . . Did she not become free in France? Being brought . . into the United States, is she not free, according to . . laws enacted by Congress? . . questions which we will not solve; but . . remand the cause, in order that they may be put in a train for solution.

[13] 15 Mo. 576 (586).
[14] Bernardine *v.* L'Espinasse, p. 483, *infra.*
[15] Marie Louise *v.* Marot, p. 505, *infra.*

They were solved in favor of Josephine at the following term,[16] as we have already shown. Also in Fanchonette *v.* Grangé,[17] in 1843, the court refused to allow "technical objections, and the omissions of public officers," to defeat a suit for freedom.[18]

A vital distinction was made in Louisiana between a negro and a person of color, the former being presumed to be a slave, the latter to be free. The court declared in 1810 in Adelle *v.* Beauregard:[19]

> Persons of color may be descended from Indians on both sides, from a white parent, or mulatto parents in possession of their freedom. Considering how much probability there is in favor of the liberty of these persons, they ought not to be deprived of it upon mere presumption.

And in the case of Sally Miller, decided in 1845, Judge Bullard declares, "except as to Africans . . the presumption is in favor of freedom, and the burden of proof is on him who claims the colored person as a slave." [20]

The fifty-seventh article of the Code Noir of Louisiana, promulgated in 1724, declares "les esclaves affranchis n'avoir besoin de nos lettres de naturalité, pour jouir des avantages de nos sujets naturels . . encore qu'ils soient nés dans les pays étrangers." This liberal provision may account for the surprising lack of discrimination against them, both as witnesses [21] and as parties to suits which involved the rights of white persons. Moreover, the Spanish governors of provinces were forbidden, by an express law of the Partidas, to marry, "and as there were . . in the colony but few women of the white race, . . the inevitable consequence was . . connections with women of color. This custom, coming as it did from the ruling class, soon spread throughout the colony, and was persevered in long after there ceased to be any excuse for its continuance." [22] Such concubines and their descendants, free or freed as they appear generally to have been, formed a class of free colored persons, in many cases of superior ability and education. Macarty's concubine, who lived with him from 1796 till his death in 1845 in a state which "was the nearest approach to marriage which the law recognized" ("It received the consent of her family, which was one of the most distinguished in Louisiana"),[23] amassed a fortune of more than $155,000 from a dry goods business in New Orleans, with branches elsewhere. "Two of the sons are in business in this city, and one is living on his income. The daughters are married and established in Cuba;" Therefore it is not surprising that the "legislation and jurisprudence [of Louisiana] upon . . [the] subject [of free colored persons differed] . .

[16] Same *v.* same, p. 509, *infra.*
[17] P. 555, *infra.*
[18] See also Virginie *v.* Himel, p. 635, *infra.*
[19] P. 447, *infra.*
[20] Miller *v.* Belmonti, p. 571, *infra.*
[21] C. C. 2260, 2261.
[22] Badillo *v.* Tio, p. 612, *infra.*
[23] Macarty *v.* Mandeville, p. 589, *infra.*

materially from those of the slave States generally," and that her courts were "in the daily habit of permitting them to testify in prosecutions where the defendants are white persons."[24] Consequently the Supreme Court of Louisiana held in 1850[24] that the judge of the lower court did not err in permitting a free person of color to testify against white persons. In 1856 Judge Buchanan thus sums up the situation:

> in the eye of the Louisiana law, there is, (with the exception of political rights, of certain social privileges, and of the obligations of jury and militia service,) all the difference between a free man of color and a slave, that there is between a white man and a slave. The free man of color is capable of contracting. He can acquire by inheritance and transmit property by will. He is a competent witness in all civil suits. If he commits an offence against the laws, he is to be tried with the same formalities, and by the same tribunal, as the white man.[25]

There is an amazing number of cases in which the plaintiff or the defendant is a free person of color, and that status is attributed indiscriminately by the initials in the headings of the cases (f. m. c., f. w. c., f. p. c.),[26] as a sort of courtesy title, even to petitioners in suits for freedom which result in a judgment that the petitioner is a slave.[27] The adversary is usually a white person, but not infrequently both parties are "of color". In three cases freedom was denied by colored relatives—a brother in the first,[28] an aunt and cousins in the second,[29] a mother in the third.[30] The demand of the first plaintiff, that his father's legacy to his brother's master of "six cents piastres, . . un acompte à valoir sur le prix qu'il pourra exiger de . . Narcisse, pour lui donner sa liberté" be pronounced illegal, was refused in 1827, and characterised by Judge Porter as "one of the harshest . . and the most revolting to every principle of equity and justice, that has, as yet, fallen under our consideration." The last case was that of a free woman of color who claimed the property of her deceased son (whom she had purchased in 1807), although his widow averred that he "had been in the constant . . enjoyment of his freedom, for . . twenty-seven years." Judgment was rendered in favor of the widow, Judge Bullard denouncing the action of the mother as "novel and repulsive."

There is an interesting series of cases, in which Benjamin Poydras de Lalande sought to prevent the evasion of the provisions of the will of his uncle, Julien Poydras, who died in 1824, leaving an estate of more

[24] State *v.* Levy and Dreyfous, p. 601, *infra.*
[25] State *v.* Harrison, pp. 649-650, *infra.*
[26] Free man, woman, person or people of color. See act of Mar. 31, 1808. B. and C. 159.
[27] In 1838 "c. p." was substituted in a case where freedom was postponed. Poulard (c. p.) *v.* Delamare, p. 518, *infra.*
[28] Mathurin *v.* Livaudais, p. 482, *infra.*
[29] Berard *v.* Berard, p. 506, *infra.*
[30] Montreuil *v.* Pierre, p. 508, *infra.*

than a million dollars.[31] In his holographic will,[32] "after a number of special legacies, he bequeaths the residue of his property . . to his nephews and nieces . . [and] directed all his landed estate and slaves, not specially bequeathed, to be sold within three months after closing the inventory of his succession," [33]

with the obligation imposed on the purchaser . . [to free] all the slaves [thereon] . . even the children . . to be born, at the expiration of twenty-five years from the date of the sale: . . Likewise, the purchasers . . are to be bound . . to . . treat with humanity, and keep on said plantations . . without requiring any labor . . all . . who may evidently have attained . . sixty years, and pay them annually . . twenty-five dollars, as a relief against the infirmities of age.[34]

Three of the sales became the subject of decisions by the Supreme Court of Louisiana off and on for the next forty-eight years.

The slave Moosa was attached to a plantation which was bought by "B. Poydras" in 1825 and sold by him "with the conditions mentioned in the will . . inserted in the *procès verbal.*" The new master took Moosa to West Baton Rouge, whereupon the latter brought suit, praying for the rescission of the sale and that he might be restored to the plantation, and that the purchaser "be enjoined from removing him therefrom." The court held that the right to remain was given only to those who had attained sixty years; that the purchaser had the right to the labor of the [other] slaves for twenty-five years from the date of the original sale, "wherever he chooses . . unless, perhaps, the slave may be allowed the aid of the magistrate, in case of an evident attempt to transport him out . . of the state, . . to frustrate his hope of emancipation, . . by compelling the purchaser to give security for . . [his] forthcoming," but that there was no evidence of any such intention in this case.

Another of Julien Poydras's plantations was sold in 1825 to Steward who sold it to Barrow who sold it to Taylor [35] in 1831, "subject to all the . . conditions imposed by the will, . . In May, 1835, Taylor sold a number" [36] of the slaves to six different purchasers, "separately and apart from the plantation to which they were attached." [35] Thereupon Benjamin Poydras de Lalande, as an heir of Julien Poydras, brought suit to compel a compliance with the will. The trial judge dismissed the action, "being of opinion the plaintiff had not shown such an interest in the matter as would entitle him to maintain the action," but the judg-

[31] Garnier *v.* Poydras, 13 La. 177 (178).
[32] For the French text of the contested provisions, see Poydras *v.* Mourain, 9 La. 492 (493); for the English translation see Moosa *v.* Allain, p. 480, *infra.* As the English version is constantly quoted, it has seemed advisable to give it in the excerpts rather than the French.
[33] Bonneau *v.* Poydras, 2 Rob. La. 1 (4).
[34] Moosa *v.* Allain, p. 480, *infra.*
[35] Poydras *v.* Taylor, p. 509, *infra.*
[36] Same *v.* same, 18 La. 12 (13).

ment was reversed by the Supreme Court in December 1835. Judge Martin declares, [491] "The plaintiff, as heir, possesses this right, which is not impaired by the avowal that the object . . is to . . carry into effect the benevolent intentions of his ancestor." Meanwhile Taylor, rendered more cautious, had agreed in July 1835 [37] to sell Noe a plantation with 69 slaves on Jan. 1, 1836, for $130,000: [554] "The slaves [are] not to be warranted such for life, nor the titles to be warranted otherwise than comformably to such decree as has been, or may be rendered by the supreme court . . in regard to the will of Julien Poydras." But the decisions of the Supreme Court in Poydras *v.* Taylor and in Poydras *v.* Mourain [38] caused Noe to back out of his contract, proving the correctness of Judge Martin's assertion in 1835 [39] that "the value of the succession . . has been much . . diminished by the conditions." [40] In 1841 [41] the suit of Poydras *v.* Taylor and his six vendees, which had been tried on its merits and had resulted in a judgment for the defendants, was reversed by the Supreme Court and the sales of the slaves rescinded. "As he has made the contract he must abide by it."

Also at the sale in 1825 "a plantation, with 143 slaves," [42] "situated . . on the river Mississippi, where . . Julien Poydras died," [43] was sold for $128,000 [42] to two of his nieces, Madame Mourain and Madame Bonneau, "both residing at Nantz, . . in . . France." [44] In January 1835, after a partition between the sisters, Madame Mourain [495] "advertised . . for sale at public auction, the one half of the said plantation . . and forty-one or forty-two of the slaves . . to be sold individually," [493] "except children, who were to be sold with their mothers," [495] "and separated from the said plantation." [43] Benjamin Poydras de Lalande, "styling himself . . [their] protector . . filed a petition and order for injunction." He obtained "a provisional injunction . . to stay the sale", which was made perpetual, the Supreme Court affirming the judgment in December 1835. Thereupon twelve of the slaves "appear and institute suit by Benjamin Poydras de Lalande," claiming emancipation and the stipend provided by the will. The court held in 1838 [44] that they were entitled to neither until twenty-five years after the sale in 1825. Again their protector brought suit [45] "for himself, and as attorney in fact for the other heirs," alleging that the "stipend formed a part of the price of the slaves sold, and that . . [being] unpaid, . . [it] is due to the estate." Judge Bullard declared that the

[316] argument, that the annuity . . is a [lapsed] legacy . . in consequence of the incapacity of the legatees, and that therefore the plaintiffs have a right

[37] Noe *v.* Taylor, p. 516, *infra.*
[38] P. 510, *infra.*
[39] Poydras *v.* Taylor, 9 La. 488 (491).
[40] Mazureau, counsel for the plaintiff in Poydras *v.* Mourain, declared that, "being sold under the conditions of the will, the succession . . brought a much less price than it otherwise would." 9 La. 491 (496).
[41] P. 531, *infra.*
[42] Bonneau *v.* Poydras, 2 Rob. La. 1 (5).
[43] Poydras *v.* Mourain, p. 510, *infra.*
[44] Poulard *v.* Delamare, p. 517, *infra.*
[45] Poydras *v.* Bormeau [*sic*], p. 542, *infra.*

to recover it, has not much weight with us. . . The plaintiffs have no capacity to represent the *statu liberi,* and *non constat* but that their mistress will pay at a proper time [in 1850], or that the *statu liberi* will coerce the payment as soon as they shall have acquired a legal capacity to act.

But their mistress, or other purchasers, far from paying the stipend when the "proper time" arrived, refused even to emancipate slaves. Accordingly Maranthe, Genie, *et al.* brought suit for their freedom and for compensation for their services, alleging "that they were the slaves of . . Julien Poydras, . . that the period fixed for their continuance in slavery has long since elapsed, and that the defendants nevertheless refuse to cause them to be emancipated." There was judgment in favor of the defendants, and the plaintiffs appealed. The judgment was reversed in December 1856 [46] and the cause remanded, two exceptions taken by the defendants, based on the unconstitutional act of 1855, being overruled, one relating to the claim for wages being "maintained." "The plaintiffs' action must be restricted to a claim for freedom." As the act of March 6, 1857, prohibited any emancipation of slaves in the state thereafter, and as the court consistently held it applicable even to rights which had accrued before its passage, the "benevolent intentions" of Julien Poydras were finally defeated, unless a speedy new trial took place between the Supreme Court's decision and the passage of the act.

Other noteworthy cases are the *Josefa Segunda,*[47] Groves *v.* Slaughter,[48] and the *Creole* case.[49]

## II.

The Superior Council of Louisiana [50] was first established in 1712, and was authorized to decide all cases whether civil or criminal.[51] There was no appeal from its judgments, at least "in the time of the Western Company;" [52] "but during the whole French era, a remedy of review in the nature of *certiorari* was permitted by the Council of State at Paris." [53] In 1724 the Superior Council "promulgated the Crown's famous Code Noir of Louisiana, established to meet the enormous increase of negro slaves under the Western Company's rule." [54] "There were some substantive differences between the French and Spanish systems, but the procedure of the latter followed lines not wholly variant from the French. . . and as the years went by there emerged a Louisiana

[46] P. 650, *infra.*
[47] P. 478, *infra.*
[48] P. 533, *infra.*
[49] McCargo *v.* New Orleans Insurance Co., p. 565, *infra.*
[50] See "The Legal Institutions of Louisiana," by Henry Plauché Dart, 2 La. Hist. Q., No. 1, p. 72 (74), and "Courts and Law in Colonial Louisiana," by the same author, 4 *id.* 255. See also 13 *id.* 367.
[51] Abstracts of its decisions and, in some instances, the cases in full are printed in the *Louisiana Historical Quarterly,* from which the excerpts of cases dealing with negroes have been taken.
[52] 2 La. Hist. Q., No. 1, p. 101.
[53] Added by Mr. Dart. See his monograph, "The Place of the Civil Law in Louisiana," *Tulane Law Review,* vol. IV., pp. 163-177.
[54] 2 La. Hist. Q., No. 1, 94.

system, partly French, partly Spanish, but not wholly either one or the other.[55]

After the United States took over the Louisiana Territory Governor Claiborne exercised in "the Supreme Court, as Claiborne called it, or Governor's Court of the Territory of Orleans, as it is known in history, . . the judicial powers of his predecessors and the usual authority of an American law court, and he added thereto the equitable jurisdiction of the English chancellor."[56] In November 1804 the superior court was organized, and [23] "under [Jefferson's] . . suggestion Governor Claiborne exerted himself to impress the common law in all its features upon the new judiciary. . . [25] The common law was not distinctly repudiated until the constitutional convention of 1812 settled the question. . . [28] The civil law had obtained legislative recognition in the Digest or first Civil Code of 1808, but the question was still acute when the convention disposed of it" by a clause in the constitution which prohibited the legislature "from adopting any system of laws by general reference." Under this constitution a Supreme Court composed of three judges was established in 1813. The number was increased to five in 1839, reduced to four by the constitution of 1845, and restored to five by the constitution of 1852. This number was continued by the constitutions of 1864 and 1868.

[55] "The Place of the Civil Law in Louisiana," *Tulane Law Review,* vol. IV., pp. 166-168.
[56] "History of the Supreme Court of Louisiana," by Henry Pláuché Dart, 4 La. Hist. Q. 14 (18).

*Re Negro Laroze,* 7 La. Hist. Q. 678, September 1722. "Conviction and sentence of flogging and incarceration, during six years, of a free negro . . for theft committed in the Company's stores."

*Re Negro,* 1 La. Hist. Q. No. 1, p. 110, May 1723. "The stolen goods were found in a boat . . and the negro in charge of it . . professes to have received the goods from a negro of the Company."

*Re Negro,* 1 La. Hist. Q. No. 1, p. 115, October 1723. "A negro belonging to M. Delery is condemned to be strangled for murder of his wife. He shall first be baptized. M. Delery is entitled to compensation."

*Re Negro Songot,* 1 La. Hist. Q. No. 3, p. 226, December 1723. "Examination of negro Songot, belonging to Mr. Cantillon, on charge of robbery. Inquiry conducted through interpreter Jacques, a negro belonging to the Company. Songot came from Martinique, but is not at home in French. Disclaims robbery and lays it to other hands. Attorney General orders dismissal of Songot."

*Re Negro Guaissecamant,* 1 La. Hist. Q. No. 3, p. 226, December 1723. "Examination . . on charge of robbery. Answers by interpreter Jacques. Name corresponds to Langlois (Englishman.) Prisoner belongs to Mr. Manade. Admits robbery in complicity with negro Petit Jean, and this repeatedly. Examination of negro Petit Jean, . . Lays the robbery to . . Langlois, but admits receiving the goods and knowing that they were stolen." The next day, "Councillor Fazende and Clerk of Court visit sites of the robberies . . being accompanied by prisoners Langlois and Petit Jean, together with armed escort and . . Jacques, to ascertain just how the premises were entered. Namely by removal of mud plaster from window sills."

*Ceard v. Chauvin,* 5 La. Hist. Q. 154, March 1724. Memorandum annexed to judgment: [167] "Quota of negroes ordered by the Council to be furnished . . to work under . . Captain engineer on the levees . . Ste. Reyne Concession . . 35; Plantation of Sr La Freniere . . 45; . . of Sr de Beaulieu . . 25; . . of Sr de Lery . . 25; . . of Sr Dubreuil . . 20."

*Re Negro Raphael,* 1 La. Hist. Q. No. 3, p. 238, May 9, 1724. Petition of recovery: "Raphael, a negro belonging to Mr. Dumanoir,[1] lent 200 francs (copper) to [a white man] . . on a month's note dated March 16." Restitution desired. Judgment, May 10: "the defendant is ordered to pay the stated debt . . plus interest and costs." [2]

[1] See p. 399, *infra.*
[2] "In this document Raphael is described as a *free* negro."

*Re Negro Raphael Bernard,* 1 La. Hist. Q. No. 3, p. 242, July 1724. "Raphael Bernard, free negro, hired himself in France about five years ago to Mr. Dumanoir at 200 francs yearly in silver, plus outfit of clothing. He has served Mr. D. 'with fidelity and affection,' but latterly Mr. D. has 'treated him with rigor,' and stinted him of clothing and hire." Restitution desired, "and Raphael would also fain return to France. Moreover, Mr. D. should restore the trunk now detained *aux Chauouachas.*" September 1724, [246] "Mr. Dumanoir shall first turn his accounts with Raphael, restore the detained trunk, allow Raphael to change his service, and advance him 100 francs: all this, pending final adjudication."

*Lasonde v. Coupart,* 1 La. Hist. Q. No. 3, p. 242, August 1724. "Mr. Lasondé lodges complaint over breach of contract . . on the part of . . Coupart, who sold him a little Indian slave 'sauvagess,' represented as ailing with a slight fever, nothing worse." Surgeon's report: "had been badly flogged and bears visible injuries therefrom. . . [He] forebodes fatal sequel." Another surgeon "likewise anticipates death as inevitably impending." [243] "Defendant denies the charge of beating and ill treating . . also states that he did not accept responsibility for the outcome of her fever." September 1724, [244] "Plaintiff nonsuited and bears costs."

*Debourdieu v. Plaisence,* 1 La. Hist. Q. No. 3, p. 247, October 1724. "Debourdieu shows that he was deceived in a slave trade" In January 1725 [2 La. Hist. Q. 105] "Sheriff Vincent notifies . . Plaisance [*sic*] to appear for giving [to give] back a negress and a little 'pickaninny,' and to take back his negro."

*De Nolan v. Durand,* 1 La. Hist. Q. No. 3, p. 249, October 1724. "de Nolan tells a distressing tale of the famine year, 1722, during which he cared for two injured slaves, the one with a burnt foot, the next one bitten by a snake: victuals then costing 'their weight in gold.' After all this burden, Mr. Durand now claims (and has been allowed) the second slave, whom plaintiff received in exchange for first one. Restitution desired." December 1724, [256] "Defendant argues that there was no question of a bargain . . nor could slaves be transferred without the consent of official authority, not here invoked. If Mr. De Nolan victualed the slaves . . he also had the benefit of their labor (lent him for putting up a forge). . . Plaintiff sustained."

*Bonhomm v. De Gauvry* [*De Gauvrit*], 2 La. Hist. Q. 113, March 1725. "Bonhomm, Canadian, moves to collect . . 2300 francs due . . for the labor of five slaves during two years and four months in the service of Captain De Gauvry." [114] "Plaintiff nonsuited and subject to costs."

*De Chavannes v. De Gauvrit,* 2 La. Hist. Q. 194, April 1725. Petition of recovery: "De Chavannes . . [bought] a negress from Captain DeGauvrit, nearly three years ago, whereas the vendor had no right to sell her, nor had he paid for her to the Company, whose property she

was. Petitioner would not run risk of paying [660 francs] twice; . . Meanwhile, the slave went mad, and subsequently ran off to the bush, never to come again." Judgment: [195] "Defendant shall pay 660 francs due to Company's cashier and then discharge plaintiff's account. Costs divided."

*Re Negro,* 2 La. Hist. Q. 463, August 1725. "see to it that a certain negro who had deserted but was recovered at Mobile, be delivered to Mr. Debrosses. Payment will be made at Fort Louis, July 21, 1722." The foregoing was "attested correct . . And the same negro was taken from Mr. Debrosses and turned over to Captain Pradel when he left for Missouris. Terms, 1500 francs, charged to Mr. Pradel. . . Recorder Rossard . . asks credit of 1500 francs on Mr. Debrosses' account with the Company. Mr. D. was unwilling to sell the slave . . Council accedes."

*Re imported French Workmen,* 2 La. Hist. Q. 468, August 1725. "They made attempt to quit the ship at the cape, when on their way over;" They "justify their action . . on the plea of seeking some refreshment after 'slavish' treatment"

*Massy v. St. Martin,* 2 La. Hist. Q. 476, October 1725. "St. M. demands payment of draft [given for a slave] in gold and silver specie, whereas Company puts *copper* on same footing." Massy petitions that St. Martin be "required to accept the contested amount (6140 francs), in copper specie." Judgment, May 1726: [3 *id.* 406] "Massy shall pay interest on 6140 francs at . . 5% . . from date of protest until past April 12, when . . [St. Martin] took back the negroes"

*Bureau v. D'Hauterive,* 3 La. Hist. Q. 415, August 1726. "Summons delivered to 'Catherine, his savagess,'"

*De Verteuil v. Sanson,* 3 La. Hist. Q. 419, October 1726. "Dr. S. denies the charge of seditious behavior, and shows that De V. threatened him with irons and punishment at the hands of negroes, all because Dr. S. remained away too long on an errand of treating a negro for rattlesnake bite. Let Mr. De V. be cited to pay the surgeon's salary and grant his discharge." Approved. [420] "Mr. De V. . . parries the sheriff's writ on the ground that the surgeon has no case: he broke his formal contract, expiring only in March, 1728, by deserting his hospital patients on past October 5th." December 1726, [426] "Mr. de Verteuil asks to be discharged from the proceedings moved by surgeon . . The latter . . left the sick slaves in the lurch at a critical juncture." Judgment, March 1727: "De Verteuil shall pay surgeon's salary of 600 francs a year, from . . January 18, 1725 . . until past October . . contract . . will then be dissolved."

*Aufrère v. Melik,* 3 La. Hist. Q. 420, October 1726. "Aufrère bought of Mr. Melik . . a negro for 600 francs, not knowing that the negro was epileptic." Petition that "Mr. M. be cited to take back the negro, and to meet costs and other charges (board and medical attention.)" "Plaintiff nonsuited and subject to costs."

*Terret* [*Verret*] *v. La Fresnière,* 3 La. Hist. Q. 423, December 2, 1726. " Terret, about two months ago, exchanged a negro . . for a negress of Mr. LaFresnière's. Mr. LaFresnière now tries to retract . . by sending back the negro on the ground of age and disability, and by taking away the negress. The original trade was explicit and well understood." Petition that " Mr. LaF. be held to the closed terms of it." Judgment, December 7: [424] " Defendant to pay 394 francs, 6 sous." December 11, " Defence of LaFresnière, to the intent that Verret deceived him . . V. pretended that the negro had no fault but a disposition to run away; whereas LaF. was willing to waive that weakness provided no other (physical) defect was in question. But the like defect soon came to light."

*Re Negro,* 3 La. Hist. Q. 435, February 1727. " Droy . . moves to obtain possession of a negro . . included in Abbé D'Arquevaux's legacy to late widow "

*Re Indian Sansoucy,* 3 La. Hist. Q. 443, March 1727. " Examination of Sansoucy, runaway Indian slave (unbaptized) of Mr. La Vigne's, aged about twenty. ' Marooned,' because he was afraid to return after failing to find an ox that had gone astray. Took refuge in a village called *des Natanapallé,* where there were fifteen other fugitive slaves. . . These runaways had eleven guns and some ammunition, and meant to defend themselves if molested for capture. Answers through Company's interpreter, St. Domengue."

*Re Indian Godin,* 3 La. Hist. Q. 444, April 1727. " Attorney General . . reports that an Indian slave who ran away two years ago has been caught and is now in prison. Slave belonged to . . Duval, and is accused of having enticed a slave ' savagess ' of Mr. Saint Amand's to rob her mistress and runaway with said fugitive." " Examination . . through interpreter St. Domengue. Name . . Godin of the Oquelonex tribe. Unbaptized; about 22 . . (in appearance). Ran away by mad impulse with slaves of Mr. Tisserant. Joined a party of other fugitives, beyond the lake, but left them afterwards. No victuals left but potatoes and fish. The runaway slaves' chief is the slave of Mr. Tisserant."

*St. Martin v. Marlot,* 3 La. Hist. Q. 445, April 1727. St. Martin de J'Aurequyberry . . received a draft of 650 francs from Mr. Marlot, drawn by Mr. Raquet . . for value of a negro lad Cupidon. Draft was protested, and Mr. Raquet answers that he is ready to surrender Cupidon for 650 francs, due on a note of Marlot's. Not so, St. Martin objects, he can not accept Cupidon *in kind*: slave market is likely to depreciate from new importations, and besides, Cupidon is now marked by branding."

*Pouyadon v. Bourbeau,* 4 La. Hist. Q. 225, August 2, 1727. " Pouyadon de la Tour sold a negress to Mr. Bourbeau for 1600 francs, and received 1100 francs, but is continually put off with [as to] the residue," August 21, [226] " Bourbeau promises to pay . . Dausseville . . 380 francs which he lent . . to pay for negress and her baby boy, obtained

from Mr. Pouydan [*sic*]." Judgment, August 30: "B. shall pay net residue claim, 400 francs, on previous residue of 500 francs."

*De Merveilleux v. Gaulaz,* 4 La. Hist. Q. 227, September 4, 1727. "Lasonde, surgeon at Naquechez, certifies that he was called to attend a negro [Choucoura] belonging to Mr. Merveilleux, and found both hands . . mutilated (by gangrene, apparently). Two fingers had dropped from his right hand; two finger tips from his left hand, in sequel to strangulation by tight cords." September 20, [228] "Madame Lambermond . . declares that she heard a negro at Mr. Merveilleux's provoke Mr. Gaullas with abusive language," September 24, [229] "Captain de Merveilleux, commander at Natchez, had to leave his post, 1 May, in order to obtain medical treatment at N. O. He strictly enjoined his substitute Gaulas to commit all discipline of unruly slaves to Mr. de Cazeneuve, and not to punish them himself: 'not knowing him to be apt and fit in this matter.' Contrary to this injunction, Gaulas ruined one of the most valuable negroes . . Hands were bound five hours while more than 600 rawhide lashes were inflicted." October 21, [231] "Pierre Gaulaz, sometime Swiss officer, and former steward of Mr. de Merveilleux . . declares that he had instruction to punish slaves, and that . . Choucoura lost his fingers by thrusting them into boiling water after wounding his hands by struggling while bound. . . [232] De M. has . . extorted from him a note of 200 piastres, to pay for slave." Contract of restitution, January 1, 1728: [239] "Pierre Gaulaz agrees [voluntarily] to pay whatever balance . . shall be required above auction figure, in order to realize 200 piastres gold to Mr. de Merveilleux for his (crippled) slave, . . since the above sum had been stipulated between Mr. de M. and Sieur de Beaulieux, settler at Chapitolas. Further, P. G. will satisfy Surgeon Lasonde for all costs on account of said slave." January 10, [241] "Surgeon Lasonde certifies that Sieur Gaulaz came to arrange with him . . concerning the dressing of the wounds . . and that Mr. G. was not constrained by Mr. de Merveilleux to pay the surgeon's account, but acted on his own free will."

*Re Dumanoir,* 4 La. Hist. Q. 232, October 1727. Petition "that Mr. Dumanoir be ordered to turn in the account of his management; . . the negress and the Indian at present in his charge." "Indian in question is the plantation hunter, and a white hunter must be hired while the Indian is absent."

*Rossard v. de Noyan,* 4 La. Hist. Q. 245, February 1728. Petition that "slaves and cattle be returned, and hire paid for slaves since Feb. 1, 1727, at 4 francs a day for each slave, until date of restitution. Action allowed."

*Re Indian Bontemps,* 7 La. Hist. Q. 686, May 1728. "Inquiry into a plot to desert to the English. Interrogation of Bontemps, aged about 18 . . who said that he spent the money he should have remitted to buy brandy. . . Interrogation of Guillory, runaway slave . . about 15 . . who accompanied Bontemps, Sr. Pellerin's Indian slave. . . [687] Interro-

gation of Baptiste, an Indian slave of the Capuchin fathers, a native of Natchez, aged fifteen years. . . [688] Judgment . . against . . Guillory and Bontemps and sentence passed."

*Re Indians Guillory et al.,* 4 La. Hist. Q. 489, June 5, 1728. "On the testimony of Indian slaves Guillory, Jean Baptiste and Bontemps, the Attorney General recommends further procedure to ascertain precise facts . . Fine of 20 francs in favor of Hospital, if accused retailers [of intoxicants] [1] . . are found guilty. Council . . imposes the said fine on each delinquent"

*Re Indians Guillory et al.,* 4 La. Hist. Q. 489, June 14, 1728. "In review of criminal procedure against Indian slave prisoners Guillory, Bontemps and Jean Baptiste, Attorney General . . finds Bontemps convicted of aggravated desertion and robbery, and condemns him to be hanged and strangled: being first appraised by two reputable inhabitants. Guillory, for twice deserting, shall be publicly flogged, and shall attend Bontemps to the gallows."

*Re Negro Biron,* 8 La. Hist. Q. 23, July 1728. "Soubagné, planter, . . declared . . that he has a [Bambara] negro named Biron, coming from the cargo of the ship *L'Aurore,* who has run away several times, . . yesterday . . the declarer, having been notified of his absence by his other negroes, started in pursuit and met him . . aimed at him and told him that if he moved he was a dead man, which compelled the negro to go with him to the house. . . the declarer called a negro to put the runaway in irons. He jumped on his gun and made himself master of it, the declarer . . seized the gun and the negro whilst awaiting help from the other negroes," Biron was brought before Councillor Bruslé to be interrogated. [24] "Considering that he does not speak French, we . . appointed Samba, a Bambara negro, a Christian, after he had sworn to report faithfully . . the answers . . [25] [Biron] said that he had seized the gun only because he feared that his master might fire at him," Judgment: "to be whipped by the public executioner at the foot of the gallows, warning him . . not to run away in future under penalty of much greater penalties."

*Re Negroes,* 7 La. Hist. Q. 688, July 1728. "Council confirms freedom granted by Cazeneuve to the two negroes . . on condition of their serving Roussin and his wife as servants during two years."

*Morrisset v. Gilbert,* 4 La. Hist. Q. 335, May 1729. "Morrisset . . seeks to collect . . three months and 25 days of hire, at 600 francs a year, of two negroes." July 1729, [336] "Net settlement ordered."

*Re Negroes Changereau et al.,* 4 La. Hist. Q. 347, September 1729. "Attorney General . . moves for the trial of some negroes accused of robbing and killing heifers for fresh meat." Approved. [348] "Examination of negro Changereau, Bambara by nation, aged about 20 years, belonging to . . Gilbert. Ran away because underfed. Had three ac-

[1] "Law forbids the sale of alcoholics to slaves, except on order from owners."

complices (fellow slaves). . . Manadé's negro [1] . . killed the heifer . . but Changereau ate of the meat. . . Examination of negro Francois, unbaptized, a slave of St. Julien's. Aged about 25 years. Had no part in robbing and killing cattle, but stole some bacon and sold it to another negro for tobacco. . . Examination of negro Pierot, Bambara by nation, aged apparently 27 or 28. Slave of Mr. Dalby's ran away because too sick to work and afraid of punishment. Admits complicity in killing a 'young beast.' Stole some corn, but no hens. . . Examination of negro Sabany, Bambara by nation, aged apparently 30 years, a slave of officer Villamille. Some comrades gave him fresh meat . . They were marooning, but Sabany was not."

*Re Bambara Negro,* 4 La. Hist. Q. 352, September 1729. "Attorney General . . moves for the trial of a Bambara negro belonging to Mr. Tredeau, and accused of persistent violent threats." Approved.

*Lowe* [*Lowre*] *v. Alexandre,* 4 La. Hist. Q. 353, September 1729. Petition: "Antoine Lowe exchanged a negro boy with Mr. Alexandre for a negress. Negro boy was in good condition then, but is now in a decline and liable to die. Mr. A. would give back the impaired slave and cancel the bargain. Let him be held to his word." Action allowed. Judgment, October 8: [354] "A. L. shall take his negro, A. his negress. Fine on both parties in favor of Hospital. Costs divided."

*Re Negro Petit,* 4 La. Hist. Q. 354, October 21, 1729. "Bonnaud reports that his negro Crusquet died from poisoning, as indicated by post mortem examination. Petit, another negro of B.'s is suspected, and should be brought to trial." October 25, [355] "Attorney General reviews the case . . Among the plantation negroes, witchcraft is supposed to be the weapon of Crusquet's poisoner's tribe; the law followed by [Superior] Council does not admit witchery, but it does punish poisoners. Institute formal trial of Petit." Approved.

*Re Indian,* 4 La. Hist. Q. 355, October 1729. Petition for emancipation: "Duplessis, settler at Natchitoches, holds 'a kind of will' . . by late François Viard, who freed an Osage woman slave and reserved 100 pistoles in behalf of her Catholic instruction." He asks that these terms be carried out.

"Attorney General approves emancipation . . but the Black Code forbids cash legacy to a slave. Money shall go to the Hospital, and said Osage will be trained by the Ursuline ladies, who are to take quarters in Hospital."

*St. Amand v. Desche,* 4 La. Hist. Q. 356, November 1729. "St. Amand moves for the citation of Surgeon Darclon Desche, to pay for a negro who died, as here contended, by reason of the Surgeon's neglect. Case of injured feet." "Notice to said Surgeon *aux Allemands,* ten leagues away." [358] "St. A. nonsuited."

[1] *Re* Negro David, p. 405, *infra.*

*Re Negro David,* 4 La. Hist. Q. 357, November 1729. See *Re* Changereau, p. 403, *supra.* " Examination of a Bambara negro, David, who admits running away (from his master de Manadé) and complicity in killing a heifer. Ran away because his master broke a finger for him "

*La Boullaye v. Pouiladon,* 4 La. Hist. Q. 359, December 24, 1729. Petition: " La Boullaye was allotted a certain slave [1] who proved incorrigibly lazy, or obstinate, when set to work. . . has since died, and petitioner seeks to obtain a slave in compensation, from estate of the late Latour Pouiladon, owner of deceased slave." Action of inquiry allowed. December 29, " Attorney General . . relates the case of . . slave, supposed to have been wittingly palmed off . . through the late Surgeon De La Tour's easy knowledge of slaves' fitness or unfitness. Let executor . . [360] be cited, together with all persons likely to have knowledge "

*D'Auseville v. Charpentier,* 4 La. Hist. Q. 510, January 1730. " Jacques Charpentier, *alias* Le Roy, steward [and tenant] of . . [Councillor] D'Auseville, is overhauled before Councillor Prat on charges of . . cruelty to slaves, and the suspicious death of one or more of them." April 1730: [521] " A main charge is that of causing frequent abortion among the slave women by corporeal punishment in pregnancy. . . insinuation that Roy is especially vindictive to those women slaves who repel his lust in the open field. . . Roy slights the Black Code in his prohibition of Sunday taskwork, and he stints the slaves of necessary provisions." August 7, 1730, surgeon's report: [5 *id.* 87] " post mortem examination of a negro named Brunet, belonging to . . D'Auseville. Marks of gangrene about . . the ventricle. . . (Gangrene seems to have ensued from a bruise and confined blood clot.) " August 30, petition that [89] " Charpentier retract his lease, quit the plantation, be sentenced to [pay] 20 000 francs by way of damages." " Immediate action ordered," September 5, supplementary charges: [91] " cruelty . . in . . exhausting the slaves by long hours and vile fare (one meal of rotten beans a day), and causing continual abortions. But the overseer . . manages to conceal most of his crimes from white witnesses." Petition that " negroes also be admitted in the trial proceedings." " Approved: Prat." September 7, [92] " D'Auseville reports that Charpentier has taken revenge on . . Brunet's account by beating . . Brunet's wife on the head and breast with closed fists. The overseer feels himself the more immune because in his contract of lease there was no proviso holding him for damages as regards injured slaves." Asks that " the petitioner's negroes be heard as witnesses." Approved. September 18, [94] " evidence . . the surgeon felt obliged to report the overseer to . . D'Auseville for striking a negro with an axe handle."

*De Chavannes v. Blanpin,* 4 La. Hist. Q. 518, April 1730. " Blanpin . . employs four negroes and a Frenchman."

[1] " The slave was imported . . March, 1728." " Allotted to him in May, 1728." 5 La. Hist. Q. 97.

*Re Negro Alphonse,* 4 La. Hist. Q. 519, April 1730. Petition "to obtain indemnity for a negro . . the slaves . . were put to work, all in good condition, on the town rampart. Alphonse . . fell ill and was taken to the Hospital, where he died . . [520] Since this happened in the Company's service, restitution is reasonably in order."

*Buquoy v. D'Auseville,* 4 La. Hist. Q. 520, April 1730. Buquoy "bought a negro at auction for 1000 francs, payable in six months to Mr. D'Auseville. . . the negro is always ill and unfit for service." Petition for cancellation of the contract. [521] "B. has offered him 20 quarters of rice if he would take back the negro." Judgment: "B. to pay his note."

*Re Negro André,* 4 La. Hist. Q. 520, April 1730. "Attorney General . . reports that . . André, free negro employed by Mr. Bellair, was trying to arrest a fugitive negro belonging to Mr. Pasquier, and shot into the water, . . has not appeared since. Let André, now in prison, be brought to trial." "No note by Court."

*Meuillion v. Du Buisson,* 5 La. Hist. Q. 81, July 1730. "Drugs used inappropriately for the negroes, like manna and rhubarb."

*Macmahon v. Baldic,* 5 La. Hist. Q. 578, September 1730. Judgment: Baldic to pay "3,200 livres for a negro . . his wife and two small negro girls,"

*Pasquier v. Rossard,* 5 La. Hist. Q. 97, October 7, 1730. "Pasquier paid for a certain negro . . recently brought back by the Chactas. . . Attorney General orders negro sold and Pasquier . . paid 700 francs from the proceeds." October 14, [98] "Modified . . Slave shall be sold, and P. 'lined up' with other creditors."

*Lionnois v. de Coustillas,* 3 La. Hist. Q. 79, October 13, 1730. "petition of Marie Barbe Edelmaire, wife of Lionnois . . That their negro having run away and having been captured by the Bayou Goulas savages, the latter took him to the guard house to get payment for their capture. . . Lionnois went along . . Mr. de Coustillas, being . . on guard, proposed to him to make an exchange . . Lionnois being under the influence of liquor accepted . . Petitioner, having seen her husband return with a negro of such bad condition, said that she would never consent to the exchange . . and that she was not willing to render herself liable to the payment of a fine of Five hundred livres, as is provided by your ordinances. . . may it please you to order Mr. de Coustillas to give back the negro . . made over to him, and to take back his own" October 19 [5 *id.* 98] "De Lionnois certifies . . negro, [taken in exchange, is] satisfactory" to him. November 25, [103] "Mr. de Coustillas . . [is] satisfied with exchange . . [asks] Council . . to confirm the same. No note by Court."

*D'Auseville v. Buquoy,* 5 La. Hist. Q. 98, October 1730. "D'Auseville claims 916 francs . . due on a slave." See Buquoy *v.* D'Auseville, *supra.*

*Meuillion v. Aufrère,* 5 La. Hist. Q. 99, November 1730. "Surgeon Antoine Meuillion bought . . a negro who proves to be epileptic, though represented to be free from disabilities. . . [asks that] Aufrère be cited to pay 1000 francs, or else furnish another negro." [101] "nonsuited."

*Mingo v. Darby,* 5 La. Hist. Q. 102, November 1730. "Free negro Jean Mingo refers to his agreement with Sieur Darby, Nov. 28, 1727,[1] whereby Jean should marry Thérèse and buy her freedom for 1500 francs. Marriage ensued, but Mr. Darby 'makes difficulties' . . on the score of allowing for supplies . . Jean offers reasonable concessions" Judgment: [103] "Thérèse shall be restored to Jean Mingo, her husband; but Darby stays entitled to payment."

*Bousquerat v. Rousseau,* 5 La. Hist. Q. 108, February 1731. Bousquerat "sold to late Sieur Soubaignie . . three negroes, only two being delivered, for 1000 francs each, payable in tobacco at . . 6 sous a lb.; and if not paid by October 15, 1729, Soubaignie was to pay hire for each negro at . . 300 francs a year. . . [asks that] Rousseau, guardian of Soubaignie minors, be cited to pay . . or else return . . negroes, and pay the hire agreed." Action allowed.

*Pieron v. Rousseau,* 5 La. Hist. Q. 109, February 1731. "Disputed negro is now among the Chaquetas;"

*Chanfret v. Mesplets,* 5 La. Hist. Q. 113, March 1731. "four mares . . exchanged . . for a negro."

*Michel v. D'Auseville,* 5 La. Hist. Q. 113, March 1731. Sieur Michel "sold a negress [Angélique] in December, 1729; delivery to take effect . . in the spring of 1730 and on the day when vendor should sail for France. Terms, 1200 francs . . but if M. did not sail . . bargain should be . . void. Buyer . . paid 300 francs on account July, 1730, and now tries to hold M. bound . . although M. has not sailed . . M. will refund the 300 francs, but insists on retracting the contract," April 1731, [240] "Louise Phelipeaux, femme Michel," is the owner of Angélique. "Madame signed no receipt, and her husband has no voice in the matter without Madame's consent, which is not given." She asks that the contract be declared void. "No note by Court."

*Lazuyer v. de Chavannes,* 5 La. Hist. Q. 115, March 1731. "bought a negro at auction for 1000 francs, from ship"

*De Morand v. Boissière,* 5 La. Hist. Q. 245, October 1731. "Poussard . . witnessed shooting of Mr. De Morand's negro by Sieur Boissière." "The negro was wounded, but not killed."

*Re Negroes,* 5 La. Hist. Q. 246, November 1731. "Velart . . reports the robbery, from Le Blanc warehouse, of 25 quarters of rice. Deed was

[1] Darby, director of . . Cautillon grant, authorizes marriage of John Mingo, English free negro, to Thérèse, a slave negress of said grant, . . John is to pay as much as he clearly can each year to redeem 1500 francs, price of Thérèse. Darby meanwhile will allow so much rice, corn, beans, and so many sweet potatoes, to feed Thérèse; item, her clothing. When price is paid, Thérèse shall have her liberty. Children, if any be born meanwhile, shall also be free." 4 La. Hist. Q. 236.

trailed by dropped rice to cabins of Mr. Prat's negroes." [247] "Judix reports that when the cabins . . were searched, a kettle of the petitioner's was also discovered . . he missed 10 barrels of rice and a lot of sweet oil on the same day when the kettle disappeared," "he further complains of the loss of a heifer three weeks later."

*De Blanc v. Bellair,* 5 La. Hist. Q. 249, December 1731. "complaint against Sieur Bellair, whose free negro Thomas violently assaulted one of petitioner's negroes who had been trying to drive the petitioner's cows home, from straying with Bellair's cattle. Thomas also shot and grievously wounded the said slave in the left eye."

*D'Asfeld*[1] *v. Company of the Indies,* 8 La. Hist. Q. 389, 1731 or 1732. [391] "that the Natchez nation, on whose territory was the plantation of the petitioners, . . was so ill treated by a new Commandant . . that it was determined . . November, 1729, to attack the French . . all the whites were massacred and the negroes numbering eighty-six, carried away"

*Re Negress Marie,* 5 La. Hist. Q. 265, June 1735. "Marie, free negress, wife of 'George,' deceased, asks the Councillors to confirm . . her freedom, granted by Monsieur de Bienville . . 1733."[2] Filed. "Only the Governor and the acting governor have the right."

*Baldit* [*sic*] *v. Goupillon,* 5 La. Hist. Q. 266, June 1735. Surgeon Baldit "files complaint against Madame . . Goupillon for cruelty to her child, . . the baby was thrust nearly nude into the Surgeon's care, by a negress of Madame . . with the remark: 'There is thy child, sent thee by my mistress.'"

*Re Negro,* 8 La. Hist. Q. 299. July 1736. "Report . . of assault and stabbing . . on him [Sr. Wig] and on his son-in-law by one of his negro slaves, whom they have had incarcerated . . with request to inform the Procureur Général"[3]

*Re Negro,* 5 La. Hist. Q. 383, August 1736. "testimony in a runaway slave case, to show that the slave had not been illtreated."

*Dumas v. de Pontalba,* 8 La. Hist. Q. 491, August 1736. "hired a negro . . Pierrot to Mr. de Pontalba ['for a month'] . . to help him move . . and to cook for him. Later Pontalba asked Dumas if he would sell him the negro, whom he would . . [take] to France. Dumas consented . . for 1500 livres . . and a quarter of brandy. Mr. de Pontalba offered 1200 livres and the brandy. . . his slave had drowned while in Pontalba's service, . . he expects Mr. de Pontalba to pay 1500 livres for him . . The slave's work brought the owner 400 livres per year." Declaration of de Pontalba, September 1736: "he had left . . the 19th . . August to go to Pointe Coupée with Pierrot . . hired . . since the 19th . . July at 20 livres per month. That in the night . . whilst tied up . . he left the

[1] Marshal of France and governor of Strasbourg. 8 La. Hist. Q. 504.
[2] [250] "in recognition of their good and faithful service . . during 26 years."
[3] Translated "Attorney General" in previous volumes of the *Quarterly.*

pirogue and the negro also wished to retire. Early on the morrow the master (patron) of the boat called for help . . the negro had fallen overboard without trying to swim, for Pierrot was a good swimmer, and the 'Patron' said . . 'That negro must have had an epileptic fit to which he was subject.' . . every effort was made to rescue him without avail."

*Prat v. Douville,* 8 La. Hist. Q. 493, August 1736. "Report filed . . by Sr. Jean Prat, Physician of the King, of theft of a gun and . . other effects . . by a runaway negro owned by Madam Douville, . . The thief was stopped by Mr. Morand's negro and brought to jail. Sr. Prat asks that he be punished and that Madam Douville pay for what he stole."

*Re Negro,* 8 La. Hist. Q. 493, August 1736. "Report . . by Sr. François Livet . . that one of his slaves who ran away nine months ago was captured by one of Mr. Fillart's slaves . . who at . . Pierrot's request loosened the cord around his elbows, whereupon Pierrot ran away again, and since then has been continually stealing from . . Livet's plantation, wherefore he denounces him to the Procureur Général"

*Larchevesque v. Chaperon,* 8 La. Hist. Q. 497, September 1736. "reports arrival at his plantation . . of a negress owned by his deceased brother . . given to Sr. Chaperon to care for his widow and child. The negress said that she could not return to Sr. Chaperon as she would die, . . she did nothing but cook for the negroes, that she was cruelly treated without cause. Before coming to . . Larchevesque she went to the RR. Jesuit fathers who hired the slaves of . . her [late] master, but they would not take her without telling Sr. Chaperon, and fearing . . Chaperon's fury she came to her master's brother who could hire her to another . . on his own place he had an example of the treatment of slaves by those . . not their real masters in the case of the negress dying of the treatment she was subjected to at Sr. St. Julien's tar factory." Declaration of Madame Chaperon: "Maria . . left her house . . in care of two small negroes, . . she found that she had gone to Sieur . . Larche [*sic*], who, to all appearances, influenced her to desert her post."

*Re St. Julien Succession,* 8 La. Hist. Q. 496, October 1736. "Protest . . by . . Surgeon at the Hospital of the King . . against . . delivery of returns of succession . . until payment of 96 livres, 12 sols, for medicine furnished to his slaves in July and September last,"

*Re Negro Guela,* 5 La. Hist. Q. 386, January 4, 1737. "Attorney General reports the case of a negro named Guela, whom Sieur Lange, manager of Mr. Perrier's plantation, has sent 'to our prisons,' under charge of frequent marooning. Let this negro be examined" Approved. January 10, [387] "Councillor . . hears . . Guela, aged about 30 . . not baptized; 'speaks good French.' Ran away for fear of flogging, and complains of much beating, little food. Marooned in the cypress tract. Carried with him some sweet potatoes, and found . . 'grains de bois.' A negro of Monsieur de Bienville's took him to town and Mr.

Lange had him promptly imprisoned." January 12, [388] "Attorney General . . orders that he shall have both ears cut by the public executioner, and be marked with a fleur de lys on the right shoulder."

*Re Negro Congo,* 8 La. Hist. Q. 694, January 1737. "Complaint . . by . . Congo, public executioner, accompanied by the Attorney General, that he was assaulted by two negroes yesterday, . . One . . was a runaway negro owned by . . Langlois.[1] They left behind them a torn blanket and an old coat,"

*Alexandre v. de Chavannes,* 9 La. Hist. Q. 128, April 1737. "to compel him to pay . . Alexandre . . 700 livres . . for rent of seven negroes since six months, at 200 livres per year for each"

*Re Negro,* 9 La. Hist. Q. 138, May 1737. "Report . . by . . Coussine, of theft . . during his absence, . . His gun was taken, his powder horn . . 10 livres in gold, a fine blanket which cost 40 livres, four towels, two tableclothes, about a half barrel of rice and two turkeys. . . his negress has warned him that one of Mr. Labro's negroes bought a blanket, a stew pan and half of a table cloth; . . Labro told him that one of Mr. Fleurie's negroes had sold these things. Coussine asks . . Attorney General . . [to] investigate . . the value to be paid by the master if the negro is guilty."

*Negro Diocou* [*Tiocou*] *v. D'Auseville,*[2] 5 La. Hist. Q. 401, June 1737. "Free negro Diocou, emancipated for his toils in the Natchez war, claims credit of 450 francs against St. Julien estate: his arreared wage account, which he asks to have deducted from the price of his wife, partly bought by himself." Asks that she be not "sold outside, but hired by said estate until he can redeem her completely." Action allowed, and notice served on Councillor D'Auseville. Judgment, July 6: [402] "Estate shall pay Diocou 450 francs; negress to be sold forthwith."[3]

*De Morand v. Pairoc,* 9 La. Hist. Q. 290, June 1737. "a young negro . . his cook . . went to the butcher shop of Pairoc, and began a quarrel with the butcher, who cut him on the finger of his right hand, giving the negro a vulgar message for . . his master. . . asks . . satisfaction given for the time the negro will be unable to work."

*D'Auseville v. Aufrère,* 5 La. Hist. Q. 402, July 1737. "Attorney General . . orders the hearing of negro Janot, [slave of the late St.

[1] [689] "Langlois on leaving for Illinois, left [Giscard] . . the care of searching for a runaway negro, who was brought to . . Giscard by Mr. Morand's negroes and led to prison. . . hired to Sr. Jaffre . . who sent him to his plantation . . never reached there but ran away without any cause."

[2] Attorney for vacant estates.

[3] She was Marie Aram, owned by the Charity Hospital on July 10, 1737, on which date the directors of the hospital contracted with François Tiocou, a free negro (4 La. Hist. Q. 366) "of the Senegal nation" to grant freedom to Marie Aram, his wife, on his serving them "Environ" seven years without salary. In 1744 the directors petitioned "Mssrs. de Vaudreuil, Governor . . and de Salmon, Intendant-Commissary, . . whereas . . [they] have . . served the hospital well . . during the time laid down . . to . . grant freedom to the said Marie Aram . . the intention of the husband and wife being to serve the hospital . . as long as they give satisfaction." 3 *id.* 551, 552. The petition was granted. See also 9 *id.* 303, 304, and 12 *id.* 669, 671.

Julien] and his wife Calais, as regards the disappearance of a certain receipt from the hands of Calais," Calais declares that Aufrère, [401] " charged with preparing inventories of late St. Julien's estate, . . [403] took charge of the receipt . . and she imputes to him the removal of sundry goods that should have been listed in the inventory."

*Dumanoir v. Brulé,* 9 La. Hist. Q. 305, July 1737. Dumanoir, agent of the Company of the Indies, states that Brulé, the former agent, " owes the Company . . 10,453 livres, 11 sols, 6 deniers, . . prays . . to permit petitioner to have seized one of his negroes, his wife and their two children, to be sold to the highest bidder," Granted. [306] " Five slaves found together in the kitchen were seized " They were released [307] " in view of mortgage of movables and inmovables given to said Company, and on condition that these slaves cannot be hired nor sold."

*Ursuline Nuns v. D'Auseville,* 9 La. Hist. Q. 310, July 1737. " Petition for payment of board of a mulattress placed under their care [by Sr. St. Julien] in June, 1735, . . Her board amounts to . . 449 livres, 10 sols. The Attorney of Vacant Estates [D'Auseville] claims [her] . . as carried in the inventory of goods of . . St. Julien," He paid the bill.

*De La Pommerais v. Moriset,* 5 La. Hist. Q. August 1737. " claims 360 francs . . due on a savagess "

*De Benac v. D'Artagnan,* 5 La. Hist. Q. 410, September 1737. " act of settlement formulated . . in Paris . . 1732, conceding twelve slaves to . . de Benac, in discharge of all dues to him by proprietors of D'Artagnan land tract; the said slaves to be selected and conveyed in Louisiana." [413] " Council orders proprietors of the grant to pay plaintiff 8400 francs in compensation for the twelve negroes."

*Prat v. Dautir,* 5 La. Hist. Q. 412, September 1737. " Declaration . . by Sr. Jean Prat, surgeon of the King, that one of his negroes, hired on a plantation . . was dangerously wounded [' by sharp instruments '], that notwithstanding the close attendance and care given him, this negro, an indigo maker, is still in imminent danger," See 9 *id.* 511.

*Chaperon v. Jesuit Fathers,* 5 La. Hist. Q. 418, October 30, 1737. " Chaperon, guardian . . hired . . slaves . . to the Jesuit fathers, who are unwilling to release them, now that the contract has expired." Asks that " the slaves be let out at auction," Approved. November 6, [420] " five negroes, five negresses and three little negroes are let out . . for . . 18 months . . Accepted bid, 1000 francs."

*Re Negress,* 5 La. Hist. Q. 420, November 1737. " Sheriff . . notifies Dame Bousquera and a negress, Marie Louise, belonging to Mr. Roujeau, to appear . . before Councillor . . for the sake of giving testimony in regard to a case of slave abortion, caused by violence."

*Dumanoir v. Louve,* 5 La. Hist. Q. 584, February 1738. " Dumanoir, Company's agent, claims 100 pistoles from . . Louve, who sold a negress . . [without] Company's permission."

*Vigeau v. de Coustilhas,* 5 La. Hist. Q. 587, February 1738. " Surgeon . . Vigeau de Grandmaison presents . . charges against Mr. de Coustilhas, proprietor of the vessel . . The Surgeon contracted to go to Martinique and then to Guinea for slaves; but the latter expedition fell through."

*Renaud v. Bossière,* 5 La. Hist. Q. 589, March 1738. " Surgeon . . Renaud of the ship . . claims . . 8 francs from Dame Bossière, on behalf of her negress;" Judgment for the plaintiff.

*Re Negro La Fleur,* 5 La. Hist. Q. 593, April 1738. " Attorney General . . reports the case of a runaway negro, La Fleur, . . [594] caught by the savages whom Monsieur de Bienville had sent in pursuit of marooning negroes." Examination of Prisoner: " aged about 25 . . and unbaptized. Ran away for something to eat, after unjust punishment, as he states it, for alleged complicity in . . [stealing] meat."

*Re Negroes,* 10 La. Hist. Q. 98, April 1738. " quarrel between a free negro and one belonging to Sr. de Chavannes . . one of the men and a negress owned by de Chavannes were wounded."

*Re Negro Pierrot,* 5 La. Hist. Q. 595, April 1738. " Attorney General . . reports the case of a negro prisoner . . under charge of . . [stealing] clothes." Examination: " belongs to Mr. . . Dupart, and is not baptized; age, about 35. He had been drinking rum, bought with his own earnings . . and can give no reasonable account of his actions in the matter of the stolen goods. Was not accustomed to steal."

*Vicar General v. Treasurer General,* 3 La. Hist. Q. 292, June 14, 1738. " Rev. P. Mathias, Curé of New Orleans and Vicar General . . has the honor to report that M. de Lapommeray, Treasurer General . . caused to be interred by his negroes the body of a negress of twelve or thirteen years, out of the cemetery, contrary to the ordinance of the King in the Black Code, by which His Majesty wills . . that the masters be obliged to inter the bodies of their baptized slaves in the cemetery, with the ceremonies of the Church. . . Father Mathias demands that the body . . be exhumed to be reinterred in the cemetery according to the rites of the Church, and that . . Monsieur de Lapommeray be cited before the Council " [293] " Let the party be cited . . and in the meanwhile we order that the body . . be exhumed [in order] to be transported to the cemetery " Motion of the Attorney General, July 5: " I demand . . that Sieur Loquet de la pommeraye be sentenced to pay a fine of thirty livres to be applied to fencing in the cemetery . . and that he be prohibited to relapse into a like infraction."

*Dumanoir v. Crespe,* 5 La. Hist. Q. 599, June 1738. "Dumanoir, Company's agent, has learned . . that . . Crespe, debtor to Company for 1199 francs, has sold a negro to Aufrère without leave; nay more, even contrary to the ruling of . . 1722." Judgment: [600] " Crespe and Aufrère shall pay jointly to the Company, 1199 francs." [601] " Crespe pleads that Aufrère has the negro . . [asks that] Aufrère be bound to undo the sale and to give back the negro."

*Boyer v. Senet,* 6 La. Hist. Q. 127, October 1738. "claims that . . Senet was taking Boyer's slave, an Indian woman, away from her work. That he ordered him to desist, whereupon Senet clubbed . . him" [131] "Sheriff . . summons ['to appear . . and give evidence'] . . the negroes Boucary and Diaucour, belonging to Sieur Blanpin"

*Mathieu v. Pradel,* 6 La. Hist. Q. 138, October 1738. "Mathieu bargained with Mr. Pradel for a savagess named Marianne. The contract was closed yesterday, but Mr. Pradel now tries to evade it on the ground that he intends to emancipate Marianne." [139] "Mr. Pradel [states] . . that . . [he] never seriously bargained with M[athieu] . . If they broached the subject at all, it was by way of idle banter."

*Re Negro Titus,* 6 La. Hist. Q. 285, December 1738. "stole from a sailor and ran away."

*Re Negro Argus,* 6 La. Hist. Q. 304, March 1739. "soldier of the garrison at Natchitoches, bought a slave at auction, for 1000 francs, and although the crier disclosed the fact that the slave had a sore foot, the purchaser was not aware of the . . incurable nature of said ailment." "Dr. Prat has inspected . . negro is badly ulcerated, and unfit for ordinary service." Sale annulled.

*Re Negro Louis Connard,* 6 La. Hist. Q. 304, March 1739. "Petition to M. de Bienville by Louis Connard and his wife . . asking that freedom granted them and their four children by will of M. de Coustillas . . be confirmed." Granted.

*Dreux v. Mathieu,* 6 La. Hist. Q. 485, April 1739. Court summons "to sundry slaves of the late Mr. de Coustillas to appear . . for testifying in the action moved by Mr. Dreux against Mr. Capraise Mathieu [manager of the plantation of de Coustillas]." [488] "Examination of seven slave witnesses, who concur with but slight variation . . that Mr. Mathieu fired the shots that killed the cow belonging to Mr. Dreux. Several of the slaves are Senegal negroes." [491] "Mathieu . . objects to Louis and his family,[1] and to the slaves Cesard and Nicolas Hipolite, as prejudiced witnesses;"

*Caron v. Mathieu,* 6 La. Hist. Q. 486, April 1739. "Jean Caron, butcher, lodges complaint against Sieur Mathieu for ordering his negroes to kill the petitioner's horse without . . warning." "Sheriff . . serves notice . . to sundry negroes of the late Mr. de Coustillas to appear and give evidence" [488] "Nine witnesses are heard: Mr. . . Darby and . . [eight] slaves" [491] "Mr. Capraise Mathieu says in reproach of . . witnesses . . that the negro Louis is addicted to strong drink and that he made an attempt at suicide; that Sieur Darby . . had long been inciting the negroes against C. M."

*La Branche v. Widow Petit,* 6 La. Hist. Q. 494, April 1739. Widow Petit declares: "Some months ago he crippled . . [her] negro cowherd;"

[1] See *Re* Negro Louis Connard, *supra.*

*Gonzalez v. Chaperon,* 6 La. Hist. Q. 661, June 1739. " the runaway Pierre is harbored by Chaperon, who pretends to have Monsieur de Bienville's permission to keep Pierre for a cowherd. . . no such permission was given." " Judgment reserved until presumed owner arrives to show whether the mulatto . . is a slave or not."

*De Lapommerais v. Dalcour,* 7 La. Hist. Q. 505, November 1739. " charges Mr. Dalcour with disregarding an implicit condition of the lease . . by working the slaves on alien property." Judgment: "Lease is canceled from date of expiration of the first year. . . (Four of the plantation slaves did service in the Chicachas war.) "

*Pierre v. Marsilly,* 7 La. Hist. Q. 513, November 1739. " R. P. Pierre, Capuchin Superior, was formerly partner with Mr. Marsilly, in . . improving a plantation . . The petitioner's negroes worked in putting up several buildings and other tasks; . . petitioner now claims half right therein,"

*De Lorme v. Chenier,* 10 La. Hist. Q. 277, April 1740. " that he hired a negro from [to?] . . Chenier . . that . . Chenier abandoned his barge . . negroes on it . . from fright drowned themselves," Judgment: [411] " That negro be appraised and that his value . . be returned to Sr. De Lorme." " Dreux and St. Martin appraise negro at 1300 livres, Colonial currency."

*Re Jaffre Succession,* 10 La. Hist. Q. 426, August 1740. Will of Jaffre, called La Liberté, " freed Jeanneton and . . her daughter. Widow objects. . . Appraisement . . followed by judgment maintaining the clause for their manumission on condition that one-half of the sum of their appraisement be raised on the succession for account of Widow Jaffre."

*Re Negro Pierrot,* 10 La. Hist. Q. 567, January 1741. " Pierrot, of Biefada nation, aged about 30 . . baptized. Charged with marooning. He ran away because he was put in irons and wrongly accused of stealing. He and his fellow marooner lived on wild cats and rats of the wood. He ran away once before, discontented with his wife."

*Claveau v. Broutin,* 10 La. Hist. Q. 568, February 1741. " plantation slaves and servants found the sick negro perishing like a dog,"

*Boissière v. Bienvenu,* 10 La. Hist. Q. 578, April 1741. " decree . . rendered sentencing Boissière to pay an indemnity of 1000 livres . . for a negro hired to him who was taken . . by the Chickassaws."

*De Pontalba v. Prat,* 11 La. Hist. Q. 123, July 1741. " he bought a mulatto . . Jacob . . for 1000 livres."

*D'Auseville v. Louis Cezard (a free negro),* 11 La. Hist. Q. 128, July 1741. " Claim by Procureur D'Auseville of 11 livres from negro Louis for Ferchaud estate and 7½ livres for himself." Judgment [129] " for D'A."

*Widow Barbier v. Dupare,* 11 La. Hist. Q. 131, August 1741. " sues to recover . . her young negro slave . . left in Mr. Dupare's charge and

. . would have the Council decide if Dupare shall keep the slave as an apprentice, whereas he has completely neglected to do his part of the contract."

*Noyon v. Girard,* 11 La. Hist. Q. 131, August 14, 1741. Noyon "bought a negro girl of Mr. Girard, about three weeks ago, and some days later learned that she was crazy. Girard refused to take her back but advised Noyon to leave her with the Dames Religieuses and if they noticed some lunacies . . [132] G. would . . [remit] 1750 livres in restitution. On report of the said Religious [1] the negress was returned to Mr. Girard. . . [asks that he] be cited to refund."

*Widow Barbier v. Mrs. Dandin,* 11 La. Hist. Q. 134, September 1741. "Council orders defendant to remit to plaintiff the . . negress . . and to pay defendant . . 400 livres for apprenticeship."

*De Viel v. Pery,* 11 La. Hist. Q. 141, October 1741. "Surgeon of the King . . leased 15 of his slaves to Mr. Pery with the understanding that de V. should incur no risks but that of natural death. François, carpenter, has cut his throat in despair, whether for ill treatment or other causes; . . [asks that] Mr. Pery be cited with reference to paying 2500 livres"

*Gauvain v. Durantois,* 11 La. Hist. Q. 142, October 1741. "served notice of citation . . handing notice to his negress servant"

*Re Negro Pierrot,* 11 La. Hist. Q. 288, January 1742. "The Procureur Général alleges that they have brought to our prisons, a runaway negro, for an assault on a soldier . . almost killed him, having broken his jaw, his teeth and almost blinded him, . . [289] Interrogation of Pierre called Jasmin . . owned first by Brunet [[291] 'living at the Balise'] and later by Madame L'Epine [[288] 'living in Arkansas'], of Sango nation, aged twenty-five . . baptized and speaks French well. . . He struck a soldier in the face because he ill-treated him . . [291] he found an iron bar under his hand and . . the misfortune happened." [289] "He knew that a slave that raised his hand on a white man deserved death. . . his mistress had let him come to Natchez and . . the Surgeon at Natchez told him that his mistress had exchanged him. . . he kept on the river bank about a month and began the next one, but he had nothing more to eat, though he had a gun loaded with lead, powder and balls given to him by Mr. Fabry. . . had been arrested by Rougeot's negro slave driver when he went for food. He kept in the woods and the negroes gave him corn when he came at night to their cabins." Testimony of Mangois: [290] "Jasmin pressed by hunger had gone into the cabin of some Indians. Madame L'Epine had offered 50 livres to arrest him. He could hardly stand when he went to the cabin; they brought him to the Fort. The soldiers fed him, he had no trouble with any one and they left him at liberty. . . [292] convicted . . condemned . . to be flogged every

[1] Letter, Aug. 11, of Mother St. Pierre, Superior of the Ursulines, to Mr. Noyon, . . asking him "to send for his negro girl, . . who does not need to stay any longer to furnish evidence of her insanity, and the Revd. Mother fears responsibility."

day and on Sundays at the crossings of the City by the public Executioner of High Justice, his right ear to be cut off, and to carry a chain on his foot of the weight of six pounds for the remainder of his days and Madame L'Epine . . to [pay] one hundred livres of indemnity towards the soldier . . if she does not prefer to abandon the . . negro,"

*Re Mégret,* 11 La. Hist. Q. 295, March 1742. " shot at some negroes or mulattoes whom he claims to have discovered fishing in closed waters. . . some . . are dangerously wounded. . . Mégret, steward on the plantation . . leased to Mr. Pery; pleads that he shot in obeying Mr. Pery's orders to the end of abating continual mischief by negroes on the premises . . He was not intoxicated "

*Fossier v. Gauvin,* 11 La. Hist. Q. 306, October 1742. " claims 53 francs . . on account of tar labor, or so much tar allowed negro workman."

*De Gauvrit v. Herbert,* 11 La. Hist. Q. 477, February 1743. " sold a pair of negroes and their children . . for 3500 livres. Only about 1100 livres have been paid. . . [asks that] the negroes be seized and sold." [480] " Judgment . . against defendant, his obligation to be paid in eight days, in default of which the negro [*sic*] shall be seized and sold at auction."

*LeRoy v. Bouchard,* 11 La. Hist. Q. 485, March 1743. " Bouchard was a resident of Point Coupée and therefore the notice [of citation] was delivered at domicile of the Procureur Général, to Pierrot, the Procureur's slave."

*Re Pompey (a slave),* 12 La. Hist. Q. 144, June 1743 " Petition of . . Procureur Général, showing that Sieur Corbin . . went to hunt . . and has not been seen since; . . The mother . . denounces a slave against whom she has ' violent ' suspicions, among other reasons that said slave runs away often and that Corbin . . had him . . whipped, and once told his brother . . to shoot him if he made an attempt at evasion; he tried to run away and the . . brother . . fired his gun at him . . loaded with . . salt. . . Order to arrest Pompey and imprison him, for interrogation "

*Des Islets v. Mme. de St. Aignet,* 11 La. Hist. Q. 624, July 1743. " agreement . . to deliver to him . . utensils for making commercial indigo . . he would furnish four negroes during two months to work thereon."

*De Chanfret v. Messager,* 11 La. Hist. Q. 647, August 1743. In August 1742 " he hired a negro named Sans Quartier to Mr. Messager to make the journey to Illinois, and to bring in the convoy in which the slave was to descend 2000 lbs. of Illinois flour. . . He has heard no news of Messager, the negro or the flour. He prays that he be cited to be condemned to pay hire of slave and the price of the flour " " citation served on Mr. Messager, a resident of Illinois "

*Re Jean Baptiste (a free negro),* 11 La. Hist. Q. 649, August 19, 1743. " accused by his employer of theft of fine clothes. . . 20 years old . . he denies the theft of which he accuses another negro, named Pantalon. Procureur Général orders detention of Jean Baptiste " August 22, " Jean Baptiste insists that he bought the shirts from Pantalon." September 10, [12 La. Hist. Q. 145] " Interrogation of Pantalon, a free Senegal negro, aged 35 years, . . He denies complicity . . [146] Confrontation . . Pantalon . . said that he knew him to be a liar, that it was not natural that he would sell him shirts that cost 50 or 60 livres apiece for 30 livres, . . He lent him two trade shirts and one trimmed one which his master had given him," The Procureur Général " concludes that Baptiste shall be again reduced to slavery for the benefit of the Hospital of the City, . . his debts to be paid by preference. Pantalon to be exonerated " Judgment rendered accordingly.

*Meuillion v. Faussier,* 11 La. Hist. Q. 651, August 1743. " his former tenant Faussier . . has abandoned . . [plaintiff's] plantation . . and left it in the care of small negresses."

*Re Jeannot (a slave),* 12 La. Hist. Q. 143, September 9, 1743. " Petition . . by the Procureur Général stating that he has information that Jeannot, slave of Leonard, . . has mutinied against his master, threatened to set fire to his cabin and said that he knew who killed Sr. Corbin, . . [144] A service was sung in negro style and language two months before . . his disappearance " September 10: " Demand of the Procureur Général . . that Jeannot be flogged until acknowledgment of what he said to his master."

*Roman v. Herbert,* 12 La. Hist. Q. 314, October 1743. " three years ago he sold a savagess to Sr. Herbert for 1000 livres. Herbert gave him a first note for 368 ls., . . and since then he has not been able to collect another cent,"

*Carrière v. Tixerant,* 12 La. Hist. Q. 480, November 1743. Inventory: [481] " twenty-four black slaves at the plantation, . . likewise three Indians and two savagesses," [482] " The Council orders . . that the defendants will pay . . 1080 livres for the value of Cotica, savage slave " [491] " account . . for the hire of the negroes . . five slaves, pièces d'Inde,[1] . . 200 livres [each] per year, . . a nursing negress and her child, also at 200 livres per year,"

*Re Negress Marie Charlotte,* 12 La. Hist. Q. 486, November 1743. " Petition . . by . . Procureur Général, stating that Marie Charlotte . . has addressed herself several times to him verbally and presenting peti-

[1] " The term *pieza de India* is not synonymous with negro. While a black of unusual quality might be considered a *pieza,* it usually required two and sometimes three negroes to constitute one. Age, height, and details of physical condition were considered and careful instructions given as to the circumstances under which three negroes constituted two *piezas de India,* or two, one," Elizabeth Donnan, *Documents illustrative of the History of the Slave Trade to America,* vol. I, p. 106 n. On p. 302 Miss Donnan quotes from Churchill's *Voyages and Travels:* " Note, That the French imitate the Spaniards in valuing slaves by . . the Indian piece."

tion to have approved by the Council her freedom which St. Julien gave her [in 1735] long before his death in writing under private seal . . before witnesses, and which she never enjoyed . . because . . Dausseville, Attorney of Vacant Estates, . . had her sold and bought her for himself, for 1500 livres, under . . pretext that his estate did not cover his debts to the Company, and that this freedom was given her without the consent of the Governor and Ordonnateur. . . [Procureur Général] asks that this freedom be approved on returning to Dausseville's succession the 1500 livres" Approved. See Marion *v.* Aufrère, *infra.*

*Re Jupiter (a slave),* 12 La. Hist. Q. 663, February 1744. "prosecution . . for . . burglary in the King's store" Declaration by Pradel, March 1744, [668] "that one of his negroes, . . Jupiter, aged about 25 . . stole . . that he did all in his power to find him and have him imprisoned, which he has now been able to do as he was brought to him by the Commander of his slaves. He had him sent to the City where he was placed in a cell in irons; and he abandons the culprit . . to public justice, . . requesting . . that he be appraised so that the amount of the theft be raised" [13 La. Hist. Q. 122] "convicted . . sentenced to be hung and strangled . . after having been submitted to ordinary torture to compel him to name his accomplices, and other thefts. . . Dusigne and his wife condemned to pay 50 livres as fine . . prohibition to sell [rum] to . . negroes without permit," [123] "arbitrators . . went to the prison . . certify . . that he is worth 2000 livres in Colonial money,"

*De Louboey v. Melizan,* 13 La. Hist. Q. 310, October 1744. "suit . . to rescind his purchase . . of a negress named Manon on the ground that the slave is an epileptic. . . received the negress . . in exchange for Junon . . together with a note . . for 38 piastres and 12 piastres in coin. . . prays that Manon be placed in the King's Hospital; . . that . . Junon and her two children be returned . . because he feared that Madame Melizan will ill-treat [them] . . one . . is two or three years and the youngest born since the transaction. . . [311] Notices to witnesses served on . . chief surgeon of the King" and on three negroes.

*Lemoine v. Raphael,* 13 La. Hist. Q. 506, January 1745. "Complaint . . by . . Lemoine . . against a negro named Raphael and his wife . . who attacked him and insulted him without cause, and had him followed and pelted by their children, the eldest of whom is sixteen"

*Le Bretton v. Couturier,* 13 La. Hist. Q. 512, February 1745. "that they were associated in purchase of negroes and plantations, that the partnership having been dissolved . . the negroes were ceded to [Couturier] . . for . . 41000 livres,"

*Marion (a free mulattress) v. Aufrère,* 13 La. Hist. Q. 517, February 1745. See *Re* Marie Charlotte, p. 417, *supra.* "she applied to the Procureur Général . . following Art. 20th of the Black Code and he obtained her freedom from MM. de Vaudreuil and Salmon, who re-

ferred her to the Council for payment of wages or indemnity for the time she served . . all the more as she is held to reimburse . . 1500 livres, price of her sale for which Sr. Barbin now prosecutes her. . . she prays for citation of Sr. Aufrère, holding procuration of Sr. d'Ausseville's heirs and creditors to compel him to pay her wages at 20 livres per month from the day he bought her until his death," " Notice served on Sr. Aufrère . . to appear before Council "

*Jaureguibery v. Livet,* 13 La. Hist. Q. 664, February 1745. " agreement . . to build a house . . [665] in payment . . a negro "

*De Membrede v. De Membrede,* 13 La. Hist. Q. 680, February 1745. " Petition . . for separation from bed and board " [681] " witnesses cited . . Charlot, negro owned by . . Brosset, aged 20 years."

*Re Chaperon's Slave,* 14 La. Hist. Q. 97, March 1745. Chaperon declares " that a slave owned by him, Commander of his slaves, . . was so brutally treated by another negro that his teeth were loosened . . in danger of death, he invokes the aid of the Procureur Général "

*Re Brosset's Slave,* 14 La. Hist. Q. 99, April 1745. Brosset declares " that . . one of his negro slaves . . killed his wife, that the declarer found her the next morning . . expiring from a blow with an axe, on her head, by her husband, who has not been heard of since. . . he makes the . . declaration in order that this slave be apprehended and punished according to law."

*Louboey v. Melisan,* 14 La. Hist. Q. 104, April 1745. " For Manon Mr. de Louboey gave a negress called Junon, about to have a child, with a small negro of two years." [106] " Chief Surgeon . . declared . . Mr. de Louboey . . told him that . . Manon had announced to him that she had epilepsy . . he met Manon . . questioned her . . and she answered that to force her to say this Madam de Ste Hermine . . threatened to sell her in a place where she would be unhappy for the remainder of her life. . . Manon when questioned by Surgeon before magistrates declared that she is not subject to epilepsy, that a few years ago she fell into fainting fits and that her master, Sr. Melisan, thinking it might come from worms, gave her medicine and she has never fainted since except once . . at Mr. Louboey's house," [108] " May 19. Complaint by . . Melisan and . . his wife, that . . Junon, . . having been sent to his desert . . for the sowing . . was no longer there, having left with an officer, a soldier and a negro sent by Mr. de Louboey . . he demands indemnity and moreover that justice be rendered in the case of one of Mr. de Louboey's slaves . . who came twice after the night call for the negroes to retire, broke through the fence to carry off . . son of . . Junon. . . May 20. Defense of Mr. de Louboey, stating that . . he sent for her as the child was wounded in the foot, from ill treatment by Mrs. Melisan, . . Junon had threatened to drown herself and her child if . . [they] were to remain subject to his [*sic*] ill treatments. Mr. de Louboey re-

turns the slaves warning Melisan that he will have to answer for all accidents . . until decision of case." See same *v.* same, *infra.*

*Gros v. Matha,* 14 La. Hist. Q. 113, May 1745. "Declaration . . by one Gros, a free negro, that Matha, another free negro is seeking a quarrel with him; he cannot live with his wife and imagines that Gros advises her . . Matha lately killed one of his turkey-cocks, and every day threatens him"

*Prevost v. Perier,* 14 La. Hist. Q. 252, June 1745. "Complaint . . [that] Perier . . last night sent two soldiers to a lot owned by Prevost. . . one [armed] with the same sword which . . Perier used on the negro Cosse the eve that the soldiers examined the cabin of the negro, ill treated him and his wife . . This morning the negro passing . . Perier's house was . . beaten until the broom handle was broken on him,"

*Louboey v. Melisan,* 14 La. Hist. Q. 259, June 1745. See same *v.* same p. 419, *supra.* [260] "Council orders that . . Manon be sequestered . . three months in the house of a surgeon, who is to give his report after that . . time, and . . Junon to remain with Sr. Melisan until judgment rendered."

*Henry v. Descloseaux,* 14 La. Hist. Q. 586, October 1745. "suit . . for payment of 29260 livres, for negroes bought at auction . . Sept., 1743, due in Jan., 1744, non-payment due to discredit of specie which increased the price of the negroes considerably."

*Re Marie Louise,* 14 La. Hist. Q. 598, November 1745. "Le Porche files a statement . . that . . Marie Louise is not a slave but should enjoy complete liberty, being the daughter of a Frenchman."

*Tixerant v. Chamilly,* 15 La. Hist. Q. 136, February 1746. "Petition . . by . . Tixerant . . stating that when he leased the negroes . . Chamilly . . informed him that . . Morieux was attacked with sciatica . . which prevents [him] from standing . . He was formerly hired to Mr. de Noyan, where he remained in bed six months with the same malady. He was treated by Dr. Prat at the hospital during six months and . . [137] Chamilly assured him he was perfectly cured. On leaving the hospital he was sold [leased ?] at auction and adjudicated to the petitioner. However the negro relapsed . . and has not gotten any better . . wherefore . . he prays that . . Chamilly be cited in order that his hire be reduced . . or that he take back said negro, petitioner being willing to return him immediately." "Permit to cite" [139] "Council . . rejected the demands of plaintiff"

*Prevost v. Dubreuil,* 15 La. Hist. Q. 141, February 1746. "Petition . . stating that . . Dubreuil owes . . thirty thousand livres for thirteen negroes, six negresses and seven children following the obligation . . passed . . 1739, . . payable in three years, . . wherefore petitioner prays that obligation . . be executed by seizure of these . . negroes . . to be judicially sold until full payment" [142] "citation . . served"

*Re Negro,* 15 La. Hist. Q. 142, February 1746. "Declaration by . . Lange . . that one of the negroes of the coast assaulted him and attempted to kill him, . . and he named Nicolas, negro of M. Prat, whom he suspects"

*Re La Rue (a free mulatto),* 13 La. Hist. Q. 367, May 1747. Soldier's testimony: [379] "having come out of the hospital . . with two comrades, . . he met La Rue [[382] who 'bowed to them with his hat'] . . to whom he . . said goodnight . . and his comrade said: 'Goodnight, Lord Little Negro'[1] to which . . La Rue answered: 'Goodnight, Lord Jean Foutre.'[2] . . all three . . told him: 'You are insolent, . . we are not insulting you,' . . La Rue . . said . . 'I have pity on you and if you were not ill I would cudgel you;' whereupon his companion . . gave him a slap; . . [380] they fought . . Mr. Tixerant appeared . . [381] the three patients [complained.] . . Mr. Tixerant answered: 'Why do you not cudgel him well? However, . . have him put in prison' . . called [a passing corporal.] . . La Rue [[380] 'very drunk'] . . drew forth a pistol [which he was taking to have mended] and . . fired it between their arms." La Rue testified, it was [383] "without any intention to hurt him, whereupon intervened Mr. Tixerant who . . with the scabbard struck him all over his body, had him tied and brought to prison, . . put irons on his feet and hands and put him in the dungeon." [382] "he is . . a [free-born] native of Senegal, of the Catholic . . religion, aged about twenty-two . . a pilot on the boat *L'Unique* [[389] 'and now pilot and captain of a prize'] . . natural son of Sr. La Rue, a free negro, commanding the vessels of the Company of the Indies, of St. Louis Coast of Santo Domingo."

[390] "the Council orders that he be summoned to appear in the Council Chamber, there to be censured . . for having carried prohibited arms, . . condemning him to a fine of one hundred livres . . for the poor, and ten . . for the King and confiscation of said arms for benefit of the destitute and to costs of the suit."

*Zeringue v. Terrebonne,* 3 La. Hist. Q. 94, May 1763. "The petition of . . Zeringue . . appearing for the widow La Croix, his mother-in-law, . . shows: That Saturday last, . . about seven . . in the evening, . . Jean and . . Jean Louis, negroes belonging to . . Widow Le Croix, while going to the plantation of the Widow Liequery were stopped by . . Terrebonne, Junior, . . [who] shot at [them.] . . One was killed and the other was wounded in the arm, the side and the thigh. . . Terrebonne . . seeing that he was in the wrong . . brought them here [New Orleans.] . . they were doing no wrong . . nor were they on his land, . . petitioner prays: That . . Terrebonne be condemned to pay upon the finding of experts, for the . . negro . . killed, and for all the costs of the surgeon, of treatment, of medicines, and damages for the negro . . wounded"

[1] "Bonsoir, Seigneur Négritte."
[2] "Bonsoir, Seigneur Jack Fool."

*Father Dagobert v. Loquet,* 5 La. Hist. Q. 59, June 11, 1764. " Father Dagobert, Superior of the Capuchins, has the honor to represent that . . [April 16] Sr. Loquet attacked in the . . street a negro wagoner to them belonging, mutilating him with blows from a stick . . [so] as to prevent him from working during forty-seven days, . . on account of a prohibition to pass in the street with his wagon, made to him two days before by Sr. Loquet who threatened to maltreat him if he did so again." Surgeons' report, April 1764: [60] " we found . . a fracture of the inferior part of the cubitus of the left arm, without displacement of the bones, . . The patient's advanced age cannot but cause a long case " Surgeon's bill, June 7: " Reported by me, Chief Surgeon for the King, . . One hundred livres . . for dressing and for treatment . . To Sr. Roussilon for visit and report, 10 lvs." Order, June 11: " Sr. Loquet to pay to the Rev. Père Dagobert . . ninety-four livres for the forty-seven days during which he was unable to work and one hundred and ten livres for the dressing and treatment "

*Re Degout,* 3 La. Hist. Q. 294, January 1766. Degout was charged with murder. " Also appeared Jeanne, negress belonging to Sr. Darbanne, . . who, after being sworn . . Testifies . . [304] Degout passed an arm between the witness and her mistress, who stood one on each side of the window folding clothes,"

*Clermont v. Roquigny,* 6 La. Hist. Q. 687, January 1770. [693] " general receiver, declares that Mr. Roquigny's seized negroes were in his charge for 194 days . . Two were too old to work, and two were unable to work, so he was put to the expense of 3½ sols a day for each one "

*Pictel v. Dubois Succession,* 6 La. Hist. Q. 703, February 1770. " sale . . transfers . . a negro family consisting of six persons."

*Teisseire v. Lesassier,* 6 La. Hist. Q. 704, February 1770. " the slave Samson was sold for 1250 livres "

*Malline v. Boisclair,* 7 La. Hist. Q. 144, March 1770. " deputy sheriff . . served copy of the petition and order on defendant at her home . . speaking to a negro servant "

*Pictet v. Raguet,* 7 La. Hist. Q. 145, March 1770. " deputy sheriff . . certifies . . to the service of the petition and order on a negro servant in the defendant's house with instructions [for defendant] to appear."

*Populus v. Kerrourette (his wife),* 7 La. Hist. Q. 525, May 1770. " he voluntarily surrendered to her 7 negroes, the best from his factory (*atelier*) from whose labors his wife has received a revenue of 900 piastres during 18 months. Besides she holds 2 negresses and 1 mulattress from whom she also draws an income."

*Moricio v. Beller,* 7 La. Hist. Q. 539, June 1770. Order: " as the debt is due, . . ' let a slave be seized and put in the public prison until the same is paid with costs,' "

*Dauphin v. Aubert,* 7 La. Hist. Q. 545, July 1770. "plaintiff prays execution on the acknowledged debt . . defendant . . disobeyed [order to pay within three days.] . . the Court orders one of defendant's slaves . . put in the public prison, but the defendant's person must not be held."

*Neau v. Raguet,* 7 La. Hist. Q. 726, September 1770. "an obligation of 2000 livres from the Marquis de Vaudreuil of July 26, 1763, belonging to a [free] negress" of Louisiana.

*Dupuy v. Veillon,* 8 La. Hist. Q. 154, October 1770. Order: "if he has not [paid] . . apprehend one of his slaves or his person,"

*Roussillon v. D'Estrehan,* 8 La. Hist. Q. 179, January 1771. Dr. . . Roussillon, surgeon, . . claims . . 282 livres, 10 sols, from . . D'Estrehan, . . Ruby, surgeon . . reports: 'Considering the treatment given and the nature of the negro's illness, the bill is just.' . . compromised their case"

*Roussillon v. Deville,* 8 La. Hist. Q. 179, January 1771. [180] "a negress . . belonging to Deville . . [was ordered to be] seized and put in the public prison [to be 'sold to pay her owner's debt']. . . Deputy Sheriff . . could not carry out the Court's decree because . . the owner had made the negress hide herself."

*Re Rocheblave,* 8 La. Hist. Q. 372, March 1771. [373] "they found several negroes wearing shirts . . identified [as Blanchard's property]. . . they said that they had bought them from Mr. Rocheblave. . . [380] Joseph Fich, white, Juan Felix, a free mulatto, Jacobo Raphael, a free negro, Juan Bautiste Raphael [his brother-in-law], free mulatto, Juan Grot (Legros), a free negro, Antonio Croizet, white, all give . . testimony . . that on the night of the robbery they were summoned by the firing of a gun . . a pre-arranged signal to repair to Mr. de Rocheblave's plantation . . and to go in search of some fugitive slaves" [374] "and some whites who were with them."

*Schiloc v. Chouteau,* 8 La. Hist. Q. 324, April 1771. Slander. [326] "Chouteau . . said that he had heard a negress on the levee ['employed by [Schiloc] . . to sell his pastries'] say that Schiloc put poison in his pastries."

*Reboul v. Reboul,* 8 La. Hist. Q. 331, May 1771. "he leased from his brother ['agent for . . de Rochfort'], eight negroes or negresses. . . Mariana . . has been continually running away . . Lately she has received a shot in the leg from a fugitive negro which has laid her up for some time." The defendant "asks that all damages be charged to the account of the owner . . absent in France." So ruled.

*Re Negro Temba,* 8 La. Hist. Q. 6, June 1771. June 1, [9] "Pedro, the [negro] overseer . . under oath declared that at twelve o'clock the night before the big shed . . took fire . . and that his master [Mr. Lebreton] was on the gallery calling to the negroes to save the chickens . . In about four or five minutes they heard a gun fired. . . They found

their master dead, . . [10] he called the neighbors . . [who] assembled the negroes to examine them; . . His master treated his slaves well. . . There were six guns in all among the negroes of the plantation. . . Juana, . . house slave, said . . under oath . . In the first part of the night her master had scolded the hunter, called Temba, because he had been sleeping away from the plantation. He fell on his knees and asked his master's pardon, . . [11] granted . . 'For this time, and that he must be careful for another time or he would pay for all.' Temba was not at the fire and came about half an hour later . . The next witness was . . Temba, . . He was ordered [the night before] to call the overseer to whip him. . . pardon . . granted . . [13] June 2, Pedro [a hunter], Mrs. de Villemont's slave, . . about two or three in the morning . . went to Mr. Robert's . . to find [Temba] . . in a cabin where he went to sleep with a negress called Mariana. . . he had heard that . . [Temba] passed for a bad negro, and that his own master feared him . . [14] Pedro was called for the third time, from prison, . . Then Papa Cipion, a free negro; Francisco, the blacksmith, Mr. Lebreton's slave; the other Francisco (called Mirliton) [a blacksmith], also Mr. Lebreton's slave, who was ordered arrested and separated from the others; Paya, also belonging to the deceased, and Liceta, a free negress, who had been his wet-nurse and had merited the confidence of Mr. Lebreton's father who had given her her freedom . . [16] Francisco Mirliton . . alone of all the slaves can sign his own name. . . June 7, [Governor] Unzaga decrees . . that the accused prisoners must name an attorney . . further orders that Temba be tortured to make him confess who were his accomplices. . . June 9, Unzaga orders the Assessor, the Escribano and the two interpreters to go to Mariana's cabin, . . They . . found . . a piece of white handkerchief . . stained as were the wads" "taken from the gun which killed Mr. Lebreton. . . [18] Governor Unzaga . . ordered Temba put on the rack and fastened to it and the punishment . . carried into effect. The executioner fulfilled his office. Temba . . repeated several times, 'There is Jesus.' Then he said Mirliton . . set fire to the shed and . . fired his gun at the same time as he did. . . He was asked what motive . . He said because he . . did not give them time off. . . [19] While Unzaga was still in the hall of torture it was reported to him . . that . . Mirliton was hanging himself with his girdle . . He . . denied the attempted hanging, . . was playing with his girdle, . . Mirliton is taken to the hall of torture, . . [20] the executioner fulfills his office. . . it would seem from the few words remaining that he confesses that he fired at his master . . Unzaga condemns [them] . . to death by hanging. . . dragged [to the gallows] from the tail of a pack-horse with an esparto grass halter tied to the neck, feet and hands, . . Temba, is to remain on the gibbet and to have his hands cut off and nailed up on the public roads . . Pedro is to receive 200, and Mariana 100, lashes at the foot of the gallows, and their ears cut off close; Carlos [[16] 'born in Guinea, . . a carpenter'] to be tarred and feathered and mounted on a pack-beast. . . June 19 . . attorney for the criminals, sets forth that . . Pedro is very ill; . . surgeon

. . [21] finds he has a malignant fever. . . to inflict the punishment decreed would cause him to lose his life. . . Unzaga . . rules . . punishment . . be suspended . . June 20 . . the executioner carried out the orders . . upon all . . with the exception of Pedro, . . June 26, . . widow de Villemont prays that he be . . examined . . Unzaga orders the slave returned to [her] . . under juratory security to be returned to prison when convalescent."

*Re Rillieux,* 8 La. Hist. Q. 518, July 1771.[519]" Elena, a free negress born in Guinea, is called and . . a negro slave . . [A white man] testifies, and then the little slave girl, Maria, aged 13, who openly accuses Vincent Rillieux. . . [He] makes his declaration, giving . . account of all his movements . . [520] then confronted by . . Maria, who under oath declares that he is the same man who came to Mrs. Maison's house and tried to choke her. . . Rillieux said that her statesment is false" Judgment, October 1772: [525] "absolve him of the crime"

*Re Fugitive Negroes,* 8 La. Hist. Q. 527, July 1771. "interrogatorios [in French] put by . . Lieutenant Governor of the Post of Natchitoches, . . Mariana, belonging to Mr. Tixerant, arrested in Mr. de Saint Denis' dairy. . . had been a fugitive for about eight months from New Orleans. She had with her . . a negress, a negro and a small child. She had been at Mr. . . Harang's house where she remained a short while. When she met Mr. de la Gautrais's negro, Louis, he took her to the woods where she and the other woman have lived. . . Charlot, Mr. D'Inguimbert's fugitive slave, . . has been absent from New Orleans for about 14 or 15 months and has spent the time with various persons. . . Gil La Rose, Mr. Cantrelle's . . slave, absent from New Orleans for about two years and has spent his time with various persons. . . Miguel La Rose, Mr. Bayon's . . slave, absent from New Orleans for about three months and has spent the time in different places but mostly in the woods. Jean Baptiste Raoul, Mr. Dubard's . . slave, resident of New Orleans, and absent . . seven months. He has spent the time with other fugitive negroes . . mostly in the woods. The last called was Louis . . absent for about two years. . . finally captured when their passports are demanded at 'Attakapas.'" Judgment: [528] "200 lashes at the foot of the gallows. . . Louis, because of his repeated flights, which . . took place . . in the time of the French domination, will be treated with the full rigor of the laws . . Notify their masters that when they return they will be held in prison for a space of time not determined."

*Chataubaudau v. La Chapelle,* 8 La. Hist. Q. 714, October 1771. "was obliged to sell his negress and to mortgage another . . the only one remaining to him in order to buy for the negroes he had hired the provisions to feed them. The first year of his lease he had the promise of a very good crop of indigo but he trusted its manufacture to one of the negroes turned over to him in the lease as an expert in that line, who caused him to lose all his first cut. . . [715] also delivered to him . . as good laborers many negroes who were incapable . . because of their ages and infirmities. They were an expense . . for food and medi-

cine. . . a negress, Combá, . . died of an incurable malady which she had before the lease." Ordered: "that she be deducted from the . . rent for two years at the rate of 1½ reales a day. . . easier to have made the claim for Combá's illness at the time so that she be deducted from the number contained in the lease or . . returned to her master to have him take charge of her cure."

*Re Negress Angelica,* 11 La. Hist. Q. 37, March 1772. "the negress presented herself . . aged eighty years, who during this same proceeding [auction] had collected an alms of twelve pesos which she offered for her liberty, but it was not admitted unless it should first be preceded by the publication of her sale as there might be some one who would give more . . No . . bid . . [38] His Honor ordered on the petition of . . Angelica, and with the consent of the interested parties, that she must exhibit, at once, the twelve pesos . . and that the guardian of the estate . . must draw up the suitable written document and that in the act of adjudication, . . it (this sale) be executed with the greatest clearness in the obligation that the . . guardian must give"

*Blaquet v. Maney,* 9 La. Hist. Q. 149, January 1773. "Blaquet [of Pointe Coupée] petitions to give freedom to a negress . . and her son, slaves of . . Maney. . . they saved his life. In remuneration . . he asks that the Commander of the Post be ordered to make a valuation of them, appointing appraisers for each interested party. When this is done, pass the act of emancipation and he will then pay in cash all costs occasioned. . . [150] Maney . . fails to answer,"

*Re Negro Luis,* 9 La. Hist. Q. 324, March 1773. A gun stolen from Mallines was found in a gunsmith's shop. "Manon . . [325] leased to . . Dutertre . . declared [under oath] that Mr. Dutertre bought the gun from Luis, a free negro, and that he took it to the gunsmith to have it repaired. . . Dutertre . . testifies that . . negro told him he had it from an Acadian or a Canadian traveler. . . Luis [[326] 'native of Curaçoa'] . . now a prisoner, . . testifies that the gun . . was given him by a negress . . Mr. Labarre's slave, . . Unzaga . . rules . . sequester his property . . deputy sheriff . . reports he went to make the seizure, but . . Luis did not have a house or anything." February 1774, Unzaga [328] "absolves . . Luis . . warning [him] . . that if within . . eight . . days he does not give an honest reputable resident who answers for his application in some employment he will be expelled . . to one of the penitentiaries . . condemns . . him to pay the costs"

*Re Negro Bambara,* 9 La. Hist. Q. 337, April 1773. "Criminal prosecution . . for killing a negro named Augustin, both slaves of Antonio Thomassin."

*Flotte v. Leiveille,* 9 La. Hist. Q. 538, May 1773. [541] "About five years before she sold a negress . . for 250 pesos, and the other negress . . with her little mulatto son, she sold to . . the tavern-keeper, about 15 months before for 250 pesos . . to pay her debts."

*Dubreuil v. Bouligny,* 9 La. Hist. Q. 546, May 1773. Bouligny's answer: [549] "Alexander [Dubreuil] has disturbed him in the possession of the plantation and has placed a negress there of whom it is said that [his uncle] Joseph Villars [Dubreuil, former owner of the plantation,] gave her her freedom and who is maintained there against Bouligny's will solely to annoy him by selling spirituous liquor to his negroes and seducing and sheltering them within his own possessions. From this place he sees others exposed to robberies and the like disorders which the existence of this negress occasions." [550] "July 20, Unzaga rules . . within one day . . [the Dubreuil brothers] must leave . . Bouligny in . . peaceful possession . . destroying the hut or cabin in which they have lodged the negress . . with a warning that if this is not done she will be evicted and her cabin destroyed at their expense."

*Re Negroes Bernardo et al.,* 9 La. Hist. Q. 552, June 1773. "Criminal proceedings . . against . . Bernardo, Mrs. Trepanier's slave, and Cipion, Carlos and Francisco, belonging to . . de Bellile, for having wished to poison him and his overseer."

*Catalina (a mulattress) v. Fazende and Boré,* 9 La. Hist. Q. 556, June 1773. "slave of . . Destrehan's estate, sets forth that for having done well, some persons in recompense for her services, have promised her the money to the extent of the value of her freedom and that of her child, . . Felicité, aged five years. She prays that . . Fazende and . . Boré who administer the said estate, name an appraiser . . Fazende . . answers . . that he is informed that . . [she] is usually sick from a certain accident . . He consents . . [On] September 18 . . she asks that . . Boré . . be ordered to draw up . . instrument for her emancipation at the price of her valuation; . . He answers that in no manner will he consent . . considering her bad conduct . . and what she had done to herself to become infirm so as to be valued more cheaply, . . [557] October 2, she answers, asking that experts be called to put a value on her, and that her act of emancipation be drawn up . . The law permits this benefit to any charitable person who may have promised her the money. She has merited the right to buy her freedom for cash as she has been a slave of this estate all of her life [36 years] and was a servant to all her master's children, . . has served with fidelity up to her illness, which has become habitual. It will be of greater interest to the estate to sell her to herself . . [and] invest the money in a young negro boy . . Unzaga . . rules: That within three days, . . Boré must determine the price of the mulattress . . and her daughter, . . if he does not . . it will be given to her at the valuation . . in the inventories taken at . . Mr. Destrehan's death. . . Boré sets forth . . If she has any indisposition it comes from her great libertinism in this city. In consideration that she is a mulattress who knows how to sew and wash very well, he can not consent to give her her freedom and that of her child for less than 600 pesos. Unzaga rules: Let the . . escribano certify the price at which . . Catalina and her child, were estimated . . certified copy taken from the inventory . . March, 1771, . . Cathalina, aged 33 . . with her three mulat-

tress children, . . Carlota, aged 10, Manon, 6, and a baby of 2 years, called Felicité, . . all estimated at 500 pesos. . . [558] Unzaga rules: Considering that the valuation was made in union with her other children, make now a separate one of the two, . . Boré names . . Thomassin . . appraises the mulattresses at 450 pesos. . . Catherina [Catalina] sets forth . . This price is excessive . . She asks that some one be ordered to make the appraisement who knows the state of her health, . . Unzaga . . rules . . that the price be estimated . . by . . Beauregard . . appraises the two . . at 320. November 6, . . Boré . . grants the act of emancipation . . for 320 pesos."

*Arragon v. Count de Guimbert,* 9 La. Hist. Q. 748, July 1773. " Count . . sold to him . . April . . a negress called Franchonet, as . . without blemish. . . turned out to be entirely useless . . because of an old chronic disease for which she has been treated by various physicians for five years. . . scirrhous tumor and hemorrhages . . [749] Unzaga . . rules: Let Drs. . . examine . . also let the negress . . swear and declare " " for how long a time she has had this disease, what the infirmity is, what physicians have attended her, . . Derneville, empowered by Count de Guimbert, . . agrees to take back the slave and return the money "

*Chateau v. Degout,* 9 La. Hist. Q. 750, July 1773. " 1764 . . sale of the mulattress . . for 2700 livres "

*Chateau v. Saint Pé,* 10 La. Hist. Q. 129, September 1773. [130] " lease by which Chateau hires out his negress . . from January 11, 1770, to July 11, 1773, . . at 5 piastres gourdes per month " Later he sold her to the hirer for 180 pesos.

*Baure v. Naneta,* 10 La. Hist. Q. 133, October 1773. " suit . . brought by plaintiff in answer to one brought against him by Naneta, a free mulattress, demanding that he free his negress, called Maturine.[1] . . he asks that . . Dapremont . . be summoned . . [The latter] answers that it was at the request of Mr. Baure that he gave Naneta her freedom, that she had never done anything to merit it, . . granted . . at the wish of Mr. Baure's daughter on the occasion of her marriage. He has heard it said that there was a theft of Mr. Baure's private papers at a time when Maturine was alone in the room. . . Mr. Baure calls for other witnesses "

*Saint Pé v. de Palacios,* 10 La. Hist. Q. 148, November 1773. Witness says [150] " there is a mulatto . . belonging to de Palacios in the prison [' gathered up for running away '] . . he has seen him in Mobile guarding the herd of cattle for his master. This mulatto brought the witness, on board of his ship, a sack of coffee that he had been charged to deliver to him,"

*Richard v. Roth,* 10 La. Hist. Q. 288, January 1774. " Plaintiff presents an act of sale dated . . October 30, 1773, by which he acquired . . a slave woman called Marie, with a crippled infant daughter . . for 1750 livres . . cash, . . he purchased the negresses for 350 pesos, supposing that they were on the vendor's plantation . . that the mother was sold to him as having no bad habits nor defects, the seller claiming that he had

[1] See Broutin *v.* Naneta, p. 442, *infra.*

the order to sell them as belonging to Widow Pery who needed the money . . not true because Mr. Roth bought the slave from Mrs. Pery while she was in the prison in this city when she was caught with some fugitive negroes, . . Mr. Roth bought her for 250 pesos . . Mrs. Pery gave her at this price to be rid of her. The petitioner . . took her as a good subject for both house and field work. Marie continues to run away and is today in the public prison"

*Antonio v. Deshotels,* 10 La. Hist. Q. 300, March 1774. Antonio, a mulatto, "presents a . . 'simple piece of paper,' dated . . 1773, which is a dying request of the Widow . . of Deshotels, . . wherein she says she has forgotten in her will to free . . Antoine. She obtained [bought] this slave from her brother-in-law on condition that she liberate him after he has served her for four years. She is now *in extremis* and declares that this is her last will which she signs in the presence" of six witnesses. A seventh, Stephen, "signs in a postscript. . . [301] He says he is extremely deaf and did not understand anything . . Unzaga . . June . . 1775 . . does declare . . that the paper . . is of no value, . . condemned . . [Antonio] to perpetual silence and orders that the costs be paid by the heirs."

*Broutin v. Desprez,* 10 La. Hist. Q. 306, March 1774. [307] "Slaves [of estate] lost by flight: Alexandro . . 200 pesos; Colas . . 140; Francisco . . 300; Honorato . . 240; Raphael . . 300; Antonio . . 260; Langulo . . 260; Naneta . . 240; Juan Luis . . 300; an Indian, Cupidon . . 100. Thirteen slaves have died, valued at 240 pesos each."

*Loppinot v. Villeneuve,* 12 La. Hist. Q. 48, April 1774. Report of arbitrators: [50] "the mulatto, named Mulet, belonging to Mr. Loppinot, had worked on Sunday . . to build a chimney on Mr. Jean Villeneuve's plantation, and . . had his supper there, since then he has not been seen. . . found drowned . . we do fix . . the price of . . Mulet at . . nine hundred livres [[53] 'one hundred and eighty pesos']. We condemn . . Villeneuve to pay" Answer of Villeneuve: [53] "I made his mulatto work one Sunday . . but as these days belong to the negroes, as is well known in this Colony, having paid him what was coming to him for his labor, I do not have to answer for his death." Loppinot's reply: [54] "Feast Days and Sundays are consecrated to the service of God . . all Canonical laws . . forbid the faithful, whites as well as blacks, to do any servile work on those days . . said mulatto went to work at Villeneuve's house without my permission, he was given his supper . . with a drink of brandy, and was kept there till ten o'clock . . At this hour . . Villeneuve sent his negro overseer to propose to me to leave my mulatto with him until the next day and . . he would send one of his negroes to replace him. I consented . . neither his negro nor my mulatto have come to me." Villeneuve's answer: [56] "In this Colony it is known that a negro may, at his free will, dispose of all day Sunday so as to make provisions for himself . . and to gain the wherewith to clothe himself. It is an illusion to believe that negroes living ten leagues from the city must go to the Parish Church . . It would be . .

dangerous to public welfare if a slave should be left . . without any work . . God, Himself, said to his Apostles: 'He who labors, prays.' . . the plaintiff not only consented to let Mulet work . . on Sunday but the day after as well" Answer of Loppinot: [82] "he had no knowledge of the whereabouts of the . . mulatto . . on the Sunday night that Villeneuve sent to ask . . to let him have Mulet for the Monday following" Certificate concerning Mulet: "We the [four] undersigned certify . . to have known the mulatto or grif, named Mulet, . . as a good mulatto aged at what appeared to us from forty-four to forty-seven years. We have known him to have skill particularly as a black-smith, mason, cooper, roofer, strong long sawyer, mixing with these a little of the rough carpentry with the rough joinery . . having employed him on many little occasions" Brief of Villeneuve's attorney: [89] "Loppinot . . tacitly consented . . by having permitted him to continue his labors the morning following . . [90] the place where the mulatto was found dead . . is . . on the other side of the river" Sentence: [91] "His Lordship . . does absolve . . Villeneuve. He condemned . . Loppinot to pay all the costs" Loppinot appealed to the tribunal of appeals of the Cabildo, quoting, in his argument, the ordinance of October 8, 1769, article 5: [100] "It is expressly forbidden to all private parties . . to sell or give drinks to savages, mulattoes, . . unless they have a written permit from their masters." Villeneuve argues: [107] "let us suppose, which I deny, that I did give the slave a drink . . could this be the cause for the mulatto to go from one side of the river to the other. . . our plantations are next to each other." [106] "they are left free of all work on Sunday, . . on such days some of them go to the neighbors' plantations who hire them to cut moss and to gather provisions, this is done with the tacit consent of their masters who do not know the whereabouts of their slaves on the said day, . . and are always satisfied that the negroes will appear again on . . Monday . . The opposing party confuses the necessity of a permit with what is given to a slave when he wishes to go to the city or when he is there and wishes to go to the country because the soldiers at the gate ask for it" [111] "In consideration that the gentlemen commissaries are not in accord with the Senior Judge . . and not having an Assessor with whom to consult they . . transmit the suit . . to . . de Urrutia" in Havana. He advises [115] "that the sentence . . must be confirmed . . there is no law nor reason that obligates anyone to answer for a purely accidental and involuntary case . . It can not . . be presumed that Villanueba proceeded with malice . . to make him drunk, he must be judged as only conforming to a kind of courtesy common in such cases. . . Lepinot . . must pay the costs"

*Angelica (a free negress) v. Marmillon, Executor,* 10 La. Hist. Q. 445, May 1774. "petitions, saying that in . . Juan Perret's will he left her all his clothes, linen, furniture and movables in the house . . asks that . . executor . . deliver the effects . . [One heir] contests . . claim declaring that the clause . . is null as . . Governor O'Reilly has set down in his Code, Article 52: . . 'notwithstanding . . negroes have been set free . . jointly with their freedom it incapacitates them to receive from

the whites any donation *inter vivos,* by cause of death or other motive. . . in case this should have been done . . let it become null and applied to the nearest hospital.' Forstall . . notwithstanding . . opposition . . orders . . executor . . to . . turn over to Angelica her legacy within three days."

*Re Negro Pedro,* 10 La. Hist. Q. 455, July 1774. "Governor Unzaga . . was notified by . . Livaudais, lessee, of the Dorville plantation that the [negro] overseer Gonzalo had died . . after two days illness . . A short while before he died he received the Holy Sacraments and in the presence of the surgeon and . . the negroes . . said that it was Pedro who had poisoned him . . with water he had been given to drink while they were working. From that moment he became ill . . The Governor orders the body examined by . . [two] surgeons . . They think . . some drug or drink . . caused . . death. . . [456] wife of the decedent, testifies . . That about a year ago Peter had quarrelled with them and had poisoned their daughter. . . The negroes wished to tie him up and carry him to the master, but he begged them for the love of God . . not to speak a word about it and he would . . cure her daughter . . which he did . . [457] Pedro [[459] 'born in Guinea'] . . was asked . . if he had any quarrel with [Gonzalo.] . . He answered . . no . . although he had punished him by order of the master and sometimes through caprice . . Gonzalo had punished him . . about four days before he fell ill, because he was found eating a melon that Francisco, who works in the melon patch, had given him. He did not poison Gonzalo, he was sick before and had fever caused by a piece of timber that fell across his chest and afterwards he got wet in the rain. . . he did not give Gonzalo a drink. He was not working in the field because he was sick from a whipping, so he only took a walk in the court yard . . [459] Theresa, called Venus, . . declares that she is not Pedro's wife, but his concubine, and he had told her the year before that he would make Catarina suffer . . because she had injured him in the field. . . [460] He said he had said no such thing . . prosecuting attorney . . accuses Pedro . . of being guilty of murder . . executor of the Dorville estate . . leaves the prosecution to the justice of the Court. . . Pedro . . appoints . . attorney. . . [461] [Three] medical experts . . declare that the infirmity from which Gonzalo died could have proceeded from other . . ailments" Judgment, September 14, 1777: "I [Galvez] . . do acquit . . In order to clear him of the violent suspicions . . and to avoid the scandal that the memory of such a crime would occasion to the public, I sentence him to ten years labor, with shackles on his feet, on the public works . . and . . because of . . abandonment [by the executor] . . when the ten years . . have passed he shall have the right to be free. This is not a recompense for the crime which would be a pernicious example. I declare that the . . ten years having passed, (he) . . will enter the dominion of His Majesty *(entrará al dominio de S. M.)*"

*Beauregard v. Plauché,* 10 La. Hist. Q. 614, October 1774. [615] "carts going by . . loaded with planks for ships, conducted by a negro

. . whom I had rented . . at the rate of 8 pesos a month; . . at that time the . . negro was a fugitive;"

*Chaperon v. Mrs. Dupard,* 11 La. Hist. Q. 156, February 1775. "alleges that for two years Mrs. . . Dupard has had in her possession his negress . . a fugitive, who has been working on the Dupard plantation . . Whereas the Black Code ordered to be observed by . . Count O'Reilly provides that . . the hirers of slaves are obliged to pay two pesos daily for the . . [157] work of the negroes . . it is his intention to exact four reales, only." Attorney for the defense "answers that the negress was on his client's plantation in the house of . . a free negro where she made her home with a written permit from her master so as to be cured of an illness by this negro . . she was cured and . . conducted to her owner, who said she was well and did not need anything more than good regulation to live and not to have to work for some time to come. . . asks that this claim be excluded and the plaintiff ordered to pay costs" So ordered.

*De Clouet v. de la Houssaye,* 11 La. Hist. Q. 333, February 1776. "sets forth that a negro belonging to . . de la Houssaye . . has killed his negress . . who had cost him 300 pesos . . He asks to be indemnified . . or have her replaced by another just as valuable."

*Maria Juana (a slave) v. Suriray,* 11 La. Hist. Q. 338, February 28, 1776. "sets forth that she presented herself verbally in His Lordship's Court demanding that her master [Suriray] give her her freedom at the price at which she would be estimated and the Governor Unzaga ordered it . . This freedom has been denied to her and her master has . . confined her with prisoners . . she escaped and has come to entreat . . justice . . may it please the Court to order her master to give her an act of emancipation . . and . . she be appraised . . and . . she will deliver the sum . . This money has been advanced to her by a person who wishes to take her out of the captivity . . Suriray . . fails to answer . . Maria Juana engages . . Cowley to represent her and in a second petition tells . . [339] Her master bought her when he was a bachelor and . . she served him as his only household slave . . Her master having married he wished to give satisfaction to the public and to her mistress . . both . . punishing her with extreme cruelty. They denied her the recourse that for charity is conceded to all slaves, namely . . to look for masters more to their liking. Her master does not wish to accept 250 pesos, the price at which he bought her. . . Suriray . . answers . . she wishes . . to enter [the possession] . . of an Englishman . . In the laws of Spain there is no obligation for the master to free . . a slave . . March 26, Unzaga . . rules: Let the decree on page 1 [338] be revoked . . it appears that . . Maria Juana has persisted in running away." See Suriray *v.* Jenkins, *infra.*

*Suriray v. Jenkins,* 11 La. Hist. Q. 340, February 28, 1776. See Maria Juana *v.* Suriray, *supra.* Suriray's petition: "Petitioner questioned her as to who had provided the money . . She answered, it was . .

Jenkins . . and that this money was delivered to a free mulattress named Mariana Deslattes . . He went to interview [him] . . asking . . if he wished to free . . negress. He answered no, but to buy her for a servant . . and that he would not give more than 450 pesos . . to secure her person he put her in prison, but she escaped . . asks that the Englishman and the free mulattress be . . detained . . [341] until they produce his negress . . Unzaga . . rules: issue a writ of arrest . . They succeed in apprehending the mulattress, but Jenkins . . takes refuge on his ship . . through . . his attorney files an answer . . the negress came to him full of fear . . 'Sir, you see me so unhappy with my master . . because a cat had carried off a turkey that had died he wished to have me given one hundred lashes each day. . . I . . have come to see if you will have the charity to buy me.' . . [344] he . . commissioned [the mulattress] . . to attend to the transaction . . Mr. Suriray . . demanded 600 pesos . . he refused to pay more than the 450 he had given Mariana . . Without . . [his] knowledge . . the mulattress and the slave went to Governor Unzaga's house to petition him . . [345] testimony shows up the lowest dregs of the passions of two white men over a worthless colored woman. . . [346] evidence that the negress was her master's concubine before his marriage when he dressed her well and took the best of care of her but after this event . . when she refused to further consort with him out of respect to his wife he began to abuse . . her, even to deprive her of her shoes and stockings and to force her to wear dirty rags . . While she was Suriray's mistress she never ran away . . [347] Jenkins . . denies having had carnal relations . . [349] Unzaga rules that because his Assessor General is absent . . there is no other legal counsellor . . so he sends this cause to Havana . . [350] On May 23, 1777, Governor . . de Galvez cites the parties to appear and to hear the definitive sentence rendered in Havana . . Veranes ['Attorney of the Royal Audiences of Mexico and Santo Domingo'] counsels the Governor General of Louisiana to . . declare that . . Jenkins . . must be absolved . . As to . . the petition of the negress, let her letter of liberty . . be drawn up and issued to her at the price of her acquisition, by her master, as is customary in this Island, in like cases, in conformity to the Royal Cedula granted in Aranjuez . . 1768. . . de Galvez adds . . I conform . . but not as to the request of the . . negress. . . that . . Royal Order is intended for . . Cuba and can not influence the rest of His Majesty's Dominions . . this Province . . must be governed by the general laws of the Kingdom . . [352] this suit . . is 630 pages long."

*Negresses Rose and Maria Isabel v. Chouteau,* 11 La. Hist. Q. 513. April 1776. Will of Reynaldo or Renato Chouteau: " declares he owns two negresses [Rosa and Lizeta], one of them has two children, . . He has already given them [1] their freedom before the present escribano. This emancipation he . . ratifies." The inventory includes [514] " Rosa, aged 24 . . with her two children, Maria Juana, aged 3, and the other an infant at the breast, six weeks old, named Reynaldo, all estimated at 500 pesos,

[1] Reynaldo was born after the act of emancipation.

and . . Maria Isabel, aged 20, valued at 340 pesos. . . disregards the emancipation" The Alcalde approves. "curator asks for the sale of the estate at public auction . . [515] Rosa . . appoints . . Mazange her attorney . . presents a certified copy of the act of emancipation, dated May 20, 1775, in which her . . master grants freedom to her and her child, on condition that she serve him as long as he lived, but in all other respects she is entirely free . . Maria Isabel, known as Lucita . . presents her act of emancipation, dated May 26, 1775. . . [The executor] avers that . . [the emancipation] would affect the debts . . and also reduce the dowry . . Alcalde . . rules . . he does declare the emancipation granted as null . . as is likewise the clause in the will . . [516] Rosa appeals . . to Governor Unzaga . . avers that the Alcalde has rendered his decree without the advice of . . Odoardo, . . who is absent and there is no other 'Letrado' (legal counsellor) in the Province" The executor and curator "answer the appeal opposing the granting of freedom . . the negresses . . answer . . ask that their cause be sent to the Tribunal established by his Majesty in . . Havana . . [Alcalde] rules to transmit . . to de Urrutia, lawyer of the Royal Audiences of Santo Domingo and a resident . . of Havana, . . [517] the adviser rules: . . the little mulatto, Reynaldo, was not mentioned in his mother's act of emancipation, because he was conceived and born in the interim between the making of the same and Chouteau's will. Since he is mentioned in this last document, . . the judge . . must consider him as free-born . . That Rosa and her daughter . . and Maria Isabel are likewise free from the date of the authorization of their . . letters of freedom. . . However the three slaves, excluding the boy, must be held as responsible for a part of the debts . . to the extent of their appraised value. Rosa and Maria Juana must . . be re-appraised, taking into consideration the ages of both at the time they were given their freedom, . . [518] the Court . . with the consent of the parties . . conforms and . . revokes . . [its former] decision . . Rosa and her daughter [are valued] at 450 pesos, . . [519] Rosa and Maria [Juana] must remain responsible for . . 325 pesos, 2 reales and Maria Isabel (Lucita) for 340 pesos, which amounts must be satisfied by them with the receipts from their wages. This amount must be earned before they may enjoy the full use of their freedom."

*Succession of Juana (a free negress),* 11 La. Hist. Q. 519, April 1776. "Juana's notarial will presented by her universal heir and . . executor, Pedro Viejo . . the testator is a native of Guinea, legitimate daughter of a negro . . and a negress . . She declares that she has never contracted marriage . . She entered into a business partnership with Old Peter, they had no capital and what they have to-day they made together. . . In her house there is a sum of 800 pesos in silver one half of which belongs to her, and her own slave, Francisca, aged 30 years, and some merchandise in their little shop. . . [520] She asks that her . . executor give the one third of her estate to a free negress named Victoria because of the great love she bears her as she has raised her as a daughter in her house. She further orders her executor to buy Joseph, aged about

25, and Juana, aged about 20 (according to what she has been told they belong at present to . . Pelagie) for the price of their appraisement and . . liberate them . . because of the great love she bears for them having raised them as her own children . . The inventory is begun . . They found in all 120 pesos . . They enumerated the stock in trade of the little shop consisting of goods by the yard, . . thread, buttons, . . garments made up, such as shirts, smocks, etc., . . [521] The executor asks to have this inventory approved . . Broutin, Victoria's defender and also representing the interests of the other two beneficiaries . . answers there is a strong suspicion that Old Peter . . has hidden the greater part of the money and goods. . . interrogatory . . put to the free negress, Magdalena Fatin or Tatin, . . She answers . . that the negress . . showed her a letter that she had written to her (adopted) daughter and to Joseph and Juana telling them that she had made her will and that she had about 1000 pesos including her slave negress, that she wished all she had distributed among them after her death. . . [522] Francisca answers . . After Juana's death the armoire was opened by Old Peter who asked her for the keys . . Old Peter put her out of the house, . . [523] Alcalde . . approves the account . . presented by Pedro Viejo"

*Tounoir v. Peyroux,* 11 La. Hist. Q. 654, May 1776. "Action . . to recover 146 livres, 17 sols, 6 deniers, alleged . . to have been paid . . for expenses incurred through the illness, death and burial of a mulatto belonging to . . Peyroux . . [655] he had died in Tounoir's house, he being a partner of Tarascon who had leased the slave for many years" Interrogatories propounded by defendant: [657] "Was the mulatto sick when he arrived at Pointe Coupée . . and also ill when he left for Rapides . . A. He knew that the mulatto was a little indisposed . . for this reason the conductor of the pirogue . . did not let him work. . . It is not true that . . Dr. Bertonville, Surgeon, having entered Tounoir's house, by chance saw the sick mulatto and said . . it was indispensable to remove the tumor and the mulatto had begged most urgently to have it taken out . . [658] A. He had had a consultation of three [other] surgeons . . who . . were not of the same opinion as was Dr. Bertonville." [660] "On August 7, 1779, Galvez . . renders final judgment, that . . Tounoir has proven his . . demand . . completely"

*Re Succession of Gauvin,* 11 La. Hist. Q. 663, June 1776. Will of Francisco Gauvin: "He says that his estate consists of one slave woman [aged 22] and some dry goods, . . provisions and personal effects, . . He instructs . . executor to . . sell . . He excepts . . his slave . . whom he requires to contribute each month to his heirs 16 reales from her hire for ten years, . . and . . [then] be freed"

*Boisdore v. Favre,* 11 La. Hist. Q. 668, July 1776. "a negress belonging to defendant has come to the city, he asks that she be arrested and put in the public prison . . until sold to satisfy his debt. . . granted"

*Baure v. de Lalande,* 11 La. Hist. Q. 676, October 1776. In 1774 "Baure lent Lalande . . 3000 livres . . the latter gave as security, his

negro, Pistolet. . . agreement that if the defendant should fail to pay [in one year] . . Pistolet will be transferred to Baure for 2500 pesos, . . [677] Baure alleges that . . a judicial act of sale should be drawn up in his favor as the sum . . has never been returned." Granted.

*Maria (a free negress) v. Macnemara,* 12 La. Hist. Q. 181, December 1776. " Marie Pechon and her son, François, both free, . . having left this city [on October 15] . . to go to her plantation on the lower river . . were obliged to stop at Mr. Tixerrant's plantation to sleep . . [182] Pedro, free negro, . . declares that . . at about ten o'clock . . Patricio Macnemara arrived . . walked to the negroes' cabins where he found Maria and her son . . sleeping there with the consent of Mr. Tixerrant's sons, . . to Francisco, he said: ' Where is your pass? ' and he answered: ' I am free and have no need of a pass.' Macnemara answered: ' You lie, where is your act of emancipation? ' ' I am on a voyage and can not bring it in my pocket,' Francisco answered. Then Don Patricio raising his hand . . Francisco escaping from his reach was stabbed with a hunting knife . . while attempting to give him another blow his mother tried to protect him; she received the blows. Macnemara . . took Francisco . . to his plantation, as he said, to punish him further for running away. . . he made his slaves guard him until the following day, then let him go " Testimony corroborated by Tixerrant. [183] " she was obliged to rent a house in the city, and a negress, and to have themselves treated medically . . unable to work . . obliged to abandon her slaves and plantation. . . they have had to pay the surgeon . . 33 pesos and 4 reales . . she prays for 250 pesos . . to indemnify them . . Macnemara answers . . that Francisco did not prove his freedom, so he took him to his house so as to turn him over to the Governor General. . . Maria sets forth . . It is not the custom for free negroes . . to carry with them . . their acts of emancipation when they go for a walk, because the fact that they are free is well known to every one. . . she did try to defend her son which is only natural . . not only among the free, but among slaves as well. . . [184] Galvez on Odoardo's advice sends this petition to Mr. Macnemara which ends the proceeding." " We know from other records that the defendant belonged to the group that supported . . O'Reilly . . and this enhances the temerity of the plaintiff and her counsel in pressing this suit."

*Magdalena Canella (a free mulattress) v. Beaurepos,* 12 La. Hist. Q. 341, January 1777. " for seven years she has had . . a negress, named Adelaide, who was given to her by Mr. Beaurepos . . yesterday [he] . . took her away . . [342] Odoardo orders Adelaide restored . . with the wages . . at the rate of 2 reales a day, . . Beaurepos made restitution . . answers . . he bought the slave at public auction. He voluntarily lent her . . to Magdalena . . Magdalena's only proof of ownership rests on the sworn word of some mulattoes, libertines like herself, . . he asks that his slave be returned to him . . Magdalena . . answers by presenting an interrogatorio . . 1. Q. Is it not true that he has consorted with Magdalena . . from . . 1767 until '75? A. When he has committed any sin and

confessed it, he did not think about it any more. 2. Q. Is it not true that he has had two children by her, . . A. . . he has forgotten all. 3. Q. Let him declare if he has not given her the slave to support her and his children . . A. He has forgotten all of this . . [344] two sheriffs . . went to her house [in July] . . and obliged her to return the negress." Sentence, in December: [345] " Adelaide to remain in Mr. Beaurepos's possession " Appeal denied. " she manages somehow to get an appeal through to Havana." Decree: [347] " remit a certified copy of the records "

*Re Negroes Cezario et al.,* 12 La. Hist. Q. 498, March 1777. [499] " Francisco's declaration . . he belongs to . . Baure, he was taken prisoner in Christoval's cabin . . night of the 14th, as a runaway slave, which he really was from the 8th. Saturday night he slept in the city with . . Maxent's Cezario . . then he went to the woods. He slept another night with Christoval and on the night of the 12th . . came to the city with Cezario . . to steal some money. . . That night [after the burglary] he . . slept on the banks of the river and in the morning . . went to see Cezario about the division of the money [97 pesos]. . . [500] Marguerita [Cezario's wife] . . told him that Cezario had left 4 pesos for him." Cezario, Marguerita, and Christoval were arrested. Cezario denied all knowledge of the burglary. [502] " Marguerita . . answers: that she is . . a creole and belongs to Mr. Montreuil and that she was hired to herself, giving her master 4 pesos a month as wages, and that she is twenty-three years of age. . . She pays three pesos a month rent for her room. Cezario pays it when he has the money, . . For food she eats as she can and for clothes she works out by the day. . . [504] Christoval . . says he is . . creole, . . saw Marguerita take the money from a box . . heard Francisco say . . he would come back . . to get the rest . . [506] Mr. Montreuil's Rozeta . . says that her sister, Marguerita, had given her some pesos tied up in a handkerchief, . . [509] Cezario asks to have his master . . defend him. . . he abandons him to the justice of the Court. . . Baure . . acting for his slave claims that Cezario seduced his Francisco, . . and that his slave should be declared free of the crime imputed . . [510] Montreuil declares there is nothing . . to implicate his negress . . Alcalde . . orders . . let Cezario name another defender. He . . names . . Cowley who presents a petition in his defense. . . September 16, 1777, . . [Alcalde] on . . Odoardo's advice passes final sentence. . . does absolve . . Christoval . . does declare as criminals and accomplices Cezario, Francisco, Marguerita and Rosa . . condemns . . them to two hundred lashes in the public streets mounted on beasts of burden, the crime to be called as is customary, with four years labor on the Royal Works for Cezario and Francisco, the two women returned to their master . . who must supervise more carefully his slaves' conduct . . and that all . . jointly must pay costs."

*Re Clement and Jacobo,* 12 La. Hist. Q. 682, October 1777. " Pierre, belonging to Mr. Cabaret . . [being] his overseer, returned from the city in a . . pirogue . . with . . Guiaca . . [683] they heard a loud cry . . Pierre

disembarked . . to see who called . . has not been seen again. . . [684] Guiaca . . said . . Pierre . . had money . . because he sold some pigs in the city and had not spent all the money. . . it is well known that Pierre did not drink. . . his brother, Clement, . . was a fugitive . . after robbing Mr. Braquette in the city . . Janeton . . declares . . that Clement . . had often been taken for stealing and that his brother, the overseer, had told him that the first time he stole again he would be killed with the beating he would receive. She thinks, because of this threat, Clement killed Pierre. . . [687] a purse . . had some blood stains . . found . . in Clement's sheaf of rice . . When . . shown to [Pierre's wife] . . she said . . it was Pierre's, . . [688] Clement feared Pierre more than he did his master. . . [689] Messrs. Hazeur . . and Trepagnier who had accompanied Clement to the place where he had hidden his gun . . said: 'Thou canst not any longer deny that it was thou who hath killed thy brother, lead us to where his body is so that we may give him burial.' He answered . . he did not know . . the gentlemen threatened him with the punishment he merited . . [690] he finally led them to the body, . . [692] prisoner's confession . . creole . . about twenty-five, . . [693] he had . . made known his intention . . only to Jacob" [691] "who had said many times that with Mr. Cabaret we will be very happy, Pierre must be killed, . . [694] Jacob influenced his determination . . had said besides: 'If he has to die one day, it will be the same to die to-day as to-morrow.'" "Luis [Mrs. de Macarty's mulatto, a runaway] . . was present at the killing . . No one feared Mr. Laveau who managed the [Macarty] place, and that the whereabouts of Luis was known to all the negroes who hide and protect him and that because of this luck he has been able to live during the ten months that he has been away from his Madame. . . Jacob's confession. He says he is . . a creole, of Mobile, aged twenty years. . . Odoardo ordered the proceedings suspended, because Jacob is a minor, to be continued when a curator will have been appointed for him. Galvez orders Jacob to name a curator . . Jacob names . . Mazange . . says he is . . [695] a coachman, . . and that he works both in the field and in the house. . . confronted by Clement . . said . . he had no wish to kill Pedro . . [696] Clement said that Jacob had also committed murder, he had killed, with . . an axe, Augusto, . . a Canadian merchant . . because of a debt he . . did not wish to pay. . . they were accustomed to do such things together as . . the stealing of a basket of indigo . . Leveille . . [697] says that it was Jacob . . with his master that bound Clement until shackles were placed upon him. . . Antonio . . put the irons on . . Mr. Cabaret . . had asked his master for . . his services because he is a blacksmith. . . Cabaret . . abandons his two slaves to the justice of the Court. . . Luis' confession. . . born in Illinois, does not know his age, but seems to be about twenty-six, a bachelor and a field laborer . . he had not seen Clement in all the time he was a fugitive which was from the first cutting of the indigo. . . [698] maintained himself . . stealing potatoes and fruit, also a handkerchief and a pair of trousers . . Clement names . . Cowley [as his defender] . . Mazange is named . . for Jacob and empowered by Mrs.

Macarty to defend . . Luis, . . [700] prosecuting attorney asks to have Jacob put to torture . . [701] having reiterated his denial, the application of torture was ordered. He was placed on a gun carriage at a distance from the fire, . . and having applied it in a manner that he felt the heat, he cried out denying . . The second torture proceedings took place [the next day.] . . continued to deny . . The third application was like the first two. Jacob maintained his innocence "

Sentence pronounced in 1778 by Galvez, on the advice of Odoardo, his assessor: that [701] " Clement, convicted . . I . . do condemn . . to the penalty of death and . . order . . that he be mounted on a beast of burden with a halter around his neck, bound feet and hands, with the voice of the town crier who will make known his crime, . . [702] thus carried through the public . . streets to the gallows where he will be whipped and afterwards hanged . . his body will be put into a leather sack with a dog, a viper, a monkey and a cock, the mouth of the sack sewed up, . . pitched into the river. I . . absolve . . of the crime of homicide . . Jacob and . . Luis, but I find Jacob convicted of robbery and Luis of running away and committing petty thefts, I . . condemn them to two hundred lashes at the foot of the gallows . . Jacob . . will be delivered to his master who will keep him in chains for three years, with the charge to watch particularly over his conduct. . . I order that the Reverend Father Vicar be notified . . so as to provide the criminal with the spiritual help " " The sentence is carried into execution . . [703] by Miguel, the negro executioner "

*Beauregard v. Ximenes,* 13 La. Hist. Q. 176, January 1778. " mortgaged . . Adelaide, aged 16 years, with her daughter, aged 4 months,"

*Re La Cabanne,* 13 La. Hist. Q. 339, March 1778. " the mulattress . . Magdalena . . was seated on the steps of her master's house when Titon [La Cabanne], the carpenter, . . begged her to concede him favors as she had been accustomed to do before. . . She answered . . that she did not wish to have anything more to do with him and . . went into the house . . [340] she heard Titon throwing stones on top of her cabin, then she . . went to tell her master, . . He . . told Titon to . . go away and if he did not . . he would make a complaint of him. . . In about an hour Titon . . forced open the door. She was then in bed with . . captain of a boat, . . she felt the wound from a blow with a sword or knife, . . leaving Titon attacking Chabote . . she went in to complain to her master " La Cabanne denied all.

*Chapron v. Mollere,* 13 La. Hist. Q. 351, July 1778. " claims . . 260 pieces of wood, 12 feet long, of good quality, promised to be given in exchange for a negro."

*Bustamente v. Josset,* 13 La. Hist. Q. 355, October 1778. [356] " Naneta, native of Congo . . [357] given in payment . . for professional [medical] services to . . other negroes "

*Blache v. Loreins,* 13 La. Hist. Q. 361, October 1778. " The plaintiff presents a medical certificate, signed by Drs. Montegut and Vincent,

. . stating that they have visited . . slave belonging to . . Blache . . found him with a bubo [1] . . and a venereal canker such as characterizes syphilis. He declared . . he had acquired this illness on going up to Pointe Coupée. . . Blache sets forth that . . Loreins . . persuaded his negro, aged thirty-five . . a creole . . knowing the trade of a brick mason, a roofer and . . gardener, to absent himself . . [362] asks that he be ordered to indemnify him . . 2 pesos a day . . and also to pay the doctor's bill" The alcalde condemns defendant to pay 36 pesos and costs.

*Janeta (a free mulattress) v. Darby,* 13 La. Hist. Q. 525, December 1778. [526] "she says the amount [200 hard pesos] . . is . . due her for . . her services for five years when she lived with him serving him as wife and servant . . He [lieutenant of militia] made her . . go live with him. . . she . . had by him a little . . girl that has died . . [and] a little . . boy . . When he married . . he made her a note for 200 pesos," Darby says "the note . . was given for . . her daughter, and in case he should take possession of her, this . . paper had to be null as this sum was for her support, . . when she fell ill he took her into his house but on the request of the mulattress she took her to hers . . this paper becomes null because the child's death ends its conditions, besides he paid the surgeon and [8 pesos] for the funeral" The suit was settled out of court.

*De Villiers v. Marie Luisa, called Trisa (a free negress),* 13 La. Hist. Q. 540, March 1779. "Chevalier . . de Villiers presents . . note and claims a debt of 590 hard pesos and asks to have her verify her mark and acknowledge the debt. Trisa or Iris denies . . [541] the two witnesses to the note . . declare . . they have seen Iris . . make the sign of the cross at the bottom . . writ of execution . . ordered issued."

*Baure v. Soubadon,* 13 La. Hist. Q. 547, April 1779. "he notified Mrs. Soubadon that she must pay 103 piastres that she owes for the [103] days' labor of the negroes who worked to stop the crevasse on her plantation."

*Morgan v. Bienvenu,* 13 La. Hist. Q. 686, May 1779. [690] "sold to Mr. LaPointe [his brother-in-law] . . a mulattress, aged about 30 years, with her two daughters for 1200 piastres and a third child, a boy, was sold to Mr. LaPointe ten years after for 400 piastres."

*De Villiers v. Le Breton,* 13 La. Hist. Q. 694, May 1779. [696] "6½ reales [a day] is the most just price to pay [slave] labor for repairing the levees."

*Re Angelica,* 3 La. Hist. Q. 700, July 1779 "Angelica, a negress, quartered at Antonio Ramis' place, to whom she has paid the price for her freedom with the exception of a small amount, petitions saying that for the great love she bears her grand-child, . . a slave of Santiago Porta she has begged an alms from various charitable people to buy her freedom and . . names . . appraiser . . and prays that . . owner, be ordered to appoint his and [that having been] done that she may be permitted

[1] "inflammatory swelling in the groin or armpit."

to buy . . and that an act of emancipation be issued to her. . . [Alcalde] grants her petition . . orders . . Porta to name his [appraiser] within three days . . [or] the Court will proceed with the naming of one for him." Her appraiser puts [701] " a value of 175 pesos on Maria Antonia, aged four . . [his] 200 pesos."

*Succession of Marie Eva La Branche,* 14 La. Hist. Q. 119, September 1779. [120] " the Alcalde appoints Baure [her husband] guardian of the estate . . Broutin, defender of the absent heirs . . [123] Joseph Casenave . . a free mulatto . . offers to pay cash for " " Magdalena . . and also the little mulatto son of petitioner and of Magdalena, . . prays that [they] . . be not put up for sale at public auction but . . be given letters of emancipation . . Alcalde . . orders the act of emancipation executed . . and this being done, Casenave pays in cash . . the prices at which they were valued in the inventory." [127] " Broutin [in March 1780] . . petitions for the cancellation of the adjudication made to him at the auction [in December 1779] . . of a thirteen year old . . boy . . he has discovered . . [he] is suffering with ring-worm of the scalp and Baure did not disclose this, . . asks that the boy be examined by . . surgeon of the Charity Hospital and that he be required to declare under oath the nature of the malady and if the slave has not had it . . a year, . . three doctors examine . . and each . . says . . for the present on account of his youth it cannot be cured, but he may get well in time. . . they cannot assure the court of the result of any attempted cure as he might die under treatment. . . The Alcalde . . orders the mulatto reappraised . . his value [was fixed] at 300 pesos. . . sold at auction . . to . . Macarty for 305 pesos." [129] " Broutin . . claims that Baure did not have his wife's consent to the emancipation " " on November 4, 1778, . . [of] his ' creole negress Marion, age forty-five,' . . Louisa or Louison, . . [and] Andres, . . an overseer of the plantation . . he asks that one-half of their value be included in the estate . . after they have been appraised and sold at public auction thereby giving Baure the opportunity to buy them and give them their liberty from his own money. . . [130] Alcalde . . condemns Baure to pay one-half . . since they were community property . . [The appraisers] report . . Louison and Andres, both aged 62, . . useless for work because of their advanced age. Marion . . is languid, is sickly, has a bad color and an infirmity of the chest and they value her at 200 pesos."

*Succession of Marie Rose de Verges,* 14 La. Hist. Q. 132, November 1779. [134] " To meet the testimony . . that Prevost has lost many slaves, Broutin [curator] asks that he be ordered to produce their burial certificates as is customary according to law."

*Succession of Poupar,* 14 La. Hist. Q. 144, November 1779. [145] " A run away negress . . has returned, and Broutin [curator] asks for an appraisement . . to be sold with the rest of the estate. She is appraised at 400 pesos."

*De Lanzos v. Santilly,* 14 La. Hist. Q. 150, December 1779. " Manuel Lanzos, Lieutenant of Infantry . . sets forth that . . he . . wishes to give "

" Mr. Santilly's brown slave, Maria, . . her liberty first of all in recompense for her services and secondly to fulfill the will of our Sovereign to redeem from captivity all who are so held, and as the law provides. . . He . . alleges a fear that Santilly moved by passion, or cruelty has inflicted [may inflict ?] this poor unfortunate woman with some frightful punishment or torture. To prevent such . . he asks that the escribano take the slave from her master's house . . that she be deposited in the Charity Hospital, or wherever the Governor may suggest. That she be granted her freedom, and the escribano be authorized to execute the proper act of emancipation according to the Royal Ordinance of Alcavala. That whatever is . . necessary to purchase the liberty . . will be promptly paid by him . . [151] Santilly, Chevalier of the Royal and Military Order of St. Louis, testifies that his slave, Maria, was born in his house, daughter of a savage, (Indian) his slave . . Mazange . . testifies that . . he removed Marie [*sic*] Santilly . . and placed her with Manuel Armesto as is customary, . . Santilly names . . appraiser . . accepted . . but before anything further is done . . Santilly and . . Lanzos, in a joint petition, say they have come to an agreement by the former selling the slave to the latter "

*Broutin v. Naneta Chebart (a free mulattress),* 14 La. Hist. Q. 275, January 1780. [276] " Broutin's petition alleging that at a public auction of . . Baure's effects [1] he bought a negress, Maturina.[2] In 1773 Baure had promised, verbally, to sell [her] . . to Naneta Chabert . . for 250 pesos . . Naneta [agreeing] . . to free Maturina when the latter had paid her this amount. . . that Maturina has already paid Naneta 192 pesos . . four exhibits . . 55 pesos delivered to Enriqueta [Arieta], a free mulattress, then a slave . . to deliver to her daughter, Naneta. . . in the presence of . . Beloty, late sergeant . . who delivered to Maturina a receipt from Mariana Dela [a free mulattress], which she accepted thinking it . . from Naneta. . . that at the same time Maturina delivered 100 pesos to Jacinto Panis which he also gave to Naneta. . . also the 23 pesos that Maturina turned over to Naneta, receipted for by Arieta, and 14 pesos . . as appears from Naneta's receipt, . . that Naneta . . in place of buying Maturina . . bought with this . . money the freedom of her own mother, Enriqueta, . . interrogatorios . . answered . . by Iris [a free negress] . . [277] Arieta, the grifa, . . Mariana Dela . . [278] Panis . . Broutin presents . . petition [that] . . 192 pesos . . be returned to Maturina . . [279] Alcalde . . renders judgment [in 1782] condemning Naneta Chabert to pay . . Broutin, Maturina's master, 100 pesos which by her declaration she owes; . . Maturina . . now . . petitions for a writ of execution against Naneta Chabert . . who has not paid . . [Alcalde] orders the writ . . issued."

*Re Mary Glass,* 6 La. Hist. Q. 589, February 1780. The prisoner [592] " was a free quadroon from ' the North of the Carolinas,' . . In the charge it is stated that . . she . . had tortured and slowly done to death

[1] Alexandro Baure, jr., died in 1779. 14 La. Hist. Q. 122.
[2] See Baure *v.* Naneta, p. 428, *supra.*

. . Emilia, a fifteen-year-old white girl," at [591] "English Point Coupée in the District of Baton Rouge [1] in [December] 1779." The witnesses included whites, free negroes, slaves and three Choctaw Indians. The last [640] "through their interpreter . . testify . . that they saw Marie Glase [*sic*] cruelly whip the young white girl . . that they told [her] . . that a white woman was not whipped, that it was done only to slaves, that . . [she] answered that this young girl was her slave, and also a young grif who is at Mr. Alexandre's and is mutilated [by her]. . . that they were Red men, but that seeing this young girl so badly whipped made their hearts ache." [635] "A runaway negro . . declares that whilst a fugitive he lived at Marie Glase's house . . had often seen . . [her] tie Emilia up and whip her as one would a negro." "he helped to bury [her] . . assisted by two negroes," The prisoner was found guilty and sentenced [642] "to have her right hand cutt off under the Gallous, then immediately to be hanged . . And when cutt down, her head to be severed . . and stuck up upon a pole at her former place of residence . . and her right hand to be nailed to the same Post." Sentence confirmed by the military commandant of the fort of Baton Rouge. The papers were sent to New Orleans, and the sentence was confirmed [649] "by Don Pedro Piernas, governor *ad interim* . . together with his general assessor, . . January 19, 1781." She was executed on July 26.

*Succession of La Frenière,* 14 La. Hist. Q. 283, March 1780. [284] "Le Bougere [overseer] enters . . claim . . for the labor of his negro who . . worked with twenty-three others to make the crop . . agreement . . [for] one twenty-fourth part of all produced . . [in] 1778 and 1779. . . [285] Alcalde . . rules that Le Bougere be paid 200 pesos for the use of his slave. . . [286] Surgeon presents a bill for 193 livres 15 sols, or 43 pesos 6 reales for medical services for Mr. de La Frenière and his slaves. . . Alcalde . . orders it paid"

*Pollock v. Shakespeare,* 14 La. Hist. Q. 475, April 1780. [476] "witness . . says . . that . . the negro Guy . . was captured by Captain [James] Willing a little above Natchez in a canoe with Mr. Easton, with the rest of the negroes and that they were brought to the city by him. It appears . to have been a fair capture.[2] . . Guy under oath taken on the Holy Evangelists because he is a Protestant declares . . Mr. Shakespeare [his former owner] asked him one day if he wished to go with him to Pensacola and . . witness . . answered yes and . . embarked on

[1] Baton Rouge had been captured by the Spanish in September. "Under the terms of the capitulation the English magistrates . . were permitted to continue for the time being in the exercise of their functions, . . the culprits [Mary Glass and her husband] were duly investigated according to the French method, . . contemporaneously the English judges conducted a similar inquiry . . The Spanish commander stood by . . and thereafter approved their verdict and confirmed the sentence. These papers were then forwarded to Governor Galvez at New Orleans, and . . approved by Acting Gov. Pedro Piernas and Judge Postigo, his Assessor. . . [Thus] there is preserved . . this very interesting illustration of the three legal systems that prevailed at that moment in Baton Rouge." Henry P. Dart's introduction to the case.

[2] [476] "the negro . . [therefore] belongs, as it is supposed, to the American Congress."

an English frigate that was anchored at the Point . . Pollack [agent of the American colonies] . . asks that . . Davies" [475] "in whose possession the negro is now held be ordered to deliver him to the petitioner. He has been told that the slave is really in prison and he asks that he be held there until this suit is finished." Judgment: [476] "Davies must restore Guy . . Shakespeare . . to pay costs."

*Elena v. Desprez,* 14 La. Hist. Q. 619, August 1780. "Elena, a free negress, sets forth that while she was a slave she had a son . . who now belongs to . . Desprez. A free negro, . . his father, has sent her the money to buy his freedom and . . [620] she names . . her appraiser . . Piernas [alcalde] rules: . . Let Desprez be notified to name his . . the two appraisers . . cannot come to an agreement. Piernas names . . mediator. He . . qualifies, placing the value at 600 pesos. . . The mother asks . . that Desprez be ordered . . to have a letter of emancipation drawn up for him at this price. . . a new ruling . . let another [appraiser] . . in discord . . be appointed. . . qualifies, estimating Magloir at 800 pesos. . . The petitioner . . asks to have the decree naming a fourth appraiser . . revoked as it is contrary to law . . [claims] that she is being overcharged. He . . only cost 500 pesos at public auction to be paid for within one year and if . . [621] sold for cash he would have been bought for 400 pesos . . the present legitimate value of a slave who knows no trade. . . a joiner ['a mulatto of 25, who is a master carpenter,'] . . was freed for 750 pesos, . . an expert blacksmith . . was valued . . at 800 pesos. . . Desprez puts too high a value on her son, a negro without a trade, a drunkard and a thief. . . a carpenter . . a master of his trade, belonging to the Capuchins, . . was valued at 800 pesos. . . Petition denied, let the parties appoint new appraisers . . a new appraisement . . that the negro is worth 800 pesos."

*Re Espinosa,* 14 La. Hist. Q. 622, August 1780. [623] "makes voyages to the Coast about twenty leagues away . . with the merchandise that he finds appropriate . . [624] an iron collar for negroes, that was bought from a sailor . . from Mobile,"

*Mallines v. Bonne,* 14 La. Hist. Q. 634, September 1780. "a negro named Francisco, aged 25, a creole, adjudicated to . . Bonne for 850 pesos."

*Re Nicholas,* 15 La. Hist. Q. 164, October 1780. Petition for freedom "sets forth that . . For the last four years it has been the intention of his owners to sell him for 400 pesos, but they could find no purchaser to give that price for a man without any trade . . and suffering much from stomach troubles. He has . . earned 400 pesos which he offers for his redemption. He prays that his owner, or the guardian of her property [Mercier] receive the 400 pesos, or that each party name . . persons experienced in appraising slaves . . [165] The two appraisers differ . . Cheval [for Mercier] fixes 1200 pesos and Picou [for Nicholas] 800 . . Nicholas asks for a third in discord. . . He . . values Nicholas at 800 . . which the slave agrees to pay . . Piernas [acting governor] . . orders the act of emancipation to be issued."

*Maria v. Methode,* 15 La. Hist. Q. 165, November 1780. "Maria, called Mariquina, presents a declaration, dated . . April 1, 1779, and signed by Methode . . that he permits her to go with her son . . where she pleases, to live, because he has given her her freedom, since July, last, . . which she has enjoyed . . until now when he proposes to sell her . . Methode's declaration . . 1780 . . declares the paper is not to give her freedom, or even a promise of it. It is only . . a permit that he wrote . . [166] so that she might travel honorably as he is accustomed to do with all his slaves. She had asked him various times for her liberty, claiming illness. . . Galvez . . Governor, rules: . . that Maria and her son are free and . . Methode must grant her letter of emancipation . . with a warning that if he does not . . another suit will be brought"

*De Kernion v. Paquet,* 15 La. Hist. Q. 174, December 1780. "1777 . . act of sale before . . Commander and Judge of the German Coast . . by which Huchet de Kernion sells to Jean Paquet, . . [175] a free mulatto, . . land, measuring 16 arpents front, . . for 13,000 livres . . payable . . 800 in piastres gourdes in . . 1778; and the 1800 piastres remaining in . . 1779. . . Kernion has received 500 piastres on account . . [but] petitions for a writ of execution" for 2600 pesos. Granted.

*Dewees v. Morgan,* 1 Mart. La. 1, Fall 1809. "an action brought to recover the price of a negro man, sold with his wife and children to the plaintiff, at public auction, by the defendant, consignee of a cargo of negroes. . . man . . died ten or twelve days after the sale, . . evidence that the slave had been slightly unwell a few days before the sale, though the physician who attended him did not consider him, at the time, as dangerously ill; but the doctor, under whose care he was placed by his new master, testified that the negro died of the yellow fever, . . incurable in its stage at the time of the sale. The defendant proved that, before the sale began, notice was given . . [2] that if any objection lay to any of the negroes, it should be communicated . . the following day—that the plaintiff . . had forborne . . until the third day. No fraud was suggested, nor was it pretended that the defendant was aware of the dangerous situation of the slave." Held: [7] "that the plaintiff do recover the consideration paid."

*Brown v. Fort and Giraud,* 1 Mart. La. 34, Fall 1809. "Action upon a note . . The ship *Clara,* owned by Foster and Giraud of New York, being libelled in the district court of the United States . . under the act of Congress, prohibiting the importation of slaves,[1] . . the defendants were desired by the owners to act for them, and consequently, the ship being afterwards condemned and sold, they brought her in and gave their note . . to the plaintiff, collector of the port . . The forfeiture being remitted by law, the defendants refused payment. . . [36] the plaintiff voluntarily suffered a Non Suit."

[1] Act of Feb. 28, 1803. 2 St. at L. 205.

*Debora v. Coffin and Wife,* 1 Mart. La. 40, Fall 1809. In 1809 "the defendants [[56] 'French emigrants'] were banished from Cuba, and all their property, (excepting the negroes . . who followed their master) had . . been . . confiscated"

*The Amiable Lucy v. U. S.,* 6 Cranch (U. S.) 330, February 1810. The district court of the United States, for the district of Orleans, had "condemned the brigantine *Lucy,* for importing a slave from the West Indies, contrary to the act of congress of the 28th of February, 1803,[1] . . [331] the territorial legislature [of Orleans] had never passed any law prohibiting the importation of slaves." Held: the act of February 28, 1803, does not apply.

*Dormenon's Case,* 1 Mart. La. 129, Spring 1810. In June 1809 "the following rule was obtained against . . Dormenon. . . 'that . . Dormenon show cause . . why his name as . . counsellor at law, should not be stricken off the rolls . . for having . . headed . . and assisted the negroes of St. Domingo, in their horrible massacres, and other outrages against the whites, in and about 1793.' . . [130] Mr. Dormenon . . denied the charge. . . [131] It is proved that Mr. Dormenon was a municipal officer under the commissaries Polverell and Santhonax, in . . 1793, when the general freedom of the slaves [in St. Domingo] was proclaimed. . . that in that character, wearing a scarf, his badge of office, he marched at the head of the brigands, acting in concert with their leaders, whose sole purpose . . was the indiscriminate . . massacre of the whites who refused to conform to the orders of the commissaries;"

Rule made absolute: [132] "Had the same evidence . . accompanied Mr. Dormenon's application for admission to the bar, I have no doubt he would have been refused. The court now being possessed of it, it is equally their duty to exclude him. . . no person who has acted in concert with the negroes and mulattoes of St. Domingo, in destroying the whites, ought to hold any kind of office here, however fair their conduct may since have been." [Lewis, J.] Order rescinded in 1812: [2 Mart. La. 305] "he has lately been elected a member of the house of representatives, . . The house have unanimously come to a resolution, that the charges . . are unfounded," [Lewis, J.]

*Mitchell v. Comyns,* 1 Mart. La. 133, Spring 1810. "the plaintiff was the owner of a negro girl, who left his plantation, in . . Maryland, without his . . knowledge, and came to . . New Orleans, where she lived with the defendant, . . [134] The answer . . set up a claim . . grounded on a contract of sale . . entered into, before a notary public, in . . New Orleans, . . the vendor was a dealer in negroes." Judgment for the plaintiff.

*Macarty v. Bagnieres,* 1 Mart. La. 149, Fall 1810. "On the sale of a negro it was stipulated that the vendor would be liable to a warranty, in the sole case of one of the maladies specified in the Civil Code, and the plaintiff states that the negro was, in the knowledge of the defendant,

[1] 2 St. at L. 205.

addicted to the habit of running away, . . not communicated to him. . . the negro was kept in jail for five months preceding the day of sale, for running away; but the defendant contends that . . *one act* . . [150] does not constitute *a habit*. But . . soon after the sale the negro ran away again,"

Judgment for plaintiff: " We . . conclude from . . the unwillingness of the defendant to trust him out of jail, that the negro was addicted to running away, . . This is a redhibitory defect in the Civil Code, 359, 367. . . In order that a redhibitory defect may be excluded from among those which give a right of action to the vendee, it must have been excluded *in good faith* by a particular clause. . . [151] if the vendor has knowledge of the defect and instead of declaring it, . . stipulates he shall not be liable on account of it, his dissimulation is a fraud which will render him liable to the warranty, notwithstanding the clause derogating to the plaintiff's right."

*Adelle v. Beauregard,* 1 Mart. La. 183, Fall 1810. " The plaintiff, a woman of color, claimed her freedom." Attorney for the defendant: " The plaintiff must prove that she was born free or has been emancipated." Attorney for the plaintiff: " Even if the defendant could prove his possession of the plaintiff as his slave, still the Spanish law would require him to produce some written title, or at least that he acquired possession of her without fraud. Partida 3, tit. 14, l. 5." By the Court: " Although it is in general correct, to require the plaintiff to produce his proof before the defendant . . it is otherwise, when the question is slavery or freedom. The law cited by the plaintiff is certainly applicable . . We do not say that it would be so, if the plaintiff were a negro, who perhaps would be required to establish his right by such evidence, as would destroy the force of the presumption arising from color; . . [184] Persons of color [on the other hand] may have descended from Indians on both sides, from a white parent, or mulatto parents in possession of their freedom. Considering how much probability there is in favor of the liberty of those persons, they ought not to be deprived of it upon mere presumption," " The defendant then proved he had brought the plaintiff from the West Indies—had placed her in a boarding school in New York, and in a few years after, sent for her to New Orleans, where she resided a few months with him, and left his house, and in a few days after brought the present suit." Judgment for plaintiff. " The plaintiff claimed wages for the time she had resided with the defendant, but the court, inclining to view her services as the return of gratitude, for the trouble and expense attending her education, withdrew her claim therefor."

*Daublin v. Mayor etc. of New Orleans,* 1 Mart. La. 185, Fall 1810. " The plaintiff . . had built a house ['eighteen feet in the street'], and defendants sent the *forçats* or galley slaves, who . . destroyed the house and drove off the plaintiff " Judgment for the defendants.

*Graham v. Forker and Elan,* 1 Mart. La. 197, Spring 1811. " One of the defendants having left the territory . . and the process being left

at the house in which he last dwelt, there being no white person in the family." Martin, J.: " the service was bad."

*Navigation Co. v. Mayor etc. of New Orleans,* 1 Mart. La. 269, Spring 1811. *Moniteur de la Louisiane,* May 26, 1794: [270] " The intention of the government is . . to request from the inhabitants of the city [and neighborhood] . . negroes . . to clear the ground through which the [Carondelet] canal was to pass; promising that this being done, the [King's] chain negroes [1] would dig the canal. . . [272] the inhabitants . . freely sent their slaves " [2 Mart. La. 13] " such individuals as had none, working themselves, or furnishing an equivalent in money. The number of negroes [furnished by their owners] . . was , on an average, after the first year, from 160 to 175. The *presidios,* or convicts, were about the same number; but working only when . . [14] not at work on the fortifications," [13] " The negroes dug and the convicts carried away the dirt. . . The negroes were fed by government, and went to their masters at night."

*Tonnelier v. Maurin,* 2 Mart. La. 206, Spring 1812. " The plaintiff [' a person of color '] lived with the defendant's testator as his *ménagère.* She had with her . . several grown daughters . . he hired out some of the plaintiff's slaves, and received their wages. . . for several years, in Hispaniola, St. Yago de Cuba and New Orleans."

Judgment for defendant: " There being no evidence . . of any claim of hers in the lifetime of the testator . . it must be presumed that the parties had joined their stock for their mutual support. The plaintiff might as well claim wages for her services in the house, or might be sued for her board and that of her children."

*State v. Cecil,* 2 Mart. La. 208, Spring 1812. " A woman of color was offered as a witness . . and a gentleman swore that she was once his slave, but he had liberated her. She had a copy of the act of liberation; the original of which was in New York."

Witness sworn: " The woman being of color, the presumption is that she was born free. . . But this presumption is destroyed by the declaration of her former master. . . however, . . it establishes her emancipation in the same breath. Neither are we ready to say that when . . a fact comes . . collaterally to be proved, the rules of evidence are as strictly to be insisted on, as when the facts in issue are to be made out."

*Jacob et al. v. Ursuline Nuns,* 2 Mart. La. 269, Fall 1812. " The petition stated that the plaintiffs' father, a free black man, acted as overseer on the plantation of the defendants, since 1796, till his death in 1811— that in 1801, the superior of the convent made a donation to him of two arpents of land fronting the river . . for his services; . . 1804, the superior, and nuns . . confirmed the donation—that he remained in possession . . till his death, devising it to the plaintiffs—and that the nuns have since sold the premises, and the purchaser has drove off the plaintiffs.

[1] "the convicts (who were about to be sent to Pensacola)" were allowed "to remain." 2 Mart. La. 10.

. . [270] produced a writing, subscribed by the superior . . by which she makes a donation . . Next . . an instrument, by which the superior and vocal nuns give to Jacob the usufruct . . [271] By the Court. These instruments do not bind the community, being made without the requisite license. . . [272] a notary attended, with a proper deed of emancipation, executed [in 1796] with the license of the bishop of Louisiana. . . He was 60 years of age when liberated, . . The will of the deceased contained a clause that he owed nothing to anybody, neither did any person owe him any thing: and the defendants proved that a number of muskets being seized on their plantation, as they had no free person on it, they were advised to free him . . [273] that with a very fine gang of negroes, the plantation made nothing to sell, supplying the convent with milk, vegetables, rice, corn and fuel; the number of negroes thereon . . varied from 18 to 42. The wages of overseers were . . from five to one hundred dollars a month."

Charge to the jury: [275] "If it be believed that no wages were promised . . for his services before the donation, it is for the jury to determine whether there is room to believe that any were expected, or promised, for the posterior services—whether they were not rendered . . on the expectation that the nuns would provide for his support." The jury could not agree on a verdict.

*Macarty's Case,* 2 Mart. La. 279, Fall 1812. "*Habeas corpus.* The goaler [*sic*] produced . . a warrant from a parish judge stating that from . . depositions . . there was strong suspicion that the prisoner was concerned in an insurrection of the slaves, commanding . . the goaler to . . keep him till . . discharged in due course of law. The depositions . . charged him with conversations, from which . . a disposition to inimity [*sic*] against the whites, were manifest; . . and on hearsay, with expressions directly tending to raise an insurrection. . . the attorney general, informed the Court, he had lately sent to the grand jury a bill against the prisoner, and . . witnesses were now before them" By the Court: "The prisoner must . . be committed . . until the morning, when, if the bill be found not a true bill, he will be discharged."

*Meunier v. Duperron,* 3 Mart. La. 285, April 1814. "The plaintiff [a constable] having, at the instigation of the defendant, arrested a free negro woman,[1] and shipped her off, was prosecuted, found guilty, fined, imprisoned [for five months], and condemned to heavy damages. . . he brought the present action to compel the [defendant] . . to indemnify him, . . defendant demurred, . . judgment for him," Affirmed: [288] "The verdict of the jury . . settles this"

*Ogden v. Blackman,* 3 Mart. La. 305, June 1814. "a trial and condemnation of his slave was had before . . a justice of the peace, assisted by three freeholders, on a charge of larceny, according to an act of the territorial legislature, . . called the Black Code, . . [306] the slave was

[1] [286] "the defendant represented the wench as his runaway slave."

sentenced to corporeal punishment, and the master adjudged to pay five hundred dollars,"

*St. Maxent's Syndic v. Sigur,* 3 Mart. La. 371, June 1814. " in 1789. . . [he] purchased . . five negroes, for $6,000;"

*Vernot v. Yocum,* 3 Mart. La. 406, August 1814. [407] " The bill of sale for the negro . . was placed in the hands of Johnston . . who held it as a stake against another negro and $200 . . to be delivered as a forfeit by either party who should . . fail to run the race."

*The Brig Alerta v. Moran,* 9 Cranch (U. S.) 359, March 1815. " Blas Moran, . . a native and resident of . . Cuba, . . is the owner of the brig *Alerta* and cargo consisting of 170 slaves, which, on a voyage from the coast of Africa to the Havanna, was, sometime in . . June, 1810, when within a few leagues of Havanna, captured on the high seas by the *L'Epine,* bearing French colors; that a prize master was put on board the *Alerta,* and 17 of the slaves taken out, after which the prize was ordered to steer for the Balize," near [367] " to which she is found by Captain Allen in distress in consequence of a severe gale, to which she had been exposed, and of the want of provisions. . . he conducted her in safety to New Orleans." The *L'Epine* was manned with a crew [360] " composed partly of persons obtained at New Orleans," [366] " Some . . are proved to be native citizens; others were residents domiciled in New Orleans, . . and others again were slaves belonging to the citizens of that place, who appear to have been seduced from the service of their masters."

Held: the sentence of restitution to Moran of the ship and of the slaves left on board [367] " ought ot be affirmed with costs." " Nothing could be more remote from the intentions of the captain of the privateer than to render a service to this ship and her cargo. So far from it, he committed an unwarrantable spoliation of the cargo by selling fourteen [*sic*] of the slaves, part thereof, to an American whom he met at sea; and he most certainly intended to have smuggled the residue of the slaves into Grand Terre or some other part of the coast, and there to have disposed of them." [Washington, J.]

*Bayon v. Prevot,* 4 Mart. La. 58, December 1815. " the plaintiff was owner of a mulatto slave, who ran away, and was arrested and confined in the jail . . of New Orleans; . . the defendant, a neighbor . . [60] went to see him, . . the slave had the dysentery; . . [offered,] as he had a boat, . . [to] take him up to his master," " if the deponent [to whom Bayon had written concerning the slave] would deliver the slave to him, . . on delivering the slave, the deponent informed the defendant the slave was a bad one, and would, if not properly attended to, make his escape; . . the slave . . was so enfeebled . . that he fell down in going on board, and once into the water. . . On the second . . night, he ran away."

Held: [65] " The taking the slave . . from the . . unwholesome air of a prison, was . . well intended . . [66] his state of sickness would not allow him to be confined. His . . escape is the misfortune of the owner, . . agent . . not . . responsible." [Mathews, J.]

*Bayon v. Mollere et al.,* 4 Mart. La. 66, December 1815. "The petition stated, that the defendants forcibly took . . a negro woman slave and her four children; that, in consequence of the . . ill-treatment of the defendants, the woman died,"

*Baron v. Phelan,* 4 Mart. La. 88, February 1816. [90] "the statement of facts . . attributes to them skill in the particular manufacture in which they were employed by their master, . . they were worth two or three dollars a-day each,"

*St. Maxent's Syndics v. Puche,* 4 Mart. La. 193, March 1816. Proclamation, November 17, 1758, of the sale of a plantation "with the . . dwelling-house . . saw-mill . . rice-mill . . sugar-mill, and brick-yard . . a negro camp,"

*Guillot v. Dossat,* 4 Mart. La. 203, March 1816. "The parties were joint owners of a slave, the plaintiff for nineteen, the defendant for one-twentieth. During the contest for the ownership, he was kept . . by the defendant, . . ordered by the Court to deliver him to the sheriff, that a division might take place by a licitation, failed to produce him . . [as] the slave ran away, without any fault on the part of the defendant . . [who] did not take any step for the capture . . neither did he apprise the plaintiff . . [206] It is true, he had the name . . registered with the clerk of the Parish Court, under a provision of an act"[1] Judgment: [208] "that the plaintiff do recover . . seven hundred and sixty dollars, being the nineteen-twentieths of . . the agreed value"

*Morgan v. M'Gowan,* 4 Mart. La. 209, March 1816. "the negro woman . . was affected with a disease of the liver . . [210] useless . . until her death,"

*Victoire v. Dussuau,* 4 Mart. La. 212, March 1816. "the plaintiff, here the appellant, offered parol testimony to prove a contract between the defendant . . and herself, whereby the latter, who holds her in slavery, agreed to emancipate her on . . reimbursement of the price which she had paid . . testimony rejected by the parish judge,"

Affirmed: "The right . . to maintain an action for her . . freedom, on this contract, is unequivocally declared (3 Part., 2, 8), and according to the general provisions of the Spanish law, such a contract may be . . proven by oral testimony . . . virtually repealed by the Civil Code. . . [213] between free persons no valid . . [214] contract can be made, so as to alter the title to slaves, unless it be in writing;" "Slaves are incapable of making any contract . . except for their freedom . . and as, in this respect, they assume, in some degree, the standing . . of free persons, the rules of law which . . govern the contracts of the latter must be applicable to those of the former, where the object of the agreement is the same." [Mathews, J.]

*Pigeau v. Duvenay,* 4 Mart. La. 265, April 1816. "The plaintiff [a white man] sues for the estate of his natural daughter, a free woman

[1] Martin's *Digest,* Black Code, n. 26.

of color, who died intestate, without a mother or issue. The defendant claims . . in his own right, and that of other persons of color . . the natural brothers and sisters of the deceased. . . [266] [In] the registry of baptism of the deceased, . . the plaintiff is mentioned as her natural father, and . . a record of the Court of Probates . . shows that the plaintiff was, on the application of the deceased, appointed her curator, *ad bono,* as her natural father."

Judgment for the defendant: " proof of *paternity* does not suffice; the *acknowledgment* must have been proved.[1] . . [268] there has been no such acknowledgment." [Martin, J.]

*Beard v. Poydras,* 4 Mart. La. 348, May 1816. " action . . for the recovery of a tract of land . . [349] The defendant . . claimed title . . under a deed from the heirs of B. Farrar," Will of Christopher Beard, 1789: [350] " that my negroes shall be put on my land . . to make tobacco, indigo, or whatever . . most advantageous; and that, in . . two or three years, if my friends should apply, my executors . . may divide the estate between them, and a mulatto wench, hereafter mentioned; . . and that a little mulatto girl, named Venus, now on the plantation of B. Farrar, esq., receive a good education, and an equal dividend of my estate." [351] " Beard had fifteen negroes on the plantation of B. Farrar. Before, as well as after his death [in 1789], Farrar had possession of his land," Will of Farrar who died in 1790: " I desire my executors to make free . . Venus, a daughter of my negro woman Nancy, supposed to be a bastard child of C. Beard, . . I . . bequeath to . . Venus six negroes, men and women, that is, three of each, to be delivered when she arrives at the age of eighteen; . . [352] condition I . . make, . . that the above freedom and donation are in consideration of . . every claim, whatever she may have, to any estate left by . . Beard; . . I desire that . . Venus be properly educated in the christian religion, and taught to read and write; and when of proper age, that she may be put to a mantua-maker, and learn the business; and my executors to see that she is well used, and all this at the expense of my estate." Venus was " born about . . 1785, . . [353] has been considered as free since . . [Farrar's] death," In 1801 she gave an order [352] " on the executors of Farrar . . in favor of . . Mulzach, for a part of the legacy . . accepted by the executors, as an evidence of her having commuted her rights, under the will of Beard, for the said legacy;" [349] " the plaintiff offered several witnesses, to prove, that she was born free, was so reputed, and had been acknowledged as such, by Farrar, before Beard's death. The district judge refused to receive their testimony "

Judgment reversed and the case remanded: [365] " The mere reading of [Farrar's will] . . is no evidence that the plaintiff intended to use it as a title to freedom, . . [368] The witnesses . . ought . . to have been heard, even upon the fact of emancipation, supposing the testimony tendered such as the law 1, tit. 22, Partida 4, does admit. . . [369] The plaintiff, notwithstanding the rejection of that evidence, had judg-

[1] Civil Code of 1808, p. 156, art. 48.

ment in her favor . . and did we agree with the district judge on the merits of the case, it would be unnecessary to send it back;" [Derbigny, J.]

*Johnson v. Boon,* 4 Mart. La. 380, May 1816. " brought these slaves, with his family, from North Carolina to Georgia and Florida. . . the latter place . . was under the Spanish government, and it continued so long afterwards;"

*Forsyth et al. v. Nash,*[1] 4 Mart. La. 385, June 1816. " The plaintiffs . . claim the defendant, a negro man, as their slave. . . The evidence . . is—1. A bill of sale . . 5th of September, 1803, . . executed at Detroit, . . 2. The deposition . . that there was at Detroit a mercantile house . . Kinsey and Forsyth, . . 4. The deposition . . the plaintiffs lived at Peoria, in the Illinois territory; . . employed [deponent] . . in 1813, to stop the defendant; that he took him up in New Orleans, and brought him before the mayor, where he confessed he had ran away from the plaintiffs ['who had promised him his freedom'], and did not like to return to them, on account of a wife and children he had in New Orleans. . . he ran away from Peoria about six years ago: . . [387] The defendant's counsel shows that in the territories of Michigan and the Illinois, . . *slavery* . . is *forbidden by law.*"

Held: [391] " The Parish court erred in sustaining the plaintiff's claim: its judgment is therefore . . reversed; . . judgment for the defendant, with costs." [389] " as the case affords no evidence of any residence of the defendant in any country in which slavery is lawful, this case must be determined by the laws of the country in which the defendant dwelt when he came to the hands of the plaintiff;" [Martin, J.]

*Labranche v. Watkins,* 4 Mart. La. 391, June 1816. [392] " The [runaway] slave was brought to jail . . 29th of July, 1813, and . . 16th of August the defendant [jailer] wrote to a person in New Orleans, to advertise the negro three times, . . no other evidence of any compliance . . except a newspaper . . 3d of September, . . The plaintiff [owner of the slave] . . [393] sent his son [in 1814] to claim the negro, with a letter to the parish judge, complaining that, from the defendant's neglect to advertise . . he had not till then any knowledge of his confinement. Eighty dollars was offered to the defendant for his charges; but he claimed one hundred and eighty. On the acknowledgment of the defendant's deputy, that the negro had been advertised in one paper only,[2] the parish judge made an order for his delivery, on payment of two months' expenses, and the fees of arrest; but the defendant refused to deliver [him.] . . It is admitted that the negro was sick; that, at the

[1] See "An Historical Detective Story," by Jacob P. Dunn, in *Proceedings* of the Mississippi Valley Historical Association, 1919-1920, p. 230.

[2] [394] " The 28th section of the first part of the Black Code provides that runaway slaves shall be advertised, in at least two newspapers, in French and English, during three months successively, and after that time, once a month during the remainder of the year. . . The next section provides, that, if the owner do not reclaim the negro within two years from the date of the advertisement . . he shall be sold by the sheriff, with the permission of the judge, after *three* advertisements,"

time of the plaintiff's application, the doctor's bill amounted to eight dollars, and afterwards rose to forty-one; that he was not confined . . attended the . . deputy as a servant." On August 29, 1815, the defendant sold the slave and bought him back the same day for the price at which he had sold him. " the District Court gave judgment that the plaintiff recover the negro . . and one hundred and eighty-five dollars and twenty-five cents for his damages, and the defendant appealed."

[396] " It is . . decreed, that the judgment . . be affirmed, with costs; and, the appeal being a frivolous one, that the plaintiff do further recover 10 per cent. on the amount of the judgment." [Martin, J.]

*Dussuau v. Bredeaux,* 4 Mart. La. 450, June 1816. " syndics of L. Dussuau, a free man of color, claim . . a female slave, . . [sold] at public auction . . for . . $885, payable . . 1815,"

*Crocker v. Watkins,* 4 Mart. La. 540, December 1816. [544] " negroes were worth more in 1816 than in 1812;"

*Bore's Executor v. Quierry's Executor,* 4 Mart. La. 545, December 1816. " Mary Bore, a free woman of color, . . is alleged to have been for a number of years in an universal partnership with . . Quierry, . . the object of . . suit is the recovery of one half of the property left by Quierry. The answer states that [she] . . [546] acknowledged herself his servant; . . rewarded by a legacy of $1500; . . lived in public concubinage with the defendant's testator, . . about thirty years . . she possessed, at that time, 400 dollars in cash and ten or twelve head of cattle, and both exerted their industry in common: he disposed of the proceeds of her property, and was heard . . to say . . [they] were partners and one half of the property belonged to her. . . when she came to live with him, he was settled on . . [547] land which he owned, and he held property distinct from hers . . she also held other property, in her own right, *viz.* a negro woman . . whom he had bought and conveyed to her. . . two suits instituted . . to recover her wages as a servant, during all the time . . and those of two female slaves of hers." Held: no universal partnership.

*Stockdale v. Escaut,* 4 Mart. La. 564, January 1817. Held: an authority to sell a slave must be written.

*Duncan v. Cevallos's Executors,* 4 Mart. La. 571, January 1817. " the plaintiff purchased from the defendants, a negro slave, for nine hundred dollars, . . [572] The defendants . . [in the bill of sale] warrant the negro . . free from redhibitory *diseases only,* . . but not as to any redhibitory *vice,* declaring that they do not know the slave. . . he is stated to be 25 . . *bon domestique, cocher et briquetier.* . . the slave was . . immediately after the sale, a worthless, idle, drunken fellow, and knew nothing of the business of a coachman. A witness introduced by the defendants, deposed . . the slave . . was the deceased's coachman and bore a good character. . . [573] the deceased's overseer, deposed . . that he was at first employed as a brickmaker, was next . . coachman, and afterwards the driver of his other slaves . . a very faithful servant, and had

the confidence of his master, who was very severe to his slaves; that he saw him drunk but once, and he never attempted to runaway, that the deceased gave 1800 dollars for him and his wife. . . the district judge gave judgment for the plaintiff,"

Reversed: [575] " the adjective *bon,* does not necessarily attach to any [substantive] but . . *domestique,* . . the rule of the common law of England is in opposition to that which we are to follow. The common law says, *verba fortius accipiuntur contra proferentem*: the civil, requires the construction to be *in favorem solutionis.*" [1] [Martin, J.]

*Trudeau's Executor v. Robinette,* 4 Mart. La. 577, January 1817. " The plaintiff claims the defendant as a slave, . . a mulatto woman born from a negro woman the slave of his testator: . . she . . is about to sail for . . Cuba. . . the plaintiff introduced a bill of sale from his testator to Gardette, and a reconveyance . . 1809 . . The defendant first introduced a letter of the plaintiff's testator . . 1808 . . 'Robinette, a child of my house, having always acted in a manner different from that of girls of her color, I am happy that she finds the opportunity of securing her happiness, especially at the eve of the stay, when her young mistress is under the necessity of calling her back near her, or of replacing her.' The testator then offers her to Gardette for 1000 dollars. 2. A bill of sale of Robinette, from . . Mather and . . [578] wife . . one of the testator's daughters, . . 1810, to . . Abat. 3. Another, from the latter to . . Tureau [*sic*] . . the same year. 4. One from the latter to the defendant's mother, now, and then, a free negro woman, . . 1811. 5. A deed of emancipation of the defendant . . 1812. . . [579] Lozano . . deposed that the defendant had been in the enjoyment of her freedom for some years past —that Gardette . . lives with her and has three or four children by her. The plaintiff proved that he had taken up and confined the defendant, but that she was liberated on an *habeas corpus.* To the introduction of the deed of emancipation, as evidence, the plaintiff objected, . . illegal, on its face. The defendant was stated in it to be . . *twenty four,* . . while the law forbids the emancipation . . under . . *thirty.*" [2] Objection overruled. Judgment for her reversed: 1. the deed was illegal; 2. she cannot contest the claimant's title.

*Gale v. Davis,* 4 Mart. La. 645, March 1817. [646] " married in North Carolina . . possessed of a negro slave . . emigrated . . to . . West Florida, . . 1778 . . came to settle in the island of Orleans,"

*Fortier v. M'Donogh,* 4 Mart. La. 718, May 1817. In 1815 [739] " a crevasse in the plaintiff's levee had inundated . . He had been ordered . . August . . to put two hundred negroes on his levee, . . September, the work was so little advanced, that a requisition of every working hand in the district became necessary . . [740] the police jury . . ordered that three dollars per cubic *toise* should be paid, instead of two dollars per day, as fixed by . . the resolution of the 15th of July. . . at the usual price . . women or old men would have been sent, . . a surveyor . . deposes

[1] "to lessen rather than to increase the obligation."
[2] Acts of 1807, p. 82, sect. 2.

that a stout negro can complete a cubic *toise* . . per day, only when the levee is but three feet high, and the dirt is at hand;"

*Foster v. Dupre,* 5 Mart. La. 6, June 1817. [8] "the plaintiffs, in . . 1809, were owners of the ship *Clara,* which sailed from . . New-York . . 8th of January . . the defendant was a passenger . . [Near] Governor's Island, . . a boat came along side, from which two negro women, the property of the defendant, were received on board. . . immediately put under the hatches . . till the ship got to sea, . . When the ship arrived at the mouth of the Mississippi, they were again put under the hatches until they were landed. . . Information was lodged with the collector, . . the ship . . was . . libelled . . and condemned as forfeited to the United States. The plaintiff spent in defending the suit $1449 75 and $150 in sending an express to . . Washington, to obtain a remission of the forfeiture, . . [9] about the time the ship was seized, several others, were so, for the same cause, having come . . from Baltimore and Charleston."

*Petit v. Gillet,* 5 Mart. La. 19, June 1817. [21] "The defendant . . claims title to the slaves . . by prescription. . . [22] bringing the mother from St. Domingo, when the fortune of all the inhabitants . . had been destroyed by the revolution."

*Seville v. Chretien,* 5 Mart. La. 275, September 1817. "The plaintiff and appellant sues, *in forma pauperis,* to recover his liberty, . . [276] In the year 1765 or 1766, Duchene, an Indian trader, brought an Indian woman to Opelousas, whom he sold to Chretien, the father of the defendant . . she died not long after, leaving a female child, who remained peaceably with Chretien, as his slave, until some time during the period in which the Baron de Carondelet was governor of the province of Louisiana; when she went to New-Orleans, with her master, for the purpose of claiming her freedom before the proper tribunal. . . a suit was commenced, but no record . . can be found, of the manner in which it terminated. She returned with Chretien, and remained with him as his slave, until his death, which happened after the United States took possession of the country, . . [277] 1803: she was called Agnes, and brought [bore?] several children, while held in . . slavery by Chretien, . . After . . [his] death . . Agnes and some of her children [one of whom was Seville] . . brought suit in the parish court . . From a judgment by default, which afterwards became final, an appeal was taken to the superior court of the late territory of Orleans, where the cause was tried by a jury, and a verdict rendered in favor of the . . appellees [Agnes and her children], . . set aside . . on account of some misconduct in the jury, and a new trial ordered. . . [278] the then appellee [Seville] . . the original plaintiff, not appearing to prosecute . . was declared . . nonsuited, and judgment was accordingly entered." Seville's claim to freedom is based on two grounds: I. the [279] "judgment of the parish court . . as being *res judicata,* by a competent tribunal." He insists that [282] "the judgment of nonsuit rendered in the district court . . is a

dereliction of the appeal from the judgment originally given in his favor, in the parish court; this court is of a different opinion. . . [283] the judgment of the district court was the consequence of the *laches* of the appellee, who . . was bound to prosecute and make out his case, as upon a new trial." II. [279] "But, if it be . . not . . established by the judgment, it is contended that the plaintiff and appellant is free by birth, being the lineal descendant of an Indian woman. . . [283] His counsel contends, that the decision of the cause must be according to the rules of the Spanish system of laws. According to these laws, it is clear that, since the famous regulations of Charles V., made about the middle of the fifteenth century, Indians could not be reduced to slavery, . . But on the other side, it is contended that this court ought to be governed . . by the municipal laws and usages of France, by which her American colonies were ruled. . . our opinion is in favor of the defendant and appellee [Chretien]." [278] "The fact that a considerable number of Indians and their descendants were held in slavery [here]" "at the time the Spanish government took possession . . in 1769 . . is clearly proven ['from the depositions of a number of witnesses']. . . [288] we have [also] historical facts, establishing . . the holding of Indians as slaves in one of the French colonies [Santo Domingo] [1] . . [289] taxed as slaves [there] . . a circumstance which creates . . a very violent presumption, that the municipal regulations of the French colonies did not prohibit the slavery of the Indians. This appears to have been the opinion of the Spanish government, which . . succeeded . . Governor O'Reilly, in 1769, on taking possession of the colony, discovered that a considerable number of Indians were held in slavery by the French colonists. This he declared, by a proclamation, to be contrary to the wise and pious laws of Spain; but, by the same instrument, he confirmed the inhabitants in their possession of such Indian slaves, until the pleasure of the king in this respect could be known. . . This never did happen. In conformity with this opinion, is a decree of the Baron de Carondelet, . . [290] in 1794, by which he orders two Indians . . to return to, and abide with, their owners, until the royal will was expressed to the contrary. . . It never was declared. The colony, without any change in the condition of the original population, is receded to the French nation, and by it transferred to the United States, under a treaty securing to the inhabitants, their rights to property, as they stood under the former government. . . [291] neither from a view of the political changes in the country, nor a fair examination of the subject, is the plaintiff and appellant entitled to his freedom." [Mathews, J.]

*Zanico v. Habine,* 5 Mart. La. 372, March 1818. "The plaintiff, as executrix . . caused the property . . to be sold at public auction, under the . . directions of the court of probates, when the defendant, through an agent, bid for a negro man, who was adjudged her, and . . said agent . . directed him to go to the defendant's. The negro, on his way, made

[1] *History of St. Domingo,* by Moreau de St. Méry, vol. I., p. 67.

his escape, and, being pursued, committed an assault, with intent to murder, for which he was tried and condemned to death, but . . pardoned . . The defendant . . [373] refused to receive him," [376] " the conduct of the slave is proven by uncontradicted witnesses to have been irreproachable."

Judgment for plaintiff affirmed: I. [384] " the *procès verbal* of sale, which the register writes . . is evidence of its contents, without the written acceptance of the purchaser. . . [II.] [385] Shall a slave who changes master, and runs off, to avoid going with him, to be presumed to be in the habit of running away? Surely no such presumption " [Derbigny, J.]

*Langlish v. Schons,* 5 Mart. La. 405, March 1818. " The plaintiff . . instituted this suit, in order to have a notarial act declared . . void, as forged . . The act purports to be a donation of liberty, from the plaintiff to his slave, . . the slave . . not to enjoy his liberty until after the death of his master;" Held: [407] " the evidence . . is insufficient to support the plaintiff's allegation " See Julien *v.* Langlish, p. 466, *infra.*

*Maurin v. Martinez,* 5 Mart. La. 432, March 1818. [434] " The negro was . . troubled with the asthma, which rendered him useless as a plantation negro: he was estimated at $400. . . the sale took place . . 1815, and the disease was discovered by the plaintiff eight or ten days after."

Judgment: [437] " that the sale . . be . . cancelled;" " The absence of a warranty cannot avail the defendant . . because the disease was such as to give rise of itself to the redhibitory action." [Martin, J.]

*Augustin et al. v. Cailleau,* 5 Mart. La. 464, April 1818. " The plaintiffs are persons of color, who have been seized under execution . . as slaves belonging to the estate left by . . widow Letourneur, . . [467] the emancipation . . under the will of their mistress, is . . acknowledged by the appellees themselves." Held: " The appellants must . . be left in possession of their freedom."

*State v. Edward,* 5 Mart. La. 474, April 1818. " The Attorney General has filed a libel against . . Edward, on account of his having been [il]legally imported. . . Since the appeal . . the act of the territorial legislature [1] has been repealed " Libel dismissed: " According to . . the existing laws of the state, independently of the law of the United States, . . forfeiture is not a consequence of the introduction of slaves into this state, and their introduction is no longer a violation of the laws of the state;" [Mathews, J.]

*Cuffy v. Castillon,* 5 Mart. La. 494, May 1818. " The plaintiff . . claims her freedom, and that of her children, under a contract between her former master and Cuffy, a freedman, her father. . . [495] on the condition of receiving 3400 dollars, . . 316 dollars . . were imputed on the price of John Baptist, one of the four slaves . . by the judgment of the

[1] Of Mar. 16, 1810, respecting slaves imported in violation of the act of Congress of Mar. 2, 1807. Martin's *Digest,* vol. I., p. 664, n. 72.

Spanish tribunal," Judgment for defendant affirmed: [497] "without payment, or an offer to pay [the full amount], they . . can claim no benefit under the contract" [Mathews, J.]

*Delacroix v. Navigation Co.,* 5 Mart. La. 507, May 1818. [509] "he was bound to keep constantly employed, at the canal, eighty good negroes, until the completion . . the overseer . . [510] states that there were always some of the negroes, sometimes as many as twenty-five or thirty, sick,"

*Metayer v. Noret,* 5 Mart. La. 566, June 1818. Derbigny, J.: "The plaintiff . . is a woman of color, who complains of having been arrested and imprisoned as a slave by the appellant, and sues him for damages. . . the plaintiff once was a slave of . . the father of the person in whose behalf the defendant caused her to be arrested. But the plaintiff maintains that she has been enfranchised by him. . . [567] ever since she left Cape François, in 1803, [she] has lived as a free person, first at Baracoa, in the island of Cuba, and from . . 1809 at New-Orleans. A creditor of her late master caused her to be seized in 1810, . . but a civil interruption of possession can take place only at the suit of the owner; and . . interruption by the owner did not happen until . . 1816, . . By the laws of Spain, a slave can acquire his freedom by a possession [of it] of ten years, in the presence of his master, or of twenty years in his absence. . . in this case . . her master was absent. Thus . . the possession of the plaintiff falls far short of the time required to prescribe. . . [568] she cannot recover any damages . . decreed, that the judgment of the parish court be reversed," See Metayer *v.* Metayer, *infra.*

*Jourdan v. Patton,* 5 Mart. La. 615, July 1818. [616] "The plaintiff claims damages, for an injury done to one of her slaves, . . his only eye having been put out. The parish court decreed that the plaintiff should recover twelve hundred dollars, the supposed value . . and . . twenty-five dollars a month from the time he was deprived of his sight; and that the defendant should pay the physician's bill, and two hundred dollars for the sustenance . . during his life, and that he should remain for ever in the possession of the plaintiff."

Judgment reversed: [617] "complete indemnity has been given, for a total loss. When the defendant shall have paid . . the slave ought to be placed in his possession, . . that part of the judgment . . which orders [him] . . to pay two hundred dollars, is evidently erroneous. The principle of humanity, which would lead us to suppose that the mistress, whom he had long served, would treat her miserable, blind slave with more kindness than the defendant, . . cannot be taken into consideration, . . Cruelty . . ought not to be presumed . . A remedy . . can only be applied, when . . proven. . . [618] she shall further recover the amount of all expenses . . for the attendance and treatment . . with costs of suit in the inferior court." [Mathews, J.]

*Metayer v. Metayer,* 6 Mart. La. 16, January 1819. "son . . of . . Metayer, of Cape François, who was the master of the defendant when

the revolution of Hispaniola broke out" "sues to make her return to a state of slavery. . . She . . failed in a former suit, . . [17] for false imprisonment,[1] . . to prove her freedom by emancipation under her master's hand; but the evidence, in the present case, shows that she was in Hispaniola when the general emancipation was proclaimed by the commissioners of the French government, and remained . . until after the evacuation . . in 1803, . . about ten years. . . continued in the enjoyment of her freedom . . until 1816. . . three years more than the time required by law for a slave to acquire his freedom by prescription in the absence of his master. . . the government of Hispaniola, during its divers revolutions, continued to countenance the general emancipation;" Judgment in her favor affirmed.

*Maurin v. Toustin,* 6 Mart. La. 496, April 1819. "The petitioner . . 1809 . . purchased from the defendant a negro girl, for . . one hundred and sixty dollars, . . while in the possession of the plaintiff, had two children, . . [497] in a suit . . the wages were fixed at six dollars per month only, in consideration of the sums expended in her maintenance and that of her children. . . Planté deposed that he hired the slave, for about three years, at four dollars per month: she left him, about three years ago, being pregnant of her first child, . . She was attended, in her lying-in, and other indispositions, by Dr. Dufour, the plaintiff's agent: while she was at the deponent's, she was clothed at the plaintiff's expense. . . [498] was severely sick at Dr. Dufour's. As soon as the deponent discovered her pregnancy, he sent her back, as she was very delicate, of but little service in that situation, and required great care. She rendered no service at the doctor's during her pregnancy, nor while she suckled her children. He values the expenses of her clothing at $18 per year, and those of her lying-in at from $10 to 15 each time.—That the expenses of a child's food, while the mother is very weak, are from three to four dollars per month. Madeleine Marren deposed that she hired the slave for four years . . at . . four dollars per month: . . The charges of lying-in of slaves are from $12 to 14, in ordinary cases. . . Touron deposed . . that the defendant hired her for $15 per month; and she came home twice a day to suckle her child."

*Saulet v. Loiseau,* 6 Mart. La. 512, April 1819. "The defendant, . . February 5, . . sold to the plaintiff . . Jacob, for $714," [517] "It is agreed . . that, whereas the . . slave is now in bad health, this sale shall be rescinded, in case he shall not be perfectly recovered in one month . . and . . Loiseau shall . . repay the price" [512] "The parties placed the slave under the care of a free negro . . who undertook to cure him, and to whom each of the parties promised . . ten dollars . . [513] He deposed that . . Jacob . . labored under a complaint of the chest—that he was weekly, supplied with meat and biscuit by the defendant; the plaintiff never furnishing anything. At the request of the former he put Jacob in irons, to prevent his going abroad and eating improper food." He died March 6. Judgment for plaintiff affirmed.

[1] Metayer *v.* Noret, *supra.*

*Girod v. Lewis,* 6 Mart. La. 559, May 1819. Held: "With the consent of their masters they may marry, . . it cannot produce any civil effect, . . Emancipation gives to the slave his civil rights, and a contract of marriage, legal and valid by the consent of the master and moral assent of the slave, from the moment of freedom, although dormant during the slavery, produces all the effects which result from such contract among free persons." [Mathews, J.]

*Gomez v. Bonneval,* 6 Mart. La. 656, June 1819. "The petitioner [for freedom] is a negro in actual state of slavery . . imported since" "the laws prohibiting the introduction of slaves in the United States."

Held: [657] "The plaintiff . . has nothing to claim as a freeman;" [656] "Formerly, while the act dividing Louisiana into two territories was in force . . slaves, introduced here in contravention to it, were freed by operation of law; . . Under the now existing laws, the individuals thus imported, acquire no personal rights: . . are disposed of according to the will of the different state legislatures. In this country they are to remain slaves, and to be sold for the benefit of the state." [Derbigny, J.]

*Andry et al. v. Foy,* 6 Mart. La. 689, June 1819. "The plaintiffs bought from the defendant nine slaves [field hands], for $10,500, payable in . . one year. . . [691] some of the slaves having manifested some reluctance to go with the plaintiffs, they stipulated that they should keep these for a fortnight on trial, and that should any of them run away during that time, the defendant should support the loss." [689] "Six [youngest] . . having successively ran away,[1] . . suit [was brought] for the rescission of the sale, alleging that the slaves were addicted to running away, in the knowledge of the defendant," Lindor had been sold to him [691] "without any warranty for moral defects, . . [692] Horace, Anthony and Sandy . . as runaway slaves. . . these four . . were confined [in jail] for running away, as well as John and Isaac, while . . in the possession of the defendant." [7 Mart. La. 41] "Horace [[37] 'about 14 years old at the time of the sale'] was purchased by the defendant . . 1818, and his vendor . . expressly excluded the legal warranty against . . redhibitory [vices] . . [42] *viz.,* capital crimes, robbery, and the habit of running away. . . did declare that Horace ran away . . and was absent seven consecutive months, during which he went to New-York, Liverpool, and Charleston, where he was arrested and brought to New-Orleans, where five weeks after he sold him to . . defendant, informing him . . Boucaud was brought to jail as a runaway, before the sale to the plaintiff, . . [43] ran away twice, within a very few days after the plaintiffs purchased him,"

Judgment: [6 Mart. La. 699] "that the sale of . . Lindor, Tony, Sunday [Sandy], Isaac, Horace, and Boucaud [John ?] be rescinded . . and that the plaintiffs do recover . . six thousand five hundred dollars."

*Marie v. Avart,* 6 Mart. La. 731, June 1819. "The petition stated that the plaintiff [a mulatto woman] is a slave of . . Lauve; that . .

[1] The time is not stated.

Avart made his last will, . . directed that, immediately after his decease, . . executor (the present defendant) should purchase the plaintiff and her child, and . . emancipate them according to law" [8 *id.* 514] "acknowledges for his natural child, Gaston, the son of the plaintiff, . . bequeaths freedom to her and the usufruct during her life of two houses . . with a sum of money; and to . . Gaston, at the death of his mother, the [same] property" [6 *id.* 731] "Lauve is willing to sell . . for a reasonable price; wherefore the plaintiff . . prays that the defendant be cited to declare whether he accepts the . . executorship, and in case he does, . . [732] compelled to fulfil the will" Held: [733] "As she is not opposed by her acknowledged master, . . she has a right to maintain her action." See Marie *v.* Avart's heirs, p. 466, *infra.*

*Palfrey v. Rivas,* 7 Mart. La. 371, January 1820. "the defendant arrested the plaintiff's [runaway] slave on a Sunday, secured him in ['very'] strong iron fetters and informed the plaintiff [by letter] . . proposing to purchase the slave. . . [372] the plaintiff . . [wrote] immediately . . inclosing a small sum to defray the expenses of the capture, and [stating] . . that he might have the negro for a price . . then fixed. . . that, if the offer was not accepted, the slave might be taken to a blacksmith, put in strong irons, and kept till an opportunity to send him to New-Orleans presented itself; but, if none could be had shortly, that he might be sent to jail." "In the mean time, during the night . . he effected his escape. . . The plaintiff . . [373] contends that, as the defendant did not comply with . . the law,[1] he must be liable" Judgment for the defendant affirmed.

*Steel v. Cazeau,* 8 Mart. La. 318, January 1820. [319] "the plaintiff resides in Kentucky, and came down in a keel boat with several slaves, as oarsmen, . . there was a frolic [at Mr. Fortin's house], in which the [plaintiff's] slave was killed" by [318] "a severe blow on the head, with some heavy weapon, supposed to be a laden whip. . . Although the utmost attention was paid to the boy, and a third doctor was called in, he died about three days after." "the defendant's slave was tried . . and found guilty. Wherefore the plaintiff claimed . . 1200 dollars, the value of . . [his] slave. . . [319] The record of the conviction . . was introduced, notwithstanding . . defendant's counsel . . objected" Judgment for the plaintiff reversed.

*The Josefa Segunda. Carricabura et al. (claimants),* 5 Wheaton (U. S.) 338, February 1820. [341] "the capture of the brig *Josefa Segunda,* with a cargo of slaves, was made off Cape Tiberon, in the Island of St. Domingo, on the 11th of February, 1818, on a voyage to the Havanna, from the coast of Africa, which she had left in the preceding . . December or January. The capture was made by a Venezuelan brig [privateer], the *General Arismendi.* . . At the time of capture, there were from two to three hundred slaves on board; some of these . . afterwards died; others . . were sold at the Jardins de la Reine, on the

[1] Act of 1816. Martin's *Digest,* vol. II., p. 514, n. 6.

south side . . of Cuba, in order to purchase provisions. Toward the end . . of February, the prize master of the brig received written orders from the Captain [Beluche] of the privateer to conduct the prize to the Island of Marguerita; . . The prize master had no log book on board; he wrote every day's occurrences on a slate, effacing what had been written the day before. On the 18th of April, 1818, . . [342] the brig was boarded by a pilot, about 40 miles from the Balize, and arrived there at 4 o'clock P.M." [10 *id.* 315] "Roberts . . an inspector in a revenue boat . . [316] boarded the vessel, and declared that he had seized her. . . 21st of April . . soldiers went from Fort St. Philip . . and brought her up under the guns of the fort. . . On the 21st [24th] . . Mr. Chew, the Collector at New-Orleans, acting on independent information . . sent an armed revenue boat, . . [317] the vessel and negroes . . [were] brought . . up to . . New-Orleans." [5 *id.* 342] "On the 27th . . the agent of Beluche at New-Orleans, wrote a letter to the prize master of the brig, . . 'Maintain always your declaration of being forced into port.'" [340] "This libel [1] was filed on the 29th of April, and on the 5th of May . . a claim was interposed by . . owners . . [343] the District Court condemned the brig and effects found on board, to the United States,"

Decree affirmed: [354] "we look in vain for testimony of any serious disaster having befallen this vessel in her voyage from . . Cuba, . . the Island of Marguerita, which is now pretended to have been her real port of destination . . could afford but a wretched, if any market at all for slaves; while at New-Orleans, each of them would produce the extravagant and tempting sum of one thousand dollars. . . [There remains] [356] no reasonable doubt of the whole story being a fiction; or that the want of provisions, if real, at the time of seizure, was produced by a voluntary protraction of the voyage for the purpose, and with the intent of violating the law on which the present libel is founded." [Livingston, J.] See the *Josefa Segunda.* Roberts *et al.* (claimants), p. 478, *infra.*

*Bazzi v. Rose and her Child,* 8 Mart. La. 149, May 1820. "The petition states that these defendants are the plaintiff's slaves, and obtained a writ of *habeas corpus* from the president of the criminal court, on which they were discharged, that the proceedings therein are erroneous . . The answer avers the freedom of the defendants, . . [150] act of emancipation . . St. Jago de Cuba . . 1805 . . 'desirous of acknowledging the signal services of Gertrude, a Congo negro woman, aged 44 years, on several occasions, [the plaintiff] gives freedom to her and her child Rose, aged 16 1-2 years, to be fully enjoyed without any trouble: promising in due time and place, to comply with the formalities which the law requires.' The parish court, 'considering that the plaintiff, by sending the act of freedom . . [to] be deposited here with a notary public, . . as well by his long silence . . afterwards, as by his subsequent conduct with regard to . . Rose, and her free baptized children, until

[1] Under the act of Congress of Mar. 2, 1807, ch. 22, sect. 7. 2 St. at L. 428.

lately, when he thought he had good reason to complain of her, had thereby completed . . his act' . . gave judgment for the defendants."

Reversed: [151] "The Partida 4, 22, 1, requires that, where emancipation takes place in writing, it be done before five witnesses. . . Nothing shows that any thing did happen in Cuba, by which the defect of the deed was cured. . . Here, the law requires certain formalities for the acquisition of freedom, none of which are pretended to have been fulfilled. . . [154] The judge, who issued the writ, was without jurisdiction in a civil case." [Martin, J.]

*Ulzere et al. v. Poeyfarre,* 8 Mart. La. 155, May, 1820. "The petition charges that Mary Ann, a Chickasaw squaw, was . . entrapped and conveyed to M. Songy, a planter, of the parish of St. James, then under the dominion of Spain . . shortly after she had two children, Ulzere and Frances . . who were duly baptized . . Frances bore Marie Therese and Casimer . . also duly baptized . . that Mary Ann . . was considered . . an Indian . . whom it was unlawful . . to hold in slavery. That an attempt having been made to restrain her, she left M. Songy's plantation and came to New-Orleans, where she made application to the Baron de Carondelet, then governor . . who gave her a letter to the commandant of the parish of St. James, who produced her liberation from all restraint, and she died a free pauper, in the hospital of New-Orleans. . . [156] she left Ulzere and Frances, under the care . . of M. Songy, on whose death the defendant as heir . . detains them in slavery. . . The plaintiffs submitted the following issues to the jury, who found them to be true. . . 4. Reducing Indians to slavery has been prohibited by the French, as well as the Spanish government. 5. The color of the plaintiffs shows them to be of Indian origin. 6. The defendant has shown no title . . judgment for the plaintiffs, . . defendant appealed . . [157] bills of exceptions . . 1. . . to the opinion in overruling . . objections to the facts thus . . submitted . . 2. . . to the opinion of the court in overruling the objection . . to the reading of . . a judgment in favor of an Indian woman of the Natchez tribe. 3. . . to the examination of . . Dreux, upon the fact of the Baron de Carondelet, liberating by a decree all Indians in slavery. 4. Another to the examination . . [as] to the . . decrees of Governors O'Reilly and Carondelet. 5. . . examination of witnesses to prove certain ordinances of the king of France."

[160] "decreed, that the judgment . . be . . reversed, and the case remanded . . with directions to the judge to strike out the fourth and sixth facts." [158] "The abstract proposition, that the French and Spanish governments prohibited the reduction of Indians to slavery, is considered by this court as a question of law; . . The principal issue . . was *liberi vel non*; the title, therefore, of the defendant . . was erroneously submitted to the jury.[1] . . if free . . no title could exist . . If . . slaves . . they had no right to contest . . title. . . [160] We further direct the parish judge not to admit the record of the suit in favor of the

[1] The court was of a different opinion in 1824.

Indian woman of the Natchez tribe in evidence, nor allow any parol evidence . . if any decree or ordinance . . unless the destruction of the original be proven." [Martin, J.] See same *v.* same, p. 476, *infra.*

*Livaudais' Heirs v. Fon et al.,* 8 Mart. La. 161, May 1820. "suit brought by the . . plaintiffs . . to recover the amount of a note given by the defendants to Frosina, a slave of the plaintiffs, by which they promised to pay to her four hundred dollars. Payment is resisted on the ground of the promise having been made in error, . . a contract without . . consideration . . production of a testament made by . . Durand, in which he instituted Pedro, his bastard child by Frosina, . . his heir, and appointed Fon . . executor; . . the child died in 1812, . . note given . . to . . Frosina . . being, as the appellants [Fon *et al.*] insist, a liquidation of Pedro's succession to his mother, which she could not take in consequence of her state of slavery."

Held: [163] "Frosina could not succeed to the estate of her son; but the owners had a right to claim it from the . . executor of Durand; . . it cannot properly be said that no . . consideration exists for the note . . Considering the note as a liquidation of this succession," [Mathews, J.]

*Catin v. D'Orgenoy's Heirs,* 8 Mart. La. 218, June 1820. "The plaintiff claimed the freedom of her children, . . The defendants' ancestor, in the deed of emancipation produced by the plaintiff, says, 'I hold, as my slave, a creole negro girl named Catin, aged 18 . . born in my service, from . . Martha, to whom I gave her freedom, according to . . deed, which I executed before . . notary, last year, 1801, and I have offered . . Catin her freedom, on certain conditions . . in consideration of the good services of her mother, . . In consideration whereof . . I emancipate . . Catin . . with the . . condition that she shall . . enjoy freedom immediately after my death.' The children were born after the deed, but before the death of the grantor."

Held: the mother was [219] "of that class of persons, known to the Roman law, by the appellation of *statu liberi,* . . children born from her, while in such a state, are not entitled to freedom." [Mathews, J.]

*Blondeau v. Gales,* 8 Mart. La. 313, June 1820. "The plaintiff's object is the rescission of the sale of a negro woman . . Celeste deposed that the defendant brought Caroline to her house with an iron collar and her hands tied, . . she had stolen some handsome dresses, and he wished to know whether, as she said, they belonged to the deponent . . [314] had run away several times. The deponent came on . . same vessel from Baltimore . . with Caroline, . . Dr. Martin deposed that . . he was called by the defendant . . found [her] . . quite senseless . . Desiree Leblanc deposed that Caroline was placed under her to learn how to plait, the defendant put an iron collar on her, because she ran away for eight days. She remained five months with the witness. Dr. Lacroix deposed that during the last 18 months, the plaintiff called him four or five times to Caroline . . attacked by hysteric fits, which rendered

her senseless for several hours. . . incurable, . . [315] Dr. Goiffon . . defendant's physician" disagreed.

Judgment for the plaintiff affirmed: [316] "in the language of the code, the slave's 'services are so inconvenient . . and interrupted, that it is presumed that the buyer would not have bought her . . if . . acquainted with the defect.'" [1] [Martin, J.]

*Marie v. Avart's Heirs,* 8 Mart. La. 512, July 1820. See Marie *v.* Avart, p. 462, *supra.* "the heirs were made parties. They pleaded the insanity of the testator, . . submitted to the jury, . . [513] The jury found the issue for the defendants. A new trial was moved . . stating the discovery of new . . evidence, . . Risteau was present, when A. Choppin [the testator's brother-in-law] . . came to the testator's house (after he had given himself the stroke with a sword, which occasioned his death, and before he made his will) and took out from a desk a check which he . . had given to Avart the day before, to purchase and emancipate the plaintiff. The new trial was refused, and the plaintiff appealed." [10 Mart. La. 29] "affirmed"

*Martineau v. Hooper,* 8 Mart. La. 699, September 1820. [700] "Harry . . was considered by his own master [the plaintiff] as ungovernable; for . . [he] told the defendant [his overseer] that he would not go to his plantation, until that negro was subdued; . . evidence that the negro had even gone so far as to lay his hands on his master. The defendant, being dissatisfied with his work, resolved to have him chastised, and foreseeing that the negro would make resistance, loaded his gun, which he left in the house, . . He then went to have the negro whipped, and ordered another slave to tie him. Harry . . refused to submit, and the defendant, having advanced . . with a hoe to strike him, was met by Harry . . also [with] a hoe . . scuffle . . The defendant then threatened to shoot . . and both . . began to run towards the house, the negro . . foremost; when, being overtaken . . he turned aside, and . . endeavored to . . escape. The defendant came out of the house with his gun, calling on Harry to stop, . . and as he did not . . shot [and killed] him, at . . eighty-five yards, himself . . walking." [699] "The present action is brought to recover from him the value . . two juries have already pronounced in his favor:" Judgment affirmed.

*Julien v. Langlish,* 9 Mart. La. 205, January 1821. [208] "The deed of emancipation [in 1814] purports, that Peter Langlish . . 'gives freedom to . . Julien, 46 years of age, gratuitously, and to remunerate him for his fidelity and former services, and those he is to render him until his death; . . under the express condition, that he shall serve his present master as before till he die;'" [209] "the plaintiff worked in town, and paid . . [his master] eighteen dollars per month." In 1818 Langlish [206] "instituted a suit . . to have the . . deed . . annulled; . . failed,[2] . . [207] on the 8th [18th ?] day of the following month, . . [Langlish]

[1] Civ. Code of 1808, p. 358, art. 80.
[2] See Langlish *v.* Schons, p. 458, *supra.*

executed . . a deed of revocation . . and on the 23d the plaintiff was . . dragged to jail, and . . whipt: whereupon . . he . . instituted a suit . . which he was afterwards advised to, and did discontinue. . . [210] Dutillet saw the plaintiff when he was going to jail, and asked what was the matter: he replied that his master, who was an old rogue, sent him to jail and wanted to deprive him of his liberty."

Held: [211] "the plaintiff has not proved that he fulfilled the condition on which he was to be free . . he insisted on enjoying his freedom before the death of his master," [Martin, J.]

*Allain v. Young,* 9 Mart. La. 221, January 1821. "That the slave was in the habit of going at large, without a written permission from his master; that he was of a bad character, and was killed in the defendant's attempt to arrest him, on a suspicion of his having committed a felony, whilst . . endeavoring to . . escape, having attempted to seize a gun." "the plaintiff seeks to recover damages to the value" Judgment for defendant affirmed.

*Broh v. Jenkins,* 9 Mart. La. 526, April 1821. [537] "Madame Broh . . left St. Domingo, on account of the revolution, and came to Baracoa, in the island of Cuba, bringing . . Lazare . . and another [slave]. In 1803, she sent [them] . . to Charleston, . . to be kept until she should send for them; male negroes from St. Domingo not being permitted at that time to remain at Baracoa. She died . . 1808, or . . 1809. Her son, the . . plaintiff, was born in 1793, . . arrived here in 1809; . . Lazare was brought here by the defendant . . 1819, . . The defendant sets up the title of prescription" [527] "Lazare was in possession of Mr. Placide, in Charleston, . . sold . . to Dastras . . 1806, who possessed him . . until . . 1817, . . sold to Lazarus; . . [who] sold him to defendant, . . 1819, in Charleston,"

Held: [561] "that laws limiting the time within which actions ought to be commenced, for the recovery of property, may operate in such a manner, as to vest a title in a bona fide possessor, and that the law of South Carolina has produced this effect in the present case." [557] "The period of limitation is there four years for persons present, . . five" for those absent. [Mathews, J.]

*Lazare v. Peytavin,* 9 Mart. La. 566, April 1821. [567] "proved . . that Lazare had . . served . . as . . overseer . . for upwards of two years, and that these services were well worth eight hundred dollars per annum." Letter: [581] "as soon as all the cane would be up, he would put all the hands in the field; . . he had many sick negroes."

*Dufour v. Camfranc,* 11 Mart. La. 607, April 1821. [612] "On his death ['in St. Jago-de-Cuba'] . . Turgeau . . brought the slaves . . to Louisiana."

*St. Romes v. Pore,* 10 Mart. La. 30, May 1821. "action for the rescission of the sale of a negro woman [for $500],[1] . . The plaintiff,

[1] [209] "who one month before, had been sold [to defendant] for $900."

after the auction [May 2], . . told the defendant he would not take the wench, as he had discovered that she was sick: . . that defendant replied, he did not know whether she was, but that, at all events, he meant to sell, and had . . sold her . . with a warranty of all redhibitory diseases. . . in consequence . . the parties . . executed the bill of sale. . . Dr. Dow . . saw her at the defendant's ['just after the defendant bought her'], he found her weak, her legs swollen, and told him a generous diet and proper medicines would effect her cure; . . Dr. Dupuy . . was called . . by the plaintiff, to the woman, . . supposed her incurable. He attended her . . 17th of May . . till the 13th of June, when she died; . . disease of seven or eight months standing,"

Judgment for plaintiff affirmed: [33] "Ailments . . constitute redhibitory defects, when they are incurable . . the disease existed before the sale, and though curable in its origin, had now become incurable. . . It appears . . the parties contemplated that the vendee's claim would depend on the issue of the disease." [Martin, J.]

*Mitchell v. Armitage,* 10 Mart. La. 38, May 1821. [39] "the plaintiff's son quarrelled at . . shop, where four apprentices were at work by a candle, with a black boy, a slave of their master, the defendant. . . [41] The latter was wounded with scissors, . . the plaintiff's son was wounded in his fingers. The quarrel arose about coming nearer the light," [40] "The plaintiff's son was reproached with not having referred his quarrel . . to the defendant, and answered he had not the patience; . . [41] the defendant gave him about twenty or thirty strokes of a cow-skin; . . the black boy was not punished;" [40] "defendant's partner, deposed . . He has seen, on other occasions, the defendant whip the black boy and others on complaint."

Held: [46] "the case is not of so black a die [*sic*] as to deserve an absolute forfeiture of the defendant's right to the boy's services, during the rest of his apprenticeship." [Martin, J.]

*Bayon v. Vavasseur,* 10 Mart. La. 61, June 1821. "The plaintiff demands the rescission of the sale of a slave, . . epileptic, and in the habit of running away; circumstances which, he alleges, were . . concealed from him. . . a special clause in the bill of sale . . that the seller does not guarantee that the slave is free from any disease, habit of running away, or other defect. . . [64] the slave was sold [for $600] . . [65] in jail. The defendant sold him as he was, and declared him to be a . . *mauvais sujet.*" "he had a sore leg." A witness deposed, [62] "He gave his word of honor, that the slave had no epileptic fits. . . [64] During the fits [in 1818], the slave foamed at the mouth, . . Fifteen or twenty days after [the sale in 1819], the slave fell into epileptic fits, and has fallen since, many times. . . [65] defendant's overseer during seven or eight months preceding the sale [deposed] . . During that time . . no fits . . He would have been worth, if . . not . . afflicted with a sore leg and addicted to run away, $2000. Bourgeois deposed . . he was a fine-looking fellow, a creole, and something of a carpenter. Had he not been addicted to run away, and had his leg not been sore, he would have sold

for $3000." Judgment for the defendant reversed and the case remanded. [11 Mart. 640] " judgment against him, and he appealed." Judgment affirmed.

*Dunbar v. Nichols,* 10 Mart. La. 184, July 1821. [186] " the plaintiff . . bought [from the defendant] a negro man, whose wife was desirous of going with him. She was sick in the house when her husband was bought. The plaintiff afterwards [in April] bought her, when she was working in the field. The witness . . [187] thinks she was well cured " [186] " Dr. Smith . . in the summer . . examined the slave, and told the plaintiff he could neither cure nor relieve her. . . The plaintiff desired him to attend her as well as he could, and if she died, to open and examine her. She died soon after, and . . he found the mesenteric gland in a scirrhous state, and very much enlarged; . . From his own view, and the declarations of the slave, he thinks it must have existed two years."

*Fleming and Wife v. Lockart,* 10 Mart. La. 308, September 1821. " The plaintiffs seek to recover damages, on account of a negro (sold as a runaway by the defendant, as sheriff) having been recovered from Mrs. Fleming, by his former owner. . . the advertisement was not continued as long as the law requires." Held: [309] " sheriff . . ought to indemnify " his vendee.

*Wyche v. Wyche,* 10 Mart. La. 408, September 1821. [413] " moved [from Georgia] into the territory of Orleans, with her husband [and negroes], in . . 1809."

*Brown v. Compton,* 10 Mart. La. 425, September 1821. [426] " plaintiff's witnesses . . established that he was for several years in possession of the wench . . that she was taken up in a neighboring parish, but released on producing a pass given her [in 1819] by the defendant " " whereby she effected her escape. . . M'Micken deposed, that in . . 1812 . . he hired [her] from [the plaintiff] . . that one day she . . fell on her knees, in tears, saying that if she had her right she would be free, and handed him . . her deed of manumission, . . [427] executed by Joshua Barnes . . of Kentucky, manumitting . . Minthy . . at the age of 35, *viz.* in . . 1817, bearing date . . 1805." [426] " she said [it] was handed to her by . . Henderson, whose name . . [was] subscribed thereto; she requested [McMicken] . . to keep it, till she could make a trusty friend . . take care of it for her, in case she was . . sold in a distant country; for she was afraid her master would get it from her, as he had frequently demanded it . . [427] and she had always denied having it. He threatened to whip her. On examining the paper, the witness found [it not] . . properly authenticated; and he informed her he would procure one properly authenticated, by the time she was to be free, which was done, and the woman has since [1817] . . been reputed a free woman of color, in . . Mississippi," Verdict for the plaintiff.

Judgment thereon reversed: [428] " At the time of the alleged injury . . the woman had been free for about twenty months." " the defendant

has a right to establish this fact in the present suit, . . It is said she was *de facto* the plaintiff's slave, and the defendant had no right to aid her in shaking off the yoke of slavery. I apprehend any man may very conscientiously assist a person, unlawfully held in slavery, to regain his freedom. The attempt is, indeed, made at the peril of the party . . [429] who is liable in damages . . [if] the . . slavery is finally established." [Martin, J.]

*Delery v. Mornet,* 11 Mart. La. 4, February 1822. [6] "witness . . embarked . . in a pirogue, with the slave Jasmin, and some other negroes . . sober . . when they came opposite the defendant's residence, they put to shore, . . purchased liquor, drank it, . . began to . . fight as soon as they re-embarked; . . [7] one of them fell twice into the river: . . deponent . . called for help . . Mr. Lartigue . . brought the pirogue to land. . . [He] observed that he would . . [8] correct them" [7] "and then they would behave themselves. On hearing this, Jasmin jumped into the river, the witness jumped after him, but was unable to save his life. Another of the negroes . . [8] also drunk, immediately endeavored to drown himself, but was prevented." Held: the defendant [10] "must . . abide the consequence." [1]

*Chretien v. Theard,* 11 Mart. La. 11, February 1822. "action . . to obtain rescission of the sale of . . slave [in 1819] . . sold as a carpenter and joiner, for . . $1,500. . . alleged that he is neither; and . . afflicted with redhibitory defects of disposition, a drunkard, runaway and thief."

*Copelly v. Deverges,* 11 Mart. La. 641, June 1822. "the plaintiff . . claims [the house and lot] by virtue of . . donation . . by . . his godfather . . 1787; who, on the same day, had purchased the same from . . [his] natural father" [667] "he and a free negro woman, called Rose Grondil, the mother of the plaintiff, and concubine of his father, remained in possession of said house and lot . . up to . . 1817, the date of the sale to Defaucheur [a free man of color]; . . Rose paid taxes on the property, as her own, for several years; and the plaintiff . . used a small house thereon as a blacksmith shop"

*Bank v. Lanusse,* 12 Mart. La. 158, July 1822. [173] "130 negroes are sold [to Macarty, a brother of Madame Lanusse,] . . they descend partly from the father" [163] "thirty-four [of them] . . were purchased by Lanusse and Macarty, during the partnership, and placed on the plantation."

*Moore v. King,* 12 Mart. La. 261, August 1822. [263] "Dr. Elmor . . about eighteen months after the sale . . found she had a pendulous wen, of the size of a duck's egg, attached by a short neck to the inside of her thigh, . . must have had it from her infancy. . . ought to be amputated . . would cost about thirty dollars. . . would estimate the diminution in the price . . at one hundred dollars. Dr. Dixon . . would think the diminution . . two hundred dollars." [262] "The jury found . . the plaintiff ought to suffer a diminution of $150 from the price."

[1] Martin's *Digest*, vol. I., p. 622.

*Cavenagh v. Crummin,* 12 Mart. La. 306, September 1822. "a sound and likely negro boy . . between twenty and twenty-five . . [307] valued [in 1821] at $1,200."

*Johnston v. Sprigg,* 12 Mart. La. 328, September 1822. [329] "employed . . as overseer for the year 1819, . . to be paid $600 . . in case he made a good crop, and $500 at all events;"

*Surgat v. Potter,* 12 Mart. La. 365, September 1822. "sold a negro woman and her two children . . [367] in New-Orleans, for $1,250 . . payable in goods"

*Mayes v. Calvit,* 12 Mart. La. 373, September 1822. [376] "His impression is, that a negro of the defendant had her mother for a wife, . . in 1809 the defendant came . . to procure . . the mother of Grace and Isham, by exchange. He was to return two children of the same size. He sent a girl in exchange for the mother . . has never sent any thing in return for the children."

*Lafariere v. Sanglair,* 12 Mart. La. 399, September 1822. "The defendants . . prayed a rescission of the sale on account of redhibitory defects. . . the slave was proven to be addicted to robbery and running away before the sale [for $1500], and soon after . . made his escape." Judgment for the defendants.

*State v. Judge Pitot,* 12 Mart. 485, December 1822. "Seghers made oath that C. André, a free woman of color, died . . and . . her executor, procured the probate of her will . . and possessed himself of her estate, amounting . . to $2,090 99 cents, and the deponent, on the application of a creditor . . was appointed to represent the absent heirs, and instituted a suit to have the will set aside . . his appointment . . [was] set aside, on the ground that the deceased had no relations, . . [486] he filed a petition of appeal . . but the judge refused to allow the appeal . . On this affidavit, a rule was . . obtained, on the judge . . to show cause why a mandamus should not issue, . . He accordingly showed for cause . . that soon after [appointing deponent], having . . been positively informed that the deceased was brought a great many years ago, when . . a child, from the coast of Guinea, as a slave—that neither her African name, nor the name of the tribe to which she belonged, could be ascertained . . the respondent, on motion, revoked the appointment."

Rule made absolute: were [487] "the case before us, [the facts detailed] might induce us to affirm . . we are not, however, apprized of the nature of the information . . and its legality and sufficiency are proper subjects of inquiry on the appeal." [Martin, J.] See Seghers *v.* Executor, p. 472, *infra.*

*M'Guire v. Amelung,* 12 Mart. La. 649, January 1823. [650] "lieutenant . . 1814 . . gave unto Miss . . M'Guire . . a mulatto girl . . about nine . . in consequence of . . services as housekeeper,"

*The Mary Ann,* 8 Wheaton (U. S.) 380, February 1823. "the brig . . 1818, sailing coastwise from . . New-York and Perth Amboy to . .

[381] New-Orleans, and having on board . . [thirty-six] negroes . . for the purpose of transporting them to be sold . . as slaves . . did . . depart . . without the captain . . having first made out . . duplicate manifests of every negro . . and without having previously delivered the same to the collectors or surveyors of the ports of New-York and Perth Amboy, and obtained a permit . . as required by the act of Congress,[1] . . [382] The Court below condemned the vessel,"

Decree reversed for [390] " defects in the libel; but as there is much reason to believe, that the offence for which the forfeiture is claimed has been committed, the cause is remanded to the District Court of Louisiana, with directions to permit the libel to be amended."

*Seghers v. Executor of C. André,* 1 Mart. N. S. 73, March 1823. Judgment upholding the will affirmed.

*Seghers v. Executor of C. André,* 1 Mart. N. S. 84, March 1823. See State *v.* Judge Pitot, p. 471, *supra.* [86] " judgment of the court of probates, revoking the authority conferred on the appellant as attorney for the absent heirs . . affirmed " " we have expressed our opinion on the validity of the will [*supra*] . . Considering the testament good in law, the judge did not err in revoking the power, for the heirs were present." [Porter, J.]

*Reynaud and Sucko v. Guillotte and Boisfontaine,* 1 Mart. N. S. 227, May 1823. " Feb., 1821, the defendants sold . . a negro boy . . about 23 . . for . . $900, and warranted him free from all redhibitory vices and diseases; . . [228] Dr. Ker, a witness on the part of the plaintiff, swears that he went to visit the negro . . [229] March, and left off attendance . . May; . . the disease [ulcers on the leg] appeared of long standing, which, if healed speedily, would soon break out again, . . [230] up to the 31st July the negro was not prevented, by sickness, from working." [229] " Dr. Chabert . . went to visit [him] . . October, and . . ceased . . December . . [231] declaring . . *Peu d'espoir de guérison.* . . [232] Dr. Thomas deposes that, about five months before . . sale, he attended the slave for a venereal affection, and cured him perfectly."[228]" The action was commenced nine months and twenty-four days after the date of the sale." " a jury . . found for the defendants. A new trial was granted, and the parties consented to waive the jury . . The judge decided . . sale should be rescinded, . . plaintiffs pay . . $20 a month for the time they used the slave not knowing of his defects."

Judgment affirmed: [229] " It is the duty of the buyer, who brings his action after six months . . to prove when the knowledge of the defects . . was acquired by him. . . the prescription runs . . from the time . . [the disease] was ascertained to be such as would form the ground of redhibition." [Porter, J.] [234] " I cannot conclude that the parish judge drew an illogical conclusion . . when he held . . the incurability . . satisfactorily proven." [Martin, J.]

[1] Act of Mar. 2, 1807, sect. 9. 2 St. at L. 429.

*Porter v. Richardson,* 1 Mart. N. S. 276, May 1823. [277] "in 1819, he purchased . . a slave for $1,500, payable . . 1821, . . refused payment, having discovered . . he was 40, instead of 37 . . as . . represented, and ignorant of the trade of a mason or bricklayer, although . . expressly sold as such."

*Thompson v. Milburn,* 1 Mart. N. S. 468, August 1823. "The sale took place . . August, 1819, . . [469] Two gentlemen of the faculty, who were called . . five weeks after . . and a short time previous to his death, . . found him laboring under a chronic dysentery of long standing;" "this action [to obtain the price] was commenced . . November, 1820." Held: "The article [2512] of our code, which directs that the action of redhibition must be brought in one year . . can only receive an application . . where the vendee . . *brings an action.*"

*Campbell v. Henderson,* 1 Mart. N. S. 510, September 1823. [511] "five slaves ran away [from Campbell] [1] . . on the 12th [of March 1822] or 13th in the morning:—Maria, a jet black negro, about 17 . . [512] with a downcast countenance, was one of them. In November . . [the overseer] went with the plaintiff to the defendant. The plaintiff claimed Maria and asked to see her. The defendant said he had a girl of that . . description, but declined showing her, . . [513] The defendant introduced . . bill of sale for Maria, from . . Collier, dated March 28," Verdict for defendant. New trial refused.

Reversed and the cause remanded: [514] "The defendant . . was under no legal obligation [to produce the slave] . . but . . his refusal, and the whole circumstances . . demand that there should be a new trial." [Martin, J.] See same *v.* same, p. 478, *infra.*

*Campbell v. Miller,* 1 Mart. N. S. 514, September 1823. [516] "The plaintiff had a farm of about 80 negroes . . in . . Mississippi" [515] "in 1818 . . [his] overseer . . went to Natchez and brought . . hence" "Paul . . about 25 or 30 . . Brandon . . 35 or 40 . . black, inclining to yellow; he had a heavy beard, and complained of rheumatism. . . [516] Collier was the plaintiff's overseer in the fall and winter of 1821 . . [to] 1822, . . discharged at the end of the winter." "These negroes, with three others,[1] disappeared" in March 1822. In the fall [515] "plaintiff's overseer . . [516] went with the plaintiff to the defendant's. The latter said he had two negroes answering . . description, but refused to let the plaintiff see them, . . [517] The defendant gave in evidence his note for $950 to Collier" "Henderson [2] deposed . . They were purchased in good faith. The witness gave a draft for $250, as part of the purchase money." Verdict for the defendant. New trial refused. Reversed and all the case remanded. See same *v.* same, p. 478, *infra.*

*Campbell v. Armstrong,* 1 Mart. N. S. 574, September 1823. "The plaintiff stated . . the defendant wrongfully possessed himself of [two of his slaves,] . . prayed for the restitution . . and damages. . . [575]

[1] See Campbell *v.* Miller, and same *v.* Armstrong, *infra.*
[2] See Campbell *v.* Henderson, *supra.*

This case differs little from . . Campbell *v.* Miller [*supra*] . . The facts, however, are found against the defendant," [574] " There was . . judgment in favor of the plaintiff, for the restitution of the slaves, but no damages were given, . . [575] It is sworn they are worth $10 per month for each slave."

" decreed, that the judgment . . be . . reversed, and that the plaintiff do recover . . Edward and Mamdee, and . . [$349.33] for their services, with costs in both courts."

*Mulhollan v. Johnson,* 1 Mart. N. S. 579, September 1823. [581] " at the sale of . . estate, a family of negroes [woman and her four children] were put up "

*Herriman v. Mulhollan,* 1 Mart. N. S. 605, September 1823. " three or four [negroes] were hired; . . worth 12 dollars a month, . . two . . remained for a year."

*M'Neely v. M'Neely,* 1 Mart. N. S. 646, September 1823. " the plaintiff . . told the witness that the negro child was not worth the raising, and that she had given it to her daughter, on condition she would rear it; . . [647] its mother being compelled to leave it every day to work on the other side of the river."

*Desdunes v. Miller,* 2 Mart. N. S. 53, January 1824. " the slave . . had the consumption . . before . . the sale . . and . . she died of that disease."

*Doubrere v. Grillier's Syndic,* 2 Mart. N. S. 171, February 1824. " The petitioner states that previous to . . 1819, he was a slave . . of Louis Doubrere, . . that by the indulgence of his master, the assistance of some friends, and his own industry, he acquired . . means to purchase his freedom. That . . Grillier . . voluntarily undertook to effect this object, and purchased the petitioner . . for . . one thousand eight hundred dollars, . . [of which $1700 was] paid to Grillier . . for that purpose by the petitioner; that he was emancipated . . [but] on the failure of his last master [Griller], he had been sequestrated as making a part of his property, and thrown into prison. . . [172] written [evidence] . . on the trial . . receipts . . by which it appears that seventeen hundred dollars were paid by the plaintiff [through Grillier] to his former master. . . Also a license . . 1821; in which the plaintiff was authorized to carry on trade in a coasting vessel . . and the books of the custom-house, showing that Grillier signed, as a surety, the bonds . . furnished by the petitioner, as a freeman, to obtain this license. The oral evidence . . went strongly . . that a contract had existed between the master and slave, for the freedom of the latter,"

[181] " decreed, that on the payment by the plaintiff of . . one hundred dollars, . . the balance . . due by him to his former master, he be released from the sequestration . . and discharged from confinement, and that the creditors of Grillier be perpetually enjoined from claiming the petitioner as a slave." [Porter, J.]

*Wall v. Hampton et al.,* 2 Mart. N. S. 361, April 1824. "The plaintiff states that she was sold [by Neville] . . in . . Pennsylvania, to Turner, at whose death she passed into the hands of the defendants, who hold her in slavery, although her right to freedom has long ago attached . . The defendants pleaded . . that the plaintiff is a slave, and was sold as such for life . . they called their vendors in warranty. These warrantors pleaded the same pleas . . The plaintiff . . filed an amended petition, stating that . . bill of sale . . was not executed by . . Neville, but was obtained through error, or fraud. . . [363] Mrs. Neville . . deposed that . . [in] 1802 . . her husband sold to Turner, a slave, named Sally Wall, . . It was specially agreed between the parties to the sale and . . the subject of it, that provided the latter consented [1] to go with the vendee [to Natchitoches], she should be a servant for a term of years not exceeding nine. . . the vendee paid for the woman and her child a price proportioned to this time of service. . . the son of . . Neville, deposes . . [364] she was no longer a slave after entering Turner's family. His father, at the time a considerable slaveholder, disposed of several of them in this manner.[2] He kept none as slaves for life who accepted freedom. . . To the best of his recollection Sally Wall was to remain as house or kitchen servant during her time of servitude. The feelings of witness's father revolted at the idea of a woman's being compelled to perform field services, particularly in . . sugar and cotton countries. In . . 1807, he saw Sally on Turner's plantation, on the Mississippi, and talked with her of the time when her service was to end, and she looked up to it with impatience. . . Maurice deposed, she is now from 50 to 55. In 1802 she was worth from $800 to $1,000; now $400." The jury found that Sally was now "45 or 50." It was admitted that the bill of sale is in Turner's handwriting, and the blanks filled up by some other person." [362] "judgment for the plaintiff, and for the defendants against the warrantors."

Judgment reversed and the case remanded, [368] "with directions to the judge, not to allow parol evidence to be given . . to disprove the contents of the deed," [367] "It is true the amended petition contains an allegation of error or fraud—but neither . . were put in issue to the jury," [Martin, J.] See same *v.* same, p. 481, *infra.*

*Harper v. Destrehan,* 2 Mart. N. S. 389, April 1824. "The plaintiff sued to recover a . . slave . . illegally . . taken out of his possession. The judge below decreed he should recover, but condemned him to pay the price . . because she had been stolen, and purchased by the defendant at public auction."

[391] "decreed, that the judgment . . be . . reversed; and . . that the plaintiff do recover . . the slave . . with costs in both courts." [390] "Slaves, by the law of this country, are considered as immovable: therefore" "the provision in the code [3] . . that . . the owner [of things

[1] Pa. act of Mar. 29, 1788.
[2] Perhaps influenced by the Pennsylvania act of Mar. 1, 1780. Ed.
[3] Civ. Code of 1808, p. 488, arts. 74 and 75.

movable] cannot recover them without paying the possessor the price, provided he bought them at . . public auction" does not apply to them. [Porter, J.]

*Lunsford v. Coquillon,* 2 Mart. N. S. 401, May 1824. "The plaintiff alleges she is a free woman, . . that some years ago, her then owner removed from Kentucky into Ohio, with the intention of residing there, taking her . . that she resided for several years in . . [his] family . . continuing to serve him . . that, having made an attempt to assert her freedom, he defeated it by her forcible removal into Kentucky, from whence she was brought back into Ohio, and afterwards into Louisiana."

Judgment for the plaintiff affirmed: [403] "The right of a state to pass laws dissolving the relation of master and servant, is recognized in the constitution of the United States, by a very forcible implication. . . [404] that such persons who do not escape, but whose owners voluntarily bring, may be discharged by the laws . . of the state in which they are so brought. . . [408] the constitution . . of Ohio emancipates, *ipso facto,* such slaves whose owners remove them into that state, with the intention of residing there;" [Martin, J.]

*Castellano v. Peillon,* 2 Mart. N. S. 466, May 1824. "The petitioner states that he purchased a negro man . . [467] who had at the time of sale, the habit of running away; and . . shortly after . . absconded, and has not since been heard of, . . The defendant . . prayed that *his* vendor, . . Leslie, should be cited in warranty. . . Leslie did not warrant . . against redhibitory vices and defects. . . [468] From the silence . . as to any other defect but that of title, it is argued that it must be *presumed* it was the intention of the parties that the vendor should not be responsible for redhibitory vices." Held: "this presumption is not strong enough to release the seller from the warranty which the law rises"[1] [Porter, J.]

*Ulzire et al. v. Poeyfarre,* 2 Mart. N. S. 504, May 1824. See same *v.* same, p. 463, *supra.* [505] "jury . . found that the petitioners are descended from an Indian woman . . and that the defendant has shown no title" Judgment for the plaintiffs affirmed: "if the defendant hold the plaintiffs in slavery, without any title, he does so illegally," [Porter, J.]

*Ford v. Ford,* 2 Mart. N. S. 574, June 1824. [575] "the slaves were her property . . in . . Mississippi . . having brought them there from . . Alabama, . . The negroes came to Louisiana . . after the marriage [in 1818]."

*Sikes v. Allen et al.,* 2 Mart. N. S. 622, June 1824. "Guerlain . . purchased the slave . . in February, and in March . . he ran away, . . was apprehended and put in jail . . six months, . . [then] sold . . to O'Conway . . [623] O'Conway's deed to the defendants . . did not warrant against any vice, or defect of disposition . . declaring he was at the

[1] "that the buyer may have the sale cancelled, 'unless the seller has stipulated that he should be under no kind of warranty.' Civ. Code, 356, art. 68."

time of the sale in the jail . . as a runaway. . . [624] Shortly after . . the defendants sell to the plaintiff, without mentioning [this.] . . within less than a month . . the slave disappears," [625] "decreed . . that the sale . . be rescinded; and that the plaintiff recover . . five hundred dollars, with interest from the inception of the suit, and costs in both courts."

*Dressen v. Cox,* 2 Mart. N. S. 631, June 1824. [637] "a few days after the plaintiff's imprisonment, Scholastique, his [free colored] servant [and housekeeper], claimed . . part of the property ['almost every thing'] in the house [and shop] then shut up. The defendant . . gave her thirty-five . . dresses, and . . other articles of man's, woman's or boy's apparel, claimed by her, which appeared to have been worn. . . Scholastique sued the defendant for the . . apparel, which did not appear to be worn." She obtained judgment against him.

*Delphine v. Deveze,* 2 Mart. N. S. 650, June 1824. "The plaintiff . . is descended from . . Marie Catherine . . the slave of . . Marie Durse . . [who] emancipated . . [her] and her children Florence, Luce, and Caroline, the mother of the petitioner. . . prays that she may be decreed free, and recover damages . . [651] The defendant pleaded the general issue, and prescription." Judgment for the plaintiff.

Affirmed: I. "the third Partida, title 29, law 24, . . provided that if a man be free, no matter how long he may be held . . as a slave, his . . condition cannot be thereby changed; . . [II.] We have examined the evidence . . the jury were fully justified in inferring . . right of the plaintiff to her freedom." [Porter, J.]

*State v. Bell,* 2 Mart. N. S. 683, August 1824. "deposition . . of a colored woman, who received from the defendant [clerk of the district court], and carried to the deluded female an instrument, by the use of which her premature delivery was to be obtained."

*English v. Latham,* 3 Mart. N. S. 88, September 1824. "The plaintiff claims . . $800, which the defendant bound himself to pay, if he did not return after one month . . an indented mulatto man, . . The defendant pleaded . . the presumed freedom of the servant, he being a mulatto. . . judgment for the defendant,"

Judgment reversed and the case remanded: [90] "the presumption of freedom . . was destroyed by the proof of his being a bondsman, as is acknowledged in the instrument [executed by the defendant]." [Martin, J.]

*Crawford v. Cheney,* 3 Mart. N. S. 142, September 1824. "action brought to recover the price of a negro whom the plaintiff charges the defendant with having shot and killed." Judgment for the plaintiff.

Affirmed: [143] "The testimony, it has been argued, is weak, and it is perhaps so, but the act . . is one rarely committed in presence of witnesses, and the most that can be expected . . is the presumptions that result from circumstances. . . We believe justice has been done," [Porter, J.]

*Campbell v. Miller,* 3 Mart. N. S. 149, September 1824. "This is the second appeal.[1] . . On the last trial a witness was offered to prove the confession of the appellant, that he had authorized the person who sold to the defendant . . objection . . on the part of the plaintiff . . overruled" [152] "judgment . . avoided, and . . the cause . . remanded" [150] "The judge erred . . [151] this is the second time which we have so widely differed with the jury in their conclusions on the facts"

*Campbell v. Henderson,* 3 Mart. N. S. 152, September 1824. See same *v.* same, p. 473, *supra.* "same judgment" as in the preceding case.

*Dreux v. Dreux's Syndics,* 3 Mart. N. S. 239, January 1825. "the price of a slave, her property, which she had consented to liberate on the payment of seven hundred dollars, . . [was] received by her husband"

*The Josefa Segunda. Roberts et al. (claimants),* 10 Wheaton (U. S.) 312, February 1825. See the *Josefa Segunda.* Carricabura *et al.* (claimants), p. 462, *supra.* [313] "After the condemnation of the vessel . . the negroes . . were, (under the 4th section of the act of Congress,[2] and under an act . . of Louisiana, passed . . 13th of March, 1818, in pursuance of the act of Congress,) delivered by [Mr. Chew] the Collector of the Customs . . to the Sheriff of the parish of New-Orleans, for sale according to law. . . the negroes were sold [for $68,000][3] . . and the proceeds lodged in the Bank of the United States, subject to the order of the Court . . Mr. Roberts . . claimed a moiety of the proceeds . . similar claims . . [by others who alleged that they had made the] subsequent military seizures . . [314] and Mr. Chew . . conjointly with [Lorrain] the Naval Officer and [Emerson] Surveyor of the port, filed a like claim as the . . actual captors . . who made the . . only effectual seizure, and prosecuted the same to a final sentence of condemnation." The court below allowed only the last claim, dismissing the others.

Decree reversed [332] "so far as it sustains the claim of Mr. Chew and the Naval Officer and Surveyor of the port" [331] "all the beneficial interest [in the first moiety] rests in the United States." [321] "The fourth section of the act of 1807 provides, that . . 'any negro . . imported . . shall remain subject to any regulations . . which the Legislatures of the several States or territories . . may make, for disposing of any such negro,' . . the Legislature of Louisiana, . . 1818, passed an act . . [322] that the Sheriff . . receive any [such] negro . . and after . . condemnation . . sell . . that 'the proceeds . . be paid . . one moiety for *the use of the commanding officer of the capturing vessel,* and the other moiety to . . the Charity Hospital of New-Orleans,' . . [332] The case . . is . . a *casus omissus* in the act of Louisiana. That act had a direct reference to the act of Congress, and 'the commanding officer of the capturing vessel' . . must mean . . of such an armed vessel or revenue cutter, as is entitled to share . . by the latter [act]." "But as the [latter] act has made no provision for . . compensation [to Mr. Chew], he must be left, in

[1] See same *v.* same, p. 473, *supra.*
[2] Of Mar. 2, 1807. 2 St. at L. 426.
[3] 3 Peters (U. S.) 59.

common with those who made the military seizure, to the liberality of the government." [1] [Story, J.] See U. S. *v.* Preston, p. , *infra.*

*Aubert v. Buhler,* 3 Mart. N. S. 489, April 1825. [490] "purchaser of . . Phillis, for . . $599 87,"

*Oldham v. Croghan,* 3 Mart. N. S. 517, April 1825. " in consideration of the labor [for one year] of a gang of slaves placed on the plantation of Croghan, he would pay . . four thousand and eighty dollars."

*Morgan v. Mitchell,* 3 Mart. N. S. 576, May 1825. " The petitioner [sheriff] claims $432 87 cents, which . . the defendant owes him for clothing, sustenance and medical aid, furnished two . . negroes [of the defendant], from . . May, 1820, until . . March, 1822, being the time they were confined in the jail . . and also moneys paid for taking up . . and for advertising . . [579] The slaves were committed . . as felons and runaways. . . want of evidence to establish they were the former . . [580] he did not advertise the negroes, . . But . . the defendant . . had personal knowledge of their being . . thrown into prison; and . . declared he had no claim to them. . . [581] one of the negroes was let out for some time, and placed on . . plantation . . he was sick. . . the person at whose house he was . . told the deputy sheriff he would feed and clothe him as his own negroes, and set him to work when able." [580] " The court . . did charge that the plaintiff could not recover as sheriff; but . . on a *quantum meruit.*" Judgment affirmed.

*Ritchie v. Wilson,* 3 Mart. N. S. 585, May 1825. " action . . on a . . note [for $628], given to the plaintiff for his wages, as overseer . . 1822. . . plea that the defendant was not bound to pay . . because the plaintiff . . did, in violation of his duty, and by improper and cruel treatment to a negro girl . . of the defendant, cause her to drown herself, whereby he sustained loss to the amount of one thousand dollars." Judgment for the plaintiff affirmed: [586] " The wrong complained of had been committed more than one year before filing the demand in reconvention." [Porter, J.]

*Spraggins v. White,* 3 Mart. N. S. 661, June 1825. " The plaintiff . . 1821 . . entered into . . partnership with the defendant, the object of which was, the purchase of slaves in the Atlantic states [2] . . to be transported to this state for sale. . . 82 slaves had been purchased, of which 73 have been sold by the defendant . . [for] $41,237," [4 *id.* 299] " Ellen and child " " are yet in his possession. . . [301] We have allowed the defendant nearly all the demands . . except that of freight on the first shipment of negroes, . . paid by the plaintiff. The matters most disputed . . were the large sums charged by both plaintiff and defendant for expenses; the one in buying, the other in selling the slaves."

*Lafon's Heirs v. Executors,* 3 Mart N. S. 707, June 1825. [714] " paid to . . one of the defendants . . $850, for wages as overseer of the tes-

[1] "Thereupon, the said collector, and surveyor, and naval officer, applied for relief to Congress," See Heirs of Emerson *v.* Hall, p. 519, *infra.*

[2] " in the northern states " Same *v.* same, 4 Mart. N. S. 297.

tator's plantation, from . . April, 1804, to . . September, 1805, and $828, for the hire of three negroes of his, employed on . . plantation, from May 1st, 1804, till February 28th, 1806."

*Lewis v. Petayvin,* 4 Mart. N. S. 3, June 1825. "action on a note . . alleged to be lost, the plaintiff having been robbed of it. . . At the trial, the . . judge . . received in evidence, the record of the conviction of a slave charged with robbing the plaintiff;" Held: "the record ought not to have been read."

*Moosa v. Allain,* 4 Mart. N. S. 99, December 1825. Will of Julien Poydras, dated 1822:[1] [100] "The sales of any of my plantations, as to the slaves which are attached to them, (and all my slaves are to be considered as attached to them,) is [*sic*] to be made with the obligation imposed on the purchaser . . [101] [to free] all the slaves . . sold with said plantations respectively, even the children born or to be born, at the expiration of twenty-five . . years from the date of the sale: and the slaves, who at this epoch may not have the legal age for emancipation, shall be bound to work . . till they reach that age, when they are to be emancipated . . Likewise, the purchasers of my . . plantations, are to be bound . . to . . treat with humanity, and keep on said plantations . . without requiring any labor from them, all . . who may evidently have attained . . sixty years, and pay them annually . . twenty-five dollars, as a relief against the infirmities of age. These terms are to be rigorously executed, and all persons, in the name of humanity, and particularly the officers of the state, are . . [102] requested by me, to cause them to be executed" [99] "The plaintiff states . . [100] That B. Poydras purchased one of said plantations . . with . . slaves attached . . of which the plaintiff was one, and afterwards sold it to one of the defendants, with the conditions mentioned in the will . . inserted in the *proces verbal.* But that the said defendant . . sold him to . . Leblanc, the other defendant, who has brought the plaintiff to . . West Baton Rouge, against his will . . and intends to remove him out of the state. . . prayer for the rescission of the sale of [to] Leblanc; that he may be ordered . . to restore the plaintiff . . [to] the plantation with which he was sold, and be enjoined from removing him therefrom. . . judgment for the defendant,"

Affirmed: [102] "The right to remain on the plantation . . is only given to those who may have attained . . sixty . . the right of the purchaser to the labor of the [other] slaves [for twenty-five years from the date of the original sale], wherever he chooses . . is perfect—unless, perhaps, the slave may be allowed the aid of the magistrate, in case of an evident attempt to transport him out . . of the state, . . to frustrate his hope of emancipation, . . by compelling the purchaser to give security for the forthcoming . . or otherwise. . . there is no evidence of even an intention of . . Leblanc, to transport the plaintiff." [Martin, J.]

*Simmons (f. m. c.) v. Parker,* 4 Mart. N. S. 200, January 1826. "The plaintiff sues for his freedom in virtue of an act of emancipation

[1] Poydras *v.* Taylor, 9 La. 488.

of his former owners, Levi Rose and Mary Rose, made in . . Kentucky in . . 1804, to take effect . . 1823. The defendant pleaded that he had purchased the petitioner from W. and N. Wyer as a slave for life; . . had bought of his vendors their right of warranty against . . Hewlitt, from whom they had purchased, and prayed that he might be cited . . and condemned to pay . . $1,000, the price given Wyer . . Hewlitt appeared . . prayed, that . . Greene, from whom he had bought, and . . Holland, who had joined . . in the sale, should be cited . . [201] and in case they failed to sustain their title . . condemned to pay the respondent . . $1,000, . . Holland . . averred . . that Parker, . . at the time he purchased the plaintiff, knew of his claim for freedom, . . [206] N. Wyer . . was dead at the time the conveyance was made from the other [partner] "

Decreed: [211] " that the . . plaintiff enjoy his freedom . . as if born free. And . . that . . Parker do recover of Hewlitt . . $500 [as [207] 'only half the right of warranty of W. and N. Wyer was transferred to Parker '] ; and that Hewlitt do recover of . . Holland . . $1,000, with costs in the court below, the appellee paying those of appeal."

*Wall v. Hampton et al.,* 4 Mart. N. S. 310, March 1826. See same *v.* same, p. 475, *supra.* " The plaintiff had a verdict [on the new trial] and judgment . . [311] The jury found on a special issue, to show that the bill of sale . . was obtained through error *or* fraud." [312] " verdict set aside, and the case remanded," [311] " this finding . . is void for uncertainty," [Martin, J.]

*Bayon v. Towles,* 5 Mart. N. S. 1, August 1826. [2] " the bill of sale was executed for the vendor . . by an agent of his, in New-Orleans, and expressly states the slave to be sold as 'a runaway and drunkard.' But the defendant [who resists payment of his note] shows that the plaintiff [in an 'anterior' conversation] . . represented . . that the slave was only in the habit of absenting himself for a short period, and . . returning of his own accord, and never wandered to any great distance [[3] '*petit marronage*'] ; while said slave, during the time he was in the vendor's possession, . . wandered as far as the Choctaw nation . . and did not return of his own accord, but was seized " [1] " judgment against the plaintiff;" Decreed [4] " that the judgment . . be . . reversed, and that the plaintiff recover . . fifteen hundred dollars, with interest " from March 23, 1822.

*Skillman v. Lacy,* 5 Mart. N. S. 50, August 1826. [52] " After the sale [by the mortgagor] . . the . . slave had several children, who, by order of the court . . have been seized, with the mother, and directed to be sold to satisfy the plaintiffs' demand." Judgment reversed: [53] " the children . . became . . property [of the vendee] . . unencumbered by the tacit mortgage of the appellees [plaintiffs] ;"

*Stafford v. Stafford,* 5 Mart. N. S. 162, October 1826. [163] " in 1803 . . she had five slaves, now increased to fifteen or sixteen . . removing the whole, and [herself] . . from South Carolina to the territory of Mississippi and this state "

*White v. Cumming,* 5 Mart. N. S. 199, October 1826. [200] " Dr. Sebly deposed the slave was brought in four or five weeks ago considerably swollen, in the belly, face and eyes. He bears old marks of frequent bleedings. . . thinks it an incipient dropsy. . . cure easier in young than in old persons." Held: [201] " The defendant has failed in establishing a redhibitory defect,"

*Wright v. Harman,* 5 Mart. N. S. 235, October 1826. [236] " these slaves were placed in the possession of the . . sheriff . . never committed to jail, but submitted to the keeping of a citizen . . who made no charge for the food . . [The sheriff] did pay for clothing said slaves $59, which was absolutely necessary."

*Bray v. Cumming,* 5 Mart. N. S. 252, October 1826. " came to Louisiana [in 1816], bringing the two slaves,"

*Mathurin v. Livaudais,* 5 Mart. N. S. 301, January 1827. Will of a free man of color: " Comme mon fils Narcisse est encore esclave, et que je désire contribuer a lui assurer sa liberté, je . . legue a son maitre . . six cents piastres, à la charge par lui de considérer ladite somme un acompte à valoir sur le prix qu'il pourra exiger de . . Narcisse, pour lui donner sa liberté " [302] " This disposition is attacked by a son of the testator's and brother of the slave . . on the ground that it is a *fidei commissum,* and prohibited by law."

Held: [303] " this legacy cannot be considered as a *fidei commissum.* It is not a charge to one to receive for, and render to another; because that other has not . . a legal existence; until the slave is emancipated, he cannot demand the thing bequeathed." [302] " This [demand by the brother of Narcisse] is one of the harshest . . and the most revolting to every principle of equity and justice, that has, as yet, fallen under our consideration." [Porter, J.]

*Duncan v. Poydras,* 5 Mart. N. S. 492, March 1827. [493] " the claim of the petitioner grows out of a seizure . . by the collector of the port of Orleans of a quantity of slaves shipped from one of the northern states . . Three libels . . were filed against the vessel . . and two actions were brought . . against the collector—one to obtain a sequestration of the slaves, and the other for damages consequent on the illegal seizure."

Held: [494] " The man who ships goods on board a vessel which is illegally seized, suffers enough in the detention . . and the expense . . without being obliged to defend the ship and master " [Porter, J.]

*Thatcher v. Walden,* 5 Mart. N. S. 495, March 1827. " The sale [of the negro] took place in New-Orleans, to relieve the [steam]boat ['on board of which the negro was hired'] from some embarrassments "

*Johnson v. Field,* 5 Mart. N. S. 635, April 1827. Mathews, J.: [636] " Slaves, being men, are to be identified by their proper names . . and where there are two or more of the same name, by some other, which distinguishes them in relation to physical, or, perhaps, moral qualities."

*Perrie v. Williams,* 5 Mart. N. S. 694, May 1827. " the plaintiff claims damages for the loss of a slave . . killed by the defendants. . . judgments . . against them: Williams . . appealed. . . [695] The second exception is, to the refusal of the court . . to allow appellant's counsel to interrogate Doctor Bedford . . introduced by the plaintiff, as to a consultation . . Williams, had . . wherein he . . palliated his neglect, in not having sooner called in surgical aid to the slave, while laboring under the wounds inflicted . . This testimony was rejected, on the ground, that no one can make evidence for himself." Affirmed.

*Bore v. Bush et al.,* 6 Mart. N. S. 1, May 1827. " action [brought by a free person of color] against a justice of the peace, and his constable, for false imprisonment. . . [2] On the trial . . one of the defendants moved the court that . . a judgment of non-suit might be rendered against the plaintiff. The court, notwithstanding the opposition of the plaintiff, granted this motion."

Reversed and the case remanded: " Free persons of color are . . bound to treat . . citizens . . with respect; and if they do not, they are subject to fine and imprisonment. But . . [3] they are entitled to a trial by jury. . . justices of the peace have no right to summon juries, it is a necessary consequence . . that the defendant was without power to try "

*Bernardine v. L'Espinasse,* 6 Mart. N. S. 94, June 1827. " The plaintiff claims her freedom from the defendant, who asserts title . . in virtue of a purchase from the heirs of Galez, whom he has cited in warranty. . . The plaintiff was born in . . 1781, in St. Domingo, the slave of Galez. She fell . . to one of the daughters, who intermarried with . . Goyffon. At the period the negroes revolted . . Goyffon and his wife fled. The plaintiff . . swam after them and got on board the vessel . . accompanied them to . . Cuba, and served them . . until . . 1809. When forced to leave that country, she again followed them and came to Louisiana. Shortly after . . her mistress died without making a will, but recommending to her husband not to forget the . . faithful services . . and requested him to set her free. . . Sometime before his decease, he made his testament, in which he gave the plaintiff and her two children their freedom, and appointed the defendant his executor and residuary legatee. The defendant . . took an oath that he would . . faithfully perform the duties . . he neglected to perform that . . imposed . . in relation to the plaintiff. When requested to comply . . by persons taking an interest in her situation, he promised . . but evaded an immediate compliance, on the ground that it was necessary the plaintiff should work for some time . . [to] reimburse him for moneys . . advanced to her. After . . [96] several years . . he finally refused to liberate her, and set up a title in himself, in virtue of a purchase he had made since he was appointed executor, from . . the collateral heirs of . . wife of Goyffon "

Judgment for the plaintiff affirmed: " where collateral relations set up a claim . . they must show that the relations in the ascending line have ceased to exist. . . [97] No such proof . . If the case presented strong equitable claims on the part of the defendant, and the warrantors, we

might . . send the cause back for proofs of heirship. But . . justice and equity . . are most emphatically with the plaintiff: and . . we cannot aid the defendant in making out a harsh demand, which has no foundation but in the strict rules of law." [Porter, J.]

*Coleman v. Breaud,* 6 Mart. N. S. 207, September 1827. [209] " negroes in . . Arkansas . . delivered . . to be brought to . . Louisiana,"

*Erwin v. Fenwick,* 6 Mart. N. S. 229, September 1827. " promised . . to deliver at the principal plantation of the [plaintiff] . . twenty slaves, ten of whom were to be males, . . for . . ten thousand dollars,"

*Hawkins v. Vanwickle,* 6 Mart. N. S. 418, January 1828. " The plaintiff claims from the defendant a slave and other property, and prays that he may be enjoined from selling them . . The defendant . . in his answer to the demand of the petitioner, pleaded, that she was black and a slave . . incapable of bringing suit. On the trial . . the plaintiff offered a deed of emancipation, passed in Cincinnati . . [419] objected to on the ground that previous to reading it, it was incumbent . . to prove the formalities (if any there were) required by the laws of Ohio in emancipating slaves. The court . . rejected the instrument . . judgment against the plaintiff,"

Reversed and the cause remanded, [420] " with directions . . not to reject the act of emancipation . . because the plaintiff does not prove a compliance with the formalities " " the whole proceeding was . . irregular. This was not the case of a woman suing for her freedom, but of a woman in the enjoyment of it, suing . . for property . . the burthen of proving the fact of slavery, was on the party making the allegation. By a law of the Partidas [1] where a man claims another who is in the actual possession of liberty as his slave, the necessity of proving him such, is thrown on the claimant—*a fortiori,* where the question arises collaterally with a third party;"

*Volant v. Lambert,* 6 Mart. N. S. 555, March 1828. [560] " The appellant's next position is, that the last vendee . . lost the slave by his own neglect; that he should have reclaimed him as a fugitive [to Mississippi],"

Held: " The article in the constitution of the United States does not apply to a case where the citizens of another state, whose laws recognize slavery, set up a title to a slave found within its limits." [Porter, J.]

*Donaldson et al. v. Hull,* 7 Mart. N. S. 112, June 1828. [114] " services [of a woman thirty-two years old] . . would not have averaged ten dollars a month . . [115] Her taxes, clothing, medical attendance, and medicines, may be valued at $20 a year,"

*Hewes v. Barron,* 7 Mart. N. S. 134, June 1828. " action to rescind a contract for slaves, on the ground that the mother was afflicted with . . large tumor on the leg."

[1] Partid. 3, tit. 15, law 5.

*Sterling v. Luckett,* 7 Mart. N. S. 198, September 1828. "The plaintiff claims the value of his slave, killed by a slave of the defendant. The evidence . . fully authorizes the verdict . . in favor of the latter."

*Noble v. Martin,* 7 Mart. N. S. 282, October 1828. "The plaintiff claims $1,000 for his wages as overseer . . for the year 1827, and a part of the crop for the labor of three slaves of his, . . [283] the parties to the suit were partners,"

*Dorothee v. Coquillon et al.,* 7 Mart. N. S. 350, January 1829. "The plaintiff, a free woman of color, complains that her child was directed to be emancipated at . . twenty-one, by the will of her mistress, who bequeathed her services in the mean while to the defendants' daughter, who is still a minor—that the will requires that the child be educated in such a manner as may enable her to earn her livelihood, when free—that no care of her education is taken and she is treated cruelly. The prayer . . is, that the child be declared free at twenty-one, and in the mean time hired out by the sheriff. . . The petition was dismissed"

Affirmed: [351] "The daughter is a *statu liber,* and as such, a slave till . . her twenty-first year. . . the object of the suit, as far as it concerns her, is relief from ill-treatment, which a slave cannot sue for." Consequently, the plaintiff cannot sue for her. [Martin, J.]

*Morgan v. Fiveash,* 7 Mart. N. S. 410, February 1829. "The defendant is sued for the value of a slave, drowned in cordelling a vessel of which the former was master, . . [412] Fisher swears that sometimes the slaves were permitted to cordel vessels through the turn" to make some money for themselves, [8 *id.* 589] "during the low-water . . especially on Sunday afternoon, and then in case of fine weather only." "They had been at all times forbid . . during the season of high-water, and they have been punished for doing it then. . . overseer . . deposed . . [590] They were frequently engaged in tracking vessels through at night, as the wind was not so high . . and he has frequently heard the cries of the negroes tracking vessels while he was in bed. . . Fisher was under him." [588] "this was the second slave lost in that manner." Judgment for the defendant.

*Heirs of Cole et al. v. Cole's Executors,* 7 Mart. N. S. 414, February 1829. The testator gave [417] "the mass of his property to his brother, . . [422] The executors resist the payment of a note of the deceased, in . . favor [of Sarah Lee, a free woman of color], dated . . 1826, for $3,000, and payable on his return from Europe. . . On the trial below, the defendants asked several witnesses whether the plaintiff was not the concubine of the deceased. . . [423] The court admitted the evidence, . . [424] She was the testator's slave in 1818; . . that year, she was emancipated. In eight years after, we find her owning seven slaves. . . In addition . . $100 is given her by the will."

Held: "If her services were given in the house . . the money by which seven slaves were acquired, shows that she must have been paid for these services. . . The note can be considered in no other light than

an attempt to disguise . . a liberality to the plaintiff, and is null for want of the formalities prescribed by law for donations *inter vivos.*" [Porter, J.]

*Lawrence v. McFarlane,* 7 Mart. N. S. 558, March 1829. "a redhibitory action on the sale of a slave, . . Bein . . sold the slave to the defendant for $250 (the price paid by the plaintiff for her)—she was sick at the time for about a week, and the defendant attended her. She complained of rheumatism, but he thought she was more lazy than sick. He owned her . . two or there years. . . [559] thinks she had the venereal. . . went to market daily, washed for the children and cooked. . . he had paid $350 for her. . . auctioneer . . deposed, he sold the slave [in February 1828] for the defendant. She appeared old and decrepit, and walked badly. . . thinks that, for a woman of her age, she brought as much as if . . healthy. . . Dr. Davidson deposed he owned [her] . . during 1819 and 1820. He sold her because she smoked a great deal, and was dirty in her kitchen, . . She drank freely, but was not a drunkard: . . Dr. Debow . . in April or May [1828] . . was called by the plaintiff . . found her affected with a chronic rheumatism, . . [561] told the plaintiff she might be cured by a course of medicine, which might take a month." Held: not a redhibitory case.

*Pilie v. Lalande,* 7 Mart. N. S. 648, April 1829. [649] "The defendant objected to [witness] . . on the ground that she was a slave. The court considered the actual enjoyment of freedom . . as *prima facie* evidence of her competency. The bill of exceptions does not state whether she was a negro or a mulatto. If the latter, the presumption was in favor of her being free, . . judgment . . affirmed," [Porter, J.]

*Xenes v. Taquino,* 7 Mart. N. S. 678, April 1829. [679] "The vice, to which the slave is charged . . to be subject, is habitual drunkeness. The purchase was made since the enactment of the late amendments to our code, . . [680] vices of character . . *are confined* to cases where the slave has committed a capital crime, . . is convicted of theft, or . . is in the habit of running away. . . [681] drunkenness [is] a vice . . of character" [Porter, J.]

*Gardela v. Abat,* 8 Mart. N. S. 126, May 1829. "action . . to settle the right of property to a . . slave and her two children, inventoried as the property of the deceased, and claimed by the plaintiff, his natural daughter, . . [127] a person of color," Held: [128] "gift void, as not made before a notary and in the presence of two witnesses."

*Meilleur et al. v. Coupry,* 8 Mart. N. S. 128, May 1829. "The heirs . . obtained a rule against Coupry, who had obtained letters testamentary . . to show cause why they should not be revoked, on a suggestion that he was a slave, . . [129] he was born of a slave mother, . . he is twenty-seven or twenty-eight . . has enjoyed his freedom for fourteen years and been married as a free man."

Held: " as he is under thirty . . and the lawful emancipation . . cannot take place before that age, the presumption of a legal emancipation . . is repelled," [Martin, J.]

*Livaudais v. Steamboat America,* 8 Mart. N. S. 166, June 1829. " action . . to recover the value of . . slave, drowned in consequence of a pirogue, in which he was descending . . being run against "

*Jackson v. Porter,* 8 Mart. N. S. 200, September 1829. [202] " in partnership as attorneys at law, and for the sale of land, slaves, etc."

*Miles v. Oden,* 8 Mart. N. S. 214, September 1829. [224] " the slaves . . were sent down the river and sold . . with the intention of applying the proceeds to the payment of the creditors in Kentucky."

*Wells v. Wells,* 8 Mart. N. S. 307, October 1829. " The plaintiff states he was in peaceable possession of five slaves . . and that the defendant took forcible possession . . [308] the defendant had possession . . for one year prior . . was absent . . when the plaintiff took the slaves; . . applied to the latter to give them up, and on his refusal . . called out to the slaves, who were at work in the field, to return to his house." Held: [311] " Nothing in our law prevents a man, who has the right of possession, from taking . . the object "

*Hepp v. Parker,* 8 Mart. N. S. 473, January 1830. [476] " the slave died of an abscess in his lungs. When the physician was first called in, . . seven or eight days after the date of the bill of sale, the negro was found to be afflicted with a cough, and difficulty of breathing. This cough existed at the time the contract was made . . the defendant . . said it was the remains of dysentery."

Held: [477] " this knowledge did not defeat his recourse in warranty, for there must not only be knowledge of a disease, but knowledge of one that is incurable " [Porter, J.]

*Landreaux et al. v. Campbell,* 8 Mart. N. S. 478, January 1830. " redhibitory action, in which the plaintiffs . . allege . . [that Ned] was affected with the absolute vice of madness . . at the time they purchased . . [479] no evidence that shows the existence . . previous to the sale; . . overseer of the plaintiffs . . [480] remained on the plantation from the arrival of the slaves [bought at Natchez], . . in January, until the 6th of February, . . did not perceive . . any infirmity: he only appeared to be of a feeble constitution, was lazy, and would not work without being constantly watched; and when out of sight of the overseer, he would . . wander . . gesticulating . . *tout seul.*"

Held: " not . . madness; at all events of its appearance within three days from . . purchase;[1] . . Considering the many frauds . . practiced on purchasers, by professed dealers in this species of property, we have reluctantly come to a conclusion on the facts, different from that at which the judge *a quo* arrived:" [Mathews, J.]

[1] C. C. 2508.

*Hebert v. Esnard,* 8 Mart. N. S. 498, January 1830. "the present defendant lately instituted a suit against the present plaintiff, complaining that he had so grievously wounded a slave of hers . . that he was absolutely incurable, . . She recovered $600,"

*Palfrey v. Kerr et al.,* 8 Mart. N. S. 503, January 1830. "The . . owners of a steamboat, resisted the plaintiff's claim for damages, resulting from the master having hired . . a slave of the plaintiff and carried him out of the state," Held: [505] "the plaintiff cannot recover, because he has not shown that the defendant could have prevented the acts," [Martin, J.]

*U. S. v. Preston,* 3 Peters (U. S.) 57, January 1830. See the *Josefa Segunda,* pp. 462, 478, *supra.* [60] "Mr. Preston, as attorney general [of Louisiana] . . filed a claim on behalf of that state, setting forth . . that the proceeds of the sale [of the negroes], $68,000, were brought into the district court by the order of the court, and that part of the same remains deposited in court. He insisted that the money belongs to the state,"

Held: I. [67] "The decision in the second cause [1] . . was not final as to the rights of the United States . . as against this party." II. "this claim of the state cannot be sustained." [66] "The final condemnation in this court took place . . 1820; but previous to that time was passed the act of March 3d, 1819, . . by which . . persons of colour seized and brought in under any of the acts prohibiting the traffic in slaves . . are deliverable to the orders of the president; not of the states. And . . repeals all acts . . repugnant to this act. . . in admiralty causes a decree is not final while it is depending here. . . [67] We would not be understood to intimate, that the United States are entitled to this money; for they had no power to sell. Nor do we feel ourselves bound to remove the difficulties which grow out of this state of things." [Johnson, J.] See Heirs of Emerson *v.* Hall, p. 519, *infra.*

*Bailly and Son (f. p. c.)*[2] *v. Percy (f. w. c.),* 14 La. 14, March 1830. "The plaintiffs claim title . . under a sheriff's deed" in 1810. [15] "The defendant . . purchased No. 5 [in 1822] from the heirs of Heloise Trudeau, f. w. c., and No. 6 from Nanette Leduff, f. w. c." [14] "who purchased them from their brother Jacques Leduff, in . . 1807." Nonsuit. Affirmed. [20] "The action was renewed, . . additional evidence . . In 1813 . . Jacques Leduff mortgaged his property to the plaintiff and his father, to secure indorsements given, . . Heloise . . and Nanette . . joined . . and mortgaged the lots . . Marie Therese Leduff [another sister], also joined . . In 1814, Jacques . . failed, . . Bailly and Son transferred their mortgage to the syndics" In 1816 judgment was entered in favor of the syndics for $17,652.92 and [18] "a *fi. fa.* issued . . The sheriff's deed . . recites that the sheriff did . . seize lots . . 5, 6 . . Bailly and Son became the purchasers . . Now, therefore, . . the sheriff grants [them] . . all the right . . which Marie Therese Leduff . . had" Judgment for

[1] The *Josefa Segunda,* p. 478, *supra.*
[2] Free persons (or people) of color.

defendant affirmed in 1839: [21] " Marie Therese . . never had any right . . in the lots "

*Merry v. Chexnaider,* 8 Mart. N. S. 699, March 1830. " The plaintiff sues . . to recover his freedom, and . . is clearly entitled to it. He was born in the north-western territory, since the enactment of Congress, in 1787, of the ordinance . . according to the 6th article of which, there could be therein neither slavery nor involuntary servitude. . . The act of cession by Virginia, did not deprive Congress of the power to make such a regulation." [Porter, J.]

*Prudence v. Bermodi et al.,* 1 La. 234, April 1830. [239] " The plaintiff . . claims her freedom . . she was once the property of the defendant's mother in Hispaniola, whom she followed to New Orleans. . . her then owner married Batifol, who [in 1814] . . sold . . to Malocher; and [in 1828] . . Batifol being dead, Malocher sold her to her former owner . . stipulating she should be free on the vendee's death. . . [240] The slave always remained with the defendant's mother," [235] " she left no property but the slave Prudence, . . Malocher . . stated that both acts were fraudulent, simulated, and entered into without any consideration."

Judgment for the defendants affirmed: [241] " If there were other articles of property, it behooved the plaintiff to show it, that it might appear that the value of the slave does not exceed the part of her estate of which the mother might dispose. The emancipation of a slave is a donation of her value to her." [Martin, J.]

*Back v. Meeks,* 1 La. 309, May 1830. [310] " This slave was sold as a runaway and a thief, to the person who sold him to the defendant. And in the sale to the latter, his vendor refused to warrant . . defendant . . sold . . to the plaintiff, with full warranty. . . The testimony of the keeper of the police jail, shows this slave was frequently confined as a runaway, whilst in the possession of two distinct proprietors, who owned him previous to the defendant, and that he was confined by the plaintiff amongst the slaves who work in chains." Held: [311] " the defendant is answerable "

*Hitchcock v. Harris,* 1 La. 311, May 1830. [313] " Defendant . . warranted the negroes . . to be sound," " two . . were . . laboring under a pulmonary disease, from which they since died. . . [315] the doctor said he made no particular charge . . having attended them with others of the plaintiff—but he added, had he made a particular charge, he would have asked forty dollars for them."

*Desfarge et al. v. Desfarge et al.,* 1 La. 365, May 1830. [366] " The will of . . [367] the brother of the petitioners, and natural father of the defendants, free persons of color, appointed one of the latter testamentary executor, and contains a bequest of all the testator's property in Louisiana to his said children, and all his property in France to the petitioners; and . . avers, that the latter is much more considerable than the former."

*Dugat v. Markham,* 2 La. 29, September 1830. [30] " while the crop was in cultivation (the husband . . superintending the hands and working with them) the negroes rebelled against his authority, and were . . instigated to do so, by the wife's children " by a former marriage.

*Montgomery v. Russel,* 2 La. 67, October 1830. [68] " The security bond . . was . . given in Alabama for the hire of African slaves . . illicitly brought into the country."

*Carlin v. Stewart,* 2 La. 73, October 1830. [74] " Dr. Stewart had given medical attendance to a negro woman, a nurse, . . His bill amounted to $56. . . she had a very severe attack,"

*Williams v. Hagan,* 2 La. 122, December 1830. " the plaintiff sold the slaves to Kimball in . . Mississippi . . 1828 . . who brought them to New Orleans, and . . [123] 1829, sold them "

*Preston v. Zabrisky,* 2 La. 226, December 1830. [227] " the defendant had sent the [two] slaves to the plaintiff, and . . received . . three others. . . the defendant . . a few weeks after, sent orders by a black boy to them to return home, which they did. . . [His] counsel has urged, an exchange was contemplated, and the slaves reciprocally sent on trial. . . The defendant . . is a free colored person, and may have been deterred from going . . by the apprehension of giving rise to some altercation." [Martin, J.]

*Ails v. Bowman,* 2 La. 251, December 1830. " The plaintiff alleges . . that . . [252] slave . . soon after [the exchange] ran away, was frostbitten, and died, although the plaintiff . . was at great expense to have him cured."

*Kemp v. Wamack,* 2 La. 272, December 1830. Mathews, J.: [274] " The defendants . . estimate the costs of raising young slaves, up to the time at which they become useful . . at ten dollars per annum. One of the witnesses thought . . fifteen dollars would suffice . . and to his opinion we are disposed to give the greatest weight . . as the negroes . . were nurtured on a plantation, and required, in this climate, little clothing; and were probably fed on bread and other cheap . . food."

*McMaster v. Beckwith,* 2 La. 329, December 1830. " The defendant, master of a steamboat, without permission from the plaintiff, employed his slave on a voyage from New Orleans to Louisville, Kentucky. At the latter place, the slave left the boat and became lost to the owner. . . the plaintiff bought the slave without guaranty, for . . four hundred dollars, . . a runaway at the time . . His services were . . worth from twenty-five to thirty dollars per month." [330] " the plaintiff, at times, hired his slave to masters of boats; and gave him, at other times, a written permission to look for employ that way " Held: " his recovery ought not to exceed what he paid for the negro." [Martin, J.]

*Bocod v. Jacobs,* 2 La. 408, December 1830. [409] " the slave ran away once while he was owned by the vendor, and was absent a few

days only. When he was arrested he gave to himself and his owner many names. Soon after the sale he ran away a second time."

Held: [410] "we do not think that the *mere* fact of running away immediately after the sale, added to a single instance before, may be received as evidence of an anterior habit. It may be the consequence of the displeasure of being sold—of his dislike of the new owner." [Martin, J.]

*Halpen v. Franklin,* 2 La. 465, December 1830. "physician's bill, for . . services to the deceased . . and slaves."

*Beale v. DeGruy,* 2 La. 468, December 1830. "1830 . . at public auction . . mother and daughter . . were struck off . . for . . $1160, . . a physician . . stated: that the [mother] . . was affected with . . [470] an enlargement of the veins in one of her legs." [468] "the value . . was diminished by one-third."

*Labbé v. Abat,* 2 La. 553, September 1831. "married . . 1781. . . 1805 . . they entered into a voluntary agreement to separate, . . [557] She said she separated from her husband because he lived with his domestic Josephine, and had more regard for the mulatress [*sic*] than for her: . . Josephine . . had a son by him, called Charles. Descuirs acknowledged this child to be his son, and the latter called him father. He also boasted that Charles would figure in the society of Paris, to which he sent him to be educated. . . [558] Josephine continued to live with Descuirs on the plantation until his departure for France [in 1825], when he took her with him. She returned from France with him. . . Josephine, since his death, continues to live in a fine house in New Orleans, which is also well furnished."

*Borel v. Fusillier,* 2 La. 570, September 1831. "the defendant told him he knew the wench . . had the asthma . . and for that reason he gave only $200 for her."

*Markham v. Close,* 2 La. 581, September 1831. "This is an anomalous action, instituted in a *civil* form, to punish a *criminal* offence. D. K. Markham . . 1830, presented his petition to the district judge at chambers, alleging that the defendant had cruelly beat . . one of his slaves . . and prayed that . . slave be taken out of his master's possession and sold, . . The answer alleges that the slave . . when he received the chastisement . . had just been brought back from the Mississippi, after absconding for a considerable time. . . [582] testimony of several witnesses . . He was severely whipped, and his back and hips very much cut and skinned. The weather being warm, the wounds smelled badly; the negro was obliged to lie on his belly, being unable to sit or lie in any other position. . . Negat, a neighbor . . by order of the master, when first landed . . gave him twenty-five or thirty lashes, with a whip. . . on the way to his master's he became sullen, and refused to go, when he gave him ten or twelve lashes more over the shoulders. The master came, and the negro still refusing . . had him whipped again. . . verdict for the plaintiff. . . new trial . . refused. Judgment . . decreeing the slave to be

sold, . . and the balance . . after paying the costs of the prosecution, be paid over to the defendant; he . . not being allowed to purchase . . having refused . . to purge himself, on oath, of the charge of cruel treatment"

Reversed. [587] "And . . ordered, that the cause be dismissed, the petitioner paying costs in both courts." [584] "It is greatly to be deplored, that owners of slaves should . . violate the duties of humanity. But the punishment . . can only reach them in the mode . . which . . law has prescribed. . . the court had no jurisdiction . . [586] The conviction . . spoken of [in the Code,] [1] which must precede the order to sell, . . means condemnation, or a criminal prosecution. . . [587] The individual who interfered in this instance may, we believe was, actuated by feelings which we cannot but respect. But what in this instance was the suggestion of humanity, might, in the next, be the promptings of envy, malice, and all uncharitableness." [Porter, J.]

*Taylor v. Swett,* 3 La. 33, September 1831. [36] "in the commencement, the parties were prevented from contracting any valid marriage . . But the death of her first husband . . not many years after ['the defendant took [her] to his bed and board'] . . left them free to contract marriage." [34] "The parties removed [from South Carolina] to Louisiana about twenty-five years ago, . . They are colored people."

*Bronaugh v. Bowles,* 3 La. 120, October 1831. "appointed . . to go to Tennessee and North Carolina and sell the property of the decedent for cash or negroes,"

*Valsain et al. v. Cloutier,* 3 La. 170, October 1831. "1810 . . Dupré made his nuncupative will . . bequeathed six thousand four hundred dollars to . . Cloutier, his half brother . . and the remainder, consisting of lands, slaves, etc., . . to a mulatto woman named Adelaide, and his natural children by her, . . the present plaintiffs. . . Adelaide renounced her share . . in favor of the petitioners, . . In 1811 . . Cloutier . . instituted suit and recovered the whole . . The probate court set aside so much of the will as bequeathes . . property to Adelaide and her children. . . [It is alleged] that the present plaintiffs were no parties to [the suit] . . not bound by the judgment. . . [171] The petitioners pray the judgment . . be annulled . . Cloutier . . says he . . had the whole of Dupré's estate . . by a final judgment of the supreme court [in 1814].[2] . . [172] children . . had already received five thousand dollars from the executor of Dupré. . . 'they were slaves when . . the testator died.' At this stage . . Adelaide . . intervened . . alleges that if the plaintiffs could not inherit . . the legacies enured to the benefit of [her mother] Marie Louise Mariotte, f. w. c.[3] their common mistress, . . who was no party to the suit annulling the . . legacies." [176] "She had [in 1796] . . purchased her daughter [Adelaide], and in . . act [dated December 28, 1797] she declared that from maternal love . . she thereby gave freedom to her daughter from the moment of her, the donor's death." [173]

[1] C. C. 192.
[2] Cloutier *v.* Lecomte, 3 Mart. La. 481.
[3] Free woman of color.

" In 1815, Marie Mariotte died, and Adelaide became free " She [172] " prays, that . . she be decreed to inherit " Rost for the plaintiffs: [172] " Two of the plaintiffs are the natural children of . . Dupré, verbally acknowledged by him, before the promulgation of the Civil Code, in 1808. The other was born, or in his mother's womb, at the time of the promulgation, and was acknowledged by the father, from the beginning of his mother's pregnancy."

Judgment [177] " in favor of the grandchildren . . must be reversed, and ours be for the mother." I. The plaintiffs were not free at the " opening of the succession." [176] " manumission did not *necessarily* result from . . declaration [of Marie Mariotte]." " she made her daughter a *statu liber.*" II. As Adelaide [177] " and her children were slaves to her mother at the time the legacy was given [in 1810], . . the property . . became that of her mother; . . at the time this testament was opened, in . . 1810, the laws of Spain were in force in Louisiana; . . although we find . . the same general provision . . [as] in our Code . . that a legacy to a person incapable of receiving is null . . we find an exception . . that a legacy given to a slave, shall belong to the master [1] . . the enactment in our Code of a general provision existing in the Spanish law, [does not] repeal the exception which accompanied it . . [III.] as the freedom of the mother took place the instant the grandmother died, there was capacity to inherit. . . decreed, that . . Adelaide . . do recover [$6,686] . . with interest . . from . . April, 1830," [Porter, J.]

*Cauchoix v. Dupuy,* 3 La. 206, December 1831. " action for slander, in which it was charged, that the defendant had asserted the plaintiff to be a man of color." [207] " The damages were laid at six thousand dollars. . . He has traced his descent through unmixed blood, for upwards of a century." " verdict in favor of the petitioner, for two hundred and fifty dollars;" New trial refused. Affirmed.

*Cowand et al. v. Reynolds,* 3 La. 378, December 1831. " The defendant guaranteed to the plaintiffs the title to a mulatto boy [man], which they had purchased as a slave . . in . . Mississippi . . [380] the seller not knowing " [378] " that the boy was free " [379] " This is a suit against the surety, in warranty, . . to recover damages . . [381] the buyer was obliged to incur expenses in consequence of repeated absconding by the person held as slave; . . those paid to the physician, and also the charges of the counsel . . for the plaintiffs in . . the suit concerning the right of holding in slavery the subject of the . . sale." [379] " verdict . . for two hundred and sixty-six dollars and ninety cents, on which judgment was rendered," Affirmed.

*Daquin v. Coiron,* 3 La. 387, December 1831. [389] " entitled to the hire of . . 31 negroes, for 2 years, 2 months; and 21 (ten having died or disappeared) for 3 years and five months [beginning 1826], at . . $100 per annum, . . [401] the slaves had so many *sobriquets,* and were known

[1]Partid. 4, tit. 21, law 7.

by so many names, that . . embarrassment remains, from the designation in the . . deeds, not corresponding."

*Roquet v. Richardson,* 3 La. 452, December 1831. "Damages were claimed from the defendant [a justice of the peace], on the ground of having concealed and employed a runaway slave[1] . . testimony, that a female slave, . . about twelve . . was brought to the defendant's house by a carman, to whom she had stated she was free; she remained . . nearly a year, during which time every publicity was given . . no paper published in the parish . . nor did it contain a jail . . The plaintiff proved . . that he had advertised her in the papers of New Orleans . . and expended one hundred dollars . . judgment for the defendant" Reversed; [454] "decreed, that the plaintiff . . do recover . . one hundred dollars, with costs in both courts."

*Strawbridge v. Warfield,* 4 La. 20, December 1831. [21] "the defendant was employed in the capacity of a broker, by . . Mercer, of Maryland, to aid him in the sale of several servants; . . repeatedly offered at private sale, and finally advertised,"

*Verdier v. Leprete,* 4 La. 41, December 1831. [42] "1828, he purchased, in the territory of Florida, five slaves"

*Hynes v. Kirkman,* 4 La. 47, December 1831. [49] "on her last trip from New Orleans to St. Louis, . . a sum of money having been stolen . . and suspicion lighting on a free negro, one of the hands, he was taken . . over the Tennessee River, and flogged, in order to obtain his confession. But he did not admit any thing, and was flogged a second time on board. All this was done by the directions of J. Kirkman [part owner of the boat], who encouraged those he employed for that purpose, by the assertion that they incurred no liability . . but the whole responsibility rested on the boat. She proceeded to St. Louis, where the negro brought suit, and J. Kirkman advised the plaintiff [captain] to cross over to the Illinois side, to avoid being taken by the sheriff,"

*Hopkins v. Lacouture,* 4 La. 64, December 1831. "removed from . . Alabama . . and brought the slave with him."

*Gourjon v. Cucullu,* 4 La. 115, December 1831. Martin, J.: [117] "the whole cargo [of slaves] was placed under the . . management of the plaintiff. . . those who thus take charge . . and attend to the sales, receive a commission of five per centum, and those who attend to the sales only; two per centum. . . The petition states an agreement for a commission for the care and sale . . of two per centum on the aggregate amount of the sales. He therefore cannot claim any commission on the value of unsold slaves. The defendant is consequently entitled to a deduction of ninety dollars, the commission on nine thousand dollars, the supposed value of the slaves returned. . . [118] judgment for the plaintiff for four hundred and fifty-one dollars, with costs"

*Chew et al. v. Keene,* 4 La. 144, December 1831. "suit . . on a . . note made by the defendant . . in 1808, . . he . . claimed in reconvention . . from

[1] Moreau's *Digest,* vol. I., pp. 119-121.

the plaintiffs, a large sum . . [146] on account of their . . mismanagement in relation to a cargo of [two hundred and twenty] slaves . . put on board a ship . . at . . Savannah . . consigned to the plaintiffs;"

*Reed (f. m. c.)* [1] *v. Palfrey et al.,* 4 La. 161, December 1831. [162] "the plaintiff, who was held as a slave by . . Palfrey, brought suit to recover his liberty. Palfrey cited Florance in warranty, and the latter, Beckman. Judgment . . declaring the plaintiff to be free, and a certain amount of damages [[163] 'fruits or profits produced'] . . against the defendant, who recovered from Florance . . the price . . with interest . . and . . the . . damages . . Judgment was also rendered in favor of Florance against Beckman, for . . price paid to the latter, from whom the former bought the plaintiff, as being the slave of Thomas, and also the damages" Affirmed.

*Jung et al. v. Doriocourt et al.,* 4 La. 175, December 1831. "Bernoudy, by his last will, . . gave to the plaintiff, f. w. c., and her four children, . . one thousand dollars each. . . suit was brought by the mother and . . children . . to recover from the defendants (heirs of the testator), the legacies . . Two of the defendants, in a separate answer, alleged . . that the . . mother . . was the adulterous offspring of the testator, . . incapacitated, as well as her children, from recovering a legacy under the will of her natural father."

Held: I. no error [180] "in admitting evidence of the plaintiff . . being . . adulterous bastard." [179] "She is under a double incapacity, as an illegitimate child of color. She cannot successfully claim any thing from her natural father or his heirs, if her descent be denied, because the law has said she cannot prove it;[2] as an adulterous child, she cannot inherit.[3] . . the tribunals of France gave to the article 908 of the Napoleon Code, a construction . . allowing [illegitimate children] . . to resist, in certain cases, the introduction of evidence of their illegitimacy. . . [180] A part of the population of this State has been placed by law under certain disabilities . . Cases of bastardy, of very rare occurrence in France, are unfortunately, much more frequent among us. . . these . . important considerations . . impose on our courts a stricter observance of the laws relating to illegitimate children, especially those of color. . . [II.] [181] the three defendants who have neglected to plead the incapacity, cannot claim any advantage from it. . . [III.] balance to be recovered by the . . plaintiffs . . two thousand five hundred dollars," [Martin, J.]

*Coquet v. Creditors,* 4 La. 198, December 1831. [200] "Maria . . was . . sold to a free man of color . . [her] brother . . [201] he was properly admitted to testify,"

*Devine v. Kelly,* 4 La. 206, December 1831. "The defendant is sued for having been an accomplice with . . slaves in a robbery, and having received a portion of the property stolen. . . judgment against him" Affirmed.

[1] Free man of color.
[2] C. C. 226.
[3] *Ibid.* 914.

*Monday v. Wilson,* 4 La. 338, August 1832. Mathews, J.: [341] "Although slaves by our laws are placed in some respects on the footing of immovable property, yet being in their nature movable, considered as things, and being *se moventes,* considered as men, they cannot (strictly speaking) be held to be immovables situated in any particular parish . . the act" of 1810, which provides that "no notarial act concerning immovable property shall have any effect against third persons until . . recorded in the . . parish where . . situated" does not apply to them.

*Fuselier (f. m. c.) v. Masse et al. (f. p. c.),* 4 La. 423, September 1832. [425] "In . . 1782, two people of color, Etienne Sam and Jeannette, entered into a contract of marriage before the commandant of Attakapas and Opelousas; and by the same act agreed, that in case . . [of] no issue . . the survivor should take all . . There were no children . . but the husband had a natural son . . slave of . . Soileau. In May, 1797, Soileau promised to sell . . to the husband, on condition that he was to give him his freedom; . . August . . [426] the father, by public act, emancipates . . the plaintiff in this present action, and he claims all the property . . in virtue of an . . act . . before the commandant . . 1799. The parties declare, that not having children . . they are desirous of nominating an universal heir . . that for this purpose, they adopt the father's natural son . . only requiring in return, that he will assist them . . for the remainder of their lives. . . The husband died first, without any act of revocation; the wife . . executed her . . will, by which other dispositions were made . . although . . a considerable portion . . was bequeathed to the plaintiff. . . pronounced null, for want of the formalities . . required."

Held: [429] "dispositions in a . . will . . invalid as such, which are irreconcilable with . . a previous donation, . . revoke it. . . the donee of the husband by whom the donation was not revoked, must receive one-half . . and the heirs of the wife the other half." [Porter, J.] [19 La. 330] "the two tracts of land, granted by the Spanish government to Etienne Sam Fuselier . . should not be included in the partition as community property. . . [331] The plaintiffs had . . an exclusive right"

*Thompson v. Bell,* 4 La. 447, September 1832. In December 1819 a negro man was sold for $1510.

*Stewart v. Berard,* 4 La. 454, September 1832. In 1812 a woman and her child were sold for $800.

*Prevost et al. (f. p. c.) v. Simeon et al. (f. p. c.),* 4 La. 472, September 1832. "The plaintiffs claim, as heirs [$2,616.28] . . which . . came into the hands of George Simeon, as curator *ad bona.* J. Prevost, the ancestor . . died in 1804, leaving considerable property in lands, slaves, and stock."

*Fulton v. Curtis,* 4 La. 515, October 1832. In 1819 a negro woman was sold for $1505.

*McPherson (f. m. c.) v. Robinson et al.,* 4 La. 563, October 1832. " The plaintiff sues for his freedom, alleging that he is a free man of color, born free in . . St. Domingo, from whence he removed to the United States with his mother, a free woman, and settled in Alexandria, District of Columbia. From thence he was taken and held as a slave, and sold in New Orleans to . . Robinson, and now claimed by M. and T. J. Wells. The Wellses . . call Robinson in warranty. Robinson made default. About eighteen months after the suit was filed, it came on for final trial. . . counsel for Robinson, made affidavit for further time to answer; . . moved to continue . . overruled, . . verdict and judgment, giving the plaintiff his freedom and two hundred dollars for his services; allowing M. and T. J. Wells one thousand two hundred and fifty dollars on their warranty against . . Robinson." Affirmed: [564] " Robinson . . does not appear to have taken the least trouble as to any preparations for his defence." [Martin, J.]

*Bruce v. Stone et al.,* 5 La. 1, December 1832. " the plaintiff sought to recover . . five hundred dollars . . price of . . Charles, . . [2] died [of dysentery] four days after the sale; . . was a runaway at the time of sale. . . keeper of the police jail in . . New Orleans . . knew a negro belonging to the plaintiff, named Charles; . . repeatedly in said . . jail, . . once or twice among the chain negroes, fell sick the last time . . and was removed by plaintiff," Judgment for defendants affirmed.

*Coote v. Cotton,* 5 La. 12, December 1832. [14] " The plaintiff claimed compensation for services . . during nine years, in buying and selling slaves, and ['chiefly'] in collecting and superintending others purchased by the defendant. . . the defendant supplied him with . . money to buy slaves, and other sums to carry to his other agents. . . the plaintiff, before he came to his service, was in the humble situation of a boatman, a sawyer and a weaver, . . afterwards he dressed so genteel, and lived in such a style that he was thought to be the defendant's partner."

*Myers v. Slack,* 5 La. 53, December 1832. [54] " The plaintiff alleges the slave [Joe] was hired on an agreement . . that he should be engaged at the whip saw " [56] " once every two weeks, . . have permission to come . . to Plaquemine, to visit his wife. . . A week [after such visit] . . defendant . . sent the slave in a skiff, accompanied by [two white men, Lambremont and Ross] . . to bring " " some articles from Plaquemine, . . On descending the Plaquemine, the white [men] . . slept in the house [of Placide]. . . endeavored to induce the slave to leave the skiff, but could not persuade him to do so. In the morning . . missing, and a few days after, his body was found in the bayou." [6 La. 136] " On the sixth . . trial . . Lambremont . . testified . . No jug was given to Joe by the plaintiff . . nor did they stop there . . Ross . . was intoxicated . . Joe likewise . . The jury found for the plaintiff for five hundred and fifty dollars." New trial refused. Affirmed.

*Borie (f. w. c.) v. Borie (f. m. c.) et al.,* 5 La. 87, December 1832. " suit . . brought by the wife of . . Borie . . to recover of him . . seven

thousand one hundred and seventy-two dollars . . [89] of which her father had made a donation to her."

*Deslonde (f. m. c.) v. Le Breret,* 5 La. 96, December 1832. "The plaintiff sues the defendant to recover . . value of a slave, which he is alleged to have killed. The answer denies that the defendant is indebted . . justifiable . . as the negro was in the habit of stealing . . defendant's property in the night. . . plaintiff offered his natural father as a witness;"

*Hurst v. Wallace,* 5 La. 98, December 1832. "claims damages . . by [defendant's] receiving on board and carrying to Louisville . . two slaves,[1] . . [99] put on board . . by a person who assumed to be their owner, and who went with them" Held: the master of the vessel is not responsible.

*McDonough v. Zacharie,* 5 La. 247, December 1832. [248] "the plantation and slaves were sold at public auction by order of the parish judge, in order to effect a partition"

*Adams v. Ryder,* 5 La. 261, December 1832. "action for . . rescission of the sale of a slave, attacked with the scrofula; . . incurable . . [262] decreed . . that the plaintiff recover . . six hundred dollars [the price], with legal interest"

*Armistead v. Bowden,* 5 La. 263, December 1832. [264] "The slaves were within this State when the contract [for their sale] . . took place" in Virginia.

*Brabo v. Martin,* 5 La. 275, December 1832. "physician who had seen the slave just after she had recovered from a fit, . . pronounced that she had been affected with epilepsy."

*Versailles (f. w. c.) v. Hall,* 5 La. 281, December 1832. Porter, J.: [282] "Pierre Avariste, . . originally bound to Hall and Adams, agreed with the consent of his mother, and the approbation of the mayor, that the indenture should be transferred to the defendant. As the original indenture . . was made previous to the promulgation of the Louisiana Code [of 1825], . . the right to annul the indenture must be denied. The question whether the master, under the provisions of the Louisiana Code, can correct the indented servant with a whip, need not be decided in this case. John Baptiste's indentures, however, have not been transferred with the approbation of the mayor, and the defendant's right to his services depends on the validity of the transfer made to him by his partner, Adams. The contract of indenture appears to us to be personal, and not susceptible of alienation."

*Moffat v. Vion,* 5 La. 346, December 1832. "The defendant's slaves had stolen from the store of the plaintiff a quantity of dry goods," Held: the latter [348] "may . . obtain a judgment in a civil suit to ascertain the amount of damages without a previous criminal prosecution," [Mathews, J.]

[1] Act of 1816, sects. 3 and 4. Acts of 1816, p. 8.

*Deslondes v. Wilson,* 5 La. 397, December 1832. "The petition states a negro slave broke open a press in the plaintiff's house, and stole . . about three thousand dollars, with . . valuable papers; . . arrested on board of a boat, and jumped into the river and was drowned,"

*Carter v. Cooper,* 5 La. 446, December 1832. [447] "the slave died shortly after the sale, of a diarrhoea;"

*Executors of Hart v. Boni (f. w. c.),* 6 La. 97, December 1833. "The petition alleged that the defendant had lived in concubinage with the testator; that she had in her possession and claimed to own, certain notes belonging to the succession, amounting to [$123,451.50] . . It further averred that a certain pretended donation, *inter vivos,* was illegal"

*Cavelier (f. w. c.) v. Germain,* 6 La. 215, December 1833. "The plaintiff is the grandmother and tutrix of three minor children . . a family meeting was convened, which determined . . that a house . . should be sold . . 1833 . . adjudicated to the defendant" for $2,925.

*Gottschalk v. De la Rosa,* 6 La. 219, December 1833. "The plaintiff sold to the defendant for five hundred and sixty dollars a female [mulatto] slave with a child, by public auction, . . 1832. . . note, payable in six months, . . The slaves were delivered . . The defendant averred, that he had learned the mother was free, and that she had been kidnapped in Alabama; that she and her child were voluntarily remaining under his protection. He prayed that the sale be annulled, and the mother and child be decreed free. . . he alleged that suit . . [220] against him . . for their freedom . . was then pending."

[221] "decreed, that the plaintiff . . do recover [$560] . . with interest . . with costs . . But . . no execution shall issue . . until the plaintiff give . . security . . to save [defendant] . . free from all injury . . in the event of the slaves establishing their claim to freedom," [Mathews, J.]

*Hilligsberg v. Canal Co.,* 6 La. 228, December 1833. The slave [229] "ran away twice before the sale." "after the purchase, . . three or four times, . . not been found since he ran away in . . 1832. . . five years before the sale, the slave ran away once, and was taken in about two days afterwards." Held: "the plaintiff has not made out his case" that the slave was "addicted to the vice of running away," "one witness . . does not state the length of time he was absent . . Another . . does not specify an absence . . sufficient to satisfy the provisions . . of the Code,"[1] [Mathews, J.]

*Stetson v. LeBlanc,* 6 La. 266, December 1833. [270] "a mulatto man . . had been employed . . to discharge staves from flatboats," [268] "and also to purchase staves for him."

*Compton v. Woolfolk,* 6 La. 272, December 1833. [273] "Fanny, aged twenty years, and her child" were sold in 1831 for $600. She died soon after.

[1] "Twice for several days, or once for more than a month." C. C. 2505.

*Joyce v. Poydras de la Lande,* 6 La. 277, December 1833. [283] "the slave died of the cholera,"

*Salnave v. McDonough,* 6 La. 357, December 1833. "hire of two negro men slaves, from . . 1828, to . . 1832, at twenty dollars per month for each, . . [358] the hire . . was usually paid weekly, to a mulatress [*sic*], in the name of . . her mistress."

*Psyche v. Paradol,* 6 La. 366, December 1833. [367] "1812, Marie Elizabeth Heloise Delahage, a free woman of color, made a nuncupative testament . . by which she bequeathed some slaves to the plaintiff, . . about four years old, of father and mother unknown; other slaves to her niece, Isis Bujac, residing in Philadelphia . . one hundred dollars, to . . Lola Brémont, and ordered . . surplus . . of her other property . . divided between . . plaintiff and . . Isis"

*Lewis v. Casenave,* 6 La. 437, December 1833. [438] "at public auction [in 1832] . . Cazenave bought a negro man . . for . . eight hundred dollars, . . the second day afterwards" "he . . [gave] the negro permission . . to go and bring his clothes, . . had not returned;" Held: the habit of running away was not established. [442] "presumption created by law,[1] regards solely vices of body;" [Mathews, J.]

*Lange et al. v. Richoux et al.,* 6 La. 560, December 1833. [561] "The plaintiffs, Eleanor, Mary Ann and Valérien Lange, f. p. c., allege that they are the only collateral heirs of . . Française [*sic*] Gabrielle Lorio, f. w. c., who died intestate . . 1830, . . an inventory of the property . . amounting to three thousand one hundred and twenty-three dollars, . . there are three lots . . owned jointly by the deceased . . and . . Marie Jeanne, f. w. c., . . [562] admitted by defendants, . . that plaintiffs are the only legitimate children of Charles Lange, f. m. c., by Française Pain, f. w. c.; that Charles . . was only child of Joseph Lange and Marie Jeanne, people of color; that Marie Jeanne was purchased by Joseph Lange from Hydel, and . . afterwards married to him; that Marie Jeanne was daughter of Catharine and Gorr, negro slaves . . who were afterwards sold to Gabrielle [*sic*] Lorio, who emancipated Catharine in 1803, and sold Gorr to Marie Jeanne in 1804, who immediately emancipated him calling him in the act father; that Française Gabrielle Lorio was the daughter of Catherine, born while the slave of Hydel, . . The plaintiffs admit that Française Gabrielle Lorio while the slave of Hydel had a son Martin, her only child; that she was purchased by Gabrielle [*sic*] Lorio, and by him emancipated in 1794, and in 1799 he bought Martin . . and in 1807, made a donation of him to his mother . . that Martin died before his mother, leaving an illegitimate daughter [Française Richoud, born in 1802,] by the sister of Gabrielle Lorio, . . [564] Française has furnished no evidence of her emancipation except the will of Gabriello Lorio, . . [who] died in 1822, . . so

[1] C. C. 2508.

that she continued to be a slave or at most *statu libera,* not having attained . . thirty," [1] Judgment for the plaintiffs.

Affirmed: [571] " While . . [Française] continued a *statu liber,* she was capable of receiving by donation or testament, but not by inheritance." [2] [Bullard, J.]

*Flower v. Millaudon,* 6 La. 697, December 1833. [699] " he broke up his establishment in Feliciana [in 1827], and brought twenty-six slaves, which had previously been mortgaged to defendant, to [New Orleans] . . for the purpose of being sold to pay off . . balance." [19 La. 191] " Millaudon finally agreed to take the gang at $11,600 [[6 La. 699] ' as a cash price '] ; . . sent up to his plantation."

*Grounx et al. (f. p. c.) v. Abat,* 7 La. 17, June 1834. [21] " 1818 . . their natural father . . conveys [house and lot sold later for $4,900] . . to Marie Adelaide, f. w. c., . . mother of the plaintiffs, who was present, accepting said sale for her children, . . all minors. Grounx, in the same act, acknowledges the said minors to be his natural children by . . Adelaide. . . [23] their mother was emancipated in 1804, long before their birth; they were . . baptized as free-born." [31] " In 1821, Grounx, and Marie Adelaide, went before a notary and . . formally annul . . the contract. . . same year, Grounx made . . will . . acknowledges these same natural children . . and declares, that, in order to provide for them the means of subsistence, according to the dictates of humanity, he bequeathes to them a moiety of all the property . . which he shall leave . . in case his two sisters . . should survive him; but [if not] . . he gives them three fourths, . . [32] the net proceeds of the estate amounted to four thousand eight hundred dollars " [27] " the executors transfer in payment [of one half] of that sum [due the children] a family of slaves [valued at $2,400]." [25] " The . . slaves . . belonged to Adelaide Grounx . . before her failure, and were surrendered by her to her creditors."

*Vidal's Heirs v. Duplentier,* 7 La. 37, August 1834. " The plaintiffs, . . f. p. c., the natural daughters of . . Vidal, late auditor of war," [43] " sue to recover the title papers of . . sixteen thousand arpents," [39] " In 1798 he made his will by notarial act, before . . notary public, and three persons named as witnesses," [45] " directs the residue of the estate, if anything should remain to be inherited, to be delivered in equal portions to four natural colored children, of whom the plaintiffs are two." [44] " the signature of the testator does not appear, nor that of either of the witnesses." The testator died in 1806. Held: [40] " the will was not properly admitted to probate;"

*Hewit v. Wilson,* 7 La. 71, August 1834. [74] " the store had been forcibly entered, . . no direct . . proof that the theft was committed by the defendant's slave. Some articles were found in his possession . . were restored . . and the slave was [' severely '] whipped by the husband

[1] C. C. 185.
[2] *Ibid.* 176, 193.

of one of the plaintiffs [[72] 'until he was satisfied'], by permission of the overseer."

*Mary (f. w. c.)* [1] *v. Morris et al.*, 7 La. 135, August 1834. "the plaintiff claims her freedom." Will of John Marshall, a resident of Georgia: [136] "Conscientiously believing that civil and religious liberty is the natural right of all men, it is my will that Jude and her two children, Mary and Ellender, with all she may have, and William, be put into the possession of my daughter Miriam Morris, on the first day of January next (1810), to serve . . *only five years*: then . . be set free, and they are hereby declared free after serving *said term of time.*" The plaintiff "alleges that . . Miriam Morris never informed her . . but she and her husband brought her to . . Louisiana . . [137] The district judge was of opinion . . it was the duty of the executor to see the will executed agreeably to the intention of the testator, which he viewed in the light of a contract for freedom; that there could be no doubt under the laws of this State where she now seeks to enforce it, she is entitled to freedom: . . Judgment was rendered, declaring Mary and her five children free"

Reversed: [138] "This bequest was made in contravention of a prohibitory law;[2] . . [139] Being from color and actual possession of the defendant, presumed to be a slave, the burden of proving her freedom devolved on her; in which we are of opinion she has failed." [Mathews, J.]

*Keys v. Powell*, 7 La. 143, August 1834. [144] "purchased . . Dinah [about 22 years old] by public act . . 1819, for . . one thousand dollars;"

*Louis (f. m. c.) v. Cabarrus et al.*, 7 La. 170, August 1834. "The plaintiff claims to be a free man, . . witness for plaintiff . . first saw Louis Richardson . . about twelve or thirteen years ago, in Cincinnati, . . knew him to reside there two or three years. . . witness for defendants, states, that in 1833 plaintiff told him . . he was entitled to his freedom; that he had worked in Cincinnati, with his master; . . was taken back to Kentucky, where his master resided, and continued to serve him as a slave, until . . brought to Louisiana, and sold to defendants. . . [171] The counsel of the defendant, moved the court to charge . . that proof of residence . . in . . Ohio, unconnected with other proof, is not sufficient . . to establish his freedom, . . the court refused, but instructed . . [172] that if the plaintiff resided in . . Ohio, by the consent of his master, he did thereby become a *freeman*; that the consent of the owner, that the slave should go into . . Ohio and perform labor, was sufficient to entitle him to his freedom." Verdict: [171] "that the plaintiff was a free man."

Judgment thereon reversed and the cause remanded: [172] "the judge *a quo*, ought to have charged . . in the manner required in . . the request of the defendant's counsel. . . The latter part of the . . charge . . is too loosely expressed, . . The consent of the master, that the slave should go . . does not, of itself free the slave, though this may be effected by the slave's going . . under this permission." [Martin, J.]

[1] Actually a slave, according to the decision of the court.
[2] Georgia act of Dec. 5, 1801.

*McDaniel v. Insall,* 7 La. 241, September 1834. The plaintiff "hired a negro girl, about eighteen . . to the defendant for a year, . . about nine months afterwards the girl became sick . . [242] of a bilious fever, and was put in a cabin about one hundred yards from the dwelling-house. . . Singleton . . states the girl took sick on Monday, . . she kept about, worked some, but still complained; she cooked, washed and worked out. He bled her on Tuesday, by defendant's direction. Heard defendant tell the servants to ask her what she wanted. . . [243] Defendant . . paid little attention to his own slaves when sick. On Saturday she got worse. She was pregnant. On Sunday sent for Mr. O'Bannon to see her, and notified plaintiff, sent for no physician, and no medicine was given to her. He gave medicine to his own slaves when sick. . . the plaintiff did not call a physician for four or five days after he took the slave home. The doctor testifies, he was called in about ten hours before she died;"

*Niblett v. White,* 7 La. 253, September 1834. "February, 1832, the plaintiff loaned a negro boy . . about sixteen . . to . . White . . [254] on White's agreeing [on Saturday] to pay the negroes for their Sunday work [hauling]. . . The weather, which had been warm on Saturday, . . (the negroes being thinly clad), suddenly changed, and blew a storm of rain and sleet. . . [255] [White] was warned by a person near whose house he passed, of the danger . . and the offer was made to him of a shelter for himself and the negroes . . but he persisted in continuing to travel." [254] "The negroes and carts had a bad morass . . to cross . . night came on, and by the time they got across . . the negro boy . . was frozen to death." Judgment for the plaintiff for $600 and costs. Affirmed.

*Dunlap v. Bailey,* 7 La. 368, October 1834. Will of Jules Belot, dated 1832: "I give unto my father for his lifetime, my negro girl . . [369] who is to be free at his death;" "any balance . . he bequeathes to the foundling hospital in Paris,"

*Hall v. Mulhollan,* 7 La. 383, October 1834. [385] "Hall . . bequeathes . . Peter and his wife to a free woman of color and her daughter."

*Stoker v. Leavenworth et al.,* 7 La. 390, October 1834. [391] "He alleges that his slave . . was killed . . by three soldiers . . acting as a patrol . . under the orders of Gen. Henry Leavenworth and Captain Andrew Lewis, . . He charges that the slave was worth fifteen hundred dollars,"

*Hawkins v. Brown,* 7 La. 417, October 1834. [418] "The negro himself told Brown [the vendee], he had a bad cough and discharged blood. The other negro is crippled, . . 'a runaway and great thief.' The proof supported this allegation." "One of them sold for [$711] . . and the other for [$400.]"

*Boree (f. m. c.) v. Kellar,* 7 La. 500, December 1834. "An action to recover . . a slave, alleged to be worth eight hundred dollars, and his hire, amounting to one hundred and fifty dollars . . The plaintiff . . took judgment by default"

*Icar v. Suares,* 7 La. 517, December 1834. " The plaintiff alleges he purchased . . Kate [[519] ' a recently imported slave '], from the defendant, . . paid five hundred dollars in cash; . . showed that the slave was very stupid; that on being told to do one thing she would do another; that she was unsafe to be trusted about the house, on account of the danger of setting fire to it; that she wandered off, and was finally put in the parish jail of an adjoining parish, as a runaway. The defendant's testimony went to show that the plaintiff took one or two slaves on trial, and finally concluded to buy Kate;" Judgment for the plaintiff affirmed.

*Guilliet v. Erwin,* 7 La. 580, December 1834. " that in February and March, 1829, he purchased two slaves from the defendant, for six hundred dollars each. That soon afterwards, one was discovered to be crazy . . and ran away, and the other had a consumption, of which he died shortly afterwards."

*Hart and Co. v. St. Romes et al.,* 7 La. 586, December 1834. [587] " The plaintiff alleges that his store . . was broken open by several slaves belonging to the defendants, and goods, jewelry and merchandise, to the value [of $2,556.79] . . stolen . . Debuys . . abandoned his slave to be sold . . in case of liability " [588] " The district court was satisfied . . that the thefts were committed by . . a slave of . . Debuys; by [three] . . belonging to . . St. Romes; and . . a slave of . . Baylé, and condemned the masters to pay *in solido,"* St. Romes appealed.

Held: " the judge erred in condemning the masters, *in solido*. . . [589] Where offenses are committed by slaves belonging to several masters, by their order, . . the masters would be liable as direct trespassers, *in solido*. . . the liability of the master is . . measured by the value of the slave, if he chooses to surrender him . . . [592] masters should be condemned to pay in proportion to the number of their slaves respectively, who were accomplices . . St. Romes . . is liable to pay three fifths . . provided that this judgment shall be without effect, if, within three days after it shall have become final, the defendant shall abandon the [two] surviving slaves," [Bullard, J.]

*Slocomb v. Breedlove,* 8 La. 143, March 1835. " decreed to her . . in Mississippi, in 1833, and sent down to New Orleans . . to be sent to her . . in Texas; . . attached . . on their passage hither."

*Marie Louise (f. w. c.) v. Marot et al.,* 8 La. 475, March 1835. " action by the plaintiff, claiming the emancipation of her daughter, a mulattress aged twenty years, a *statu libera*. . . [476] The testimony shows that Jean Mornay made a donation of Josephine, . . about two . . to . . [his grandchild] daughter of . . Marot, then about the same age, by public act . . 1816, on condition that she should be emancipated at the age of thirty . . the father signing . . and accepting for his daughter. . . [[478] ' Some days after '] Marot . . executed a private act before two witnesses, . . ' la vérité est que l' intention du donateur est que . . Joséphine soit affranchie aussitôt qu 'elle aura vingt ans. En consequence j'oblige ma . . fille . . à se conformer aux désirs de son grand père ' " [475]

" The petition alleges . . that the donee . . and her husband, have imprisoned Josephine, and refuse to emancipate her: . . [477] verdict for the plaintiff, and judgment . . that Josephine be set free, provided, the consent of the civil authorities can be obtained, and that she remain in the service of the defendants until then,"

Reversed and the cause remanded: [478] " the acceptor . . was *functus officio,* and by himself could do no acts prejudicial to . . [his daughter's] interest. It is really painful, in applying rules of law . . to be obliged to violate . . feelings of humanity: but this pain is sometimes felt by judges . . Yet . . we do not consider ourselves bound to leave the wretched victim of present affliction without hope. . . the facts . . have convinced us that it is a case in which we ought to exercise the general power granted by law to remand causes . . whenever justice, in our opinion, requires such a proceeding. It is, perhaps, true, as a general rule, that the supreme court . . should be influenced alone by . . the record; . . but it is an action brought to redeem a helpless female from slavery; and every thing which may properly be done *in favorem liberatis,* should be done, even to notice facts *dehors* the record. It was stated at the bar, and not denied, that . . [Josephine] was taken by her owners to France . . and was placed by them under the direction of a hair-dresser, to learn his art. Did she not become free in France? Being brought . . into the United States, is she not free, according to . . laws enacted by Congress? . . questions which we will not solve; but . . remand the cause, in order that they may be put in a train for solution." [Mathews, J.] See same *v.* same, p. 509, *infra.*

*Strawbridge v. Turner and Woodruff,* 8 La. 537, March 1835. " The petitioner alleges, that the commander of the steamboat employed by the defendants, took on board . . [his] slave . . without his knowledge . . and employed him as a hand . . he had the slave arrested . . but in endeavoring to escape the latter fell or jumped overboard and was drowned. . . [538] the defendants' counsel moved the court to instruct . . that ' the owners of the boat were not liable, unless they knew of the illegal acts . . and could have prevented them.' [1] . . refused . . verdict of eight hundred dollars "

Judgment reversed and the cause remanded. [9 *id.* 215] " before the second trial, the plaintiff amended his petition, by . . an averment, that the defendants, by due diligence, might have prevented the slave being employed . . evidence . . shows . . owners [suffered] . . the slave . . to be engaged for several days, in unloading and loading her in . . New Orleans, where they resided. . . It does not appear that they made any inquiry, whether . . with . . [216] knowledge . . of . . his master." Second verdict and judgment for the plaintiff. Affirmed.

*Harris v. Denison,* 8 La. 543, March 1835. [544] " Denison . . foreman in a foundry . . had [the slave] . . at work with him, . . could not spare him then, on account of his valuable services, and was willing to allow [his owner] . . liberal wages [for his labor]."

[1] Civ. Code of 1808, art. 20, pp. 320, 322; C. C. 2299.

*Gaillard v. Labat,* 9 La. 17, December 1835. [18] "The plaintiff alleges . . that he had purchased . . a slave . . and her daughter . . for . . one thousand dollars . . That the defendant . . knew . . that he wished . . a confidential house servant, . . But . . she was . . an habitual drunkard. . [19] The defendant . . admits that she represented [her] . . as a good servant," Verdict, rescinding the sale. New trial refused. Affirmed: "The term *good servant* is very vague; but a house servant, addicted to . . drunkenness, hardly deserves the epithet." [Bullard, J.]

*Ory's Syndics v. David,* 9 La. 59, December 1835. [60] "The sale took place . . 22d January, 1834, at which a woman . . Madeleine, for [$960,] . . Eulalie and her child . . for [$1010,] . . were adjudicated to the defendant: . . Madeleine fell sick of cholera on the 24th . . the day after she was delivered . . and regular medical aid immediately afforded. She died on the day following." The defendant paid $53 for medical attendance and funeral charges.

Ordered: that the plaintiffs recover $957, [63] "as the balance of the price of . . Eulalie and her child . . that the sale of . . Madeleine be rescinded" "It has been contended in argument . . that cholera [1] . . is not an incurable disease in its first stages. The court is of a different opinion; it considers a malady incurable, so far as to authorize the redhibitory action, when it baffles the efforts of regular medical aid, and death ensues, notwithstanding this aid is promptly administered." [Martin, J.]

*Berard (f. w. c.) v. Berard et al. (f. p. c.),* 9 La. 156, December 1835. "the plaintiff claims her freedom and that of her [five] children. She alleges she was born free, in . . St. Domingo, which place she left under the care of Marie Jeane [*sic*] Berard, her aunt, and came to New Orleans, with whom and Marie Louise Berard, her sister, she lived for a long time, and until the death of the former, in 1814 . . . gave . . her services as one of the family. . . The defendant, Marie Louise, avers . . that they were the . . slaves of . . [157] Marie Jeane, and have descended to her natural children . . Celina and Antoine Garidel, . . C. and A. Garidel, f. p. c., intervened and claimed the plaintiffs as their slaves . . The judge charged that it was incumbent on the plaintiffs to prove that they were entitled to their freedom," [158] "that the intervenors were not bound to show their title." Verdict in favor of the intervenors.

Judgment thereon affirmed: "A slave cannot stand in judgment for any other purpose than to assert his freedom. He is not even allowed to contest the title of the person holding or claiming him as a slave." [Martin, J.]

*Noirette (f. w. c.) v. Diggs,* 9 La. 172, December 1835. "The plaintiff . . purchased [of Diggs] a negress . . who . . died of scrofula . . three or four months afterwards." "She claims a rescission . . with a return of the price [$425]," Judgment for the plaintiff affirmed.

[1] [61] "the new and rapid disease of Asiatic cholera" made its "appearance amongst us, since the passage of the Code,"

*Phillis (f. w. c.) v. Gentin,* 9 La. 208, December 1835. " alleges she was born free in . . Pennsylvania, . . prays that she and her [two] children be adjudged free, and allowed five hundred dollars as damages . . ' The evidence . . appears . . to establish that the plaintiff, a black woman, was, in . . 1814, . . when she was . . fifteen . . bound as an indented servant at Philadelphia, to . . Page, to serve till she was twenty-eight . . after . . a year and a half . . she was taken to Pittsburgh, . . 1816, Page transferred the time of service . . to . . Bakewell, who . . [209] married his daughter. Bakewell took the plaintiff to Louisville, and . . about 1819, transferred her time of service to . . Zuma, who lived at Cincinnati; she remained [there] . . some time, when Zuma took her to St. Louis, where, after some time, he sold her term of service to . . Sutton. She disappeared . . 1822, and the next trace we have . . is, that she is sold . . 1823, by . . Herring to . . Rhodus; from Rhodus, in 1824, she passed to . . Rowell, at the sale of whose succession, in 1830, Bonnecaze became her owner, who, in 1831, sold her to Gentin,' "

Held: [210] " She is . . clearly now free " having been " a *statu libera* in . . Pennsylvania, . . now past the age at which she was to become free . . and . . [having] resided . . in . . Ohio, with or by consent of her owner, . . Damages . . [211] ought not to be allowed against . . any . . except the vendor who first violated her rights by selling her as a slave for life; he would be liable to vindictive damages in a suit regularly brought for that purpose." [Mathews, J.]

*Adams v. Hurst,* 9 La. 243, December 1835. [244] " suit . . to obtain a divorce, *a vinculo matrimonii* . . . ample proof . . that he has lived in concubinage and open adultery with a free woman of color . . making the house of his concubine his home." Decreed, [245] " that the bonds of matrimony . . be dissolved,"

*Dufour v. Morse,* 9 La. 333, December 1835. [334] " He . . left the notice with the black man, requesting him to deliver it " " The plaintiff's counsel has not contended that this was a legal notice,"

*Guerier v. Lambeth,* 9 La. 339, December 1835. " the defendant [owner of the premises] . . ordered one of his slaves to nail up the door and windows, who, in executing this order . . upset a bottle of ink," [341] " which was suspended in . . shop [of plaintiff, lessee], . . fell upon a trunk of goods, and stained them. . . [342] the court charged, that the master was responsible, if the damage had been caused . . either by or without the master's order." No error.[1]

*Chase v. Mayor et al.,* 9 La. 343, December 1835. " Callender and Deblois sold the slave to . . Chase . . for six hundred dollars . . 1833. . . allowed to remain at the store of Callender and Deblois, but having run away and engaged himself on board a steamboat, as a cook, Deblois sent him . . with an order " [346] " to the *calaboso* [*calabozo*] or city jail . . Three days afterwards this slave was . . sent out . . to work on the public streets,[2] . . properly secured by a chain and ball " " with fifty-seven

[1] C. C. 180.

[2] " according to the city ordinance of 1817, (Digest of City Laws, p. 127)."

others [the chain gang], similarly situated, attended by six of the city guards as keepers, . . when the guard was returned in the evening he was missing."

Judgment for the defendants: [347] " no evidence was required of the defendants to show the particular manner in which this slave . . effected his escape." " the city ordinances . . had more in view the convenience of the owners . . than the increase of the revenues of the city." [Martin, J.]

*Montreuil et al. (f. p. c.) v. Pierre (f. m. c.),* 9 La. 356, December 1835. " Bazile Montreuil alias . . Dédé . . and Jeanne Dédé, f. p. c., . . allege that they are the only legitimate brother and sister of the deceased . . but that Charles Pierre . . claims the estate, in virtue of a nuncupative will, . . 1834, in which he . . is instituted sole . . legatee, and . . executor of said will, which has been ordered to be executed . . by the court of probates. . . allege, that . . Charles Pierre . . has never been . . emancipated. . . [358] The defendant died soon afterwards, and the suit was carried on against his . . widow . . a free woman of color. . . Shortly after . . Rosette Devillier, a [free] woman of color, presented her petition . . alleging that she was originally a slave . . [of] Madame Jumonville Devillier, . . while a slave . . 1797, she had a son . . baptized . . Charles, and called Charles Pierre, . . she . . 1807, purchased him . . for . . five hundred dollars, and that he remained her slave . . to his death, by reason of which, his . . property . . belonged to her, . . The widow . . averred he . . had been in the constant . . enjoyment of his freedom, for . . twenty-seven years . . a document was offered in evidence, . . [361] purporting to be a copy of a notarial act, . . 1807, by which the . . executors of Madame Jumonville Devillier, emancipated Charles Pierre, in consideration of [$500] . . paid by his mother . . . without date, and not certified a true copy. . . It was admitted by the court, and the plaintiffs took a bill of exceptions." [360] " judgment sustaining the will . . and also that he was free, and in favor of the claim of his widow . . the plaintiffs in both suits appealed."

Affirmed. Bullard, J.: [368] " The two cases . . present a novel and repulsive spectacle. A mother . . comes forward, after his death, to claim the fruits of his industry, on the allegation that her son lived and died her slave; that he was a mere thing, . . Such pretensions must be rigorously scrutinized;"

*Winn v. Twogood,* 9 La. 422, December 1835. [424] " the defendant himself had purchased the same slave as a notorious runaway."

*Chardon's Heirs v. Bongue,* 9 La. 458, December 1835. "Chardon . . 1830 . . executed his testament . . by [which] . . he emancipates all his slaves, bequeathes to . . Jenny and . . Eugene, formerly his slaves, . . three thousand dollars each, . . Jenny, a witness, states that ' Chardon . . told deponent, the reason of his not leaving any thing to his relations was, that they had attempted to assassinate him ' " The will was upheld.

*Marie Louise (f. w. c.) v. Marot et al.,* 9 La. 473, December 1835. See same *v.* same, p. 504, *supra.* [474] "On the return of the cause . . the plaintiff filed a supplemental petition, in which she alleges, that . . Josephine . . was taken to France by the defendants, . . that the defendants, since their return . . have . . imprisoned her . . daughter, for which she claims five hundred dollars in damages." Verdict: [475] "that Josephine is entitled to her freedom, but not . . to damages."

Judgment thereon affirmed: [476] "The main question . . is whether the fact of her having been taken to [France] . . by her owners, operated . . so as to produce an immediate emancipation. That such is the benign and liberal effect of the laws and customs of that State, is proven by two witnesses of unimpeached credibility. . . Being free for one moment in France, it was not in the power of her former owner to reduce her again to slavery." [Mathews, J.]

*Poydras v. Taylor,* 9 La. 488, December 1835. "The plaintiff alleges . . that Julien Poydras died in 1824; that his plantations and slaves were sold under the conditions of his will,[1] in 1825, and that one . . with the slaves attached . . was sold . . to . . Steward, who sold it to Barrow, . . [who] 1831, sold it to . . Taylor . . with the conditions . . and the purchaser bound himself to comply . . but . . has sold several of said slaves . . to [six] different purchasers, separate and apart from the plantations to which they were attached. He therefore alleges, that as one of the heirs of . . J. Poydras, he is a party concerned under a clause . . which . . solicits the assistance of all humane persons, in behalf of said *statu liberi,* . . wherefore he prays . . that said sales be rescinded, the *statu liberi* restored . . and the defendant . . enjoined from selling . . except according to . . the will,"

Held: [491] "neither any of the slaves . . nor any other person as a *prochain ami,* could institute a suit for their sole . . benefit. But the executors of the deceased . . and his heir since the expiration of the office of the executors, have the undoubted right to interpose and prevent a violation of the testator's intentions, . . and to demand a specific performance of the conditions of the sale . . this right . . is not impaired by the avowal that the object . . is to . . carry into effect the benevolent intentions of his ancestor." [Martin, J.] See same *v.* same, p. 531, *infra.*

*Poydras v. Mourain,* 9 La. 492, December 1835. [494] "Benjamin Poydras de Lalande, styling himself the protector of a number of slaves, filed a petition and order for injunction, in which he states: 'That, as one of the heirs of . . Julien Poydras,[2] . . his uncle, . . your petitioner finds himself in duty bound, since the executors . . have been duly discharged, to see certain clauses of the last will [3] . . faithfully executed. . . [495] shows, that in . . 1825, Madame . . Mourain [another heir], residing . . now in . . France . . became the purchaser [4] of the plantation

[1] See Moosa *v.* Allain, p. 480, *supra.*

[2] "his executors . . had received to the credit of the estate" $1,297,045. Garnier *v.* Poydras, 13 La. 177 (178).

[3] For the English text see Moosa *v.* Allain, p. 480, *supra.*

[4] "for herself and [sister] . . jointly" Bonneau *v.* Poydras, 2 Rob. La. 1 (3). The plantation was partitioned in 1834. *Ibid.* 10.

and slaves . . on the . . Mississippi, where . . Julien Poydras died,' " [502] " and . . subscribed to the conditions imposed by the will." In January 1835 she [495] " advertised . . for sale at public auction, the one half of the said plantation . . and forty-one or forty-two of the slaves . . to be sold individually," [493] " except children, who were to be sold with their mothers," [495] " and separated from the said plantation." [502] " He obtained a provisional injunction . . [503] to stay the sale" [495] " The defendant pleaded an exception to the plaintiff's . . right to sue . . avers, that she had a right to sell . . [496] that the will of . . Poydras . . has been already decided upon . . in . . Moosa *v.* Allain, . . and that the decision is in favor of the right . . to sell them separately from the plantation." Exception overruled. Judgment in favor of the plaintiff and the injunction made perpetual.

Affirmed: [503] " An exception to the present plaintiff's capacity to institute a suit of this kind, was pleaded in another case, relating to a number of these slaves,[1] . . this court . . maintained the plaintiff's right of action . . . [504] The right of the purchaser in [Moosa *v.* Allain] . . was considered merely in regard to the then plaintiff . . a slave . . . [505] Justice requires that the defendant should not be permitted to disregard the obligation she has solemnly contracted." [Martin, J.]

*Boisdere and Goule (f. p. c.) v. Bank,* 9 La. 506, December 1835. " the Citizens' Bank of Louisiana, was incorporated by legislative act, . . [507] 1833. The third section describes who may become subscribers, . . 'all persons who shall be . . owners . . of real property within this State.' " [509] " The plaintiffs . . allege that they were original subscribers and stockholders " [507] " one for two hundred shares or twenty thousand dollars, and the other for one hundred and fifty shares, or fifteen thousand dollars," An amendatory act, passed in 1836, provided [506] " that no person or persons who are not free white citizens of the United States, and domiciliated in . . Louisiana, shall be . . owner of any part of the capital stock"

Held: [511] " the legislature only intended to provide, that hereafter none but free white citizens shall become stockholders . . for we cannot consider the legislature as having . . [512] imposed a condition constitutionally . . impossible, that of annihilating the . . vested rights of the plaintiffs, without their consent." [Bullard, J.]

*Tagiasco et al. v. Molinari's Heirs,* 9 La. 512, December 1835. [513] " action . . by the executor and brother of Marie Louise Tagiasco, f. w. c., . . to recover a lot . . with its improvements, . . which . . Marie Louise and Jean Tagiasco, f. p. c., inherited from their . . mother, Louise Baptiste Roux. . . which they allege were sold . . 1816, by . . Molinari to . . Marie Louise Roux, for . . three thousand dollars cash, he . . reserving to himself the usufruct . . during his lifetime; . . Molinari died . . 1833," [517] " The facts . . are . . Molinari, late husband of the defendant, previous to his marriage . . lived in a state of concubinage with

[1] Poydras *v.* Taylor, p. 509, *supra.*

the testatrix, Roux, . . during the period of the concubinage, . . the paramour conveyed to his concubine the property . . in opposition to the title set up . . a counter letter [[514] ' bearing the same date as the deed '], signed with the ordinary mark of the pretended purchaser, . . attested by two [[515] ' perfectly honest '] witnesses, was admitted in evidence on the part of defendant. In this instrument, the concubine acknowledges that the deed to her was fictitious " [514] " that the three thousand dollars . . Molinari himself had the very same day lent to Marie Louise Roux, in order that . . an appearance of truth . . might be given to the sale,"

Judgment for the defendants affirmed: [522] " the act of sale . . was fictitious, and intended to disguise a donation made to her, which could not legally be done." [Mathews, J.]

*Anderson's Executors v. Anderson's Heirs,* 10 La. 29, March 1836. Will of John Anderson: [31] " I leave to Phebe [[34] ' emancipated by the will '] one hundred acres, known by the name of Taguinos Place, with all the improvements . . and four negroes, *viz.*: Phil, Jeanny, Big Louisa and Long Frank, and one thousand dollars in cash, to be invested in bank stock. At the death of Phebe, the said land and negroes, and increase, to become the property of a yellow boy . . son of Jeanny; and in case of his death, to revert back to my . . heirs. This I do for Phebe, for her long and faithful services to me." The testator estimated his estate at $117,100. [34] " The executors surrendered the estate [before paying or investing Phebe's legacy.] . . They . . demand of the heirs to pay [it] . . They further demand . . the child of [Louisa] . . born after the will was made."

Held: [35] " the will being as obligatory on the heirs to deliver the legacy as upon the executors, the legatee who is not joined in the present suit, has a direct action against the heirs, for this purpose." [Bullard, J.]

*Saul v. Magee,* 10 La. 39, March 1836. [40] " The redhibitory disease is alleged to have been pulmonary consumption of which the slave died . . after the commencement of the suit." [39] " The plaintiff alleges he purchased [her] . . for seven hundred dollars, about nine or ten months ago; . . sick . . ever since, . . cost him in nursing and medical attendance, upwards of one hundred and fifty dollars. . . a supplemental petition . . claiming one hundred dollars for funeral charges. . . Judgment . . rescinding the sale, and decreeing the return of the price with interest, and seventeen dollars for funeral expenses, and costs." Affirmed.

*Banks v. Botts,* 10 La. 42, March 1836. [43] " The plaintiff . . purchased . . William . . 23d of June, 1835, for six hundred dollars, warranted free from all redhibitory defects " [45] " the slave remained at the house of Mr. Jacobs until the 25th, when he was put on board a steamboat, . . during the time he remained at Jacob's, he exhibited none of the symptoms of small pox, and no cases . . had occurred at his establishment for two months. . . the disease made its appearance . . during the voyage to Lafourche, and he died on the 10th July." [43] " The

plaintiff . . prays for the rescission of the sale, the return of the price, . . with seventy-five dollars, expended for medical attendance," Verdict for the defendant. Judgment thereon affirmed.

*Ditch v. Wilkinson,* 10 La. 201, September 1836. [202] "keeping house, making clothes for the negroes, and taking care of the young negroes"

*Cooper v. Cooper,* 10 La. 245, September 1836. [251] "she cursed . . her husband for threatening a negro girl for having told lies about . . [her] daughter."

*Turnbull v. Towles,* 10 La. 254, September 1836. [256] "Dr. . . Towles received of the estate [of his father-in-law] . . Family of negroes . . (Bob, Riner and three children,) . . . $1,625."

*Rice v. Cade et al.,* 10 La. 288, September 1836. "action against . . owners of the steamboat . . to render them liable for the loss of a negro . . [289] Sunday morning . . the steamboat . . stopped at Mr. Cade's landing, . . [290] Witness [overseer], with the negroes and Mr. Cade, all went down to the wood yard, . . three or four of the plaintiff's negroes . . also helped . . to wood the boat. . . Did not . . see . . Arthur, before he was brought out, wounded [[289] 'by the engine or fly-wheel,'] . . [291] Rice lives near . . Cade; is very indulgent to his slaves, and not so strict as Cade in keeping his negroes at home on Sundays; . . Petrie . . saw two of Rice's negroes carrying in wood; is not sure he saw Arthur; . . saw a bottle, out of which the negroes drank; . . [292] Capt. Curry . . states . . After landing at the wood pile, [he] saw . . a great number of negroes, men, women and children, on the bank, looking at the boat. Neither himself, Mr. Cade, nor any other owner of the boat, he is satisfied, knew that any strange negro was on board. . . made it a rule, for . . seven or eight years, . . never to employ . . any slave . . without the consent of the owner, . . and when found on board . . without such consent, to commit . . to the first prison on his route." Judgment against Cade for $850.

Reversed: [294] "The permission to slaves . . may be often implied from the minuteness of the services, . . On the arrival of a stage or steamboat, a number of black boys crowd near it, . . The passengers . . cannot be expected to lose time in inquiring whether . . a slave or a free person, and, in the former case, whether he has his owner's permission. . . many times, the most correct of our citizens buy a melon, or other trifling article, without the production of . . permit [from the master]. . . the act is considered as justified by the maxim, *de minimis non curat lex,* or the proverb, *lo poco por nada se reputa.* The *day* on which the services . . are rendered is thought to authorize . . According to . . law, slaves are entitled to the produce of their labor on Sunday; even the master is bound to remunerate them, if he employs them. He, therefore, who . . on that day . . does not retain them on his plantation, impliedly permits them to earn money by their labor, . . [295] the evidence authorizes us to conclude, that the loss . . was . . purely accidental," [Martin, J.]

*Nichols v. Alsop,* 10 La. 407, October 1836. [408] " the slave . . was affected with epilepsy, at the time of the sale, and never rendered any services. . . the medical bill . . amounted to seventy-five dollars, and the other attendance . . worth fifteen dollars per month. The price paid for him " was $350.

*U. S. v. Ship Garonne; U. S. v. Ship Fortune,* 11 Peters (U. S.) 73, January 1837. " The French ship *Garonne,* from Havre, and the ship *Fortune,* also from Havre, were libelled . . at New Orleans . . 1836, under the provisions of the first section of the act of congress, passed April 20, 1818,[1] . . The ship *Garonne* had arrived in New Orleans . . 1835; having on board . . Priscilla, who had been born a slave in Louisiana, the property of the widow Smith, . . a resident . . Mrs. Smith . . went . . in 1835, to Havre, taking with her, as a servant, Priscilla; having previously obtained from the mayor of the city a passport for the slave, to prove that she had been carried out of the state, and that she should again be admitted . . Priscilla, being desirous of returning to New Orleans, from Paris, was sent back on board the *Garonne,* under a passport . . [74] in which she was described as a woman of colour, the servant of a citizen of the United States. On the arrival of the ship, the baggage of the girl was regularly returned as that of the slave of Mrs. Smith. The facts of the case of the ship *Fortune* . . Mr. Pecquet, a citizen of New Orleans, went to France in 1831, taking with him two servants, who were his slaves; as was alleged in the testimony, with an intention to emancipate them. They . . returned to New Orleans at their own instance, in the ship *Fortune,* in 1835, as was asserted, as free persons. The passport . . represented these females as domestics of Mr. Pecquet, . . After their return . . it did not appear that they were . . held . . by any person, as slaves; but no deed of emancipation for either of them had been executed. . . in the list of passengers which was certified under the oath of the captain, these persons . . were stated to be the slaves of Mr. Pecquet. The declarations of Mr. Pecquet that these persons were brought back as free . . were in evidence. The district court . . dismissed both the libels,"

Decrees affirmed: [76] " In the case of the . . *Garonne,* . . [77] even assuming that by the French law . . [Priscilla] was entitled to freedom, the Court is of opinion that there is nothing in the act of congress . . to prevent her mistress from . . sending her back to her place of residence; and continuing to hold her as before, in her service. The object of the law in question was to put an end to the slave trade; . . The language of the law . . cannot properly be applied to persons of colour who are domiciled in the United States, and who are brought back . . after a temporary absence. . . [78] The principles above stated decide also the case of . . the ship *Fortune.*" [Taney, C. J.]

*Morton v. Pollard (f. w. c.),* 10 La. 552, February 1837. Action to recover $675 " which the defendant agreed to pay . . for building a sugar mill."

[1] " an act, in addition to an act, to prohibit the introduction of slaves into any . . place, within . . the United States . . after the first day of January, 1808."

*Hall v. Emerson's Curator and Heirs,* 11 La. 1, March 1837. See Heirs of Emerson *v.* Hall, p. 519, *infra.*

*Thomassin (f. m. c.) v. Raphael's Executor (f. m. c.),* 11 La. 128, March 1837. " The plaintiff alleges that he is the sole . . heir of Charlotte Geneviève Raphael," [131] " The facts . . are . . The testatrix . . had a natural son called Jean Baptiste Thomassin, jr., [[129] 'a griffe,'] who intermarried, in 1806, with Charlotte Montreuil. From this marriage were born two children, of whom François, the plaintiff, is the survivor . . At . . the birth of Thomassin, jr., his putative father, Thomassin, sr., was a slave, and being afterwards emancipated, was married to Charlotte Raphael, in . . 1826, by the curate of St. Louis church, in . . New Orleans." [130] " The certificate of the celebration of the marriage . . contains an acknowledgment [of Thomassin, jr.] . . by his mother " but it was [129] " only signed . . by the priest, who celebrated it."

Held: [132] " where the parties are persons of color, . . the law expressly declares, that the only mode in which the acknowledgment can be made, shall be 'by declaration executed before a notary public, . . whenever it shall not have been made in the registering of the birth or baptism of such child.' [1] " [Carleton, J.]

*Hendricks' Curator v. Mon,* 11 La. 137, March 1837. " deceased, f. m. c., . . [138] occupied the premises . . and kept a grocery store in a part of them;" [137] " owed . . five hundred dollars for rent,"

*Rodriguez v. Vassant,* 11 La. 165, March 1837. [166] " The plaintiff's slave having absconded, was found, as he alleges, in the possession of the defendant, who refusing to restore him, suit was brought therefor, the slave sequestered [in February] and detained in jail, *pendente lite.* . . [167] Doctor Ker . . declares, 'that last summer he attended a black boy in prison, . . that he died [in September] of a pulmonic complaint following the measles; . . that the measles are not a dangerous disease, but become so when in a damp place; . . believes there was at that time, or shortly before, a negro belonging to . . Pandelly, affected with the measles.' "

" We think, with the parish judge, that the plaintiff was in error as to the identity . . But . . testimony . . does not show with sufficient certainty, that the death . . was caused by any disease arising from his detention in jail. . . [168] decreed, that the defendant . . plaintiff in reconvention, recover from Rodriguez," $146.50 [167] " for his services from . . the date of the sequestration, until . . he died," [Carleton, J.]

*Laclotte's Heirs v. Labarre, Tutor,* 11 La. 179, March 1837. [180] " Mlle. Jeanne Laclotte " [181] " was the illegitimate child of a white man by a colored woman, a native of St. Domingo, . . the plaintiffs are the natural brothers and sisters " [180] " Margaritte Laclotte, styling herself the natural child of the deceased . . has instituted proceedings to obtain . . the estate;" " The petitioners aver . . that she . . is, in truth,

[1] C. C. 221.

the child of her slave. . . [181] The court . . recognized the heirship of the petitioners;" Affirmed.

*Burke (f. w. c.) v. Clarke,* 11 La. 206, March 1837. [207] " Fortescue, a colored man, employed on board . . says, the plaintiff came on board . . and said she was going to Nashville to see her child; that she had a servant girl which she wanted to hire to the captain, as chambermaid, until she returned. . . Witness heard the captain [and owner] agree to give twelve dollars per month " " the plaintiff's agent . . on her return . . called on Captain Clarke for the slave, but he refused to deliver her up, saying he would keep her all the summer, and take her to Cincinnati, where she would be safe, as he would not let her go ashore without some one accompanying her. . . Clarke returned . . and told . . that the girl left him on the second trip up at Louisville." [209] " she made her escape or was drowned." Held: [210] " The plaintiff is entitled to one thousand dollars, the value of the slave, and her wages . . we allow one month."

*Sarcé v. Dunoyer's Executor,* 11 La. 220, March 1837. " Dunoyer . . 1833 . . made a nuncupative will . . emancipated and instituted several colored people his universal legatees." [222] " In 1835 he made another testament . . by which he also emancipates his slaves, and leaves them each a small legacy;"

*Madison (f. m. c.) v. Zabriskie (f. m. c.),* 11 La. 247, March 1837. " The plaintiff claims an improved lot of ground in . . New Orleans, . . [250] The parties to the act . . of sale . . were ignorant colored men, neither of whom knew how to write."

*Gravier v. Cullion,* 11 La. 269, March 1837. [270] " his succession being divided among his three natural children, this lot and the improvements became the share of Elizabeth [f. w. c.], . . who was one of them."

*Mulhollan v. Eaton,* 11 La. 291, March 1837. " in March, 1834, he agreed . . to advance, and did advance fifteen thousand dollars . . [292] to purchase slaves to be sold or used in Louisiana, for which he was to have a share of the profits, or take out such slaves as he might want for his plantation. That in the fall of 1834, the defendant made four shipments of slaves to Louisiana which he had the entire control of, both in buying and selling. This . . partnership was limited to . . 1834."

*Thompson v. Thompson,* 11 La. 324, September 1837. [325] " August, 1815, . . he sells . . Becky, and her two infant children . . for . . one thousand dollars." Some years later the vendor proposed that if the vendees [326] " would let him have Becky's two children . . he would give them two other likely young negroes of equal value "

*Youngblood v. Flagg,* 11 La. 337, September 1837. [339] " General Youngblood . . [340] came [from South Carolina] to Louisiana . . 1829, with the [twenty-three] slaves . . and settled in Attakapas as a sugar planter,"

*Foster v. Foster,* 11 La. 401, September 1837. [403] "induced his brother . . to leave his family in Mississippi [in 1830], and come with his [eighteen or nineteen] slaves to . . Louisiana," Later on [407] "merchants, residing in New-York, . . held a mortgage on several of the . . slaves" [405] "for goods sold"

*Frank (f. m. c.) v. Powell,* 11 La. 499, January 1838. [500] "The plaintiff was born in Pittsburg . . of a slave accompanying her owner [from Maryland to Kentucky] . . during a stay he made in that town while . . detained by sickness, and the inclemency of the weather. He was afterwards, while a lad, brought by a person who had purchased him on the death of the owner, . . to Cincinnati, where he . . [502] resided a considerable time in the family of . . [the new owner's] son-in-law" He was later [501] "hired [by his owner] to an innkeeper, on an understanding, that as soon as his wages would produce [$150 to the hirer,] . . he should be free. He remained but a few weeks . . and eloped; he was afterwards taken," [499] "and delivered to . . Harris, and carried into . . Kentucky; and after much cruel treatment [as he alleges], he was passed into the hands of . . Powell, who brought him to this State, . . and offers to sell him for [$1500.] . . The district judge . . concluded, that even if . . a slave when . . taken to . . Ohio, . . he became free from . . residing there with the consent . . [500] of his then owner." Affirmed.

*Noe v. Taylor,* 11 La. 551, January 1838. [554] "July, 1835 . . Taylor agreed to sell . . Noe, a tract . . with sixty-nine slaves, . . not to be warranted such for life, nor the titles to be warranted otherwise than conformably to such decree as has been, or may be rendered by the supreme court of Louisiana, in regard to the will of Julien Poydras, in relation to said slaves." [1]

*Tournoir v. Tournoir,* 12 La. 19, February 1838. Nuncupative will made in 1831 "in which the testator bequeathed . . a tract of land, six slaves and four thousand dollars . . to . . Fanny Richér, f. w. c.,"

*Langley's Heirs v. Langley's Executors,* 12 La. 114, February 1838. "George Langley made a nuncupative will . . 1836 . . [115] directed, that fifteen of his slaves be emancipated immediately on his death, and that they receive all his personal property." One of the three subscribing witnesses [117] "was not present when the will was dictated . . all present when . . the notary public read the will to Mr. Langley, and when Mr. Langley and the notary, and . . witnesses, signed" The probate court sustained the will. Reversed.

*Taylor v. Penrose,* 12 La. 137, February 1838. "a conditional sale of . . [more than one hundred] slaves for five years, at a stipulated price per annum, which plaintiff reserved the right of receiving in sugar at four cents per pound." "suit was instituted, on the ground, that the defendants had failed to comply . . The plaintiff prayed that the slaves be sequestered . . Penrose . . made application . . to bond twenty-one . .

[1] See Poydras *v.* Mourain, p. 509, *supra.*

refused" Affirmed: [138] "he might have selected the most effective, and left the young and old a burden and expense upon the plaintiff."

*Lopez's Heirs v. Mary Bergel (f. w. c.),* 12 La. 197, February 1838. [198] "The plaintiffs obtained a judgment against Gregorio Bergel, for the amount of a note . . Bergel sold all his property [a house and lot] to a negro woman, formerly his slave, but then kept as a mistress, and when execution issued no property could be found." [15 La. 44] "the subscribing witness was the son of the defendant, and the reputed son of the maker of the note, . . [45] The note was signed by an ordinary mark," Two verdicts for the plaintiffs, followed by a verdict for the defendant. On the fourth trial there was a verdict for the plaintiffs. Judgment thereon affirmed, January 1841.

*Behan v. Faures,* 12 La. 211, February 1838. "The plaintiffs . . purchased a negro man . . for one thousand dollars, . . soon after . . they discovered the slave was addicted to drunkenness, and was so vicious . . when intoxicated, as to be unsafe" Held: [213] "in vices of the mind, the redhibitory action is limited to three, of which drunkenness is not one."

*Patterson v. Behan et al.,* 12 La. 227, February 1838. "The plaintiff alleges, that on Sunday night . . two slaves belonging to the defendants, broke into his store . . and stole [guns and pistols.]" Verdict and judgment for $494.

*Mulhollan v. Huie,* 12 La. 241, February 1838. [242] "the slave . . arrived in this State . . January, 1834," [241] "The plaintiff purchased . . 11th March . . for seven hundred dollars, payable in twelve months, with ten per cent. interest, from the date of his note until paid. . . [242] delivery took place . . 20th . . shortly after the boat had left New Orleans, the . . slave . . was discovered to be very sick ['with inflammation of the brain'], and . . notwithstanding the attendance of two physicians who happened to be on board, he died on the next day," Decreed that the sale be rescinded and that the defendant pay the plaintiff $770.[1]

*Poulard (c. p.) et al. v. Delamare,* 12 La. 267, February 1838. "Joseph Pollard and eleven others . . claim to be in the condition of *statu liberi,* and according to . . the last will . . of their late master,[2] entitled to be emancipated, and allowed an annual stipend of twenty-five dollars. These plaintiffs . . [268] institute suit by Benjamin Poydras de Lalande . . allege, . . That a plantation . . having one hundred and forty[3] slaves thereon, was sold . . 1825, to widow . . Mourain, for the joint account of herself and sister, . . both residing at Nantz, in . . France, and represented by . . Delamare and P. G. Mourain. The petitioners allege, that they are all more than sixty . . and the defendants refuse to emancipate them, and to pay them their annuity"

[1] Act of Jan. 2, 1834, sect. 3.
[2] See Moosa *v.* Allain, p. 480, *supra.*
[3] "143 slaves" 2 Rob. La. 5.

Held: [270] " They are not entitled [to emancipation] . . until after . . twenty-five years from the sale . . the slaves, which the will requires to be kept . . after their sixtieth year, free from labor . . are those which have been emancipated. . . The yearly stipend . . is clearly given in lieu of food and raiment, which masters are compelled to give . . and to which freedom destroys the right." [Martin, J.]

*Conolly et al. v. Bertrand (f. m. c.),* 12 La. 313, February 1838. " The plaintiffs . . 1836 . . procured a negro woman . . at auction, sold as the property of the defendant, [for $745;] . . is an idiot and incapable of performing any service whatever, . . The defendant . . purchased . . from . . Bienvenu [for $760] . . prays that . . [he] be cited in warranty . . Bienvenu . . [314] purchased her from . . Petitpain [for $725] . . calls [him] in warranty to defend. . . verdict . . rescinding the sale, and requiring the price to be returned with costs; and that the several vendees have judgment against their vendors," Affirmed.

*Cuny v. Robert,* 12 La. 474, February 1838. " the plaintiff . . purchased ['a female slave and her child'] from . . Russell . . 1832 [for $700] . . The defendant averred that he purchased . . from . . Franklin, in New Orleans . . who . . purchased from . . Nichols, of . . Tennessee, who bought from . . Armstrong, of Tennessee, who avers that . . Russell, put the slave . . and others, into his . . hands to sell "

*Hood v. McCorkle,* 12 La. 573, February 1838. [574] " plaintiff's slave [valued at $1700] came in at twelve o'clock, and weighed his cotton and went off. In about two hours the overseer missed him, and went to . . neighbors . . and desired them (and among others the defendant . . overseeing for . . Chambliss, adjoining) to accompany him the next day in search . . The same evening the slave was discovered quarrelling with the slaves of Chambliss, and had a butcher knife in his hand. The defendant was sent for . . the slave ran, and on getting over into plaintiff's field and on refusing to stop . . the defendant shot him down on the spot. . . verdict for the defendant." Judgment thereon reversed and the case remanded. [16 La. 241] " On the second trial . . additional evidence " " The negro had the butcher knife in his hand, when shot. . . had run away once before." [242] " the jury came again to the same conclusion," New trial refused. Affirmed.

*George v. Fitzgerald,* 12 La. 604, February 1838. " 1835, at New Orleans, he purchased from . . Fitzgerald, of . . Virginia, . . Daniel [for $850] . . Winney [for $650] . . and Billy [for $875] . . guaranteed against all redhibitory . . defects . . That Daniel was afflicted with diarrhoea . . of which he died; Winney had the same disease of which she died; and that Bill was afflicted with a scrofulous and other incurable diseases, which has occasioned him to . . become wholly useless;"

*Zimmer v. Thompson,* 13 La. 22, December 1838. " he became the purchaser of . . Betsy, at auction, for [$1070] . . warranted to be a good house-servant, cook, washer and ironer, and fully guaranteed against all redhibitory vices. . . did not possess the qualifications . . and was con-

sumptive . . The defendants . . purchased this slave with others, from . . Taylor, residing in Tennessee . . The plaintiff . . had judgment," Affirmed.

*Mathews v. Pascal,* 13 La. 47, December 1838. [48] "a redhibitory action, under the Act of 1834, . . [49] the slave . . remained a few days after the sale, on his plantation, in bad health, . . ran away and has not been since found." [54] "decreed . . that the sale be rescinded . . and that the plaintiff recover . . eight hundred dollars," the price paid.

*Heirs of Emerson v. Hall,* 13 Peters (U. S.) 409, January 1839. "In 1829 . . Hall . . presented a petition . . that the estate of William Emerson . . was indebted to him, . . prayed . . that . . the tutor and curator of the children . . should . . pay . . 1830, a decree was given . . against the estate . . Afterwards a case was submitted . . [410] by which it appeared, that . . Emerson died . . 1828; . . he, as surveyor, Chew . . and . . Lorrain . . had, at their sole expense, the . . *Josepha* [*sic*] *Secunda* [*sic*] condemned [in 1820] [1] . . Congress had made no provision for their compensation, . . applied for relief . . and obtained . . an act" [411] "3d March, 1831, . . 'whereas, the one-half of the proceeds . . are now deposited . . which half would have been payable to [them] . . but for an omission in the laws . . be it enacted . . [412] order [it] . . to be paid over to . . Chew, and the legal representatives of . . Emerson and . . Lorrain,'"

Held: [413] "the heirs were intended" "they receive . . gift . . [414] the fund cannot be considered as assets . . for the payment of debts."

*Nott v. Botts,* 13 La. 202, March 1839. "The alleged redhibitory vice is that of the habit of running away. The sale took place . . November, 1835. The slave was hired to the cotton press, and left the press . . May, 1836—the plaintiff says by reason of sickness, . . returned to the cotton press . . June, 1836, staid one day, and has not since been seen. . . broker . . to sell the slave . . testifies that after the sale . . [203] witness asked [the slave] . . how he liked his situation? The slave answered, very well. That defendant then observed, he feared he might have some trouble about him; . . afraid he would run away, as he had given him the slip up the country." The district judge considered the "story . . not very probable." "The witness is at enmity with the defendant—is a negro broker. . . There is nothing extraordinary in the fact of a negro coming from Kentucky, where they are treated almost on an equality with their master, running away in Louisiana." Judgment for defendant affirmed.

*Baptiste (f. w. c.) v. Soulie (f. w. c.),* 13 La. 269, March 1839. [270] "a redhibitory action, for the rescission of the sale of a mulatto woman and her child [for $900], . . affected with a pulmonary disease, of which they both died. . . verdict for the defendant,"

*Gallier v. Jonau (f. m. c.),* 13 La. 309, March 1839. "The plaintiff . . entered into a written contract with the defendant to build a block of brick stores and dwelling houses in . . New Orleans. . . [310]

[1] See the *Josefa Segunda,* pp. 462, 478, and U. S. *v.* Preston, p. 488, *supra.*

'binds himself to deliver . . finished . . three months after the granite, . . to be furnished by . . Jonau, shall have been put up;' . . The granite . . consisted of posts . . for the first floor . . together with sills for the . . [seventy-five] windows in front, . . The defendant . . contends that the demurrage should count from the erection of the pillars in the first story. . . that the setting of the . . sills depended upon the progress . . in building the walls, by which he might retard the placing of these pieces . . at his pleasure." Buchanan, J.: "This . . consideration . . should have presented itself to Mr. Jonau before signing the contract."

*Lobdell v. Bullitt,* 13 La. 348, March 1839. [349] "The plaintiff . . embarked with his family, servants . . the officers in the night induced . . Job, a good carpenter, . . to work as a fireman; . . fell . . overboard, and was drowned. . . the steamboat was unprovided with a yawl . . and . . ropes . . The slave was proved to be worth one thousand five hundred dollars, for which judgment was rendered." Affirmed.

*Pavageau (f. m. c.) v. his Creditors,* 13 La. 354, March 1839. "The plaintiff having made a surrender of his property . . Crocker presented a note of $787, . . secured by a special mortgage on one of the slaves surrendered"

*Goldenbow v. Wright,* 13 La. 371, March 1839. [373] "the boy [slave] about thirteen . . went on board . . unperceived by the defendant [master of the boat] . . in company with a sister . . a connection of the wife of the cook, who, discovering the boy . . employed him as an assistant . . not concealed . . supposed . . drowned . . A boat was sent . . in vain." Verdict of $600 for the plaintiff. "bill of exceptions taken to the admission of the deposition of William Black, a black man, on the ground that he must be presumed to be a slave; . . no evidence of his freedom, except . . he avers he was free, and had free papers. . . was examined twice, and cross-examined on the part of the defendant," Held: he "ought not to be permitted to repudiate testimony of which he had sought to avail himself."

*Lalanne's Heirs v. Moreau,* 13 La. 431, April 1839. "allege that they are the sole heirs of their . . mother, . . f. w. c., and inherited . . a house and lot"

*Priscilla Smith (f. w. c.) v. Smith,* 13 La. 441, April 1839. See U. S. *v.* the *Garonne,* p. 513, *supra.* "suit for freedom. The plaintiff was the slave of the defendant . . when . . the latter went to France, taking Priscilla . . [442] but, on her entreaty, she was sent back . . and hired out in New Orleans" Judgment for defendant.

[447] "decreed, that the judgment . . be . . reversed; and that the plaintiff be declared a free woman, and that the defendant be for ever enjoined . . from disturbing her in the enjoyment of her freedom, the latter paying costs in both courts." [445] "there have been three decisions of this court [1] . . in which all the members . . concurred, and

[1] Lunsford *v.* Coquillon, p. 476, Louis *v.* Cabarrus, p. 502, and Marie Louise *v.* Marot, pp. 504, 509, *supra.*

which were in accordance with three judgments of the district courts; nevertheless, we have attended to the new considerations . . submitted . . that the legislature has provided two modes of emancipation . . [446] but the legislature has recognized the right of owners to emancipate their slaves in other States.[1] . . further urged, that owners cannot evade the laws of this State . . by taking them out . . To this the answer is, that if . . [such] emancipation . . is to be declared . . void, it cannot be so on the application of a party to the . . fraud. It has been said that the plaintiff cannot be heard, because the law requires emancipated slaves to withdraw from the State. To this it may be answered, that the object of the suit is to procure the means of complying . . and that the Act of 1830 . . authorizes slaves . . emancipated in another State . . to return. . . she comes within the spirit; for the reason why . . permitted . . is, that they have their relations . . and friends here, whom it would be cruel to prevent them from rejoining." [Martin, J.]

*Peyroux v. Chasal,* 13 La. 459, April 1839. Action to rescind sale and recover back the price. " before the sale, the slave was sick all the time with the rheumatism, . . often so sick that he could not use his limbs, or feed himself. . . has continued . . and entirely disables him." Judgment for plaintiff affirmed.

*Adams v. Bell,* 13 La. 555, April 1839. " twenty-three negroes . . hired from Governor Lynch, of Mississippi,"

*Barelli v. Hagan,* 13 La. 580, April 1839. " action . . for contribution to a general average, occasioned by a jettison, for the preservation . . of . . vessel . . on the rocks . . in her voyage from Charleston to New Orleans, . . the defendant had twelve slaves on board," [581] " shipped under a bill of lading." Held: he must contribute.

*Painpaie v. Martin,* 14 Ala. 59, May 1839. " The plaintiff had paid six hundred dollars in cash . . and gave his note for six hundred dollars. The slave fell sick the next day of some incurable disease, . . lingered for a time and died." Held: [61] " he is entitled to recover the whole price "

*Scott's Executrix v. Gorton,* 14 La. 111, October 1839. [112] " At the sale . . Gorton became the purchaser of a negro woman . . and her child, for [$1,165.] . . On examining the woman . . Gorton refused to comply . . on account of . . defects . . These slaves . . were readvertised . . the husband and agent of the executrix purchased them in," [for $560.]

*Gibson v. Huie,* 14 La. 124, October 1839. Gibson [125] " purchased from . . Huie . . of North Carolina, four slaves [for $2450] . . afflicted . . with redhibitory maladies, . . incurable, . . He prays judgment for the return of the price, and [$700] . . in damages, for medical attendance, and other expenses," Verdict for $3,150. On appeal counsel for defendant contended: [127] " the evidence does not show that all . . died of redhibitory defects. Two . . had diarrhoea and a disease of the lungs; were taken sick after the sale, and on receiving medical attendance, be-

[1] Session Acts of 1830, sect. 16, p. 94.

came convalescent, and died . . six or seven weeks afterwards, of a relapse. . . There is only [$255] . . of medical expense proved," Judgment affirmed.

*Cecile (f. m. c.) v. St. Denis (f. w. c.),* 14 La. 184, October 1839. " plaintiff . . alleges, he was induced . . 1838, to execute an act of sale of . . Henry and Mary, to the defendant, while in a state of intoxication, [for $1100] . . worth [$2000] . . and that . . sale was fraudulently obtained . . by the defendant and her husband (a *statu liber*) ; that, at the time, she executed . . an instrument purporting to be her will, . . in which she . . left the two slaves to him . . and . . took a lease . . by which he was to pay her ten and twelve dollars per month each for hire."

*Patterson v. Bonner,* 14 La. 214, October 1839. " The plaintiff . . 1825 . . sold to . . Mrs. . . Bonner, twenty-four slaves, by notarial act, for [$7922] . . for which he received her notes, . . [215] memorandum appended . . ' agreed, that . . Patterson shall have the privilege of redeeming . . within three years after the last instalment . . paid, by repaying the price . . with interest ' . . [217] The last note was paid . . in 1832," [215] " 1834, he made the defendant a tender of the amount due . . she refused . . He prays that . . [she] be condemned to deliver up all . . [216] and their increase, or their value,"

Decreed: [235] " that the plaintiff recover . . the slaves *named* in the petition, or such . . as survive, on paying . . [236] $7922," [Strawbridge, J.] Order on an application for a rehearing: " granted, so far as relates to the plaintiff's claim to the children born during the time the slaves were in . . [defendant's] possession . . but this order shall not prevent the execution of the judgment . . and that in the delivery of said slaves, children under ten years of age shall not be separated from their mothers. But the plaintiff shall give security . . to produce [them] . . to answer the final decree;" The court held in 1841 [19 La. 509] " that the plaintiff has a right to recover the children born during the possession of the defendant. This was our opinion, when we gave the judgment; but . . [Judge Strawbridge] used the expression, ' the slaves *named* ' . . instead of . . *claimed* " " the present case is to be tested by the provisions of the former Code, under which this sale *à réméré* was made. That Code does not expressly state, like the present, that the children of slaves are natural fruits, but it places those children on a quite different footing from the young of animals, which both Codes consider as natural fruits." Neither " the usufructuary . . [nor] the vendee in a sale *à réméré* . . could, nor can make the children born during their possession their own." [1] [Martin, J.]

*Miller v. Holstein,* 16 La. 389, October 1839. [390] " is in moderate circumstances, but owns several slaves."

*Brosnaham v. Turner,* 16 La. 433, October 1839. [437] " Villaverde's title to the land commenced in 1801, . . he died . . 1821, having the day before made a will," [435] " devises all his rights . . to lands . . within

[1] Civ. Code of 1808, p. 118, art. 42; C. C. 536, 537.

. . Mississippi, Louisiana, or the territory of Florida, . . one half . . to the . . children of Dr. Brosnaham, and the other half equally divided between" "the two mulatto children" [437] "Manuel and Francisco Villaverde, free people of color, residing in Florida, . . his natural children, by a slave belonging to him, to whom he gives freedom; and states that the emancipation of the children had been established before. . . no probate . . was . . attempted till . . 1836. The legislative council of Florida, then passed an act . . 'to authorize the county court . . to admit to probate the will.'"

*Armor v. Huie,* 14 La. 346, January 1840. "judgment . . to pay back [$1500] . . the price of a slave . . who died of a pulmonary complaint shortly after the sale."

*McDonough v. Fost (f. m. c.),* 14 La. 350, January 1840. "application for mandamus to the judge . . to grant to the defendant an appeal from his order" Held: "the defendant is entitled to . . appeal."

*Watkinson v. Black,* 14 La. 351, January 1840. "taken from . . Tennessee . . several slaves" to Louisiana.

*Barnett v. Macoin,* 14 La. 428, January 1840. "charges that a negro woman purchased by plaintiff . . was . . afflicted with . . the dropsy, . . [429] died . . about eleven months after" the sale, [428] "and . . that while in defendant's possession the slave had been guilty of . . an attempt to poison her mistress, . . [429] total failure of proof as to the second ground . . some suspicions . . but . . unfounded." Judgment for defendant affirmed.

*Herries v. Botts,* 14 La. 432, January 1840. "The plaintiff alleges that he purchased a slave woman . . with full guaranty, for [$700] . . in cash, and that . . she was afflicted . . with" [434] "an irreducible umbilical hernia" [433] "submitted to two juries, and each time . . verdict for the plaintiff," Morphy, J.: "A new trial . . had been granted . . on the ground that . . the defect . . [was] an apparent one, for which no action lies. On the second trial, the defendant gave in evidence . . that . . she appeared . . a strong, healthy girl. . . the jury . . gave their verdict for the plaintiff, this time, without leaving their seats. They, no doubt, concluded . . apparent . . healthiness . . deterred [him] from making such a close examination . . as he might otherwise have done. . . [434] To discover this malady . . required . . a peculiar kind of examination which is not generally resorted to in relation to female slaves, unless some suspicion is raised by their . . appearance. . . the physicians declare . . that she cannot even perform the household work, . . We must, then, consider this disease as . . redhibitory . . for it is not to be supposed that the plaintiff would have purchased her, had he known it."[1] Judgment for plaintiff affirmed.

*Robinett et al. v. Verdun's Vendees (f. p. c.),* 14 La. 542, January 1840. "action . . by the heirs . . of . . Verdun . . to cancel . . sales . . of

[1] C. C. 2496.

land . . to Jean Baptiste Gregoire, and six or seven other colored persons, alleged to be his illegitimate children. . . [543] Evidence was offered to prove . . illegitimate . . their counsel objected . . received, . . verdict . . against all the defendants, except J. B. Gregoire;"

Affirmed: [545] "although children of color (from a white person) are not allowed to prove their natural paternal descent, when they have not been legally acknowledged, . . their natural paternal filiation can . . be proved against them.[1] . . [546] particularly when in opposition to the true object of the law, it is pretended that the absence of a legal acknowledgment ought to afford them a greater advantage . . than if . . acknowledged. . . it will not be amiss to remark again . . 'very important considerations . . impose on our courts a stricter observance of the laws [than in France] relative to illegitimate children, especially to those of color.'[2] . . It appears to us, also, very clear, that the object of the law[3] . . is to exclude illegitimate colored children from any right in the estate of their white natural father, by whom they have not been duly [legally?] acknowledged, and that they can only set up such a right when . . father is a man of color." [Simon, J.]

*Verdun's Heirs v. Verdun's Executor and Legatees,* 15 La. 28, March 1840. "action by the collateral heirs of . . Verdun . . to annul his last will . . drawn up by the parish judge, in the form of a nuncupative will, by public act, in the presence of and signed by three witnesses." [30] "Ce testament en a été dicté à moi dit juge en presence des témoins . . et l'ayant lu au testateur . . il a declaré parfaitement comprendre et y perseverer." [29] "The legatees were illegitimate colored children of the testator, together with their mother. . . judgment annulling the will,"

Affirmed: [30] "it contains no mention of its having been dictated by the testator to and written by the notary, and written by the notary as dictated by the testator. . . [31] also void as a nuncupative will under private signature," which requires five witnesses "unless, . . being made in the country, a greater number than three cannot be procured. . . not even shown that any attempt was made to get more . . than . . required . . by public act." [Simon, J.]

*Bob and Milly et al. v. Nugent's Syndics,* 15 La. 63, March 1840. Will of Timothy O'Hara of Mississippi, dated 1824: "It is my will, that . . Bob, and Milly his wife, and her seven children . . be set at liberty, . . [64] Bob and Milly at my death, and the . . children when the youngest of them . . shall have attained . . ten years; and in case the laws . . of Mississippi should not admit them to be emancipated, I . . enjoin it on my executors . . to carry or send them all into . . Ohio . . and afterwards to bring them again into this State (Mississippi), in case the laws . . will admit them, and they . . desire it . . that . . one hundred dollars be paid . . to each . . after their freedom is established . . that the necessary

[1] See Jung *v.* Doriocourt, p. 495, *supra.*

[2] Same *v.* same, [180] "Cases of bastardy, . . rare . . in France, are unfortunately, much more frequent among us."

[3] C. C. 226.

expenses . . be paid out of . . my estate, . . I give . . to . . Nugent . . all the . . residue of my estate: Provided, he shall take or send the negroes . . into . . Ohio," If Nugent " should fail to emancipate . . the residue . . to . . Bowles . . and on his failure . . to . . Chew," [65] " The executor made no attempt to obtain the consent of the legislature,[1] but removed with the slaves to this State, where he procured money on a mortgage upon them." [64] " The district judge decreed the plaintiffs their freedom,"

[66] " decreed . . that the judgment . . be . . reversed, and that there be judgment for the defendants as in case of nonsuit." The plaintiffs [65] " have a right to stand in judgment for the purpose of compelling the executor to emancipate them, . . but this must be done contradictorily to the executor. . . The syndics have an interest adverse . . but they cannot be listened to in the absence " of the executor. [Martin, J.]

*Mix v. Mix,* 15 La. 66, March 1840. " He . . gave a legacy [in 1839] in slaves to his sister . . [67] and her daughter, of New Haven, in Connecticut,"

*Bernard v. Pyburn,* 15 La. 126, March 1840. [127] " This suit was instituted . . to recover the value of a negro [[126] ' worth fifteen hundred dollars '], alleged to have been shot and killed by one of defendant's slaves, through the order of his master, . . The defendant pleaded . . that the death was . . whilst . . killing . . defendant's hogs, at ten o'clock at night; . . merely accidental, . . tried three times; there was a mistrial; two verdicts . . in favor of the defendants," Judgment affirmed.

*Ware (f. m. c.) v. Canal Co.,* 15 La. 169, March 1840. " the plaintiff claims . . two thousand dollars damages . . he was returning . . with his skiff . . with oysters, . . and in passing through the locks, . . he was " [170] " by the . . lock-keeper cruelly beaten, stripped of his clothes, and put in the stocks, on a plantation near the canal, and kept in confinement several hours; . . under the pretext that he had not paid the toll, although . . not . . demanded . . The plaintiff obtained judgment " for $150. [173] " ordered, that the judgment . . be reversed; and that ours be for the defendants, with costs in both courts." [172] " he clearly stepped out of the line of his duty " [Morphy, J.]

*State v. Judge of the Commercial Court,* 15 La. 192, March 1840. [194] " John N. Stiles, a free man of color, imprisoned under the ' act to prevent free persons of color from entering . . this State, . . approved March 16, 1830,' applied for a writ of *habeas corpus,* . . denied him, on the ground ' that the subject of the colored population . . is, by the Constitution of the United States, referred to the legislation of each separate State, and that the law under which the party is arrested, is not opposed to the Constitution of the United States,' . . The applicant prayed an appeal . . refused, and he has filed his petition . . for a mandamus to the judge, commanding him to allow the appeal." Refused: not a civil case.[2]

[1] Miss. Rev. Code, pp. 385, 386, sect. 75.

[2] Not till 1845 was appellate jurisdiction in criminal cases given to the Supreme Court of Louisiana by the constitution of that year, and "on questions of law alone."

*Forsyth v. Despierris,* 15 La. 215, March 1840. [216] "the slave . . was purchased . . 12th September . . and . . eighteen days afterwards, was admitted into Dr. Luzenberg's hospital, . . died on the 18th October . . On a post mortem examination, Dr. Luzenberg gave . . his decided opinion, that the disease . . existed before the sale, . . incurable. Another physician, who had attended . . about fifteen days before the sale, stated that he had had an attack of the pleurisy, and was sick eight days; . . left him . . '*bien portant*;' . . not afflicted with the disease stated by Dr. Luzenberg. . . judgment rescinding" Affirmed: [217] "more weight must be given to the opinion of the physician who . . made a post mortem inspection"

*Emmerling v. Beebe,* 15 La. 251, March 1840. [252] "averring . . that the slave was . . under the control of . . Moussier, who permitted him to hire himself out, and with whom they had settled for his wages. . . that when the slave was hired on board [[251] 'their steam towboat'] . . he exhibited free papers."

*Maloney v. Doane,* 15 La. 278, March 1840. "The plaintiff charges the defendant with having . . maliciously . . caused him to be imprisoned [on a charge of harboring his slave] . . five months, at the expiration of which . . acquitted" [281] "The defendant . . avers that he had sufficient probable cause." [279] "anonymous letter purported to be addressed to . . Jones, . . charging him with cruelly whipping and maltreating the servant girl . . charged with being harbored by the plaintiff. This letter was found under the defendant's door, who . . was owner . . The letter states that she was out of his reach and he had better sell her as she was; that there were friends who would buy her, to get her clear of bad treatment, . . in . . [plaintiff's] handwriting,"

*Freeman (f. m. c.) v. Sheriff,* 15 La. 476, March 1840. [478] "a judgment was obtained for twenty-five dollars and costs, against the present plaintiff. An appeal was taken to the parish court, and dismissed by consent." [477] "Execution, however, issued . . in virtue of which the lot . . was seized." "Plaintiff . . prays for an injunction, . . The district court dissolved the injunction, gave judgment against plaintiff for costs;"

Decreed, that the judgment be [479] "reversed, and that the injunction be made perpetual, with costs in both courts." [478] "According to articles 1140, 1144, 1145, of the Code of Practice, a judgment rendered by a justice of the peace . . cannot be made out of the sale of . . real property" [Simon, J.]

*Goule and Lambert (f. p. c.) v. Vidal et al. (f. p. c.),* 15 La. 479, March 1840. "action against Merced Vidal, f. w. c. as principal, and M. Debergue, f. m. c. as surety on a merchant's account" for $366.29. Judgment for the plaintiffs affirmed.

*Serapurn v. Bousquet et al.,* 15 La. 509, March 1840. "The testimony of two physicians . . One deposed, that three days after the sale he was

called in, and the negro boy was affected with a *gastro autérite,* . . [510] not incurable . . The other states, it was through the . . neglect of the defendants, and the want of regular medical aid for nearly a month, that caused the boy's death. . . at the time of sale, it was proclaimed . . that the boy . . was sick of a fever . . The price . . was [$430] . . which was included in the note sued on. The district judge was of opinion . . that the defendants should be allowed the price, and have it deducted "

Reversed: [511] " Had it been proven . . [512] that the slave had received . . all the necessary care . . there would have been no doubt . . of their being entitled to the reimbursement " [Simon, J.]

*Taylor v. Andrus,* 16 La. 15, September 1840. " The plaintiff alleges, that he hired, for one year, . . Henry, of the value of [$1500] . . to the defendant, as an ostler . . [16] The evidence . . showed, that the defendant employed . . Henry to drive a wagon and team in hauling wood to his hotel . . some of the horses took fright . . The boy was thrown off . . died. . . One witness . . declared that when the boy started, he heard the defendant forbid . . Henry from putting the vicious horse in the wagon. . . disobeyed," " when he was about using him, on a former occasion, to drive a hack, he asked the consent of . . the owner; but . . in the present case, he had not done so. . . [17] verdict of seven hundred dollars for the plaintiff;"

Decreed, [20] " that the judgment . . be . . reversed, the verdict set aside, and that there be judgment for the defendant, with costs in both courts." [18] " An intelligent being like a slave cannot be assimilated to a horse or an inanimate object, the particular uses . . of which are limited, . . A slave, although hired as possessing a particular talent, is expected to render numberless other services," [Morphy, J.]

*Loussade v. Hartman et al.* 16 La. 117, September 1840. " The plaintiff shows that his slave Sandy, was on his way to . . the house of a neighbor . . where he had written permission to go every evening to see his wife and children; . . about . . 10 . . he was arrested . . by the [four] defendants . . [118] Hartman and Theriot, two of the defendants, . . averred that they were doing the duties of patrol . . demanded his pass, which after much insolence the negro produced, and it was pronounced by the patrol not to be legal; he was ordered to be whipped, when he broke away . . One of the party went . . after him, when the captain called to him to stop and not further trouble the negro, when the person replied no damned negro should run over him." [117] " The defendants [according to the plaintiff] pursued him to the bayou, threatening to kill him, when . . he threw himself into the bayou, to avoid being taken, and was drowned. The plaintiff further alleges, that . . [118] slave . . was a good mechanic and carpenter . . worth three thousand dollars. . . two of the defendants . . averred that . . one . . took a pirogue, and attempted to save him from drowning, . . Hartman, did not pursue . . verdict for the plaintiff, in the sum of one thousand dollars, . . judgment thereon, against Hartman and Theriot,"

Decreed, [120] " that the judgment . . be . . reversed, and that there be judgment against the plaintiff, as in case of nonsuit, with costs in both courts." " because . . [the judgment] is not against each . . for his proportion of . . damages, and because their co-trespassers are not included " [Martin, J.]

*Cuny v. Robert,* 16 La. 175, October 1840. Letter [179] " by Russell to F. W. Armstrong, . . Alabama, dated in the parish of Rapides, . . 1827." [177] " I came out . . and found Edmond and Terry [slaves] in deep distress " [179] " by ' the separation of Vincent and Lavinia.' He directs Armstrong to deliver Vincent to his mother-in-law, and take a receipt from her, stating that when he should refund . . five to eight hundred dollars, Vincent should be returned. He speaks of . . a runaway . . who he expects to come in that day, and says if he gets [him] . . ' you will receive [him] . . by the first conveyance. . . Do the best with George, Lavinia and Nelson, and apply . . proceeds to your own debts ' . . [180] Armstrong . . delivered . . Lavinia to Robert Armstrong [in 1827], who sent her to New Orleans, in the early part of . . 1829, and gave F. W. Armstrong credit for five hundred dollars on a debt " [177] " 4th March, 1829, R. Armstrong sold to Nichols [in Tennessee], for . . five hundred dollars." [175] " Franklin . . purchased . . of . . Nichols," Defendant [178] " purchased . . from . . Franklin, in New Orleans, . . 10th March, 1829," [175] " the plaintiff alleges he purchased [Lavinia and her child] from . . Russell, . . 1832, for . . seven hundred dollars," Held: [179] " The alleged power to sell, . . contained in . . letter [is] . . [181] too indefinite "

*Nelson v. Lilliard,* 16 La. 336, October 1840. [339] " The sale [in March 1837] of the five slaves, made in a lump for five thousand dollars, states that the vendor warrants them sound *in body* except the boy Solomon, and sound in mind, except the boy Willis," [338] " Willis was an idiot, and since the sale the vendors have taken him back; . . [339] Several physicians were examined, . . proven that . . Solomon had the seeds of consumption perhaps eight months, previous to the physicians having first seen him . . latter part of the summer of 1837; . . That Moses died . . June, of epilepsy, or of a stroke of the sun; . . had had an attack . . April, . . found once . . foaming at the mouth, . . That Cynthia died in September, complained of her hip, and was lame from a week or ten days after Nelson bought her . . that Frank is alive, able to work moderately, but has been sick four months in the summer, . . that plaintiff was in the habit of treating his slaves kindly, that they were generally well clothed and well fed, and that . . Lilliard, admitted at one time, that ' the slaves . . were an old, *no account* set of negroes, and if he had known . . they never should have come out from Virginia.' " [340] " judgment . . in favor of the plaintiff, only for the reimbursement of the prices of Moses and Cynthia,"

*Miller v. Holstein,* 16 La. 395, October 1840. Strawbridge's brief: [398] " Take another case [of slander], a man is called an abolitionist;

if the words were uttered in London, they would be complimentary instead of libellous, yet here they would as certainly exclude him from society as calling him a colored man;"

*Elizabeth Thomas (f. w. c.) v. Generis et al.,* 16 La. 483, December 1840. [484] "The plaintiff alleges she was born free," [486] "The evidence shows that the warrantor [Vanlandingham] purchased the plaintiff . . in . . Virginia . . about 1814; . . brought her to his farm in Kentucky, where she remained . . until about . . 1832 or 1833; that the plaintiff being then sick, . . requested to be transported to Shawneetown, in . . Illinois, to be there put under the care of an eminent physician . . that during the warrantor's absence, she was taken . . with the consent of his overseer; . . [487] resided in Illinois until . . 1837, when she was brought down to Louisiana, and sold to the defendant by the warrantor. . . that the warrantor had a house and store in Shawneetown, that his family resided there for some time, that plaintiff lived in her master's house in that place, and that the warrantor was there at various times. A respectable witness also swears that Vanlandingham told him that plaintiff went . . with his . . consent. The constitution . . of Illinois . . declared that . . 'involuntary servitude shall not be thereafter (after 1819) introduced' . . Judge Scates, who was examined and gave his opinion as a lawyer on the . . constitution of Illinois, says . . that the consent . . of the owner is immaterial; if the slave be held in *involuntary* servitude in Illinois, she becomes immediately free . . but that cannot be involuntary to which she *consents,*" [485] "The district judge decided, that . . the plaintiff became *ipso facto* free, by residing there with the consent of those who held her in slavery, and being once free could not be made a slave. . . judgment declaring the slave a free woman, and decreeing the warrantor to return the price,"

Affirmed: [488] "It is . . perfectly clear to us, that . . she was under no obligation to serve him there; . . [489] The opinion of Judge Scates . . must yield to the principle so well recognized . . that a slave has no will, and cannot give any consent;" [Simon, J.]

*Nelson v. Botts,* 16 La. 596, December 1840. "action for overseer's wages. The plaintiff alleges, he entered into a verbal agreement with the agent of . . Bell . . to be employed . . for one year from the first of January, 1839, at . . one thousand dollars . . to be found his sugar and coffee, and allowed the hire of . . [his] negro woman as a field hand, worth ten dollars per month. . . October . . discharged without cause, and without pay [by Botts who] . . came . . as owner, . . It was in proof that plaintiff took with him . . to the plantation, a negro woman, a strong able-bodied field hand, . . but was a part of the time not in a situation to do much work. The plaintiff required of Bell a cook, who told him if he chose to turn his woman into the field, he would furnish him a cook. Witness says, in all cases overseers are entitled to a cook."

[600] "decreed, that the plaintiff do recover . . one thousand dollars" [599] "The right to . . additional sum [for the hire of his negro woman] does not appear . . to be sufficiently proved."

*Robert (f. w. c.) v. Allier,* 17 La. 4, January 1841. Appeal from the commercial court. [5] " The plaintiff, Geneviève Robert, f. w. c., (*dite* Aubertine) claims the notes . . or 6,000 dollars of them, as a legacy made to her natural and acknowledged daughter, Maria Josepha Robert, . . [6] f. w. c., . . born in New Orleans . . 1816 . . Her father unknown; [she [10] 'had never been acknowledged by her father'] but she was acknowledged by her mother by an act of procuration passed before a notary public, . . 1835, in which she gave her consent to her daughter's marriage with Gustave Allier, (the defendant) and appointed Pierre Dupuis to represent her as mother; she residing in Louisiana; her daughter and the other parties in France. The daughter had left New Orleans with her mother's consent, in 1822; . . remained until her death, . . 1837, prior to her intended marriage. . . By the will of Louis . . Dupuis, who died . . in France, . . 1828, a legacy of 6,000 dollars was bequeathed to Maria and the naked property of one third . . [6] of 2,000 dollars was given her, and the usufruct to her mother. . . The defendant claimed the legacies and all the property of Maria . . under her olographic will [made in 1837], . . 'Je donne et legue à . . Allier, que je dois épouser, tout ce dont la loi me permet de disposer.' . . not accompanied by any proof." " 1839, the notes in controversy were given by the heirs of Dupuis in payment of the legacy of 6,000 dollars; said notes remaining in the hands of the notary " [11] " until a competent judicial tribunal should decide whether they should be delivered to the plaintiff or to . . Allier."

Held: [16] " This competent tribunal . . was necessarily the court of probates, . . [18] we . . instruct the judge of probates that he ought not to order the . . will . . to be carried into effect, without its being *first* proved before him according to law; unless satisfactory evidence is produced to show that it has been duly proved in France. . . decreed, that the judgment of the commercial court be annulled, . . and . . that there be judgment against the plaintiff as in case of nonsuit, and that she pay costs in both courts." [Simon, J.] See Succession of Robert, p. 546, *infra.*

*Barriere (f. w. c.) v. Gladding's Curator,* 17 La. 144, January 1841. " The testimony of a notary showed that the deceased sent for him . . the day he died . . told him he wished to give all his property to a free colored illegitimate child he had living with one of his sisters in Albany, and to a free colored woman (the plaintiff) with whom he had been living [for fourteen years],[1] calling her his housekeeper. On being told . . [145] he could not . . disinherit his brothers and sisters, he then desired to pass a sale of the house and lot he lived in to the woman, but the notary refused, . . About four o'clock he made the note [for $4000] . . in place " of them. [147] " estate . . worth $22,600, . . plaintiff had received before Gladding's death . . a slave and some furniture, and . . a check for $700 " Held: [149] " the amount of . . note, . . virtually nothing but a mere disposition *mortis causa,* cannot be recovered;"

[1] [146] "in a state of notorious concubinage"

*Canty v. Beal,* 17 La. 282, January 1841. "that in . . 1837, he put in six able bodied negroes, . . and the defendant was to furnish five . . and his own services in carrying on a brickyard; . . That these negroes were employed under the . . superintendence of defendant about seven months, and their services were worth $216 a month,"

*Lesseps v. Railroad Co.,* 17 La. 361, January 1841. [362] "the negro was told not to drive across until the engine passed, but gave no heed, cracked his whip, and in the affright the mules halted on the road, and all were struck down."

*Canal Co. v. Field,* 17 La. 421, January 1841. [422] "canal, then digging through, was overflowed, the company's hands became sick," [423] "they had employed . . about sixty slaves, and two dredging machines;"

*Buel v. Steamer et al.,* 17 La. 541, January 1841. "action against the captain and steamer *New-York,* to recover . . $1500 as the value . . of the slave Prince," and [543] "damages by the absence . . and expenses in endeavoring to recover the same, to the amount of $200." [542] "the boy . . came on board . . under a false name, stating he was free, and had just come off the steamer *Farmer* from Cincinnati. He was employed by the engineer without the knowledge of Captain . . who had given directions not to employ any negro without first seeing that he had free papers; but . . no free papers were demanded." [546] "nothing shows that he concealed himself . . so as not to be discovered before being out of the State; . . he was seen on board by several . . who knew him;" [542] "By the time the boat reached the . . Cumberland River it was ascertained that the boy was a slave, and Captain . . had him handcuffed, put on board the *Black Hawk* with directions to bring him to New Orleans and lodge him in jail. His passage was paid, but on the way . . he made his escape. . . never found . . verdict and judgment for the plaintiff in the sum claimed," Affirmed.

*Poydras v. Taylor et al.,* 18 La. 12, January 1841. "action against . . Taylor, and his [six] vendees . . to compel a compliance with the terms . . of the will of . . Julien Poydras,[1] . . the district judge . . came to the conclusion that the plaintiff ought not to succeed."

Judgment reversed. Decreed, [16] "that each of the sales [in May 1835] . . of . . Genevieve, Harry, Congo, Clarisse, Hibou, Charles, Robin and Hannah, be annulled," [15] "The public, the heirs and the slaves will have a deep stake in the questions that will arise some years hence; until then we shall only use our conservatory powers to keep the slaves . . in the situation intended by the testator. . . Taylor . . seems desirous of escaping from the performance of . . obligations [imposed], and interposes . . questions of public policy, . . which it would, perhaps, have been more prudent for him to have considered before making the purchase. The zeal now manifested for the peace, happiness and pros-

[1] See Moosa *v.* Allain, p. 480, Poydras *v.* Taylor, and Poydras *v.* Mourain, p. 509, *supra.*

perity of the country is so nearly and obviously allied with private interest, as to deprive it of the charm or merit of disinterested patriotism." [Garland, J.]

*Turner and Renshaw v. Wheaton et al.,* 18 La. 37, January 1841. Action on a note. " slave . . purchased . . for $610. . . a thief and runaway," [39] " plaintiffs' vendor . . informed them that the slave was a runaway, . . told them . . where she would probably go, . . whenever she ran away from plaintiffs she did not come directly to his house; . . two or three days [after.] " [38] " concealed from the purchaser. . . judgment . . in favor of the defendants," Affirmed.

*Fleytas v. Railroad Co.,* 18 La. 339, January 1841. " The defendants are appellants from a judgment by which the plaintiff recovered [$1500,] . . the value of a slave, crushed by one of their locomotive engines, while he was lying across their railroad, asleep, intoxicated, or in a fit of epilepsy or other disease. . . the engineer . . discovered the slave about two minutes before . . The testimony . . preponderates in favor of the defendants. . . judgment . . reversed; . . ours . . for the defendants,"

*Roasenda v. Zabriske (f. m. c.),* 18 La. 346, January 1841. " The plaintiff obtained an order of seizure against two lots . . on a note of the defendant for $7905, payable one year after date, . . secured by mortgage . . stipulating . . ten per cent. interest from maturity, if not then paid." [348] " injunction . . made perpetual for the *excess* of interest;"

*Penalta v. Borges' Executor,* 18 La. 348, January 1841. " The plaintiff alleges the succession of . . Borges is indebted to him . . $63, 634," [350] " for the hire and value of nine slaves " [348] " that in 1820 he left [them] with . . Borges . . to hire out . . and remit to him the proceeds at Rio Janeiro; but . . had never received anything . . [349] offered a witness to prove that Borges . . had acknowledged that he held . . as the plaintiff's agent. . . objection [to parol proof] was sustained . . The plaintiff offered the record of a proceeding against him in the United States district court . . showed that a Portuguese vessel with slaves (including the nine now claimed) had been captured . . by pirates, and recaptured by an American vessel and brought into Charleston, where the vessel and the cargo with the slaves were libelled. The slaves were claimed by the vice consul of Portugal and given up as belonging to Portuguese subjects," [350] " This officer finding no vessel destined to a Portuguese port, in Charleston, the plaintiff was employed to seek . . elsewhere, and . . brought the slaves to New Orleans, where he delivered them to . . Borges, and soon after left . . no evidence of the probable value . . The judge of probates . . dismissed the case for want of this evidence." Judgment reversed and the case remanded [351] " with directions . . to admit testimonial proof of the agency "

*Hermann v. Hootsell,* 18 La. 419, January 1841. [420] " 1836, Cotton sold . . a negro woman . . and child, for . . $1300,"

*Olivier v. Cannon,* 18 La. 474, January 1841. " action to recover an old slave, horse and dray, valued in the inventory at $331,"

*Gaillardet v. Demaries,* 18 La. 490, January 1841. "a slave hired by the defendant, in his employment driving a dray, and being in full trot, ran against the plaintiff's gig and broke it;" Held: [492] "the plaintiff had . . an action against both the owner and employer" [1]

*Duncan v. Hawks et al.,* 18 La. 548, January 1841. "The plaintiff alleges, . . [his] slave . . absconded, and that . . master of the schooner . . while lying in port [[549] 'about to sail for Tampa Bay or New-York'], employed [him] . . as a cook on board for several days, without his . . knowledge" [550] "the slave . . was recovered"

Held: "The statute of 1837 [1835],[2] which is relied on as giving plaintiff a privilege on the schooner, and as establishing the absolute liability of her owners, cannot . . be made to apply . . the legislature intended to render absolute . . the liability of owners . . when a slave is carried out of the State, or . . from one part of the State to another, . . the master was undoubtedly liable"

*Russell v. Favier et al.,* 18 La. 585, January 1841. [588] "the girl Lydia was born on the plantation of the plaintiff in . . Virginia, of a female slave that belonged to him. . . 1836, he brought this girl with a number of other slaves to Vicksburg, . . He refused to sell them, though offered a high price. The slaves were hired out at the commencement of each year, and the plaintiff annually visited the State for the purpose of receiving their hire. . . In January, 1838, the girl was hired [by his agent] to . . Bruner, who in . . April . . took her to Natchez, and after offering her for sale privately at different times, finally had her sold at auction, . . Veill became the purchaser, brought her to New Orleans, and sold her to the defendant, with a full guarantee, without notice of any fraud."

Held: [589] "bad faith of the lessee does not deprive the owner of his right of property. . . [590] ordered that . . [defendant] recover of [Veill] five hundred and thirty dollars [the price paid], with interest . . and the costs of this suit and the costs of this appeal." [Garland, J.]

*Bowman v. Ware,* 18 La. 597, January 1841. "The plaintiff, Mrs. Bowman, alleges she purchased ['negro woman and her two small children'] . . for . . $1800, shortly after they had been brought from Mississippi by the defendant, . . discovered that the woman is afflicted with chronic rheumatism in the ankles and wrists . . [598] perfectly useless; . . tendered . . back again . . verdict and judgment rescinding . . and for the return of the price" Affirmed.

*Groves v. Slaughter,* 15 Peters (U. S.) 449, January 1841. [455] "Slaughter [a non-resident], in . . 1836, and in . . Mississippi, sold to Brown slaves introduced by him, as merchandise, and for sale, into that state, in . . 1835, or 1836; and . . received . . these notes,[3] endorsed by

[1] C. C. 2299.
[2] Act of Mar. 27, 1835, sects. 1 and 2.
[3] Amounting to $14,875.

Groves and Graham," " When the notes became due, the endorsers refused to pay them," [451] " because the contracts on which they were founded are in direct violation of the constitution . . of Mississippi,"[1] [455] " suits were instituted against them in the Circuit Court of Louisiana. . . decided that they [the slaves] were a valid consideration," The judgment was brought up to the Supreme Court of the United States, [497] " by writ of error, for revision." Mr. Gilpin, for the plaintiffs in error: [457] " No legislative action is necessary to complete the prohibition;" [Appendix I] " Argument of Mr. Walker, of Mississippi, on the opening and concluding of the Case, . . he appeared only for . . Groves, of Louisiana,"

"the clause is not directed to the legislature, and is not a mandate . . but an absolute prohibition, operating *proprio vigore*. . . [xviii] the inter-state slave trade, as carried on by traders in slaves as merchandise, was the thing designed to be prohibited. . . [lv] great mistake, maintained in the north by [the Abolitionists] . . is . . that by the law of the slave-holding States, slaves are merely chattels . . and therefore are subjected to the power of congress to regulate commerce among the states. . . No, they are, in every thing essential to their real welfare, regarded as *persons*; as such they are responsible and punishable for crimes; as such to kill them in cold blood is murder; to treat them with cruelty or refuse them comfortable clothing and food, is a highly penal offense; as such they are nursed in sickness and infancy, and even in old age, with care and tenderness, when the season of labor is past. To call them chattels or real estate, no more makes them in reality land, or merely inanimate matter, than to call the blacks of the north freemen, makes them so in fact. . . [lvi] are not the slaves whom the doctrines and principles of abolition have now reached, upon those counties of Maryland, Virginia and Kentucky, bordering for more than a thousand miles upon the adjacent states of Pennsylvania, Ohio, Indiana and Illinois, unfit for a residence as slaves in Mississippi; and would it not be most dangerous to permit slave traders to drive them also in any number within our limit? Would they not contaminate our slave population, and diffuse among them the same doctrines and principles, which from these bordering counties, have already peopled Canada with a colony of thousands of runaway slaves. . . [lxix] Engaged as these traders were in this inhuman traffic; transporting these slaves in chains from state to state, for the sole purpose of a sale for profit; desirous of increasing this profit by purchasing the cheapest slaves, which would always be the most wicked and dangerous, reckless of the moral qualities and character of the slaves whom they bought, not for their own use, but to sell for speculation; tempted to buy the most wicked slaves, because always to be purchased at the lowest price, and sold in a distant state at the highest price, to those who would be ignorant of their dangerous character; inured as these traders were to scenes of wretchedness and cruelty, and entirely regardless of the means by which they reaped a profit from this traffic, why might we not, as a means of self-protection, arrest this traffic by forbidding the introduction of slaves as merchandise? Especially, when a state had tried all other means to arrest the introduction of dangerous slaves, and had found the state, notwithstanding her previous restrictions, inundated, by these traders with the wicked and abandoned slaves, the

[1] Adopted Oct. 26, 1832: "The introduction of slaves into this State as merchandise, or for sale, shall be prohibited from and after the first day of May," 1833.

insurgents and malefactors, the sweeping of the jails of other states, might they not wholly exclude the traffic, as the only effectual means of self-preservation? . . But even if they could repose for the character of the slaves upon the traders, there was that in the very mode and purpose of introduction which rendered nearly all such slaves most dangerous to the tranquility of the state. The very manner in which these slaves were forced from one state and driven into another, would introduce them with hearts overflowing with bitterness, and stimulated to revenge the most deadly, against the seller and the purchaser. Such slaves would seek for vengeance, not only by their own deeds, but they would endeavour to inflame the passions of all other slaves in the state, who but for their contaminating influence would have remained useful and contented. Who can deny that there was danger arising from such transactions? *The legislation of all the slave-holding states demonstrates that it is so*; . . [lxxix] Kentucky . . 1794, . . [lxxx] Virginia . . Act of 1778 [and acts of 1785, 1788, 1789, 1790, 1792, etc.] . . Tennessee . . 1812, . . Georgia [1798] . . Delaware [1789] . . Pennsylvania . . [1780 and] 1788 . . [lxxxii] Maryland, . . 1796, . . New York . . 1788, . .[lxxxiv] North Carolina . . 1794, . . South Carolina, . . 1800, . . 1801, . . 1802, . . Missouri, . . 1835, . . Arkansas . . 1838, . . Mississippi . . 1837, . . Louisiana . . 1826; . . Rhode Island, . . 1784, . . Connecticut . . 1774 and . . 1784, . . [lxxxv] New Jersey . . 1798,. . Indiana,. . Nor in Ohio, Maine, Massachusetts, New Hampshire, or Vermont, under their constitutions. . . [lxxxvii] ten of the twelve states which framed the constitution, have passed laws . . [lxxxviii] prohibiting the introduction from other states, of slaves for sale, . . at least six of the new states have affirmed in their constitutions the power to pass those laws, and . . congress . . have on all these occasions, commencing in 1792, and terminating in 1836, conceded that these constitutions . . were 'not repugnant to the constitution of the United States.' . . [If] this court, having annulled all the state laws on this subject, shall announce that it is a question over which the power of congress is supreme and exclusive . . [could] the Union stand the mighty shock, and if it fell, shall we look upon the victims of anarchy and civil war, resting wearied for the night from the work of death and desolation, to renew in the morning the dreadful conflict? . . No, this court will now prove, that . . here the rights of every section of this Union are secure. And when. as I doubt not, all shall now be informed, that over the subject of slavery, congress possesses no jurisdiction; the power of agitators will expire, and this decree will be regarded as a re-signing and re-sealing of the constitution."

[481] " Mr. Clay,[1] for the defendant in error, said the questions to be decided in this case, involved more than three millions of dollars, due by citizens . . of Mississippi, to citizens of Virginia, Maryland, Kentucky, and other slave states. The magnitude of the cause is shown by the increase of slaves in . . [482] Mississippi, from 1830 to 1840. In 1830 the slave population was about sixty-five thousand. In 1840 it had increased to upwards of one hundred and ninety-five thousand. . . from 1830 to 1837 the increase had been more than seventy-four thousand. A large portion . . had been introduced . . by non-residents. The universal habit of all the planting states, has been to buy slaves on credit, leaving the product of planting to pay for them. . . From 1832 until 1837, no one questioned the right to introduce slaves for sale; all concurred in the

[1] See Clay *v.* Ballard, p. 563, *infra.*

opinion, that the constitution did not, *proprio vigore,* prohibit their introduction."

Mr. Webster, on the same side, contended that [490] "The contract was made, in the belief of all parties to it, that it was valid and legal. The attempt to avoid it, is to give a retroactive effect to new views of the provision [in the constitution of Mississippi]. . . [493] In 1837 the Governor . . submitted to the legislature the propriety of prohibiting the sale of slaves by non-residents. In his message he expresses doubts of the operation of the constitutional prohibition, and suggests that a law should be passed to give it affect. The law was passed in 1837. . . No opinion was expressed, that the legislature thought the constitution had made the prohibition effectual."

Judgment affirmed: [499] "the construction of the constitution in [Mississippi [1]] . . is not so fixed and settled as to preclude us from regarding it an open question. . . [500] Legislative provision is indispensable to carry into effect the object of this prohibition. . . [503] this view of the case makes it unnecessary to inquire whether this article . . is repugnant to the constitution of the United States;" [Thompson, J.] M'Lean, J.: "As one view of this case involves the construction of the Constitution of the United States in a most important part, . . I will state . . my own views . . [504] although the question . . is not necessary to a decision of the case; . . the question is, whether" the provision in the Mississippi constitution of 1832, "that the introduction of slaves into that state, as merchandise, or for sale, shall be prohibited . . is in conflict with that part of the Constitution of the United States, which declares that Congress shall have power 'to regulate commerce . . among the several states.' . . [506] Can the transfer and sale of slaves from one state to another, be regulated by Congress, under the commercial power? . . [508] The power over slavery belongs to the states respectively . . and the transfer or sale of slaves cannot be separated from this power. . . Each state has a right to protect itself against the avarice and intrusion of the slave dealer; . . The right to exercise this power, by a state, is higher and deeper than the Constitution. . . rests upon the law of self-preservation;" Taney, C. J.: "In my judgment, the power over this subject is exclusively with the several states; . . [509] Another question of constitutional law has also been brought into discussion, . . whether the grant of power to the general government, to regulate commerce, does not carry with it an implied prohibition to the states to make any regulations upon the subject, . . I decline expressing my opinion" [510] "Mr. Justice Story, Mr. Justice Thompson, Mr. Justice Wayne, and Mr. Justice M'Kinley concurred with the majority . . in opinion that the provision . . [to regulate] commerce . . did not interfere with the provision of the constitution . . of Mississippi," Baldwin, J.: [514] "Slaves . . being articles of commerce with foreign nations, up to 1808, . . were also articles of commerce among the several states, which recognized them as property . . [515] Whether they should be so held . . is a matter of internal police,

[1] See introduction to the Mississippi cases.

over which the states have reserved the entire control; . . if they recognise slaves as . . property . . they become the subjects of commerce between the states which so recognise them, and the traffic in them may be regulated by Congress, . . as part of its purely internal commerce, any state may regulate it . . but when such regulation purports to extend to other states or their citizens, it is limited by the Constitution, putting the citizens of all on the same footing as their own. . . [517] my opinion is that had the contract in question been invalid by the constitution of Mississippi, it would be valid by the Constitution of the United States. . . wherever slavery exists by the laws of a state, slaves are property in every constitutional sense, and for every purpose," " Mr. Justice M'Kinley dissented from the opinion of the Court, as delivered by Mr. Justice Thompson;[1] and Mr. Justice Story also dissented; both . . considering the notes sued on void."

*Slatter v. Holton,* 19 La. 39, June 1841. [40] " Plaintiff [[41] ' S. F. Slatter, of New Orleans '] seeks to recover the value of a slave named Shadrack," [39] " had the steamer *Henry Clay* sequestered, and claims a privilege thereon for the . . value of his slave." [40] " testimony . . that the *Henry Clay* [' whereof the defendant was master '] left New Orleans . . January, 1837, . . while she was lying below the Cumberland bar, . . stopped by the low stage of the waters, . . the *Wave,* . . passing from the . . Cumberland into the Ohio, came alongside the *Henry Clay* to take off her passengers; that plaintiff's boy . . aided in carrying the baggage . . on board the *Wave*; . . the boy . . together with three other servants were received on board . . [41] at the instance of the defendant, who requested the captain . . to allow such of these cabin boys as might be wanted to work their passage, . . that the others would pay, but expressing a wish that he would be moderate in his charges; that . . Shadrack, or Jim Thornton, being remarkably active about the table, was permitted to work his passage . . that at some distance further up . . the Ohio, the *Wave* fell in with the . . *Tuscarora,* from which other passengers were taken, and among them a Mr. Peterson, who instantly recognized Jim Thornton as . . Shadrack; . . told the captain . . that he had been present when H. H. Slatter, the plaintiff's brother, bargained for . . Shadrack with Mr. Tate, in . . Baltimore; . . afterwards saw him put on board of a brig at Alexandria (District of Columbia), to be sent to the plaintiff at New Orleans." " urged the captain of the *Wave* to arrest him as a runaway, but the latter declined . . saying that the boy had been put on board . . by defendant, who would not have done it without authority, and that moreover defendant was responsible . . in case . . a slave;" " above Flint Island . . he was discharged and never afterwards heard of; . . admitted on the trial . . ' that Slatter had returned to Armstrong [his vendee] the purchase money ($1600)' " Judgment for the plaintiff for $1600.

[1] But see Charles Warren, *Supreme Court in United States History,* vol. II., p. 345, n. 2.

Affirmed: [42] " The good character . . which the testimony establishes for the defendant . . entirely acquits him of any improper motives; but cannot relieve him from the consequences of his neglect to comply with the formalities required by our laws in relation to persons of color." [1]

*Barrett v. Bullard,* 19 La. 281, September 1841. " The plaintiff alleges that . . 1835, he purchased . . Titus from [Judge Bullard] . . for . . $650, . . [282] That shortly after . . he discovered the slave was afflicted with a severe chronic disease of the kidneys, . . That he has placed said slave in a hospital, where his medical attendance and nursing have cost $300; . . two physicians . . were called in . . cannot say it was incurable. . . appeared to have been of long standing. . . The defendant's witnesses . . His general good health and robust, athletic constitution was proved by two overseers and two other persons who had charge of him, and some of them up to the time of sale; . . [283] No evidence of a tender . . to the defendant . . judgment annulling the sale and decreeing the return of the . . price " reversed; " and that ours be for the defendant . . [284] as in case of a non-suit,"

*Edwards et al. (f. p. c.) v. Martin's Heirs et al.,* 19 La. 284, September 1841. " action for personal liberty and freedom. The plaintiffs are . . [six] children of a colored woman named Polly Edwards, who was sold as a slave . . 1802 [when she [291] ' was . . about nineteen '], by . . Andrus . . to . . Martin . . for $625. The plaintiffs were all born . . while their mother was held . . [285] by Martin. He . . sold her to . . Foreman, against whom she asserted her freedom, alleging she was free born. She had judgment . . 1834, declaring her free, and that she was born free." [291] " Andrus was decreed, as warrantor, to return to the heirs of Martin the money paid . . together with the costs;" [285] " Andrus . . had also judgment against the widow and heirs of . . King, from whom he had purchased. . . Martin being now sued by the children . . called Andrus, in warranty . . The warrantor . . denied, that he was liable . . for the . . value of the children, . . verdict and judgment, declaring them free: assessing their value as slaves at the time to be $4,800, . . which the heirs of Martin . . were entitled to recover from . . Andrus . . [and] Andrus . . from King's heirs."

[295] " judgment . . so amended as to allow to the defendants against the estate of . . Andrus, instead of $4,800, . . $625 with costs below; those of this appeal to be borne by the appellees." [292] " must be settled according to . . the laws of Spain, . . [294] Justinian . . ordered that . . where the agreement had for its object a certain . . amount, as in sales, . . the damages . . should not exceed the value of the subject matter [2] . . From . . references of . . Lopez, we cannot but believe that the principle was adopted . . in Spain . . [295] This indemnity appears . . liberal, when it is considered that the vendees have been reimbursed the whole amount . . paid . . After they had enjoyed her services during 27 years,

[1] Bullard and Curry's *Digest,* vol. I., p. 253.
[2] Code of Justinian, Book 7, t. 47, l. 1.

nearly the whole of the ordinary time of service of a slave, they were perhaps entitled to recover only a portion of the price . . because in the sale of a slave the warranty . . does not contemplate the perpetual enjoyment . . as in the case . . of land;" [Morphy, J.]

*Miller v. Lelen,* 19 La. 331, September 1841. [333] "the plaintiff caused his overseer to have . . [defendant's cattle] driven off by his slaves, with dogs,"

*Blanchard v. Castille,* 19 La. 362, September 1841. [363] "husband . . threatened to abandon her and kill the slaves, if she did not consent to sell them;"

*Benoit v. Broussard,* 19 La. 387, September 1841. [388] "entitled to one fourth of the slaves Carmelite and her children, . . ordered to be sold, to effect a partition."

*Briant v. Marsh,* 19 La. 391, September 1841. [392] "These [two] slaves, he alleges, are in the habit of running away, and one of them is so deficient in intellect as to be nearly useless." Garland, J.: "It is very difficult, if not nearly impossible, to fix a standard of intellect by which slaves are to be judged; hence, we must . . not extend the cases of relative vices too far. Madness is an absolute redhibitory vice, and actual idiocy may perhaps be so considered, although not specially named; . . But such a defect . . would, we think, be . . apparent"

*Riggs v. Duperrier,* 19 La. 418, September 1841. "negress . . sold at public auction [in February 1838] . . at . . $600." [419] "About two weeks after . . very ill and almost useless, . . March . . the plaintiff placed [her] . . under the care of a physician, . . until . . May, without any improvement . . During this time, another physician was called in, . . [420] both . . concur in saying, she had a cancer in the womb . . incurable. The woman died in a short time after she was taken from under . . [their] care . . In behalf of the defendants . . witnesses . . did not know of . . disease. She worked . . as the other slaves, and in the swamp the year previous to the sale."

Judgment rescinding the sale, affirmed: [420] "from the character of the disease, it is not probable that she would disclose it to white men, as long as she could help it, unless it was to her owners." [Garland, J.]

*Brownson v. Fenwick,* 19 La. 431, September 1841. Allegations of the plaintiff: [433] "That, in 1835, he employed the defendant as his agent, to purchase . . in Maryland a certain number of slaves, and furnished him funds . . [434] That the defendant . . on his return . . delivered them . . informing him . . that . . Dennis, whom he said he had purchased for the plaintiff of the estate of Leo Fenwick [his brother], had made his escape [in Cincinnati,] . . and that he had cost $800, . . settled with the plaintiff for the price and expenses, . . $829 95. . . that he has ascertained that the defendant never made any such purchase . . was appointed executor . . proceeded to bring [slaves of the estate] . . to this State . . for the benefit of the legatees, and that, before the escape . .

it never was . . [his] intention . . that [Dennis] . . should be the property of the plaintiff." Judgment for the plaintiff affirmed: the amount retained must be [436] " refunded . . together with five per cent. interest . . on . . $829 95 from judicial demand."

*Lecomte v. Smart,* 19 La. 484, October 1841. [488] " A *vacherie* has been kept there for many years; . . some persons white or black were always there . . and a large stock of cattle . . grazed on the [Lannacoco] Prairie."

*Rowley v. Rowley,* 19 La. 557, October 1841. [578] " When the plaintiff left for New-York in 1833, she left [Dinah] . . with her sister in Natchez." She married Rowley, a resident of Troy. " Some time after their return [in 1834], . . [he] sold this slave for $800."

*Heirs of Grubb v. Henderson,* 1 Rob. La. 4, October 1841. [5] " Jane Gordon, otherwise called Jenny Grubb, lived with the testator . . many years . . as his concubine; . . [6] Manuel Gordon Grubb and George Gordon Grubb were universally regarded as her children, the former by . . Grubb, and the latter by a mulatto slave of . . Grubb named Chance. . . *both* the children were raised by him and claimed as his own." [7] " made a will in their favor, and afterwards being apprehensive that the will might not be carried into effect, sold . . land to the defendant [his executor] . . and took his notes . . payable to . . children. The plaintiffs . . instituted suit . . donation [in the will] . . was revoked, and they . . obtained possession of the notes " Judgment for the plaintiffs for $6720 with interest.

*Bronaugh v. Neal,* 1 Rob. La. 23, October 1841. " instead of completing . . payment [for two slaves], Price clandestinely got possession . . and removed with them to . . Mississippi. . . Goodwin . . was employed . . to pursue . . and regain possession . . which was obtained after a lawsuit,"

*Klady v. McGuire,* 1 Rob. La. 25, October 1841. " three hundred dollars . . received . . from the treasurer of the State, as the compensation allowed . . for . . [his] slave . . executed for a criminal offence,"

*Knight v. Murchison,* 1 Rob. La. 31, October 1841. [32] " she purchased . . [three] slaves . . in . . Mississippi . .1839, . . husband . . sent them into " Louisiana.

*Wafer v. Pratt,* 1 Rob. La. 41, October 1841. [42] "1819 or 1820 . . Wafer brought this slave [from Louisiana] to Arkansas "

*Kiper v. Nuttall,* 1 Rob. La. 46, October 1841. Suit on a note " given in part payment of . . negroes . . testimony . . that . . Charlotte was unhealthy . . before the sale to the knowledge of some of the heirs, . . One of the witnesses calls it a female complaint brought upon her by an attempt to produce an abortion; but . . it clearly appears that Charlotte died of a congestive fever . . taken sick . . four to six days before she died; no physician was called in . . except about three hours before her

death, . . Such a neglect of the . . duties prescribed by humanity should . . preclude a purchaser from recovering the value . . he is bound towards the vendor to take such care of the thing sold which he intends to return, as might be expected from a prudent father of a family." [Morphy, J.]

*Cawthorn v. McDonald,* 1 Rob. La. 55, October 1841. [56] " judgment recovered by Lake and Petty against Fisher in . . Mississippi, . . the sheriff levied upon the slave together with others, . . all the slaves were brought from Mississippi by Petty . . who stated that being . . apprehensive that Fisher would run the slaves off, he had taken the start of him and run them off himself,"

*Hooper v. Hyams,* 1 Rob. La. 90, October 1841. " one of the slaves . . purchased, was . . afflicted with . . the dropsy, of which he . . died."

*Duncan v. Elam,* 1 Rob. La. 135, October 1841. " 1837, sold . . a plantation and slaves . . for sixty thousand dollars,"

*Griffin v. Waters,* 1 Rob. La. 149, October 1841. [152] " 1828 . . the defendant had several slaves; but . . all of them died but one, who ran away; . . [153] lost several slaves by the boat remaining in New Orleans for some time, when the yellow fever was prevailing. . . [154] The inventory shows . . eighteen as belonging to the community, and two had died in 1834, before the inventory was made. . . $1500 allowed . . for their hire for . . eleven months [1834-35]. During that time one valuable slave was accidentally killed, another died,"

*Armstrong v. Mooney,* 1 Rob. La. 167, November 1841. " a physician, testified that the slave had been afflicted with a chronic inflammation of the neck of the uterus, . . that the treatment requires complete repose, in most cases for a year; . . remain the whole time on her back. . . that the cure . . was very difficult in slaves, owing to their neglect or inability to submit to the necessary treatment. Out of a great number whom he had visited, . . but one . . cure well established. . . that the expense . . would be from one hundred and fifty to two hundred dollars; . . that the disease diminished her value at least one third. . . judgment in favor of the plaintiff, for two hundred dollars, as one third of her value." Affirmed.

*Jackson v. Bridges,* 1 Rob. La. 172, November 1841. " The petitioner . . alleges that he is a free man of color, about twenty nine . . born in the District of Columbia; that at the age of eight or ten . . he was by his sister put under the protection and in the service of lieutenant Delany, . . that he served as an ordinary seaman . . on board the frigate *Constitution,* from September, 1825, till July, 1828, when he was discharged at Boston, . . returned to his native place, whence shortly after he was clandestinely, forcibly and fraudulently sent to New Orleans by . . Delany, as he believes, and sold as a slave. . . several successive calls in warranty are to be found in the record, whereby the divers vendors . . have been made parties. . . The petitioner has failed to show that he was born free, or . . emancipated; . . witnesses [testify that] . . [173] plaintiff was with them on board of the . . *Constitution,* . . was considered

by every one there as a free boy, and that none but free persons, or persons believed to be such, were engaged . . on board of vessels belonging to the United States Navy. Some . . say that the plaintiff, who was then very young, waited on . . Delany, as a servant, while others represent him as having been one of the crew;" Verdict for the defendants. Judgment thereon affirmed.

*Dussin v. Charles et al.,* 1 Rob. La. 195, December 1841. Defendants "allege that . . note [for $600] was given in part payment for . . a *quarteronne* girl named Myrthée, with her child, . . that Myrthée is the daughter of . . Ismene Bedeau, a free woman of color, and has brought suit to recover her freedom . . and that they . . have already paid . . six hundred dollars . . the first instalment . . prayer that this suit may not be tried until the final decision" Judgment for the plaintiffs affirmed: defendants have not [196] "placed before us . . a transcript of the record of the suit"

*Gallier v. Walsh,* 1 Rob. La. 226, January 1842. [227] "a saw mill, and a number of negroes were put into the partnership,"

*Poydras et al. v. Bormeau* [*Bonneau*], 1 Rob. La. 315, February 1842. "Action by Benjamin P. de Lalande for himself, and as attorney in fact for the other heirs of . . Julien Poydras,"[1] "allege . . That one of the plantations was sold to Madame Bormeau and Madame Mourain, . . afterwards partitioned . . and that six of the *statu liberi* fell to the [former's] share . . and that they were above . . sixty on the 1st of January, 1833, and were entitled to the . . benefit of . . stipulations in the contract of sale, in conformity with the testament. . . that Madame Bormeau . . had refused . . and that the *statu liberi,* aided by one of the plaintiffs, had failed in an action to recover the . . stipend[2] . . allege, that . . stipend formed a part of the price . . unpaid, and is due to the estate . . pray judgment . . for the arrearages . . nine hundred dollars, and the further annual sum of [$25] . . for each of the *statu liberi,* from the 1st of January, 1839."

Judgment against the plaintiffs affirmed: "the petition does not disclose a right of action in the plaintiffs. Admitting their construction of the will . . [316] it by no means follows, that the vendors . . have a right to recover a part of the consideration in this form of action. The argument, that the annuity . . for such slaves as shall have attained . . sixty, is a legacy . . lapsed in consequence of the incapacity of the legatees, and that therefore the plaintiffs have a right to recover it, has not much weight with us. . . The plaintiffs have no capacity to represent the *statu liberi,* and *non constat* but that their mistress will pay at a proper time [in 1850], or that the *statu liberi* will coerce the payment as soon as they shall have acquired a legal capacity to act." [Bullard, J.]

*Shea v. Schlatre,* 1 Rob. La. 319, February 1842. "The petitioner represents that . . in April, 1839, an agreement was entered into between him and his servant Frances, a free person of color, under his . . pro-

[1] See his will quoted in Moosa *v.* Allain, p. 480, *supra.*
[2] Poulard *v.* Delamare, p. 517, *supra.*

tection, and . . Schlatre. . . his services were engaged for one year . . [320] to give his attention . . concerning a warehouse . . and . . the services of Frances . . to manage and carry on a tavern . . at the same place, for one hundred dollars. . . [both] to be found with boarding, lodging, and washing, . . as well as with the necessary servants. . . July . . peremptorily discharged . . Frances has transferred to him her claim . . The evidence shows that sometime after . . he was engaged . . in the same capacity by [another.]" Held: [321] "could not affect this vested right."

*Nolan v. Danks et al.,* 1 Rob. La. 332, February 1842. [333] "that previous to the written contract [in April 1839] . . the defendants had employed the plaintiff as an overseer, but . . finding him disposed to become intoxicated, they discharged him; but that afterwards, at his urgent request, they again employed him, giving him an increase of one hundred dollars on his wages [$750], upon the express condition that he should [[332] 'not taste any kind of spirits, or wine'] . . for the balance of the year. . . he . . became repeatedly so intoxicated as to be entirely unable to fulfill his duties," and was discharged in October.

*Solet v. Solet,* 1 Rob. La. 339, February 1842. "action of slander, by his daughter, who charges him with having said that 'she was a thief,' and . . 'the most base and infamous person that ever lived.' . . persons of color. The plaintiff left the defendant to live in concubinage. The words . . [were] spoken . . on the departure" "verdict for five dollars, and judgment accordingly."

[340] "reversed; and . . ours . . for the defendant with costs in both courts." [339] "probable that in rebuking . . the father was under the influence of a sense of duty, rather than prompted by malice to injure her."

*Maria and another v. Edwards,* 1 Rob. La. 359, February 1842. "The petitioners sue for their freedom under the last will of . . James Goodbee. . . [360] dated . . 1838, and signed . . in the presence of four witnesses. . . [361] several fruitless attempts were made to obtain the necessary . . [five] witnesses. . . the testator died the following day."

"ordered . . that the slaves . . be declared to be entitled to their freedom . . and that the executor take the necessary steps to have them emancipated according to law; the appellees to pay the costs of this appeal." [360] "this case comes within the exception [1] . . in relation to . . nuncupative wills . . when made in the country" [Morphy, J.]

*Porche v. L'Admirault,* 1 Rob. La. 365, February 1842. "seek the rescission . . on account of a malady pronounced by physicians to be a pulmonary consumption."

*Terrell v. Cutrer,* 1 Rob. La. 367, February 1842. "one of the slaves . . was purchased by her agent in Kentucky, in . . 1833;"

[1] C. C. 1576.

*Palmer v. Taylor,* 1 Rob. La. 412, March 1842. " The plaintiff seeks the rescission . . on the ground of a malady existing at the time of the sale, from which the slave . . died. . . resisted on the plea of the general issue, and on an averment of gross negligence, cruelty, and illtreatment . . A post mortem examination was made, and the opinion . . was in favor of the existence of the disease at the time of the sale. . . [413] The testimony does not show that any doctor was ever sent for . . but . . he was accidentally seen by a doctor who had been sent for to another slave. . . expressed his opinion . . dangerously ill." [413 n.] " after prescribing, ' he returned . . the next day, and saw the negro, who seemed . . better.' " [413] " Two or three days afterwards, the slave died in the field, and it does not appear that in the meanwhile he had received the attention . . due to a sick slave. The impression upon our minds is strong, that this last circumstance had on the jury, the effect which it deserved to have. . . we are unable to say that the verdict [against the plaintiff] is incorrect." [Martin, J.] Judgment affirmed.

*Thomas v. Selser,* 1 Rob. La. 425, March 1842. " the note sued on was given for . . five slaves, bought by the defendant of . . Clark, . . one of whom, . . Caleb, is alleged to have been in the habit of running away previous to the sale, . . and to be still out . . [426] son-in-law [of the defendant heard] . . Clark [say] . . that he did not consider the negro a runaway; that, to be sure, he had run away four or five times, but . . generally from the fear of being whipped, and . . did not stay away over five or six days at a time. . . But . . Dr. Atchinson, informs us, that . . Caleb belonged to . . Dr. . . Campbell, of Mississippi, who becoming embarrassed . . a very short time before the sale to the defendant, had placed this boy, together with other slaves . . in the hands of Clark, to be brought to Louisiana for sale. That he . . was intimately acquainted with . . Dr. Campbell, for four or five years previous . . Caleb was his wagoner; . . entrusted with the transportation of his produce to market, and of his family stores at home; . . always held in high estimation by his master, . . that he never heard of Caleb's absenting himself . . but once, when, in consequence of a quarrel with his wife, he stayed out one night " Judgment for the plaintiff affirmed.

*Bertie v. Walker,* 1 Rob. La. 431, March 1842. " 1839, she bought . . Matilda " for $1150.

*Jordan v. Black,* 1 Rob. La. 575, March 1842. " The plaintiff alleges that he has the legal . . title to a number of slaves, . . based upon a conveyance made by Elizabeth Morgan, the wife of the defendant, previous to her marriage, . . specified that the slaves shall remain in . . [grantor's] possession . . during her life, and be emancipated by the plaintiff after her death." " and that the defendant has illegally removed them from . . Tennessee . . [576] in violation of injunction " granted in 1838 " perpetually enjoining [him;] [1] . . they were sequestered, and taken into the

[1] Same *v.* same, vol. II. of this series, p. 511 n., and Underwoods Case, *ibid.*, p. 511.

custody of the sheriff. . . verdict for the plaintiff," Judgment thereon affirmed.

*Lyons v. Kenner,* 2 Rob. La. 50, April 1842. Suit on a note given for [51] "negroes lately introduced into the state, . . [52] appeared . . to be . . free from any disease. . . On the day after the sale, when, at the defendant's request, they were taken to the depôt . . to be transported to his plantation, . . a young girl named Martha Ann, complained of pain . . had some fever, and a running from the eyes . . the first symptoms of measles. . . a witness who had charge . . informed the defendant, who nevertheless had her sent . . with the other negroes, . . not been shown that on reaching the plantation, she was kept apart . . and a physician was only called in . . four days afterwards. . . he found . . Martha Ann, and . . Isaac, sick with the measles, and . . a great number of the other negroes caught the disease within fifteen days after the sale." Martha Ann, Isaac, and two others died.

Judgment for the plaintiff affirmed: [53] "defendant did not act as a man of ordinary prudence" "he cannot avail himself of" [52] "the presumption, created by section 3 of the statute of 1834,"

*Bank v. Merle,* 2 Rob. La. 117, April 1842. [118] "notice [of protest] . . was handed to a black female servant, in the office of . . Caldwell," Held sufficient: [119] "We cannot see the force of an argument which admits that if a notice be left on an inanimate object, it will be good, but if left with a human being . . it is bad, merely because that being cannot exercise all the civil rights of a white person." [Garland, J.]

*Succession of Senac,* 2 Rob. La. 258, May 1842. "G. D. Senac, a native of France, who had long resided in this country, made his olographic will in this State . . 1836, whereby he bequeathed their freedom to two of his slaves under certain restrictions. . . departed for France [two days later] . . expressed . . his intention of passing the remainder of his life" there. His child was born there in 1837, and he died there in 1838. The will was held void: [261] "no good reason why our law should be superseded by that of France." [Morphy, J.] On a rehearing, [264] "ordered that the judgment . . remain undisturbed." [263] "a will . . in order to have its effect here as a French will, must have been made in France,"

*Menefee v. Johnson,* 2 Rob. La. 274, May 1842. In 1837 "the plaintiff agreed to give the defendant fourteen negroes, in exchange for two leagues and one labor [1] of land . . in the Republic of Texas, . . defendant . . proceeded with them to Texas, accompanied by . . Browning . . agent of the plaintiff, . .[275] tracts . . found occupied. . . Browning then called upon him . . to re-deliver . . the negroes. . . Johnson refused . . Browning . . accepted a bond . . in the penal sum of $13,597.50 . . [276] Several of the slaves have died"

*Jourdain v. Boissière,* 2 Rob. La. 289, May 1842. "petitioner claims four hundred dollars, the price of a negro woman . . under a warranty

[1] 177 1/7 acres.

against all redhibitory vices and maladies, except . . running away. . . that, from the moment of the purchase, the slave had been constantly suffering . . particularly from ulcers in her legs and knees, . . that for drugs and medical attendance . . [he] has expended $125, and has . . been compelled to return her " Judgment " annulling the sale, and allowing the plaintiff $450."

Affirmed: [290] " The declaration of the broker, at . . the sale, that the girl had a wound on her knee, and had hurt herself in scrubbing . . did not apprize the plaintiff that she had a disease . . not to be radically cured."

*Saulet v. Trepagnier,* 2 Rob. La. 357, June 1842. [358] " agreed [in 1829] to pay for the plantation and slaves . . $130,000,"

*Boullemet v. Philips,* 2 Rob. La. 365, June 1842. " The defendant is appellant from a judgment on a verdict for [$4000] . . in an action of slander. The words charged . . are, that the plaintiff's family are not white, . . and . . that his mother was a colored woman and of mixed negro blood. The plaintiff avers that his mother and all his family are . . white persons. The words . . were [not] spoken with the least degree of malice. A crowd of witnesses . . Those of the plaintiff uniting in . . opinion that the . . mother was white, or at least of Indian descent, and . . kept company with white ladies. The [defendant's] witnesses . . equally unite in the opinion that she was . . colored . . the *ménagère* for several years of the plaintiff's father, who afterwards married her; that her brother and some other children were considered . . colored . . that she never associated with white ladies. . . that her children were excluded from a school . . on the ground that they were not white boys, and that some of them were hired out at ten dollars per month as colored people." Judgment reversed, verdict set aside and the cause remanded.

*Drouet v. Rice,* 2 Rob. La. 374, June 1842. " 1814, George Moreau, a free man of color, obtained a judgment for $434 . . four lots and a half . . were levied upon,"

*Succession of Maria Josepha Robert,* 2 Rob. La. 427, June 1842. See Robert *v.* Allier, p. 530, *supra.* [428] " the testimony of three witnesses was taken, under a commission, in France, by whom the genuineness of the will was established." Held: [437] " her domicil . . was in Louisiana, . . her disposition must prevail as a legacy of her entire moveable estate."

*Gay v. Kendig,* 2 Rob. La. 472, June 1842. " On the back of the note . . ' If the negro boy . . for whom this note is given, shall died of diarrhea [*sic*] within six months . . this note shall be null.' . . [473] he died within six months " of " a complication of diseases,"

*Hollander v. Nicholas,* 3 Rob. La. 7, September 1842. " The defendant . . was sued . . by his overseer on a [' large '] plantation . . to recover $1500, his wages for the year 1841."

*Levesque v. Bonin,* 3 Rob. La. 12, September 1842. " the plaintiff . . knew of the disorder . . bought at the solicitation of his wife, the defendant's sister, who was well acquainted with the disorder, and was extremely desirous of having the slave as a cook, as the plaintiff owned her sister, whom he had purchased although she labored under hernia, for nearly the same price "

*State v. Linton,* 3 Rob. La. 55, September 1842. " that . . Linton was the owner of a plantation . . [56] on which he had kept . . ten slaves . . without having any white or free colored person as manager or overseer" [1]

*Galpin v. Jessup,* 3 Rob. La. 90, October 1842. [91] " disorder of the viscera, creating a morbid appetite, and occasional swellings . . and benumbing at times his physical and mental faculties. Most of the witnesses agree that the negro was entirely useless," Sale rescinded.

*Womack v. Nicholson,* 3 Rob. La. 248, October 1842. " suit . . to recover the value of . . Nancy, hired as a field hand [in March] . . to the defendant, with damages. . . The evidence shows that . . Nancy was an insolent and intractable slave, addicted to running away, . . was stubborn, and required more whipping than ordinary negroes; . . Shortly after . . she was discovered to be . . [249] sickly. About the beginning of August, a physician was called in . . labored under dropsy. . . Some time after, the girl growing worse . . A pass was given her, and the overseer . . was instructed to dismiss her. . . met on her way home by . . Metcalf, lying in a very helpless condition, on the side of the road, . . taken in a wagon [to the house of Eppes]. She appeared to have been badly beaten, and her head was bruised and swollen. . . A midwife was procured, and . . in the night, she was prematurely [[248] ' a month or more '] delivered of a child. Eppes . . examined her body, which bore marks of the whip—some old, and others new . . she got better . . While at his house she was visited by three physicians. . . [Two] concur . . that she had dropsy in an advanced stage." " Hardwick . . differed . . thought . . that her ailment resulted from the treatment she had received, and from her pregnancy and the premature birth . . When she left . . her wounds were nearly cured. . . after the girl was taken to the plaintiff's plantation, where she remained about two months before she died, no physician was called to attend on her. . . all the appearances . . [250] [of] dropsy."

Held: " even adopting, as we do, the finding of the jury, that [the whipping] . . was inflicted by . . the overseer, it is clearly made out . . though it . . probably did cause, the premature birth . . that the death of the girl . . must be attributed to the disease she had before . . especially when we take into view the little care . . extended to her at . . [her master's] plantation. . . [He is] entitled to recover only the expenses [$158.50] incurred . . during the time she was at Eppes' house," [Morphy, J.]

*Hivert v. Lacaze,* 3 Rob. La. 357, December 1842. [358] " 8th of August, 1838, the plaintiff purchased at public auction a young negro-

[1] Act of June 7, 1806, sect. 18. Moreau's *Digest,* vol. I., p. 118.

woman [[357] 'fully guarantied against the vices and maladies prescribed by law'] . . for . . $470;" [357] "on the very day the slave was delivered . . [358] she showed the most decided proof of madness or idiocy. . . [359] On the 12th and 13th, she was examined by two physicians, who . . [had] examined [her] . . June preceding . . certify that . . struck with the strange expression of her countenance, and the incoherence of her answers, their attention was called to her intellectual faculties . . she was, and is yet, totally unfit to perform any act which may require a combination of the simplest ideas." The defendant's agent offered [358] "to annul the sale if . . [plaintiff] would give one hundred dollars, as the person who had purchased the slave before the plaintiff . . had done," Judgment cancelling the sale affirmed and the case remanded [360] "for the purpose only of assessing . . expenses and damages due to the plaintiff,"

*Hazard v. Lambeth,* 3 Rob. La. 378, January 1843. "drafts . . amounting to $6229 97 . . are founded on orders for negro clothing, which the petitioner, . . a manufacturer residing in Rhode Island, was in the practice of obtaining from a number of planters [[382]'fourteen'] living on Red River, and in other parts of the State. The orders are all as follows, . . 'ship for me yearly . . [379] Winter clothing . . by 1st of August, and summer clothing by 10th of March, each year.' . . On the arrival of the goods, the defendants [[380] 'the commission merchants of the planters'] were in the habit of forwarding them . . [381] plaintiff . . had an agent in New Orleans, . . [382] the planters . . sent their crops [to defendants] to pay their debts"

*Gros v. Bienvenu,* 3 Rob. La. 396, January 1843. In September 1841 the defendant bought "Maria [[399] 'a good washer-woman'], and her two children, François aged six . . and Joseph about two" for $1250. [397] "while she was in the possession of the plaintiff, who employed her at times in selling milk and ice cream in the evening, she did not, one night, return . . at his request, she was arrested by the city guard a day or two after, and lodged in the jail of the . . Municipality, out of which she was taken by the plaintiff, who paid for her apprehension. . . a number of witnesses, some of whom have owned the girl, testify that she has always borne an excellent character. . . [398] the price . . cannot be considered in any way extraordinary. . . As relates to . . Joseph, who died shortly after the sale, . . a physician . . was called to see him at the defendant's house . . the very month in which the sale took place. . . found the boy in a state of marasmus. . . so low that he could not tell . . the cause . . must have been sick at least two or three months . . We cannot say that the judge erred, in fixing fifty dollars as a fair allowance for the child,"

*Smith v. McDowell,* 3 Rob. La. 430, January 1843. [431] "The sale took place . . March, 1840; and the slave ran away early in April . . was caught, but ran away again . . within . . six weeks . . No evidence . . of his having run away before the sale . . The defendant contended that . .

act [of January 2, 1834,] ought not to govern . . as the slave had been more than eight months in this State before the sale. McClay deposes that he lived with . . McDowell, in Vicksburg, . . who had a plantation on the opposite side of the river, . . That . . McDowell was the owner of . . Bob, whom he sent for sale to . . his brother, in New Orleans. That the slave had a wife on his master's plantation, and was a plantation hand. . . that in . . 1838, 1839, and up to February or March, 1840, the most of the slave's time was spent on the plantation. Sands, a witness for the plaintiff, deposes that . . [432] the defendant said that the slave had been [in Vicksburg] . . about four years." Judgment cancelling the sale and condemning defendant [431] "to the reimbursement of the price," affirmed.

*Nolé v. de St. Romes and Wife,* 3 Rob. La. 484, January 1843. "The plaintiff, for herself and her two children, claims emancipation under the will of their former owner, . . The answer resists . . on the ground, that in order to obtain the consent of the police jury to her emancipation, they (defendants ['executor and heir']) must allege that she has behaved well during the four preceding years,[1] and that she is able to provide for her maintenance, which they cannot do. . . that the children are not thirty years of age. . . judgment for the defendants, but the rights of the children to emancipation were reserved to them, the court being of opinion that the plaintiff, especially during the four years preceding . . had been of a bad reputation, thievish and insolent."

Affirmed: [485] "As to the children, the record does not inform us whether their emancipation is claimed under the act of 1807 and the Code, as being thirty . . or under the act of [January 31,] 1827,[2] as being natives of this State. The District Court reserved their rights, . . all they could expect. . . the mother's behavior . . would alone have prevented her emancipation." [Martin, J.]

*Bissell v. Leftwich,* 4 Rob. La. 102, February 1843. "proved that a sick negro was sent to the plaintiff's ['tavern or boarding house'] . . in . . 1839 ['for two months']; and that the charge of $60 for board and attention to him is correct."

*White v. Guyot,* 4 Rob. La. 108, March 1843. [109] "The evidence leaves it doubtful whether the disease . . was venereal or *fluor albus.*"

*Ogden v. Michel,* 4 Rob. La. 154, March 1843. [156] "More than four years after the sale [in 1837] to the plaintiff, he ran away. It appears that for four or five years before the death of his former master, he had not run away, although previously he had done so repeatedly. He seems to have been a faithful servant for many years, until he finally made his escape from his new master." Judgment for defendant affirmed.

*Penny v. Weston,* 4 Rob. La. 165, March 1843. [166] "the grandfather had certain property consisting principally of slaves, which he

[1] Act of Mar. 9, 1807; C. C. 185.
[2] B. and C. 429.

brought with him from South Carolina, . . [169] Not only had the taxes to be paid on the young slaves; but it is well known that they are in reality an expense to the owner for food, clothing, and medical attention." [Bullard, J.]

*Nimmo v. Bonney and Bird, Executors,* 4 Rob. La. 176, March 1843. [177] " In his will, executed in the olographic form in 1835, . . [Langley, a bachelor,] bequeathed to each of the defendants a portion of his slaves, to serve them, and their heirs, until they should severally arrive at the age of thirty, at which time . . [to be] emancipated . . ' It is my desire that the following . . be emancipated immediately at my decease, . . Comfort, aged 33 . . Nancy, 33 . . Katy, 21 . . Henry, 18 . . Elena, 12 . . and James, 2 years; and, after all my debts are paid . . that all my personal property be equally divided between . . Nancy, Katy, Henry, Elena and James, and that they be under the special care and protection of both my executors, . . and finally that both . . see the above . . dispositions strictly complied with.' . . it does not appear that they took any steps, to carry into effect the will . . in favor of those . . whose immediate emancipation was ordered; but they have always kept them . . [178] As the plaintiffs have averred . . that these slaves were not born in the state, . . it may account for their inaction, at least as to such . . [179] under thirty years." [1]

Held: " these negroes did not become absolutely free by the homologation of the will [in 1838] . . they can become so, only by a compliance with the formality required by law for the emancipation . . until this be done, they continue to be slaves, and owe their . . labor to the estate . . surrender [to the heirs] will not impair the right of the slaves to obtain their emancipation whenever it can legally take place; nor can it prevent the executors from executing their trust," [Morphy, J.]

*Succesion of Ducloslange,* 4 Rob. La. 409, May 1843. Will of Ducloslange: [411] " En reconnaissance et pour salaire des soins et bons services qui m'ont été . . rendus par la négresse libre . . Eulalie Bacchus,[2] je lui lègue, pour en jouir sa vie durant les trois terrains . . avec les bâtisses . . le tout reversible après elle à mes enfans naturels . . En outre je lui donne . . les bêtes à cornes "

*Bertholi v. Deverges,* 4 Rob. La. 431, May 1843. The plaintiff bought a female slave in November 1838 for $855. [434] " she died [in July 1839] with a *well confirmed phthisis,* in the opinion of the physicians who examined her lungs after her death; . . the malady made its appearance within a very few days after the sale, . . treated *for a cough,* which lasted a *long while,* when . . in the possession of the defendants," Verdict in favor of the plaintiff for $855. Judgment thereon affirmed.

*Reynaud v. Creditors,* 4 Rob. La. 514, May 1843. [515] " December, 1836, at the sale of the property of the estate . . Reynaud purchased . . Joseph for $1379, and Celeste and her children for $2205, payable, one-

[1] Act of Jan. 31, 1827. B. and C. 429.
[2] Mother of his natural children.

half on the 15th of January, 1837, and one-half on the 15th of January, 1838,"

*Feltus v. Anders,* 5 Rob. La. 7, May 1843. Judgment condemning " master and owners of the steamboat . . to pay a fine of $500, under the act of [March 25,] 1840, . . the plaintiff is a resident of Mississippi, . . the boy . . was found . . on board . . at Natchez, without the written consent of his master, . . [He was] received on board . . within the limits of this State." Held: the residence of the plaintiff is immaterial.

*Bell v. Dowly and Wife,* 5 Rob. La. 18, May 1843. " Marie Canaller, . . a colored woman, had been living in open concubinage with the plaintiff, for several years previous to her death . . in . . 1840." " a sale under private signature, . . May, 1839, . . written at the foot of a list of the articles in the [grocery] shop which . . she had purchased from the estate of her father . . ' I hereby transfer to . . Bell . . [who] agrees to pay [$500] . . December, 1839,' . . [19] Marie Canaller continued in possession . . her name . . at the door . . was . . replaced by that of Bell only a few days before her death, . . from the time when Bell went to live with the deceased, he occupied himself about the house, went to market, and attended the shop . . absolutely destitute . . having failed . . and being then in the prison limits. One of the witnesses says that Bell was considered as a *loafer,* kept and entertained by Marie Canaller." [18] " the defendants . . claim ownership under a probate sale " Judgment in their favor affirmed.

*Lobdell v. Burke,* 5 Rob. La. 93, June 1843. " suit . . to obtain a diminution of the price paid for a gang of thirty negroes, . . the adults in general being much older, and the children much younger than . . represented. . . [94] Jefferson . . was never delivered . . had either run away, or was kept out of view by Offutt," who owed $25,000 to the defendant who received the negroes in payment " without his ever having seen " them, as they were " then on his debtor's plantation in Arkansas, . . A few days after, the plaintiff agreed to purchase of defendant . . for the same price, the defendant told him . . he would prefer to delay until he (the plaintiff,) had seen the negroes, . . but the plaintiff . . did not like the trouble of returning to the city. . . [95] The witnesses [neighbors of the plaintiff] . . formed an opinion of their ages only from their general appearance, a most unsafe . . rule, according to the witnesses themselves, who say that negroes appear generally much younger than they actually are, and that, in judging . . only by inspection, mistakes may be committed of from five to fifteen years. . . the jury correctly allowed to the plaintiff only the value of . . Jefferson," [Morphy, J.]

*Winston v. Foster,* 5 Rob. La. 113, June 1843. " The defendants, owners of the ship . . appeal from a judgment decreeing them to pay a fine of $500, under . . the act, approved March 25th, 1840, . . on the evening of the 24th of May, 1840, the ship *St. Mary,* Captain Foster, was towed down the river by the *Tiger,* . . next morning . . Foster discovered a negro . . [who] stated himself to be the second cook; the

Captain replied, that he was not . . the cook . . being called . . asserted that he was . . the Captain . . replied, that he had never seen the man before, and . . called upon [him] . . to produce his free papers; . . [114] finding he had none, . . had the boy secured, and sent him on board the *Tiger,* . . the commander of the tow-boat, on his return . . lodged the negro in the jail . . Captain Foster at the same time addressed to the Mayor a note . . 'I discovered . . a negro man who calls himself Thomas Taylor, says he is free, and was born in Richmond, Virginia. . . no documents' . . The evidence further shows, that the boy . . was a confirmed and incorrigible runaway, and was advertised in the *Picayune,* as having left . . 23d of May, 1840. . . [115] the plaintiff's slave has been returned to her; and the only question is, whether the defendants have incurred the fine which the Legislature have imposed from motives of public policy. We think they have not," [Morphy, J.]

*Petit v. Laville,* 5 Rob. La. 117, June 1843. [118] "In January, 1841, the defendant became the purchaser, at public auction, of a negro woman [for $1310] . . payable at 6, 12, 18, and 24 months credit, . . The defendant did not comply . . by furnishing the notes . . in March following, the slave was resold at public auction . . for . . $1040. The plaintiff sues to recover the difference . . and . . expenses . . forming together . . $345. . . also . . damages. . . resisted . . that the slave was adjudicated to the defendant as a good washer and a good subject, but that she is neither . . ran away . . and was in the habit . . at the time of the sale . . defendant . . offered to return and did return the slave" Held: [119] "it was the duty of the plaintiff to put the defendant *in mora,* previous to proceeding to the sale . . at the defendant's *folle enchère,*"

*Ricard v. Kimball,* 5 Rob. La. 142, June 1843. "judgment for the value of a slave, drowned through the want of skill and negligence of the persons who navigated"

*Soubie v. Sougeron,* 5 Rob. La. 148, June 1843. "action . . brought . . April, 1839, to annul the sale, and recover the price of a negro girl . . bought . . February, 1839, . . The evidence shows, that . . seventeen months after the sale, the girl . . was sent to the Charity Hospital, where she died [in] six or seven days . . [from] pulmonary consumption, . . A witness living at the plaintiff's house . . testifies that the slave had been sick about six months . . never saw any physician called in . . [150] Dr. P. F. Thomas, . . defendant's family physician . . was called upon [in 1838] to see this girl who was troubled with worms, . . not long sick; that after she was sold . . plaintiff, whose physician he had also been for some time . . asked him whether he would deliver . . certificate . . which would enable her to return the slave . . and that she would pay him well for it. He replied, that he was not in the habit of making such bargains, and begged her to leave his office, remarking . . that he . . never knew her to be subject to any redhibitory disease." In March 1839 she obtained a certificate [149] "from two . . 'docteurs en médicine de la faculté de Paris,' . . [150] that she had the *Chloris,*"

[149] " Que l'état morbide général . . remonte â une epoque . . qui nous semble excéder un an: Que sa toux . . est d'un fâcheux augure, en tant que développée dans les circonstances actuelles, elle nous paraît tendre vers une maladie dont le résultat serait pour la négresse . . une mort inévitable."

[151] " ordered, that the judgment [in favor of the plaintiff] . . be . . reversed, and that ours be for the defendant, with costs in both courts." [150] " the purchaser is bound to take such care of the thing sold . . [151] as might be expected from a prudent father of a family. The plaintiff is the less excusable, as she was cautioned by the physicians of the necessity of care . . to avert the disease " [Morphy, J.]

*Rosine and others v. Bonnabel,* 5 Rob. La. 163, June 1843. [164] " Rosine, the original plaintiff, who died *pendente lite,* had sued for her liberty, and that of her minor children, alleging that her former mistress manumitted her in St. Jago de Cuba, in . . 1806, . . in consideration of three hundred dollars . . paid her . . and promised to cause the deed . . to be executed before the proper authority when called upon. After the death of Rosine, her children continued to prosecute . . one of them bringing her own children as co-plaintiffs, assisted by a *curator ad hoc.* Ultimately, after a delay of more than ten years, the case was submitted to a jury, . . the plantiffs offered in evidence a document in Spanish, purporting to be a transcript of certain judicial proceedings before a tribunal in St. Jago de Cuba, instituted by Rosine against her former mistress; and offered . . [165] to prove by . . the Spanish Consul in New Orleans, that the manner in which said document is certified . . is the legal manner in the Spanish dominions, . . also offered to prove the genuineness of the signatures of the notaries who signed . . or . . some of them . . The counsel for the defendants objected . . sustained " Verdict for the defendants.

[167] " ordered . . that the judgment . . be reversed, the verdict set aside, and the cause remanded . . with directions to the judge not to exclude parol evidence to prove the law of Spain . . and, if satisfied . . that the document . . is admissible, not to exclude it on the ground of its wanting any other attestation, or proof of authenticity; and . . that the costs of the appeal be paid by the defendants." [Bullard, J.]

*Fox v. Walsh,* 5 Rob. La. 222, June 1843. " she died [of consumption] about ten months after the sale [to the plaintiff]. . . Dr. Stone . . was called [about eight months after the sale] . . found her . . [223] suffering from a violent cough, . . thought, that medical aid should have been procured . . earlier . . but the plaintiff stated, as a reason . . that they thought it a mere cold. He attended on her afterwards at the defendant's house, two or three weeks before her death."

*Forsyth v. Wilkinson,* 5 Rob. La. 263, June 1843. " The defendant having purchased at auction . . Fanny . . for . . $825, took her . . but when required to sign the sale, refused . . on the ground, that the girl did not suit him, . . took the slave to the auctioneer . . who had sold her,

. . brought only $600, . . [264] Beard put the girl up several times, and bid her in, finding that she did not bring the price he thought she was worth;"

*Hitchcock v. North,* 5 Rob. La. 328, July 1843. Bullard, J.: "he was . . confined . . in a loathsome jail." "put into a *cachot,* or dungeon, and there watched with other persons, among others, a negro fastened in the stocks."

*State v. Seaborne alias Moore,* 8 Rob. La. 518, July 1843. [520] "Moore, was indicted . . for the murder of Hardy Ellis. . . The court . . charged the jury: 'That the condition of the deceased, whether slave or free, did not affect the character of the offence; that manslaughter was a crime which could be committed by a free white man on the body of a slave; . . and that, if the prisoner treated the deceased as free, he could not set up his slavery as a defence, even if it were a defence in law.'" The prisoner was "convicted . . of manslaughter, and sentenced . . to seven years imprisonment at hard labor." Affirmed.

*Succession of Key,* 5 Rob. La. 482, September 1843. "This suit is brought by the curator of the estate of Allen J. Key, for the purpose of being authorized to sell several slaves, whom the deceased, in . . a nuncupative testament . . directs to be emancipated. . . The inferior court declared the will valid," Affirmed.

*Carson v. Dwight,* 5 Rob. La. 484, September 1843. "The defendants are appellants from a judgment condemning them to pay . . balance due upon the price of . . Isabella, purchased . . for . . $700. The negro woman having been . . sold to satisfy the second instalment . . $350, brought only $290, . . The defendants resist the claim . . by plaintiff, on the ground, that . . Isabella is entitled to her freedom, as she was brought from Texas . . where slavery was not, at that time, tolerated" "into the United States, contrary to the laws . . that a suit has been brought by Isabella . . They oppose the amount by them paid on the first instalment, as a reconventional demand . . and pray, that the sale may be declared . . [485] void, . . and that judgment may be rendered in their favor . . for $350."

Held: "the reconventional demand . . is premature, . . ordered, that the judgment appealed from be affirmed, with stay of execution, till the plaintiff gives to the defendant good security to protect him from injury . . from the slave succeeding in her suit;" [Simon, J.] See Isabella *v.* Pecot, p. 581, *infra.*

*Re Kershaw,* 5 Rob. La. 488, September 1843. "witnesses . . said that Kershaw keeps a female slave belonging to his child, as a concubine; . . [no] reasons . . but their own suspicions, except one . . who testified, with an evident bias . . and said that Kershaw once told him, when drunk, that he was the father of a child by the girl."

*Hudson v. Grout,* 5 Rob. La. 499, September 1843. "slave . . employed . . in taking to pieces a steamboat sunk in the river, . . drowned. . . the witnesses generally agree, that the work . . was not . . dangerous"

*Marie Fanchonette v. Louis Grangé,* 5 Rob. La. 510, September 1843. " The plaintiff . . a free woman of color, avers, that since her emancipation by Laurent Grangé, she has had a child . . [now] about four . . that the defendant . . forcibly detains him. . . prays, that he be declared free, and that the defendant be condemned to pay her $1000 damages. . . [511] To prove her own freedom, she offered as evidence, a copy of an act. . by . . her former master . . 1836 . . certified . . also . . an advertisement, made by the Sheriff . . of the application to emancipate her . . also . . the record book . . of the Police Jury . . showing the assent . . judgment in favor of the plaintiff, . . defendant has appealed. . . bill of exceptions . . that the record . . [512] of that particular meeting is not signed by the president and secretary of the jury. . . [513] that the copy of the . . act [of emancipation] . . is false, there being no original in existence."

Judgment affirmed: [512] " their omissions of duty cannot prejudice persons incapable of controling [*sic*] . . them. . . [513] the defendant . . has wrested from the possession of a mother her young child. He sets up no title in himself . . but relies, in a question of personal liberty, upon technical objections, and the omissions of public officers, to defeat the action . . against a trespasser without right, a plaintiff need only show a *prime facie* . . right; . . we think the duly certified copy of the act of emancipation . . enables the plaintiff to maintain the judgment " [Garland, J.] See same *v.* Grangé *et al.,* p. 561, *infra.*

*Rudy v. Harding,* 6 Rob. La. 70, October 1843. [71] " negro man, purchased . . in Kentucky [in 1835], for . . $800 . . for the use of . . [their] plantation,"

*Cotton v. Brien,* 6 Rob. La. 115, October 1843. Action upon a note which [116] " was given for the purchase of slaves in . . Mississippi, which had been introduced into that State as merchandize, and for sale, after the 1st day of May, 1833, . . constitution [of Mississippi] declares, that . . [such] introduction . . shall be prohibited " after that date.

Held: [118] " The prohibitory clause . . carried within itself . . the paramount authority of the popular will." [116] " the Supreme Court of the United States, . . held, that the prohibition . . did not invalidate the contract, but that an act of the Legislature of the State was required to carry it into effect,[1] . . [117] The authority of the Supreme Court of the United States is . . deserving of the greatest respect. But upon questions which concern our own citizens, although growing out of the constitutional . . provisions of a sister State, when there is a conflict between the Federal and State tribunals, . . we feel authorized to look upon the question as a new one, and to decide for ourselves." [Bullard, J. ]

*Lowry v. Erwin,* 6 Rob. La. 192, October 1843. [202] " The overseers who were on the plantation say, that . . McNeil never lived on it; . . he lived with his family . . in . . Mississippi,"

[1] Groves *v.* Slaughter, p. 533, *supra.* See introduction to the Mississippi cases.

*Gordon v. Creditors,* 6 Rob. La. 328, January 1844. "agreement that . . [he] should furnish the land, buildings, slaves," for a saw-mill.

*Caldwell v. Mayes,* 6 Rob. La. 376, January 1844. "Hazard, a manufacturer of negro clothing in Rhode Island, shipped to . . the factors of . . a planter in Mississippi, several bales of negro clothing, . . to be forwarded . . only on the acceptance by [the factors] . . of Hazard's draft on them for . . $600."

*Gaines v. Chew,* 2 Howard (U. S.) 619, January 1844. The holographic will of Daniel Clark, written in 1813, [626] "provided for the freedom and maintenance of his slave Lubin;" [6 *id.* 570] "About two hours before his death, . . [571] Mr. Clark told Lubin, his confidential servant, to be sure, as soon as he died, to carry his little black case [containing his will] to Chevalier de la Croix."

*Gardiner v. Cross,* 6 Rob. La. 454, February 1844. "action for assault and battery, and slander. The defendant attempted to justify . . his conduct, by averring that the plaintiff . . frequently went into the cabins of his slaves . . exciting them to insubordination, . . verdict for $800 in favor of the plaintiff," New trial refused.

Judgment affirmed: "The case is a very aggravated one. The plaintiff was compelled to submit to being tied and whipped. . . [455] Two bills of exception were taken . . The first, to the refusal of the court to permit the defendant to prove, that he had been told that a slave had been heard to say, that the plaintiff was endeavoring to induce some of defendant's slaves to run off. The second, to the court's refusal to admit evidence of the plaintiff's character. . . The evidence was inadmissible . . the attempt to excite slaves to insubordination, ought to be promptly . . suppressed; but . . without planters being permitted . . to chastise, in the manner in which they punished their slaves, persons against whom suspicion may exist." "Whatever may be the character of a white man, it cannot follow, that any one has the right of inflicting . . such a chastisement" [Martin, J.]

*Arbonneaux v. Letorey,* 6 Rob. La. 456, February 1844. "$41 for the special [medical] treatment . . of two slaves"

*State v. Bill,* 8 Rob. La. 527, February 1844. "The accused was tried and convicted before the judge of the parish . . and six freeholders, on an accusation of an attempt to commit a rape[1] upon the person of a [white] child aged about six years;"

Judgment affirmed, [528] "subject . . to a modification, which originates in the impossibility of carrying the judgment into execution, on the day designated therein for the execution of the culprit."

*State v. George,* 8 Rob. La. 535, February 1844. [536] "The accused . . the slave of . . Covington, has been charged with wilfully and maliciously striking . . the overseer of his owner, causing a contusion and shedding of blood. . . he was tried by the parish judge and six free-

[1] B. and C. 59.

holders of the parish of Tensas, where the crime is alleged to have been committed, convicted and sentenced to suffer death. Covington . . has appealed . . [537] The first ground of complaint is, that the court erred in refusing to permit the defendant to challenge a juror, ' who had formed his opinion . . upon vague rumor ;' and had stated further, ' that his mind was made up as to the punishment which should be inflicted ' . . this class of persons . . [has no] right to peremptory challenges. They are nevertheless entitled to a trial by an impartial jury; and . . their right of challenging for cause in many respects, cannot differ materially, if at all, from those of free persons. . . [538] we are not prepared to say, that the judge erred in overruling the first objection to the juror, . . The second objection . . was well taken." Since the passage of the act of April 6, 1843, sect. 7, " it now rests with the jury in such cases . . to determine . . [539] within prescribed limits, the punishment . . The second ground of alleged error is, that the judge refused to instruct the jury, that they ought to acquit . . if the prosecution failed in making proof of the venue as charged. The acts of 1806 and 1825 . . of which the act of 1843 is amendatory, require that the judge and freeholders shall be of the parish where the offence was committed. . . The venue . . must be specially proved. . . after the jury had retired . . the parish judge remained with them in order to read to them the testimony, which . . they were unable to decipher . . [540] decreed, that the judgment . . be . . reversed; that a new trial be granted " [King, J.]

*State v. Lennon,* 8 Rob. La. 543, February 1844. " convicted of inveigling slaves, and sentenced to imprisonment at hard labor for six years," Affirmed.

*Verdun v. Splane,* 6 Rob. La. 530, March 1844. " Simeon was born . . 1827, . . the plaintiff, his mother, . . [531] had been a meritorious slave, and had been rewarded [in 1828] by her emancipation." [530] " he was not baptized until about a year after his birth, . . His mother . . was permitted to raise him during the life of her former owner, on whose death, Simeon was sold . . and purchased by his mother, [who [531] ' gave notes, with the required security,'] . . he then being about 12 or 13 "

Held: Simeon did not acquire his freedom by prescription. [531] " the circumstance of the child being permitted to remain . . with his mother [' a proper indulgence '] . . was . . [no] evidence of a sufferance of the enjoyment of his liberty, so as to destroy the right of the heirs " [Martin, J.]

*Sheriff v. Boyle,* 7 Rob. La. 82, March 1844. " action . . brought on an account for fees and expenses amounting to $1157, alleged to be due . . Sheriff . . for having kept about one year, eleven slaves, under a writ of sequestration [1] . . and for clothing and medical attendance . . [83] One [witness] said, that he . . would not think $30 a year, a fair compensation for keeping a grown negro. Another testified, that the expense

[1] See Jordan *v.* Black, p. 544, *supra.*

of his negroes . . is not more than $25 per year, each. Another . . that he would not charge more than a bit per head for weighing out the allowance of the negroes per week, and two bits per head for the meat per week; he would consider two bits per day unreasonable, as he boards white men at that, and makes money at it. Another said, that for keeping slaves as sheriff, he always charged two bits per day per head, which included clothing and feeding;" Judgment condemning the defendants to pay $420, in discharge of the claim. Affirmed.

*Mishon v. Bein,* 7 Rob. La. 146, March 1844. Will of Jacob Manumishon, a free man of color: " I give . . to Aimée, my faithful and beloved friend, whom I emancipated twenty years ago, the premises on which I now reside in . . New Orleans, for . . life, . . Then I give . . to Maria, her daughter, wife of Francis Lockwood, . . [147] a stevedore, on the levee . . the . . premises . . in fee simple, . . All my other effects, real and personal, moneys, bonds, notes and obligations . . to Maria . . and to . . Lockwood, in equal proportions . . after the decease of . . Aimée,"

*Lewis v. Cartwright,* 7 Rob. La. 186, April 1844. " The plaintiff claims his freedom, on the ground that he was carried by his master from the United States into Texas, at that time one of the States of the Mexican confederation, . . constitution of the State of Coahuila y Tejas, . . adopted . . March, 1827. The 13th article . . [187] provides . . [that] children born of slave mothers, after the publication of the constitution, . . [shall] be absolutely free, and . . [prohibits] the further introduction of slaves from abroad six months thereafter. . . the evidence . . is quite vague, as to the time . . the plaintiff was carried to Texas. The only witness . . upon that point says, . . that he . . recollects having hired him of Prior to aid him in clearing some land . . about . . 1826;" [186] " judgment . . rejecting his pretensions." Affirmed. See Cartwright *v.* McMillen, p. 593, *infra.*

*Villeré v. Graeter,* 7 Rob. La. 203, April 1844. " judgment against [the defendants] . . for causing the death of one of the plaintiff's slaves, by drowning, while engaged in a prohibited traffic with him and others, and encouraging them to steal sugar from their master to sell to them."

*Drummond v. Commissioners,* 7 Rob. La. 234, April 1844. [236] " that . . Lewis is worth $1500 [in 1842]; . . Moses . . $400, and Peter $750; that Lewis is a blacksmith, and his services worth $50 per month; and . . the services of the other two . . each $15 per month."

*State v. Williams,* 7 Rob. La. 252, April 1844. [253] " 1841, a prosecution was instituted in . . Criminal Court . . against [Williams] . . for an alleged violation of the statute of January 29th, 1817, . . [255] The indictment . . represents, ' that . . Williams, late . . of New Orleans, in . . 1840, . . did . . bring into this State . . twenty-four slaves, named . . which slaves . . had been convicted . . of murder, burglary, rape, arson, manslaughter, attempt at murder, and of having raised and attempted to raise an insurrection among the slaves in . . Virginia; he . . well know-

ing' . . [256] A statement of facts agreed to by the Attorney General and the counsel for the defendant represents: 'That the slaves mentioned . . and now confined in prison, . . were all sentenced to death for said crimes . . but were reprieved by the Governor of Virginia, for sale and transportation beyond the limits of the United States, . . that Williams entered into bond to [so] transport . . that the said slaves were the property . . of Williams when they arrived . . and that he came to this State with them from Virginia, by way of Mobile.' . . verdict of guilty, . . the court pronounced a judgment . . that as there was no informer the whole amount of the fines and forfeitures accrued to the State, . . declared the . . slaves forfeited to the State, and condemned Williams to pay a fine of . . $500 for each of the twenty-four slaves . . and ordered him to stand committed until the fine and costs are paid. . . an appeal was . . prayed for" [254] "the Judge of the Criminal Court . . refused . . A rule having been granted on the Judge . . to show cause why a *mandamus* should not be issued commanding him to allow an appeal . . Canonge, J., showed for cause, that the Supreme Court is without jurisdiction in criminal cases; . . The rule was made absolute, and the Judge ordered to grant an appeal, reserving . . the right to move for its dismissal on the ground of want of jurisdiction. The Judge . . having refused . . the Sheriff was directed to commit him to prison, . . Upon being informed . . the Judge granted the appeal, protesting . . [257] Attorney General . . moved to dismiss the appeal for want of jurisdiction."

Appeal sustained. [270] "as the obligation of the defendant to pay the fine was merely a civil one . . on which, on his failure to pay, he might have been prosecuted in courts destitute of criminal jurisdiction, . . it was not in the power of the Attorney General, by indicting the defendant, . . to deprive him of the right of appeal. . . [271] On the merits, . . the proceeding by indictment . . is contrary to law; . . The judgment ought to be reversed." [Martin, J.] Garland, Morphy, and Simon, Judges, concurred. Bullard, J., dissented: [272] "Is there any man of unsophisticated sense who would not exclaim at once, that it is a crime . . to bring in knowingly . . convicted ravishers, murderers, and incendiaries?" [309] "A re-hearing having been granted, Martin and Garland, Judges, adhered to the opinions originally pronounced" "further reflection . . brought [Judge Morphy] . . to a different conclusion, . . [314] The act of 1817 is [a] criminal law." [315] "a further attentive consideration . . brought [Judge Simon also] . . to a different conclusion from that which . . [he] had heretofore adopted." As Judge Bullard's opinion remained unchanged, the appeal was dismissed.[1] See Gil *v.* Williams and Davis, p. 653, *infra.*

*Penny v. Christmas,* 7 Rob. La. 481, May 1844. Weston and his wife Sarah [482] "came [from South Carolina in 1818] to this State . . with certain slaves" "and settled in the parish of East Feliciana: . . [488]

[1] The constitution of 1845 removed the ambiguity of the disputed clause in the constitution of 1812 by extending the appellate jurisdiction of the Supreme Court to "criminal cases on questions of law alone, whenever the punishment of death or hard labor may be inflicted, or when a fine exceeding three hundred dollars is actually imposed."—Ed.

Scott died in South Carolina . . 1822, or . . 1823," His will empowered his executors " to lay out five thousand dollars in the purchase of young and valuable negroes for the use of my sister, Sarah Weston,"

*Brown v. Railroad Co.,* 8 Rob. La. 45, June 1844. [48] " orders had been given to . . secure the cars every night, by placing . . blocks under the wheels. This duty . . was sometimes entrusted to a black man "

*Macarty v. Canal Co.,* 8 Rob. La. 102, June 1844. " a gang of negroes were employed in clearing and opening the road."

*Rist v. Hagan,* 8 Rob. La. 106, June 1844. The plaintiff purchased John in 1839 for $1100. [107] " he ran away twice at least within the first two months . . was absent about ten days the first time, and about two weeks the second time. He was taken, on one of these occasions, ten miles from home; . . the slave's general habits were those of a great runaway, and great drunkard and thief. . . he was whipped once after having run away . . Another swears, that the negro . . was absent weeks at a time; was in the woods nearly all the time when not sick; and is *a practical runaway negro.* . . [108] at the date of the sale, the slave had been less than eight months in the State;" The plaintiff stated that he had been [106] " obliged to pay . . $100 for apprehending him . . also . . $300 for physicians' services and medicines, . . [107] Judgment . . annulling the sale, and condemning the defendant to pay $1100, with interest, etc.;" Affirmed.

*Lemos v. Daubert et al.,* 8 Rob. La. 224, June 1844. [225] " the plaintiff discovered . . the unsoundness . . gave notice of it to the auctioneer, and of his declining to complete the purchase. . . lodged the slave in jail, at the risk and charge of the owner. . . The disease appeared to be . . a grave swelling on one of her thighs, on which a scar showed that a surgical operation had been performed; . . the jury came to the conclusion . . redhibitory . . The court came to the same " [224] " the sale to the plaintiff was rescinded; . . his vendor, had judgment against Durapau [her vendor], who had judgment against Montz, and this last against Destez," Affirmed. [225] " application . . by the defendants' warrantors for a re-hearing [granted] . . as it is admitted in . . answer, that the defect . . [226] was such as to be discovered by simple inspection.[1] . . All the sucessive warrantors, except Destez, who denies all knowledge, seem to admit also that the defect was . . apparent . . testimony of . . Dr. Dupierris, that Durapau . . had called upon him to examine her, . . advised . . not to purchase . . as she had every indication of a scrofulous disease and a swelling in the abdomen. . . notwithstanding . . Durapau told him that he intended purchasing . . as he could get her very cheap." Held: [227] " the parties successively called in warranty should be discharged from all liability."

*Fink v. Martin,* 8 Rob. La. 256, June 1844. " December, 1842, an execution was issued . . David, a valuable mechanic, . . was seized.

[1] C. C. 2497.

He was not offered for sale until April, when . . no adjudication could take place for want of bids . . sufficient to pay the mortgages having priority over that of the plaintiff. A rule on the latter and the sheriff was then taken by the defendant, calling upon them to show cause why . . David should not be returned" Ordered [258] "that the rule . . be made absolute, and that he do recover the possession"

*Irish v. Wright,* 8 Rob. La. 428, July 1844. [431] "action against . . master of the steamship . . to recover . . damages for having . . abetted . . the plaintiff's debtor, in conveying a large number of slaves belonging to the latter, from the mouth of the Mississippi to Texas, . . [432] with a full knowledge of the rights of the plaintiff, and against the earnest remonstrances of his agent, the slaves were taken by Wright and towed in a small vessel to Galveston," Verdict against Wright for $13,330, the amount of the debt. Judgment theron affirmed.

*Commissioners v. Hodge,* 8 Rob. La. 450, July 1844. [452] "Saul always acted as Hodge's overseer, . . His salary was $1200 a year, . . Hodge . . also hired nine negroes from him to work in the field."

*Guérin v. Rivarde,* 8 Rob. La. 457, July 1844. In 1813 "Gertrude . . [was] estimated at . . $800, and Lucie and her three children, Marie, Hedy and Obadiah . . at $1500. . . 1833 . . Marie with her two children, Hedy and her two children, and Obadiah [were sold] . . for . . $2550 cash."

*Jenkins v. Thenet,* 9 Rob. La. 34, September 1844. "The slaves were brought into this State, in 1835, by . . Fenwick, . . administrator of the estate of his deceased brother . . in Maryland," "and fraudulently sold"

*Marie Fanchonette v. Grangé et al.,* 9 Rob. La. 86, September 1844. "The plaintiff sues for $10,000 damages . . [88] proved, that a short time after the decision of this court, in her suit against Louis Grangé,[1] that individual, together with one of his co-heirs, forcibly took her and her [two] children into possession, still alleging a claim to them. On the part of the defendants, it was shown, that the plaintiff always resided with Laurent Grangé after her emancipation, until . . his decease, . . and one witness says, that she was his concubine. . . The present parish judge says that he cannot find . . any original of the act of which a copy is produced; produces an [incomplete] act . . judgment in favor of the plaintiff, declaring her and her children free, and giving $100 damages against Louis Grangé,"

Judgment affirmed [90] "with costs, and ten per cent damages against Louis Grangé, on the . . one hundred dollars, for a frivolous appeal." [89] "there is no . . excuse for him, in aiding to reduce the plaintiff to a state of slavery, after she had been declared free by a competent tribunal. . . The counsel for the defendants . . calls on us . . to say, that the judge [who certified the copy] committed a forgery,

[1] Same *v.* Grangé, p. 555, *supra.*

. . [90] and that a clerk in his office [who recorded it] aided . . This is asking us to presume against what we think is the weight of the testimony, and the presumption of law that public officers do their duty until the contrary is shown, in a case involving the personal liberty of the plaintiff and her children." [Garland, J.]

*Milo v. Lynch,* 9 Rob. La. 98, September 1844. " The petitioner seeks to recover [$700] . . the price of a mulatto boy named Edmund [about 16], . . purchased . . 1841. . . [99] evidence . . that some time after the sale, the plaintiff returned the boy . . and received . . another . . but that [he] . . having been bitten by a dog, was sent for by his master to be taken care of, and . . died . . that Edmund ran away twice from the plaintiff, and three times from the defendant, after he was returned . . The first time . . he was found in the jail . . in the parish of Iberville, to which . . he had escaped on board of a steamboat. When . . apprehended for the third time by the defendant, he was lodged in jail, where he has remained ever since." Verdict in favor of the plaintiff. New trial refused. Affirmed.

*Lewis v. Gibson,* 9 Rob. La. 146, October 1844. Action to annul a sale. [147] " The evidence shows that the slave [Lige] had runaway from the defendant several times in . . Arkansas, and that he had been guilty of the brutal act of knocking out one of his teeth for doing so. . . 1841, he brought this and another slave to this State for sale, and kept them . . at the residence of . . Grayson, . . plaintiff . . went several times into the field to . . converse with them. The defendant told the plaintiff that . . Lige had run away once; . . why he made such a difference in price [was] . . ' that . . Andrew was one in whom he placed a great deal of confidence, . . no confidence at all in [Lige.'] . . The plaintiff said he wanted to purchase . . cheap. . . not proved the slave has ever run away . . since . . Grayson . . stated ' that Lewis told him, that . . Andrew told him, that Lige had run away two or three times.' . . objected to . . sustained "

Held: " the judge erred . . [148] The matter intended to be proved was the admission of the plaintiff, not the statement of the slave; . . judgment . . for the defendant as in case of a non-suit, the plaintiff paying the costs in both courts." " Sufficient was told him previous to the sale, to put a prudent man on his guard." [Garland, J.]

*Bailey v. Stevens,* 9 Rob. La. 158, October 1844. " action . . by the proprietor of a plantation . . against an overseer . . charged with brutal treatment of the slaves, during the absence of the plaintiff, and other gross violations of duty, . . verdict and judgment for the defendant " Reversed and the case remanded: " A perusal of the evidence . . is far from reconciling our minds to the finding of the jury. . . justice requires . . a new trial." [Bullard, J.]

*Routh v. Routh,* 9 Rob. La. 224, October 1844. [225] " In 1814, he was his father's overseer . . [226] [at] $500 a year "

*Cecile v. St. Denis,* 9 Rob. La. 231, October 1844. [235] "The defendant is a free woman of color, . . she had to be furnished with money . . to pay for a favorite slave . . his mother having advanced it."

*Gas Light Co. v. Botts,* 9 Rob. La. 305, December 1844. "action . . to recover $1050, the price of . . Davy, sold . . 1838, . . evidence . . that . . the superintendent of the gas works, having met the defendant . . the latter told him he had heard that the company wished to buy slaves; that he had not then on hand any that would suit them, but that a friend . . had gone to Mississippi to purchase prime slaves, . . that, some time after, . . defendant asked him to . . examine . . Davy, . . stating . . that the boy had been in town but a few days . . bought, and ran away [twice] . . further shown, that the defendant had purchased . . about a month before he sold him . . from . . Smith, with a restricted warranty against the redhibitory maladies only; that the slave was then in the chain gang, to the knowledge of the defendant; was sold to him for $500, clear of all expenses; and was represented as a subject very hard to manage." Verdict and judgment in favor of the plaintiffs. Affirmed.

*Fazende v. Hagan,* 9 Rob. La. 306, December 1844. Action to rescind a sale. "Fortier testified that the slave, a boy of about ten . . ran away about twenty days after the sale; . . was found at the negro-yard of the defendant, a slave trader; that the plaintiff, on finding the boy there, told defendant that he did not want him . . that defendant replied, that the plaintiff . . must keep him; that plaintiff took the boy, who, in about ten or fifteen days . . again ran away, and was drowned. . . [307] Judgment by default was confirmed" "in the absence of the defendant."

Reversed and the case remanded: "The habit of running away in a boy of ten . . is supposed to be extremely rare. The boy's absenting himself from his new master, and going to his former, is perhaps not conclusive evidence of an intention to run away," [Buchanan, J.]

*Clay v. Ballard,* 9 Rob. La. 308, December 1844. "action against Ballard, for . . $4,000, with interest, . . on the following obligation . . 'New-Orleans, January 9, 1841. We, . . Ballard and . . Slaughter, promise to pay to Henry Clay, Esq., [$5,000] . . Ballard paying [$4,000] . . thereof . . in addition to his fee already . . agreed upon, in . . Groves *v.* . . Slaughter,[1] now in the Supreme Court of the United States, provided that the decision . . fully settle the question' . . a letter [to Clay, of the same date,] . . [329] 'we are represented by able counsel . . but relying on your ability . . more particularly, we feel justified in enclosing you the above obligation,' . . The respondent . . avers, that . . the tribunals . . of Mississippi . . have disregarded the judgment of the Supreme Court of the United States,[2] . . so that the decision is of no value, legally or morally, to him;" [332] "The testimony of judge Montgomery shows, that Ballard had, at the time the . . suit was pending

[1] P. 533, *supra.*
[2] See introduction to the Mississippi cases.

. . claims to the amount of nearly $200,000, against citizens . . of Mississippi and Louisiana, which were liable to the same defence made by Groves; that in one . . against Gen. Brandon, for about $16,000, the defence had been abandoned after the decision of the Supreme Court. The same is shown in the deposition of Chancellor Quitman, who gives the particulars of a compromise of one claim, amounting to upwards of $100,000."

Judgment against the plaintiff reversed; " and ours is, that the plaintiff recover of the defendant [$4000] . . with interest . . from judicial demand (January 9th, 1843), with costs in both courts." " the plaintiff was far from warranting that . . [the judgment] would, in all other cases, and in other courts, be adopted as the unerring guide of decision;" [Bullard, J.]

*Farmer v. Fisk,* 9 Rob. La. 351, December 1844. [352] " the record shows that . . Kitty was a confirmed runaway, while she belonged to Proctor, defendant's vendor; . . away from her master for several years, when she was arrested, and put into the jail of the . . Municipality, in June, 1841; . . remained there until November . . and was then sold out of the jail to the defendant, through one Hite, a broker, for $350; . . [353] jail fees were paid either by defendant, or by Hite. Proctor . . believing the latter was the purchaser, . . informed him that . . [she] was a runaway, and that he sold her as such. . . Hite . . did not communicate these facts to the defendant, who, a month afterwards, sold the slave to the plaintiff for $600." [351] " verdict and judgment . . in favor of the plaintiff for . . the purchase money, and for $100 damages." Affirmed.

*Knight v. Heinnes,* 9 Rob. La. 377, December 1844. [378] " the slave ran away from the [new masters] . . shortly after she was in their possession, and is in the parish jail . . where she has been for a long time."

*McDonogh v. Millaudon,* 3 Howard (U. S.) 693, January 1845. [695] " on the 3d of April, 1769, the French governor of Louisiana granted . . a tract of land . . on the Mississippi river . . to Lake Maurepas, . . to . . join that of a free mulatto named Joseph Lacomb. . . [697] on the face of the sketch [made by Trudeau in 1790] . . a note which says that the land . . passed . . in favour of . . Alexandre Lange, mulatto,"

*Mazerolle et al. v. Françoise et al.,* 9 Rob. La. 528, February 1845. " The plaintiffs sought a judgment declaring the defendants to be their slaves. . . [529] The record proves that Françoise was the slave of Anne Mazerolle, the wife of . . Daigle; that, at her death, Françoise was sold by the Court of Probates, and purchased by . . Daigle, who, . . by a notarial act, emancipated her, and by his will recognized her emancipation, and bequeathed to her . . her [two] children, to be liberated at the age of majority." Judgment for the defendants affirmed.

*Succession of Duplessis,* 10 Rob. La. 193, March 1845. [194] "Martin Duplessis, a free man of color, died . . 1833, leaving a nuncupative will under private signature, in which he . . ordered the emancipation of . . Sophie and her children. . . executor . . died, in . . 1834, without having executed . . The heirs . . sold all the property except Sophie and her children, whom they kept until . . 1842, when they proceeded to a partition . . and caused these slaves to be sold under an order of . . court. . . 1844, . . Lombard petitioned . . for letters of dative executorship, . . the heirs . . deny that . . Duplessis ever made any valid will; . . [195] the application . . was rejected,"

Affirmed: "If Sophie and her children were yet in the possession of the heirs . . [there would be] no good ground for rejecting the application . . The right . . to their freedom has not been lessened . . by the course pursued by the heirs . . but it must be asserted contradictorily with the person who bought them." [Morphy, J.]

*McCargo v. New Orleans Insurance Co.* ("The *Creole* Case"), 10 Rob. La. 202, March 1845. [312] "This case . . with six others, growing out of the loss of the slaves on board the brig *Creole,* . . are actions upon several policies of insurance," McCargo's proposal for insurance states that: [204] "Insurance is wanted against all risks, and chiefly against foreign interference on twenty-six negroes, at $800 each, on board the brig *Creole,* . . from Norfolk to New Orleans—warranted by the assured free from elopement, insurrection, or natural death." These provisions were incorporated in the policy. [314] "The cargo . . consisted of one hundred and thirty-five slaves,[1] besides some tobacco." [260] "two-thirds of the slaves . . were males; there were ten whites, . . comprising the crew . . and four white passengers, T. J. D. McCargo, Hewell, Merritt [agents of McCargo] and Leidner." [314] "She left Richmond on the 25th of October," 1841. Gifford, chief mate, testified: [217] "When the negroes came on board no examination was made to see if they had any arms in their packs; never examined the packs of negroes, nor has ever known it to be done to see if they had any arms" [206] "On looking at the bill of lading he recognizes the names . . Madison Washington, Elijah Morris, Pompey Garrison and Andrew Jackson as the slaves of the plaintiff . . After putting to sea the negro women were put in the after hold . . the men in the fore hold; . . Hewell and Merritt [agents of McCargo] . . attended to the negroes. . . The men were allowed to come on deck night and day if they wished. . . Between nine and half-past [on November 7], Elijah Morris came . . on deck, and told him that one of the negro men had gone . . where the women were. . . [207] Merritt, by lighting the lamp, enabled us to see Madison Washington, . . It was the rule to whip the negro men if they

[1] [260] "The tonnage of the *Creole* was 157-25/95ths tons. . . The act of Congress of 2 March, 1819, (which does not indeed apply to the very same subject matter, . . ) forbids the carrying of more than two passengers for every five tons; . . Will any reasonable man say that 135 negroes would be as . . indisposed to insurrection, under such circumstances of discomfort, as . . in a . . more commodious vessel?" [Counsel for Insurance Company.]

went into the hold with the women, . . he pushed deponent off, . . a pistol was fired at deponent, . . Madison called to the rest, to come on; as they had commenced, they must go through with it. . . [208] deponent retreated to the main top, and Captain Ensor followed . . badly stabbed . . Heard Madison Washington tell the rest to kill every white man, . . Three or four . . went aft to kill the Frenchman at the wheel. Madison Washington told them not to hurt him, he was a Frenchman, and could not speak . . English. . . they brought Mr. Hewell on deck [[207] 'stabbed in a number of places'], they cut his head off as near as they could . . (he was then dead); . . threw him overboard . . [209] told deponent to bring the captain down . . put him in the fore hold . . nineteen kept strict orders over the rest . . threatening to whip them if they disobeyed . . They appointed another cook for the negroes, Madison having been the former cook. . . [219] On the night of the insurrection the vessel had been hove to, and she remained so all night . . but the next morning . . course for Nassau . . was pursued because D. Ruffin and George Portlock [slaves], who both understood the compass, relieved each other in watching . . [220] threatening instant death if the course was changed." [210] "we arrived at Nassau . . the 9th November. . . a black pilot [[233] 'and his black crew'] came on board . . the quarantine officer came along side . . Deponent jumped into his boat, . . [went] to the American Consul. . . [They] went to see the Governor . . asked protection . . The Governor sent a company of Africans with a white officer . . together with a black corporal and sergeant. . . These soldiers . . tied Ben Blacksmith, Madison Washington, D. Ruffin and Elijah Morris, and confined them in the long boat on deck, . . [213] When witness walked in the streets, the inhabitants, both whites and negroes, would say: 'There goes one of the damned pirates and slavers.'" "Captain Woodside, master of the [American] barque *Louisa* . . came on board with the American Consul" The former deposed, [240] "soon after . . [two] Episcopal clergymen [came on board], who were for some time in familiar conversation with the slaves, and appeared to be giving them directions . . as he noticed the female slaves to be putting on their bonnets, and making preparations to leave . . [247] the Attorney General of the colony of New Providence . . deposed, . . [248] an inquiry . . had been carried on, on board for several days, . . That on getting on board . . he had pointed out to him by the police magistrate . . eighteen persons . . identified . . as . . concerned in the murder . . Leitener [*sic*] . . identified one other . . witness requested . . the officer in command . . to take charge of the accused . . and . . informed [them] . . that they would . . be conveyed on shore, and there imprisoned until . . the British government . . decided whether they should be delivered up to the American government for trial,[1] . . and

[1] [250] "George Grundy and Adam Carnay have . . since died, and the remaining seventeen were, on the sixteenth of [April 1842] . . liberated by an order of the judges of the Court of Admiralty Sessions of this colony."

requested the mate to cause every person on board [1] . . to appear on deck . . [249] They appeared to consist principally of black and colored persons . . witness . . told them . . that . . [no] criminatory evidence having been adduced against any of [them] . . he had to inform them that as far as the authorities of the island were concerned all restrictions on their movements were removed." [325] " all the other English witnesses . . testify that he did not tell the slaves they were free . . They all swear that Merritt, at the same time, told them . . that they might . . go, or stay, as they pleased. This is flatly contradicted by the American witnesses, . . Merritt, however, admits . . he . . said to them: . . ' all of you who think proper to proceed . . to New Orleans, have the privilege of doing so on . . the *Creole.*' . . Woodside said to Gifford, that he ought to protest . . Gifford expressed . . his entire willingness that the people should go on shore." [249] " A shout . . rose from among the colored persons, who appeared . . with one voice to express their determination to quit the vessel, . . [250] getting into the boats . . alongside " [230] " Captain Ensor sent [the American consul] . . a letter . . from . . Attorney at Law, demanding . . the baggage of fifty-four slaves . . principally . . old blankets and some old clothes, the slaves having taken on shore their . . best clothing . . [He] [231] advised Mr. Gifford to give up the articles . . [232] a schooner . . 18th of November . . sailed for Jamaica, with between forty and fifty . . slaves from the *Creole*. . . [258] There was a verdict and judgment below in favor of the plaintiff for $18,400," [2]

[332] " decreed that the judgment . . be reversed . . and ours is for the defendants, with costs in both courts." "the insurrection . . was the cause of breaking up the voyage," [Bullard, J.]

*Andrews v. Ocean Insurance Co.,* 10 Rob. La. 332, March 1845. " action to recover $3,300, the insurance upon eight slaves . . on the . . *Creole,* . . The same facts . . were presented . . but the verdict and judgment below, were in favor of the defendants." Affirmed.

*Lockett v. Firemen's Insurance Co.,* 10 Rob. La. 332, March 1845. " action to recover $20,000, the insurance on twenty-six slaves . . on the . . *Creole,* . . [333] this written clause was inserted: ' The assurers are not liable for suicide, mutiny, natural death, or desertion; but to take the risk of interference by foreign governments, or their agents.' . . verdict for the defendants," Judgment for the defendants affirmed.

*Hagan v. Ocean Insurance Co.,* 10 Rob. La. 333, March 1845. " action to recover $6,500, the insurance on nine slaves, . . The policy was

[1] [218] " They thought they had all the slaves up." But [217] "five slaves . . came with us to New Orleans," "Two had remained in the cabin, on the voyage from Richmond . . appeared to be crying, and did not know what to do. One was . . a woman, perhaps thirty . . named Rachel Glover; the other, Mary, a mulatto girl, about thirteen . . the other two women had been in the hold all the voyage, . . preferred coming to their masters. The [little] boy was the son of one . . in the cabin."

[2] Note: " The jury deducted $800 for one of the slaves who reached New Orleans. . . $1,600 appears to have been deducted as half the value of four . . who [took] . . part in the insurrection, the jury being of opinion that their loss should be divided between the insurers and the plaintiff."

similar to that . . in . . McCargo *v.* The New Orleans Insurance Company, . . on the same voyage, . . verdict and judgment in favor of the defendants," Affirmed.

*Johnson v. Ocean Insurance Co.,* 10 Rob. La. 334, March 1845. "action to recover $15,000, the insurance on twenty-three slaves, . . policy . . similar . . on the same voyage, . . judgment in favor of the defendants." Affirmed.

*McCargo v. Merchants Insurance Co.,* 10 Rob. La. 334, March 1845. [335] "action to recover $15,200, the insurance upon nineteen slaves . . on the same voyage . . The policy stipulates that the defendants take upon themselves . . 'all . . perils, losses, or misfortunes' . . Appended . . is a memorandum, 'that the Company are not liable for suicide, desertion or natural death, but . . chiefly for the risk of detention, capture, seizure of foreign powers.' . . verdict in favor of the plaintiff for $14,400, a deduction of $800 having been made for one of the slaves [Rachel Glover] [1] who had reached New Orleans on the brig. . . verdict and judgment in favor of the plaintiff,"

Affirmed: [337] "we have adopted the English law, according to which an insurance on slaves protects the assured against losses . . from mutiny . . unless . . expressly excepted . . Estrangin gives it as his opinion that . . revolt . . ought in general to be at the risk of the insured; . . Bulay Paty . . seems to countenance the same doctrine. . . [338] losses . . springing from . . the desire inherent in the subject to escape from a state of slavery. These doctrines . . in relation to the African slave trade, would seem not unreasonable; . . But the commerce between the States . . is very different from that trade which is now reprobated by the common voice of Christendom, by which the natives of Africa were reduced for the first time to a servile condition, and when their resistance might be regarded as any thing but criminal." [Bullard, J.]

*Lockett v. Merchants Insurance Co.,* 10 Rob. La. 339, March 1845. "action to recover $10,000, the insurance upon fifteen slaves . . on the same voyage" [348] "the only [ground of defence] . . peculiar to the present case is an alleged deviation in descending the James River, and coming to anchor in Hampton Roads." [340] "verdict and judgment for the plaintiff for $9,333 33, the sum of $666 66 being deducted as the value of one . . [341] admitted to have reached New Orleans" Affirmed. Petition for a re-hearing of the last two cases. Counsel for the insurance company: [351] "The passionate desire for liberty exists in the bosom of *every* slave—whether the recent captive, or him to whom bondage has become a habit, . . [353] two of McCargo's slaves . . Rachel Glover and Mary [2] arrived . . Allowance was made . . for one slave only."

[1] Same *v.* N. O. Insurance Co., p. 567, n. 1, *supra.*
[2] *Ibid.*

Re-hearing refused: [353] "The counsel have not correctly understood us, if they suppose we meant to make the difference between the African slave trade . . and the commerce between the States . . [354] to consist in the desire, in a greater or less degree inherent . . to escape . . there was a great difference . . The natives of Africa were guilty of no crime, when they resisted the attempt of the slaver to subject them to a servile condition. . . If . . Mary . . arrived safe, the title to her vested in the defendants by the abandonment;" [Bullard, J.] [1]

*Casimir v. Blanc,* 10 Rob. La. 448, April 1845. "Jean Casimir and Ursule, *alias* Sulet, free persons of color . . [449] lived together in St. Domingo, and at St. Jago de Cuba, where the plaintiff was born [in 1805]; . . the plaintiff lived with his father, who called him his son, after they came to New Orleans; . . [but] Casimir never admitted his marriage to a witness, who . . was living with his sister as his concubine; and . . Casimir was . . married to Félicité D'Abat, in this city, and . . Ursule made no complaint, although she lived . . in the same *faubourg* . . in concubinage with one Jean, who appears to have accompanied them from St. Jago de Cuba." [448] "judgment of the Court of Probates, repelling his pretensions" affirmed.

*François v. Lobrano,* 10 Rob. La. 450, April 1845. "The petitioner, formerly a slave of . . Pilié, was sold by [him] . . to . . Sauvinet . . July, 1835, for . . [451] $300, . . on the express condition that as soon as . . reimbursed . . he should be entitled to his freedom, the formalities . . at . . (petitioner's) expense. . . January, 1839, Sauvinet sold . . to . . Saliba, for the same price, and on the same condition; and . . October, 1839, Saliba sold . . to the present defendant, for the same . . The petitioner . . [alleges] that, previous to July, 1835, he had paid . . Pilié $500, on account of his freedom, and that he has long since paid to his subsequent masters more than the $300 . . that . . the defendant . . has put him in the chain gang of the city. The defendant . . averred that . . slave . . had not even paid his monthly wages; . . often deprived of the services . . by his running away during several weeks; . . coupled with the still worse habit of drinking . . he has been obliged to lodge [him] . . in jail, . . The previous vendors . . answered to the same effect; . . judgment in favor of the defendant."

Affirmed: [452] "Until [the $300] . . is paid, he must remain the absolute slave of the defendant." To the argument of François's counsel, "that from the moment he paid $500 to . . Pilié, he became a co-proprietor of himself with his master, for five-eighths of his value . . therefore, owed . . only three-eighths of his labor . . we cannot assent. A slave cannot . . until legally . . emancipated, own any property, without the consent of his master." [2] [Morphy, J.]

*Prevost v. Martel,* 10 Rob. La. 512, May 1845. [513] "Prevost, who died in . . 1843, leaving an olographic will, . . bequeathed a . . [514]

[1] The *Creole* case was arbitrated in 1853 and the claimants were awarded $110,330. J. B. Moore, *International Arbitrations,* IV. 4378.

[2] Was not the consent of his master implied?—Ed.

portion of his immovable property to . . Florestine Cécile, a free woman of color, and all his moveable estate to . . Clarisse, also a free woman of color, and that these legacies, together with the emancipation of several of his slaves, being duly executed, he instituted his . . sister . . the universal legatee of the remainder" The plaintiffs allege that they, with the sister, [513] "are the only legitimate heirs . . [514] that . . Clarisse was his concubine, . . and . . Florestine . . the bastard daughter . . [515] Florestine Cécile . . alleges that, being born a slave, she was, at the age of three years, emancipated by . . Constant, who considered her as his daughter," Petition dismissed: the plaintiffs have no interest.

*McFarlane v. Richardson,* 11 Rob. La. 13, 1845. [15] "1833 . . purchased . . 'a mulattress, named Biddy, or Kitty, *alias* Estelle, aged twenty-seven years.' It is recited in the act [of sale] that this slave had a child, who was not sold with her, being a *statu-liber.*"

*Milliken v. Andrews,* 11 Rob. La. 241, June 1845. [242] "a physician . . attests . . 'that the disease was a dropsy of the chest; . . not probable he could recover so as to become a healthy slave.' . . the slave was not put to any hard work, was properly clothed and fed, and . . due medical aid was given to him."

*Lagrange v. Barré,* 11 Rob. La. 302, July 1845. [303] "sold the land to . . Valbuzi Cavelier, a free man of color, for . . $800;"

*Sally Miller v. Belmonti,*[1] 11 Rob. La. 339, July 1845. "The plaintiff sues for her freedom, on the ground that she was born free . . that her father . . and her mother . . emigrated from Germany in 1817 or 1818, with herself, and two [three] other children; that her mother [and baby] died upon the passage," [12 La. Hist. Q. 451] "Müller with his three children, a boy of eight . . and Dorothea and Salome, aged about six and four" "were . . sold as redemptioners . . to go to Attakapas, . . [452] news was brought to the city of the death of the father from fever and the drowning of the brother, but where Salome and Dorothea were, none could say, except that they were in Attakapas. . . [453] [In] 1842 . . cousin of Salome . . who had been her playmate on the ship . . went down to . . the lower section of New Orleans, . . Passing the cabaret of Louis Belmonti, she noticed . . a woman . . It was as if her aunt . . stood face to face with her, . . her black hair and eyes, her olive skin . . 'You are Sally Müller, my cousin!' The stranger . . said: 'You must be mistaken. My name is Mary Bridget. I am a yellow girl . . Mr. Belmonti . . bought me from Mr. John Fitz Miller[2] of Attakapas. I have no relatives except my [negro] husband and children.' . . [455] Belmonti refused to let her go. . . When the slave went to live with [her god-mother, who later testified, [454] 'I could recognize her among a hundred thousand'] . . and . . decided to gain free-

[1] See "Salome Müller," by George W. Cable, in the *Century Magazine,* vol. XVI., n. s., p. 56; see also "Sally Mueller, the German Slave," by Louis Voss, in 12 La. Hist. Q. 447. The latter is based on Cable's article and on a pamphlet by J. Hanno Deiler.

[2] "The similarity in the surnames of Salome and her master . . is accidental and without significance." *Cent. Mag.,* vol. XVI., p. 62 n.

dom by an appeal to the law, Belmonti replied with threats of imprisonment, the chain-gang and the auctioneer's block." [11 Rob. La. 339] "Belmonti calls in [Miller] as warrantor. The warrantor pleads that, in . . [340] 1822 . . Williams . . left with him . . mulatto girl, then named Bridget, and about twelve . . whom he . . represented to be a mulattress and slave for life. That having made an advance of one hundred dollars, to be reimbursed on the sale of said girl, he . . sold her to his mother . . who retained her until 1834, when she, with her children, were sold back to him; . . in 1838 . . sold to Belmonti, . . [342] Numerous witnesses swore positively to their undoubting conviction of her identity. . . evidence . . that the lost child had . . moles, on the inside of her thighs. The plaintiff was examined by eminent members of the medical profession, who certify to the existence" [340] "The District Court . . dismissed her petition and she appealed."

[344] " judgment . . reversed; and ours is, that the plaintiff be released from the bonds of slavery, that the defendant pay the costs of the appeal, and that the case be remanded for further proceedings, as between the defendant and his warrantor." [340] "The first inquiry . . is, what is the color of the plaintiff? . . Ever since the case of Adelle *v.* Beauregard,[1] . . it has been the settled doctrine here, that persons of color are presumed to be free. . . except as to Africans in the slave-holding States, the presumption is in favor of freedom, and the burden of proof is on him who claims the colored person as a slave. . . [341] no evidence of her having descended from a slave mother, or . . a mother of the African race; . . Gen. Lewis . . says she is as white as most persons; . . presumption . . fortified . . by the testimony, . . [343] if there be . . two persons about the same age, bearing a strong resemblance to the family of Miller, and having the same identical marks from their birth, and the plaintiff is not the real lost child, . . [344] it is certainly one of the most extraordinary things in history. . . we are of opinion that the plaintiff is free," [2] [Bullard, J.] [12 La. Hist. Q. 460] "According to Cable, corroborated by Deiler, she went to California with a white husband,"

*Thomson v. Mylne,* 11 Rob. La. 349, July 1845. [374] " was to give the services of ten slaves, and six negroes in *statu liberi*;"

*Sandoz v. Gary,* 11 Rob. La. 529, September 1845. In 1809 Décuir [530] " emancipated a mulatto girl named Josephine, who was his concubine, and who continued to live with him up to . . his death [about 1826]. . . 1818, Josephine purchased . . Betcy at a probate sale . . for $1100, and . . Décuir became her surety, . . About . . 1825, Josephine and Décuir left [the plantation] . . to go . . to France,"

Held: if [533] " the adjudication made to Josephine, in 1818, . . disguised a donation of this slave by Décuir to his concubine, . . such . . was not prohibited by the law in force at the time it was made." [3]

[1] See p. 447, *supra.*
[2] See Miller *v.* Miller, p. 598, *infra.*
[3] Civ. Code of 1808, p. 210, art. 10.

*Smith v. Berwick,* 12 Rob. La. 20, September 1845. In 1841 [21] "a levy [was] made by the Sheriff on upwards of twenty slaves [belonging to Mayes], . . agreed that [they] . . should remain in the possession of Mayes until the day of sale, . . Some twelve or fifteen days before . . Berwick [a friend of Mayes] . . told [Keiffer] . . that . . Mayes . . wanted to carry some slaves to Texas, and that . . Keiffer . . could get a negro man for it. . . Keiffer and . . Fry, came with two boats and took the negroes on board . . between midnight and morning. The negroes were carried into the Sabine River, and landed on the Texas side. Mayes went with them. . . It was very dark."

*State v. Neal,* 12 Rob. La. 48, October 1845. [49] "Bills of indictment were found . . against . . Neal, the manager of the plantation . . of Linton, and against . . executors . . who had the management of a plantation belonging to . . [another] estate, for neglecting to comply with the requisitions of the statute,[1] . . found guilty . . Judgment . . against each . . for $100," Affirmed.

*Heirs of Compton v. Executors,* 12 Rob. La. 56, October 1845. Compton died in 1841, [67] "leaving no ascendants, or legitimate descendants. His olographic will, dated 1st March, 1840," [60] "I . . give . . to my two children, Scipio and Loretta, who have been duly acknowledged by me, my plantation . . on which I . . reside; . . containing about 545 acres; all the slaves . . and . . to each of my said children . . ten thousand dollars, it being my intention . . that they shall have one-fourth in value of my estate, . . I give . . to the free woman of color Fanchon, all my household and kitchen furniture . . also one saddle horse, and my carriage, pair of horses, two patent gold watches, stock of cattle, . . to . . Aaron Prescott . . $20,000; . . all the remainder of my estate" to four nieces. [61] "He appoints . . Prescott tutor[2] to the two children, . . orders that . . [he] be furnished with funds sufficient for their support and education, . . and appoints his nephew . . and . . Prescott, his . . executors, . . [67] the inventory of his estate [amounted] . . to $184,640, . . his debts not . . more than $4000. . . The testimony establishes that the deceased was living in open and notorious concubinage with a mulattress named Fanchon, who . . was emancipated in . . 1825; Fanchon had several children, two of whom, Scipio and Loretta, are named in the will as being the testator's children; he always treated them as such, and acknowledged them . . [68] by regular notarial acts . . 1830, and . . 1837. The deceased caused one of them to be educated in Ohio . . and always showed him the affection of a father. . . Loretta is dead. . . the legacy . . to . . Prescott was intended as a *fidei-commissum,* . . according to the instructions of the testator, in a letter . . 5th of March, 1840. to be divided equally between Scipio and Loretta. . . land . . on Red River, apparently sold . . to Kelso, on the 25th of April, 1838, was re-sold by the latter to Fanchon on the 27th . . a mere disguised donation. . . January, 1840 . . a disguised donation [of land] . . to . . children.

[1] "a white person for every thirty slaves . . to oversee" Act of Dec. 21, 1814.
[2] According to the civil law.

. . June, 1840, a similar donation . . to [them] . . 1830, an act of direct donation . . to Elizabeth [1] and Loretta, of a tract . . which . . was . . 1835, given by Fanchon to Scipio by notarial act . . Fanchon claims to be the owner of a note of hand, due by [a brother of the testator] . . for $5000 . . gift . . to her by the deceased."

[75] " decreed, that the legacy . . to . . Scipio and Loretta, be reduced to the one-fourth [2] in value of his estate; . . that the legacy . . to Fanchon [3] . . be annulled . . that the bequest . . to . . Prescott [3] . . be also cancelled . . that the different donations . . of . . tracts of land . . and of a note of hand . . to . . Fanchon and her children, be all annulled " [72] " Scipio and Loretta could be acknowledged . . and as they have been . . they should be entitled to the rights allowed them by law " [4] as natural children.

*Fanchon Morres v. Compton,* 12 Rob. La. 76, October 1845. " The plaintiff sues for the amount of a promissory note, made by the defendant payable . . 1840, to the order of . . Compton [deceased], for $5000,[5] . . endorsed by [him] . . delivered to the plaintiff. . . [77] no evidence that the donation had been made by an act . . as required by art. 1523, of the Civil Code. . . The plaintiff died before the trial, and Scipio [5] qualified as administrator " Held: [79] " The note . . should . . be considered as a part of the estate of the deceased,"

*Offutt v. Morancy,* 12 Rob. La. 92, October 1845. " suit . . instituted on the following . . 'I have bought of Mr. W. Offutt ["trader in slaves"] a boy named Cyrus, for which I promise to pay [$750] . . by acceptance and note. December 14th, 1834.' . . the defendant ['a planter'] . . says, that at or about the [same] date . . he made a contract [in Mississippi] with the plaintiff . . to purchase of him twenty slaves, for . . twenty thousand dollars, . . Ten . . were delivered . . [93] the other ten were to be delivered whenever defendant called for them. . . In January, 1836, an agent for the defendant called . . for [them.] . . The plaintiff . . said, that he then did not have the slaves to deliver, . . never has delivered [them.] . . slaves were rising in price rapidly; . . in the course of that year, such slaves as the plaintiff was to deliver . . were sold at from $200 to $500 the pair, more than the price stipulated. . . [94] [not] shown that the plaintiff had at any time such slaves as he had engaged to deliver . . and sold them at a higher price to some other person. . . a witness . . testifies that Cyrus was to be taken at a reduced price, he not answering the description, and was to be paid for with the remaining ten " Held: plaintiff " cannot be permitted to separate the agreement relative to Cyrus, from the entire contract "

[1] [68 n.] " Another child of Fanchon's."
[2] C. C. 1473.
[3] *Ibid.* 1474.
[4] *Ibid.* 1743.
[5] See Heirs of Compton *v.* Executors, p. 572, *supra.*

*Graves v. Hemken,* 12 Rob. La. 103, October 1845. "She claims [Jennie and her children] under the will of her father . . [104] probated in South Carolina, . . she was brought to the State when the family moved here in 1836. They lived formerly in Mississippi. . . Interrogatories were propounded . . whether she had not resided in Alabama in 1813, 1814 and 1815." Note: "the plaintiff objected to the interrogatories being taken for confessed, . . that at the time they were propounded, plaintiff lived in Arkansas, and . . no copy of them . . was ever served"

*Succession of Stafford,* 12 Rob. La. 178, October 1845. In 1843 Tom was sold for $1100, cash.

*Andat, Curatrix, v. Gilly, Curator,* 12 Rob. La. 323, December 1845. "The petitioner . . alleges . . that, in . . 1829, Lagarde purchased Amelia with her mother . . for the purpose of emancipating them, as he repeatedly declared . . and that since this purchase he had, by the same mother, . . [324] Cidalyse; that a short time after, the mother . . died in New Orleans, since which time, up to . . his death, in 1840, . . Lagarde suffered these children to remain in the full enjoyment of their freedom, and placed them under the care of various persons of trust, uniformly declaring them to be free persons;" [323] "that . . Legarde, several years ago, placed in her hands these girls, declaring . . [them] free, and . . his natural children; that according to his wishes she raised them in the best manner she could, and acted towards them as a mother; . . [324] that by these acts . . and by their enjoyment of their liberty . . more than ten years, these children have acquired their freedom; and that she purchased them at auction [at the probate sale of the succession], for the purpose of testing their right to be set free. . . verdict in favor of the plaintiffs. . . judgment . . declaring them to be free, . . [325] more than three years have elapsed . . The judgment . . has become final against the estate," Appeal of the tutrix of the minor heirs dismissed.

*Gas Light Co. v. Paulding,* 12 Rob. La. 378, December 1845. [379] "Allen had an order to cut off the gas, and a black boy in attendance to carry it into effect."

*Michoud v. Girod,* 4 Howard (U. S.) 503, January 1846. Will of Claude François Girod, dated 1812: [505] "I declare that the property I am now possessed of are . . one main plantation, whereon I reside, . . and one hundred and odd slaves . . [506] I give and bequeath to the mulatress [*sic*] Françoise Vils, for the faithful services she has rendered to me at my house, during a long space of time, . . six thousand dollars, . . . I give and bequeath to my god-daughter Françoise, a free colored woman, the daughter of Rosette, a negro woman, . . fifteen hundred dollars, . . I give . . to the mulatress Belanie, wife of Colas Meillen, . . two hundred dollars, . . I give likewise to her younger sister Polline . . two hundred dollars, . . I give . . to my mulatto slave Dominic, who is a blacksmith and rum-distiller, his freedom, which he shall be put in pos-

session of six months after my death, for his good and faithful services to me." [509] " A certain lot of ground . . has not been sold, because it does not belong to the succession, but to one F'se Wiltz, a free woman of color." [510] " 18th of February, 1814. . . ' Corvaisier, judge . . of the Court of Probates, did repair to the sugar-plantation of said deceased, where . . I proceeded . . to sell at auction, and for cash, . . one hundred and seventeen slaves, employed on said sugar-plantation, . . of different ages and sexes, in good health, sick, infirm, crippled, and such as they are or may be, and no warranty being given to the purchaser against the redhibitory vices and maladies prescribed by law, ' "

*Webb v. Goodby,* 12 Rob. La. 539, February 1846. " James Goodby . . ordered [in a codicil to his will] . . the emancipation of two of his slaves, . . appraised in the inventory . . at $600."

*Executors of Henderson v. Heirs,* 12 Rob. La. 549, February 1846. Will of Stephen Henderson who died in 1838: [550 n.] " At the end of five years . . there may be drawn by lot, out of all the slaves, . . five females and five males, who will be furnished with a free passage to our settlement in Africa, and one hundred dollars each; but they must go of their own free will, and to return back to slavery if ever they return back to this country." [550] " In the meanwhile, the heirs made a partition of all the slaves of the estate . . [551] bound themselves, in case that portion of the will which relates to the transportation . . should be declared valid . . [552] to comply . . and to support all the charges " [550] " The defendants are the heirs who . . own part of the slaves designated by the draft . . [551] [One] is in possession of . . Martha, Sylvia, Giff, Old Leon and Jim Jackson, the youngest of whom . . was twelve . . at the time of the inventory, . . The two others are in possession of . . Daniel and Milly, the first of whom was four years old only at the time of the inventory . . The other . . slaves drafted are Judy and Betsey, who are in the possession of a person not a party . . and John Mulatto, who is in the possession of . . one of the executors and plaintiffs." [550] " The petition concludes with the prayer, that the defendants may be decreed to manumit the slaves . . to transport them . . and to furnish them with one hundred dollars each,"

[552] " decreed . . that, on the demand of the executors, the [defendants] . . deliver to them for transportation " all but Daniel who [551] " was improperly drafted, as he could not give his consent thereto. . . [552] and that for each . . one hundred dollars be paid . . with the expenses of the transportation, . . with the costs in both courts." " manumission unnecessary." [Martin, J.] See Heirs of Henderson *v.* Executors, p. 605, *infra.*

*Baudoin v. Nicholas,* 12 Rob. La. 594, February 1846. [595] " the plaintiff . . was to have one-fourth of each crop of rice, for his services as overseer,"

*Keller v. McCalop,* 12 Rob. La. 639, February 1846. Will of Mary Keller: [645] "I give to my [two] slaves . . their freedom, to take effect at the death of my husband," Will sustained.

*Fuentes v. Caballero,* 1 La. An. 27, April 1846. [28] "the slave was in the [Charity] hospital sixty-three days, at one dollar a day." Held: "The costs of suit, fees of counsel, and funeral expenses, are not included among the charges to which the seller ['ignorant of the vices of the thing sold'[1]] is . . subjected."

*Fernandez v. Bein,* 1 La. An. 32, April 1846. "1842, Eulalie Cheval, a free person of color, sold to the defendant . . Sarah, then about nineteen . . for . . $420, . . [33] 'under the express condition . . that, in case during . . ten years from this day, the father of . . Sarah, Francis Lockwood, should be willing to purchase . . or, in case of . . [his] death, . . Sarah should be willing to [purchase] . . herself, . . Mrs. J. D. Bein . . obligates herself, her heirs and assigns . . to desist of the possession . . provided he or her [*sic*] should reimburse'" Mrs. Bein gave a note secured by [32] "a mortgage on . . Sarah, which . . was . . assigned to the plaintiff. The plaintiff prayed for an order of seizure and sale . . she was advertised, unconditionally as a slave." "adjudicated to . . Jandot, for $600 . . [who] refused to pay . . because . . Sarah is . . a *statu-liber*," Held: [33] "the plaintiff is estopped by his own act from treating her as a slave for life . . by the contract of which he claims the benefit by assignment," [Eustis, C. J.]

*Bernard v. Auguste,* 1 La. An. 69, May 1846. "The parties are all persons of color. . . a contest between the adulterous concubine of a fraudulent bankrupt and his confidential friend, for property which he has so far succeeded in withholding from his creditors. . . We leave [it] . . where the dishonest acts of the parties have placed it." [Rost, J.]

*Stevens v. Wellington,* 1 La. An. 72, May 1846. "In November, 1840, Cook authorized Wilson . . to sell the slave . . then a runaway . . Early in the spring of 1841, the slave being still absent, Cook contracted . . to convey him, when recovered, to Stevens for $500. . . April, 1841, Cook obtained possession . . and . . sold him to Stevens . . [73] remained in possession of Stevens until the autumn of 1841, when he again ranaway, was taken up and lodged in the parish prison . . whence he was withdrawn by Wilson and Palmer," to whom Wilson had sold him in March 1841.

*Musson v. Clayton,* 1 La. An. 122, May 1846. "redhibitory action . . to rescind . . sale . . a theft . . of money was committed in the plaintiff's house. Strong circumstances concurred to fix suspicion upon the slave . . a police officer was called in, the apartment of the slave searched, the slave sent before an examining court, and thence to prison." "judgment rescinding . . and condemning [defendant] . . on the delivery of the

[1] C. C. 2509.

slave, to repay the price, with interest . . and one hundred dollars as damages." Affirmed.

*Holmes v. Steamer Chieftain and Owners,* 1 La. An. 136, June 1846. " action . . to recover $600 damages, and . . $500 the penalty of the statute of 1840, for . . transportation of a slave out of the State, . . one of the witnesses . . embarked at Bayou Sara late in the evening, and saw the slave on board the first or second day after, and . . he continued on board until the witness landed in . . Kentucky. . . time . . in running from Bayou Sara to the northeastern limit of the State was nearly forty-eight hours. The overseer . . states that the slave had absconded . . [138] several weeks previous " [136] " verdict . . for $300 damages, and for $500, the fine prescribed " Affirmed.

*Bertin v. Phillips,* 1 La. An. 173, June 1846. " the slave . . who belonged to . . succession . . was prosecuted under a criminal charge, and, upon his conviction, the [district] court ordered the costs to be paid by the owner. A *fi. fa.* was issued " Held: " the slave . . [174] could only have been sold under the authority of the Court of Probates."

*Spalding v. Taylor et al.,* 1 La. An. 195, June 1846. " The plaintiff, . . of St. Louis, . . sued out a writ of attachment against the steamer *Missouri,* for damages sustained by the loss of . . Felix, . . Felix, from his complexion, says one of the witnesses, might have some Indian blood or be of Spanish descent, but no one could suppose he had any African blood; . . a great many white creoles have a darker complexion . . dressed like a gentleman . . no attempt to conceal himself . . and, if he had taken passage in the cabin, witness would have allowed him to sit at table as any other passenger. . . has never seen [a slave] . . whose appearance was any thing like that of Felix. . . Chouteau, in whose family Felix was born [in St. Louis], . . says . . he has blue eyes and straight hair; . . [196] In the winter of 1842-3, Felix, being then at St. Louis, . . hired himself for several months on board of the . . *Chippewa,* trading between St. Louis and Galena. . . received his wages from the clerk of the *Chippewa,* at a public tavern [in St. Louis], where he was often seen . . to all appearance free and at leisure. . . From about that time, till . . May . . in New Orleans, . . engaged his services on . . the *Missouri* . . and went up in her to St. Louis, . . Chouteau . . saw him almost daily in the streets; . . plaintiff . . was informed . . at the very time he was looking out for testimony . . for the purpose of attaching the boat here . . Felix was there enjoying his freedom openly . . until he saw fit to hire himself on board of the . . *Brazil,* to go to Galena, where he remained. . . plaintiff was informed by the officers of the *Brazil,* that he could get Felix by sending for him . . his answer was that he cared nothing about him, and preferred looking for him to the steamer *Missouri.*" [195] " verdict in favor of the plaintiff for $1,000."

Judgment thereon reversed, [197] " the attachment set aside, and . . judgment in favor of the defendants for costs in both courts." [196] " If he had . . attached the *Brazil* . . assent on his part would have been

presumed, . . [197] The enjoyment of his liberty was a *status* under which he could prescribe against the plaintiff's title.[1] . . on account of his color and of his vices, the slave was of very little value at any time . . After he had been suffered . . to remain as long as he pleased in States where slavery is prohibited, he must have been utterly worthless, . . if there were no other reasons operating against his claim, it would be contrary to public policy to entertain it. The legislature of this State have repeatedly passed laws to prevent free persons of color from coming . . he was here without a master, . . those laws, are clearly applicable to him." [Rost, J.]

*Camfrancq v. Pilié,* 1 La. An. 197, June 1846. "the plaintiff, . . a free woman of color, claims . . [198] wages for services as a nurse, and the reimbursement of monies . . for a period covering several months antecedent to Hiligsberg's death, the nurse was sent for, at his request, when he was suffering, . . she was obliged to furnish the means of conveyance . . from the city to his country residence." "We think the amount of $200, allowed by the court below, too small; and give judgment . . for . . four hundred dollars."

*Josephine v. Poultney,* 1 La. An. 329, November 1846. Held: "the operation of the laws of Pennsylvania upon the personal condition of the plaintiff and the rights of the defendant, by a residence acquired in that State by both of them, released the plaintiff from the dominion, which the defendant had over the person of the plaintiff as a slave, in Louisiana. Her condition being once fixed, under the decisions of the late Supreme Court,[2] she cannot be reduced to the condition of the slave of the defendant." [Eustis, C. J.]

*Lacoste v. Sellick,* 1 La. An. 336, November 1846. [337] "The *Rainbow* came in collision . . from the steam which escaped, the [hired] slave . . received a scald, of which he . . died. . . verdict for the plaintiff," Judgment thereon affirmed.

*Bornet v. Davis,* 1 La. An. 339, November 1846. "J. B. Lafleur . . recovered in the Circuit Court of the United States for this district, a judgment against the plaintiff for his freedom, and for $860 as damages for the value of his services."

*Richardson v. Johnson,* 1 La. An. 389, November 1846. "The plaintiff alleges that he is a citizen of the republic of Texas; that he purchased from the defendant, a resident of New Orleans, a slave, about fourteen years of age, for . . $400, . . warranted . . 'against the vices and maladies prescribed by law,' . . that the boy was, at the time . . affected by a disease of the eyes, . . a permanent defect . . that he would return the slave . . but . . is prevented . . by the laws of Congress;" Petition dismissed. Affirmed.

[1] C. C. 3510.
[2] Lunsford *v.* Coquillon, p. 476, Louis *v.* Cabarrus, p. 502, and Smith *v.* Smith, p. 520, *supra.* See introduction to the Louisiana cases.

*Downey v. Stacey et al.,* 1 La. An. 426, December 1846. " slave, hired . . as fireman on a steamer . . the evidence . . convinced [the judge of the lower court] . . ' that . . [he] must have fallen overboard . . without . . the knowledge of any one on board.' " Judgment for the defendants affirmed.

*Weld v. Peters,* 1 La. An. 432, December 1846. [433] " Hunt and Howard were . . partners, the former . . resided in Boston and the latter in New Orleans. Howard purchased the slave . . in the name of the partnership . . A notarial transfer . . was made [in 1839] to Weld by Howard, acting in the name of his firm, . . the price is stated to be $1800. . . [434] Hunt . . was in the city some time after " " and ratified the act."

*Michel v. Dolliole,* 1 La. An. 459, December 1846. Will of Joseph Prieto, probated in 1838: " Je donne . . $500, qui devra être employée par mon exécuteur . . à obtenir la liberté de mon neveu Louis," " The will . . provides that this, and other sums bequeathed . . for the purchase and emancipation of his slave relations, shall be placed at interest, to accumulate until the executor can succeed in accomplishing the object of the legacy. The plaintiff . . is the owner of . . Louis; . . executor, offered her . . $500, which she refused; and subsequently . . she agreed . . for $550; . . executor . . refused . . [460] the slave was lying dangerously ill," " judgment in favor of the defendant, for costs in both courts." " till he was restored to health . . he was not worth the price demanded "

*Beaulieu et al. v. Furst,* 2 La. An. 46, January 1847. [47] " In a small tenement . . on the Metairie road . . have dwelt . . a black woman, at the time [of] the transactions . . over eighty . . her two sons and her daughter . . Not one of them can . . read or write, . . They cultivate, for marketing, a small field of vegetables," In April 1837 they affixed their marks " to some notes . . and . . a deed, . . a conveyance of real estate by the defendant to the plaintiffs, in consideration of . . $13,400, . . secured by mortgage on the property sold, and also on the homestead . . The first note was protested . . for non-payment, and the defendant caused the property sold by him . . to be seized . . It was adjudicated to a third person for $7,000. The second note was also protested . . and the defendant obtained against the property of the plaintiffs another order of seizure . . subsequently converted into an ordinary suit. The plaintiffs, alleging error, fraud . . obtained an injunction. . . the defendant . . averred the transaction . . unsullied . . Six juries have been sworn to try that issue. The first four were unable to agree; the fifth found a verdict for the defendant. . . on appeal, it was reversed, and the case remanded . . On the last trial, the jury again gave a verdict in favor of the defendant " [46] " for $6,559 87, with interest . . from . . 1838,"

Judgment thereon affirmed, the judges being equally divided. Slidell, J.: [57] " The question is, were they so ignorant as to believe they were selling, when in reality they were buying?" [56] " they visited the ground before the completion of the sale; . . [57] They went . . all over the

house . . and seemed to be well pleased. . . The plaintiffs have executed other acts, both of sale and of mortgage, and have executed other notes. . . [58] [They] have had the benefit . . of the services of counsel of great eminence. While no jury has ever found for them, two have found against them. The costs and other expenses of this litigation must have been enormous, and it has occupied . . more than eight years. . . *Interest reipublicae ut sit finis litium.*"

*Johnson v. Johnson,* 2 La. An. 67, January 1847. [68] " The plaintiff . . purchased . . with full warranty, for . . $400, Winney, about eighteen . . A short time before [the sale] she had a miscarriage on board of a vessel on her way to Louisiana. . . her disease is proved to have rendered the use of her so inconvenient and imperfect,[1] that it must be supposed that the plaintiff would not have purchased . . if he had been apprized " [67] " judgment . . that the sale be rescinded, and that the plaintiff recover . . $400, with . . interest from the date of . . sale, and . . $21, expenses incurred in medical treatment . . and that the plaintiff restore the slave " Affirmed.

*Robert v. De St. Romes,* 2 La. An. 135, January 1847. " The slave was sold ' comme cuisinière, blanchisseuse et bonne domestique de maison; . . pleinement garantie . . à l'exception qu'elle est un peu oppressée.' " " the slave . . has the asthma . . this disease is aggravated by the labours of the kitchen; . . its nature is such as to render the use . . inconvenient and imperfect,[2] . . not curable. Oppression is its dominant symptom. But . . may proceed from other causes . . The seller is bound to explain . . clearly " Sale rescinded. Affirmed.

*Waring v. Clarke,* 5 Howard (46 U. S.) 441, January 1847. [443] " so sudden did she fill with water and sink, that two of the crew, a white man and negro, were drowned, or are missing "

*Brinegar v. Griffin,* 2 La. An. 154, February 1847. [155] " in . . 1845, and in Kentucky, where the parties both reside, they entered into a partnership for the purchase of a gang of slaves, to be brought to this State and here sold, . . they arrived . . in the fall . . and closed the sale . . in the following spring; . . Most of the sales are stated to have been on credit, . . In one instance, a . . barter . . for sugar "

*Eugenie v. Préval et al.,* 2 La. An. 180, February 1847. " The plaintiff, who was the slave of . . Préval, sues for her liberty, and makes Préval, Mrs. Faure, his daughter, and Miss Raynal, defendants. Miss Raynal and Préval disclaimed any ownership . . Mrs. Faure . . left Louisiana, in . . 1830, for France, and the plaintiff was sent with her. She married [' an officer in the French army '] in France, and returned, after several years, . . her husband remaining . . in France." " the plaintiff . . returned in 1838." Judgment of nonsuit.

[181] " decreed that the judgment . . be reversed, and that the plaintiff recover her freedom, and that . . Mrs. Faure, pay . . $146, for wages

[1] C. C. 2496.
[2] *Ibid.*

from the institution of this suit . . [and] the costs of this appeal; those of the court below . . against the two other defendants, to be borne by the plaintiff; the rest . . by Mrs. Faure." [180] "The domicil of the servant and her mistress was in France, . . We did not consider the statute of [May 30,] 1846,[1] . . [181] as retrospective . . It settles the law on this subject, on the principle laid down by Lord Stowell, in the case of the slave Grace,[2] . . it must be understood, that the judgment is confined to the right of ownership . . asserted over her by the defendant," [Eustis, C. J.]

*Dunlap v. Hundly,* 2 La. An. 212, February 1847. "1837, the petitioner purchased a negro man . . from Thomas Hundly, a negro trader, who had brought [him] . . [213] to Mississippi, with many others, for sale . . a few weeks before the sale to Dunlap." [212] "avers . . that he purchased said slave for a house servant, the vendor representing him as sober and honest, when he knew him to be an inveterate drunkard, . . that he made to David Hundly his note for $1,800, payable four months after date, . . [213] That plaintiff returned him to Hundly, who said he would take him back, and sue the man he got him from, for damages." [212] "only crediting the note with $1,400:" "The plaintiff enjoined an order of seizure and sale obtained by . . Hundly, . . [213] The injunction was perpetuated". Affirmed.

*State v. Gilbert,* 2 La. An. 244, March 1847. [245] "The defendant, . . a slave, was tried by a court composed of two justices of the peace and ten owners of slaves, under the provisions of the act of [June 1,] 1846, for an attempt to commit a rape on . . a white woman, a crime punishable by death. The court failed to agree . . on the first trial, and a second trial was had, . . [246] a witness was offered on the part of the prosecution, to prove confessions of the accused while undergoing corporal punishment. . . objections . . overruled . . excepted"

Judgment reversed, verdict set aside and the cause remanded "with instructions to the inferior court not to receive the confessions . . given under the influence of threats or violence."

*Isabella v. Pecot,* 2 La. An. 387, April 1847. [390] "The petitioner alleges that, in 1836, she resided in Mexico, in the province or State of Texas, where she had resided for some years . . held . . as a slave . . by . . Gates: . . [391] In . . 1836, when a hostile army had entered . . Texas to renew the attempts . . to reduce the people . . to subjection, a portion . . fled for refuge to the Sabine, seeking safety . . within . . the United States." Isabella [390] "was brought by . . Gates . . afterwards . . sold to pay . . [his] debts . . eventually conveyed to . . Pecot, against whom she claims her freedom. . . At the trial . . the plaintiff offered to prove by . . a witness that . . slavery was prohibited by the laws of

[1] "That from the passage of this act, no slave shall be entitled to . . freedom, under the pretence that he or she has been, with or without the consent of his or her owner, in a country where slavery does not exist, or in any of the States where slavery is prohibited." Acts of 1846, p. 163.

[2] Vol. I. of this series, p. 34.

Mexico. . . objected . . [391] sustained by the court, which refused to permit . . parol proof . . unless it was first shown that there was no written law,"

" the court did not err. . . The ruling . . derives . . additional force from the acts of the plaintiff. On a previous calling for trial, the plaintiff had applied for a continuance . . for the purpose of ' procuring from the city of Mexico a copy, duly authenticated, of the law . . abolishing slavery in the Republic.' . . by the laws of Spain . . slavery was recognized. If that law has been changed since Mexico passed from the dominion of Spain, it could scarcely have been otherwise than by written law. . . Her principal witness declares that, before the plaintiff was brought from Texas, he had seen many . . slaves there, and that the cotton plantations there were cultivated by slave labor. It is also a matter of public history with regard to this member of our confederacy, that Texas formally announced her independence before . . the plaintiff . . was brought . . into Louisiana, and that . . slavery . . was recognized . . it remains to consider the effect of her importation . . from Texas, then a foreign country. . . [392] If the laws of the United States would affect the rights of the owner of a slave imported under such circumstances, can the commission of the offence be enquired into by a State tribunal, at the suit of the slave . . We think not." [Slidell, J.]

*Collingsworth v. Covington,* 2 La. An. 406, April 1847. [407] " The evidence establishes fully that the plaintiff, while in the employment of defendant as an overseer, received from a slave belonging to the latter a painful and dangerous wound, which disabled him for some time, and subjected him to charges for medical treatment. . . that the plaintiff was a good manager, attentive to the health, discipline, and good government, of the slaves . . and exercised no unnecessary severity; that Covington had rendered his slaves unmanageable by over indulgence; and that the loose discipline which he maintained on his plantation, was a source of complaint . . among his neighbors."

Held: " Masters are expressly made answerable for the damage occasioned by the offences or quasi-offences committed by their slaves, but with the right reserved . . of liberating themselves from that responsibility, by abandoning the slave. No exception . . which precludes an overseer . . from obtaining reparation " [King, J.]

*Cavelier et al. v. Moss,* 2 La. An. 584, May 1847. " the slave . . was in the possession of Sparks in 1834, . . he sold him to Elliott, in 1836; Elliott sold to Fox, Fox to Gray, Gray to Knox, in 1837, . . in 1837, the slave ran away from Knox, who advertised him, and offered a reward " " The plaintiffs purchased [him] . . in . . Mississippi, in 1838. . . 1844 . . he ran away, . . he was apprehended in Mississippi, and delivered by the jailor to Knox, who paid the reward, and sold him to Porterfield, under whom the defendant claims." Judgment for the defendant.

*Arsène v. Pignéguy,* 2 La. An. 620, June 1847. [621] " The plaintiff claims her freedom on the ground that, being the slave of . . Pignéguy, she was taken from New Orleans to France, where she remained in the

service of his family for . . two years, in 1836, 1837, and 1838, and afterwards returned"

"judgment . . releasing the plaintiff from the dominion of the defendant . . affirmed;" "It is contended that . . the defendant acquired no domicil in France, . . We cannot expect that foreign nations will consent to the suspension of the operation of their fundamental laws, as to persons voluntarily sojourning . . for such a length of time. As to those thrown on foreign coasts by shipwreck, taking refuge from pirates, driven by some overwhelming necessity, or perhaps those passing through a foreign territory on a lawful journey, their personal condition may remain unchanged; but this is the extent to which an immunity from the effect of a foreign law could be maintained under the laws of nations. Marie Louise *v.* Marot,[1] . . Priscilla *v.* Smith,[2] . . In the case of the slave Grace,[3] . . she had not been taken out of the realm, but from one of the islands to England, within the same imperial jurisdiction. . . it is further ordered, that the plaintiff recover . . $8 per month from . . November, 1846, with costs in both courts." [Eustis, C. J.]

*Sophie v. Duplessis,* 2 La. An. 724, June 1847. [725] "The plaintiff claims her liberty in virtue of a nuncupative testament . . made [in 1833] by her former owner, Martin Duplessis, a free person of color. . . [727] The evidence . . has not established the execution of the testament with the forms required . . The plaintiff may still be able to supply the present defects of proof, . . judgment . . of non-suit." [King, J.] See Henriette *v.* Duplessis, p. 593, *infra.*

*State v. Dubord,* 2 La. An. 732, June 1847. [741] "The defendant was prosecuted under the 3d section of the act of 1819 . . 'every person . . who shall inveigle, steal, or carry away any . . slave' [etc.] . . convicted . . ineffectual motions for a new trial, and in arrest of judgment," Affirmed.

*Harvey v. Kendall,* 2 La. An. 748, June 1847. "the slave . . remained . . seventy-one days after the sale, apparently in perfect health, . . he [then] reported himself sick. The symptoms . . were so slight, that . . [it was] considered . . doubtful whether . . [he] was really sick, and [it was] concluded . . unnecessary to call in medical aid. The slave was placed in the plantation hospital under the care of a nurse, and within less than forty-eighty hours . . died, . . A post mortem examination . . by two physicians, who discovered . . a chronic affection of the liver, . . [749] the defendant must have been ignorant, at the time of the sale, of the disease . . only bound to restore the price, and reimburse the expenses occasioned by the sale and . . for the preservation . . $60, the amount disbursed for the examination after death, and for expenses of interment . . are not among the charges for which the defendant is liable." [King, J.]

[1] P. 509, *supra.*
[2] P. 520, *supra.*
[3] See vol. I. of this series, p. 34.

*Hynson v. Meuillon,* 2 La. An. 798, September 1847. " The defendant recovered from the plaintiff $500 damages, for an outrage committed upon her person by a slave belonging to him, who was sentenced therefor to fifteen years imprisonment at hard labor. On the day that the verdict allowing the damages was rendered . . the plaintiff, Hynson, abandoned the slave to her in open court, by a notarial act, . . The defendant having caused execution to issue . . notwithstanding . . [the plaintiff] enjoined the proceedings . . The injunction was perpetuated, and the defendant appealed . . on the ground that, the abandonment contemplated by art. 181 of the Civil Code implies a corporeal delivery "

Judgment affirmed: " The dispositions of the Code . . make no exception in relation to those [abandoned] who are undergoing the punishment of their offences. . . The confinement of the slave for fifteen years operates . . a hardship in this case; but . . all fixed rules of damages, . . at times, fall short of the actual damage sustained."

*Morrill v. Carr,* 2 La. An. 807, September 1847. " brought the slaves [from Arkansas] to Louisiana, in 1830 or 1831."

*State v. Fant,* 2 La. An. 837, September 1847. " The defendant was indicted under the act of 1832, (Acts, p. 162,) for selling . . intoxicating liquors to a slave, without the consent . . of the owner, . . Upon conviction, the maximum punishment . . was awarded " Affirmed.

*Sullivan v. Williams et al.,* 2 La. An. 876, September 1847. [877] " the defendants entered into a partnership for the purchase of slaves in Virginia, for re-sale, . . two lots or gangs were purchased and sold. Of . . [the] first . . several were re-sold in . . Mississippi, and the residue in New Orleans. The second lot appear to have been all disposed of in New Orleans. The plaintiff was employed in Virginia, as the agent . . in making purchases . . of the second lot; $30,000 were placed in his hands . . and upon that sum it was agreed that he should receive a commission of five per cent. . . [878] a receipt, signed by Getting . . ' Received, 3d January, 1834, of . . Sullivan . . five thousand dollars, to be accounted for in negroes ' . . [879] no allegation that the plaintiff was not authorized to employ Getting as a sub-agent . . he had previously been employed by the defendants themselves as an agent;"

*Girard v. New Orleans,* 2 La. An. 897, October 1847. Will of Stephen Girard of Philadelphia who died in 1831: [899] " I give . . to . . the city of New Orleans . . the settlement formed on my behalf by my particular friend, Judge Henry Bree, of Ouachita, consisting of upwards of one thousand . . acres . . including upwards of thirty slaves now on said settlement, and their increase, in trust, . . subject to the following reservations: . . settlement shall be kept up by . . Bree, for . . twenty years, as if it was his own; . . at the expiration of the said term . . or on the decease of . . Bree, . . the land . . the slaves . . and all . . shall be sold . . and the proceeds . . applied by said corporation . . to promote the health and general prosperity of the inhabitants " [900] " The slaves had all been purchased and held in the name of Bry [*sic*], because the latter very judiciously refused to have anything to do with their management unless

as their absolute owner. He was for many years the agent of the testator, . . The slaves became insubordinate, and Bry, believing that they had set fire to their cabins, which had been destroyed, and that the establishment could not safely be continued, removed the hands from the place."

Held: [901] " The will . . presupposed their employment on a certain estate, but did not impose it as a condition . . If the usufruct . . is therefore to be considered separate . . from . . the land, what is there to prevent the city . . from taking the legacy of the ownership of the slaves? The [first section] . . of the act of [February 17,] 1805, . . [restricting] the right of the city to hold property [to such as is situated within its limits], has no reference whatever to slaves. . . Slaves are in no sense real estate; they are considered as *immovables* by a positive article [1] to that effect; but neither in common parlance, nor in law, are they designated by the term *real estate*." [Eustis, C. J.]

*Sandridge v. Jones, 2* La. An. 933, October 1847. " When the writ was placed in the hands of [Watson, ' one of . . Jones' deputies,'] . . he was notified by the plaintiffs' attorney, that despatch and the utmost caution were necessary . . [He] gave it to another deputy, who retained it for a day, and then returned it . . Watson then . . repaired to the neighborhood . . The weather being inclement, he waited until about four . . in the evening for the slaves to return from their work, . . and, after having effected his seizure, the slaves were not . . secured . . but were suffered to retire to their cabins for the night, with no guard placed over them. The slaves . . were . . six or eight miles from the boundary line between Texas and Louisiana, and the defendant in attachment resided in Texas. On the morning following . . the slaves were missing. The sheriff returned on the writ . . that they were removed to Texas," Held: [934] " His negligence has rendered him liable "

*Cole v. Lucas, 2* La. An. 946, October 1847. [947] " In [May] 1843 . . [Miller] sold his plantation . . with the slaves, to Lucas." " originally nine [notes] . . for $3,000 each, . . The first [due in March 1844] . . was paid; . . [948] Kirk . . says: ' I saw Miller myself endorse these notes. . . Miller handed them to me, telling me to keep them for [the mulattress] Patsy's benefit,' . . [949] August, 1843, Miller gave a power of attorney authorising Kirk to have Patsy emancipated, by taking her to . . Ohio, Indiana, or Illinois." [947] " Being in feeble health . . [Miller] left . . for St. Louis, in April, 1844, . . [949] taking . . the remainder of his slaves unsold," [948] " Patsy accompanied her master and her protector [Kirk ?] . . [951] The deceased . . hired a house," Kirk states: [949] " He talked of it as his home; said he had left Louisiana permanently." [951] " his physician swears that he advised him to go on account of his health, and that Miller told him he intended to return," Kirk says: [948] " After Miller . . arrived there, I gave him back the notes," Patsy [947] " was emancipated on the 13th or 14th of May, 1844, at Madison city, . . Indiana, . . [Kirk says:] [948] ' Miller . . gave [the

[1] C. C. 461.

notes] . . to Patsy [[947] " transferred by blank endorsements "] after her emancipation, on her return from Madison, as he himself told me, and I saw the notes in her possession.' " [947] " These notes, after his death [in St. Louis, on May 21,] . . were found in the possession of . . Patsy, . . [Cole, a former neighbor of Miller,] went to Missouri in the fall of 1844, or early in 1845, and procured the notes from Patsy." Cole brought suit. " Judgment by default . . against . . Lucas, . . Griffin, curator of the vacant estate of . . Miller . . intervenes . . and claims the notes . . verdict . . against the intervenor, and in favor of the plaintiff,"

Reversed; and decreed [953] " that the intervenor . . recover of . . Lucas " I. [947] " the plaintiff is not . . a bonâ fide holder . . without notice; . . [II.] concubinage [of Miller and Patsy] was open and notorious. . .The concubine can only receive in moveables one-tenth . . and the slave . . nothing by donation [' under . . our laws ']. . . [948] no evidence [but ' hearsay '] of the time when . . [the notes] were delivered to her. . . [III.] [949] That when Miller sold his estate . . the motive . . was to convert his property into such a disposable form as would enable him to evade the laws of this State, and secure the proceeds for . . Patsy, may be considered as established. . . [952] it is not proved that a domicil was acquired . . in . . Missouri," [Eustis, C. J.]

*Bach v. Barrett, 2* La. An. 955, November 1847. " action to recover the price of a slave, . . the slave reported himself as being sick [about a week after plaintiff purchased him]. . . diarrhoea, for which he was treated. A short time after, recovered . . for several weeks, when . . again found . . unfit for service, . . [956] removed to an infirmary, where the disease . . was pronounced by the attending physician to be dysentery, accompanied by incipient consumption, . . he died several months later. . . no offer . . to return the slave " Judgment for defendant affirmed.

*Roebuck v. Curry, 2* La. An. 998, December 1847. " action . . to recover damages for injuries alleged by the plaintiff to have been inflicted on her slave, by a slave . . [of] the defendant. . . the plaintiff offered Thomas Burns, a person of color, as a witness, . . objected to . . until evidence could be adduced of his freedom, and time was allowed . . A certificate was next offered, stating that Burns had been emancipated by an act passed before . . Caire, a notary public in this city, . . excluded . . A witness . . then . . deposed . . that he had liberated [Burns] . . about three years previously. . . [Burns] was permitted to testify "

" the judge erred. Burns had been held in slavery, and, except in the criminal cases specially provided for by law, could only be heard as a witness on producing evidence that he had been liberated; [1] . . The failure to produce the act of emancipation, which was stated to be within the immediate reach of the plaintiff, . . leaves room to suspect . . In the absence of the testimony of this witness, there is no proof that . . injuries were inflicted by the slave of the defendant." [King, J.]

*Bank v. Hagan, 2* La. An. 999, December 1847. [1001] " The residence of the defendant was in New Orleans, where he was engaged in the

[1] C. C. 2260, 2261.

business of selling slaves. He spent two or three weeks in Charleston every summer, on his way to Virginia, and passed through there on his return,"

*Stachlin v. Destrehan,* 2 La. An. 1019, December 1847. "The defendant is sued for damages for having caused his slave to inflict personal chastisement with a whip upon the plaintiff. . . the defendant has a canal . . which the public are prohibited from navigating, without . . consent . . Mrs. Ohler employed the plaintiff to assist her in removing . . discovered that . . [her] boat . . had been taken away . . and, without applying for permission, embarked in a skiff . . defendant, recognizing his boat, . . ordered them to stop, . . Mrs. Ohler asserted that the defendant had lent her boat to some other person, . . The plaintiff, who was towing the boat . . refused to return it, . . defendant ordered his driver, a negro man slave, to chastise the plaintiff, and the slave . . inflicted several severe blows with a heavy lash which drew blood," "verdict in favor of the plaintiff for one thousand dollars," New trial refused. Affirmed: [1021] "The outrage upon the plaintiff was not only without . . excuse, but . . was the most ignominious to which a free man can be subjected." [King, J.]

*Kellar v. Fink et al.,* 3 La. An. 17, January 1848. "June, 1841, Nichols, to whom the mother and child belonged, sold the latter to Emily Bowyer ['a free woman of color']. In the act of sale she was described as an orphan . . aged about five . . daughter of . . Aimée, who had runaway, and gone to Canada." "The plaintiff [after the sale of the child] purchased at sheriff's sale . . the mother . . she claims the child as her property. . . Nichols testified . . that . . Aimée had runaway in 1841, and that when he sold the child he never expected to recover the mother. He acted, in so doing, in the interest of the child, as the person to whom she was sold was a good mistress and took good care of her." Judgment for the defendants. The plaintiff appealed. Her counsel "contended that, under the statutes of 6 [7] June, 1806, and 31 January, 1839 [1829], s. 16, children under ten . . cannot be sold separately from their mother; that . . such sale is null; and that the child is the accessory of the mother, and becomes the property of any purchaser of the latter."

Judgment affirmed: [18] "We are at a loss to conceive what right of property the plaintiff ever acquired in the subject of this suit." [Eustis, C. J.]

*Taylor v. Rostrop,* 3 La. An. 100, January 1848. "The plaintiff is the holder of a judgment . . against . . Marotte, who was . . in possession of certain slaves, upon whom . . Fagot held a special mortgage . . Marotte, subsequently sold Louise and her child, two of those slaves, for . . $1300, on condition that they should be emancipated . . within three years. Fagot intervened . . received the price, and raised his mortgage on those two slaves. . . Maindrault, the purchaser . . sold them on the same condition to the defendant, who emancipated them under a decree of court . . The plaintiff now proceeds against this defendant as a third

possessor, and prays that the slaves be sold . . [101] no fraud is alleged" Judgment for the defendant affirmed.

*Bibb v. Hebert,* 3 La. An. 132, January 1848. "The plaintiffs sued to recover . . the value of a slave . . killed by one of the slaves of the defendant." [Note:] "The slave was shot while within the enclosures of the defendant, in the act of stealing hogs from a pen, which he had forced open." Held: "the killing . . was not justifiable, . . [The defendant] is bound to pay the owner"

*Gaudet v. Gourdain et al.,* 3 La. An. 136, February 1848. "The plaintiff . . sues for her freedom, . . Gourdain, purchased her mother and the two children she then had, under an agreement made with her . . mother, that he would emancipate her, and retain only her two children . . provided she paid one half of the purchase money; . . The promise is not only proved, but it is also in evidence that it was known to some of the bidders . . that they abstained in consequence . . and that [the defendant] . . purchased the . . mother and her two children for little more than half . . he was prepared to give . . The payment [ of $220, 'half of the amount of the adjudication'] was made by the plaintiff's mother before the plaintiff was born," "in November, 1831, . . [who] enjoyed her liberty with her mother from that time,"

[138] "judgment in favor of the plaintiff, and that she be forever quieted in the . . enjoyment of her liberty, against all claims . . of the defendants, . . Gourdain paying the costs in both courts." [137] "It is undoubtedly necessary that the act of emancipation should be in writing" but the "rule found in art. 1783 of the Civil Code, which authorizes slaves to contract . . for their emancipation, subjects those contracts to no particular formality. It is derived from the spanish laws,[1] into which it had been introduced from the civil law," [Rost, J.]

*State v. Lyons,* 3 La. An. 154, February 1848. [155] "The defendant was convicted of selling . . liquor to a slave [hired to her] in contravention of the act of 1832, . . judgment rendered against her"

Affirmed: "Persons who *give* liquor to slaves, under their control by a contract of hiring, are expressly exempted . . a sufficient guaranty for their prudent . . use. But the prohibition of *selling* extends to the lessee of a slave."

*Succession of Sinnott,* 3 La. An. 175, February 1848. Sinnott's will: [176] "I . . authorize . . my executor . . to emancipate according to law, and as soon as may be after my decease, my mulatto boy named Thomas; and I give [him] . . all my estate, real and personal, . . including my house and lot . . It is my will . . that my wife . . shall have the use of my house and lot . . and of the rents to arise therefrom, during her life. I institute . . Thomas my universal heir." "Thomas, who was the natural son of the testator, and who was acquired upon the express condition that he should be liberated as soon as it could be legally done, was emancipated in conformity . . and the executor was

[1] "Partida 3, tit. 2, law 8. D. [5. 1.] l. 53, de Judiciis."

appointed his tutor. The only remaining property . . was the house and lot . . encumbered with a mortgage . . to secure a debt of about $400, . . the only one now due . . The family meeting of the minor advised the sale . . whereupon Phillips, in his capacity both of executor and tutor, took a rule upon . . the widow . . to show cause why . . not . . The rule was made absolute, and a decree rendered for the sale"

Affirmed: [177] "the appellant may advance the sum necessary to discharge the debts . . to be returned without interest at the expiration of the usufruct.[1] Failing to so the heir may cause the property to be sold"

*Macarty et al. v. Mandeville,* 3 La. An. 239, March 1848. Eustis, C. J.: [240] "This case arises under article 1468 of the Code,[2] . . The plaintiffs are the collateral heirs of . . Eugene Macarty, who died . . 1845 . . . The deceased, from . . 1796 until his death, lived in concubinage with the defendant, who is a person of color. She is in the possession of a fortune which . . exceeds . . $155,000. The property left by the deceased . . amounted to about $12,000. The defence is that all the property in the possession of the defendant belongs exclusively to her, . . the result of her industry and economy during half a century; . . the plaintiffs have not attempted to deny that the defendant has been *une femme extrêmement laborieuse et économe.* . . she had, in all respects, rendered her condition as reputable . . as it could be made. Five children have been the fruits . . all well educated. Two of the sons are in business in this city, and one is living on his income. The daughters were married and established in Cuba; . . The state in which she lived was the nearest approach to marriage which the law recognized, and in the days in which their union commenced it imposed serious moral obligations. It received the consent of her family, which was one of the most distinguished in Louisiana, . . She received, in 1799, a tract . . three acres front and forty in depth on each side of the bayou . . and we think it clear that her family gave her money, . . [241] The defendant was for several years engaged in the dry goods business . . She purchased from the importers, and retailed her goods by her slaves and persons who sold for her. . . She had a dépôt in the parish of Plaquemines, and her trade extended . . even to Attakapas. . . [242] Witness says . . [she] had an unlimited credit . . she afterwards employed her means in discounting notes, in which she was aided by the experience of Macarty, . . the property claimed by the plaintiffs appears to us to be in the bonâ fide possession of the defendant and exclusively so, without any established connection with the interests of the deceased. . . [245] we find no warrant . . for disturbing her in the enjoyment of the fruits of the labor and thrift of a long life."

*Oates v. Caffin,* 3 La. An. 339, March 1848. [340] "This is a possessory action; . . In 1833 . . Isaac ran away from the defendant, who . .

[1] C. C. 579.

[2] "Those who have lived together in open concubinage are . . incapable of making to each other . . any donation of immovables; and . . a donation of movables . . cannot exceed one-tenth . . of the whole value of their estate."

advertized . . and offered a reward . . Nothing was heard from him till . . 1846, when the jailor . . in . . Mississippi, advertized him . . The defendant . . took the slave out of jail, and brought him to New Orleans, where he resides. The plaintiff . . has proved, that he was in possession . . in . . Mississippi, for eight or nine years, and until . . 1845, when . . slave ran away . . has appealed from the judgment rendered against him"

Affirmed, "the judges being equally divided in opinion," Rost, J.: [341] "Isaac, was held to labor under our laws, and the authorities . . of Mississippi were at all times bound to deliver him to the party to whom the labor is due. . . U. S. Constitution, art. 4, sect. 2. . . Our laws regulating the condition of slavery are derived, through those of Spain, from the roman jurisprudence. The rule of that jurisprudence was that, the slave who absconds . . steals himself, and that he stands as other stolen things, and neither possession nor title can be acquired to him." Eustis, C. J., concurred. Slidell, J., dissented: [344] "clause of the constitution should not be interpreted as interfering with the police power belonging to the other slave-holding States, in virtue of their general sovereignty. In virtue of that power Mississippi has full jurisdiction to arrest a fugitive slave in order to secure her own citizens against his depredations or evil example, and to sell him to pay the expenses" King, J., also dissented. See Landry *v.* Klopman, p. 662, *infra,* overruling the decision in Oates *v.* Caffin.

*State v. Isaac,* 3 La. An. 359, April 1848. King, J.: "The defendant has appealed from a judgment . . upon a conviction for . . murder . . [360] upon a previous occasion, the accused was tried upon the same written accusation . . and found guilty. . . One of the justices refused absolutely to sign the sentence [of death.] . . The effect . . was, to produce a mis-trial, . . [361] The confessions . . to his master were objected to, on the ground that they were made under the influence of fear, and that he was not permitted to complete his statement. The witness testified: 'That the accused came to him the morning after the affray, and told him that he had killed the slave . . and commenced justifying . . when the witness stopped him, and told him that he intended to deliver him over to be punished.' . . justice requires that his incomplete disclosure . . should not go to the jury." Judgment reversed and new trial granted.

*State v. Lewis,* 3 La. An. 398, April 1848. "The slave, Lewis, was convicted of murder by a court organized under the act of 1846, (Acts, p. 114,) and sentenced to imprisonment at hard labor in the penitentiary for twenty years. After an ineffectual effort to obtain a new trial, an application was made . . for a *habeas corpus,* on the ground that the prisoner was detained in virtue of an illegal sentence. The writ was refused"

Judgment affirmed: "the 7th section of the act of 1843, (Acts, p. 92,) which authorizes the jury . . to pronounce sentence of . . imprisonment . . for life, or for a shorter term . . [399] stands in conflict with no provisions of the act of 1846."

*Ducloslange v. Ross,* 3 La. An. 432, May 1848. " in 1819 . . Beaulieu, a free man of color, made a donation . . of a . . lot . . in this city [New Orleans], to . . sister,"

*Coby v. Kock,* 3 La. An. 439, May 1848. " action to recover . . damages for illegally holding the plaintiff as a slave. The petition was filed . . April, 1846. The defendant answered that . . June, 1844, he purchased, by a notarial act, from . . Miesegaes, . . [who] reserved . . the right of redeeming . . and the use of him, which he enjoyed . . ten or twelve months, . . immediately after entering respondent's house, plaintiff ran away, . . taken up . . 27 November, 1845 " " but a short time previous to his instituting . . a suit for his freedom in the District Court of the United States. . . was declared free . . March 1846: . . services . . were worth $15 a month. . . a witness . . stated that . . plaintiff . . was a long time in the employment of Miesegaes, as a porter; that, after he had been discharged, he told witness that he had never informed his former owners that he was free. . . [440] ordered that, the plaintiff recover . . $73 50, and costs of suit." [439] " This claim for wages . . covers a period of three months and seven days, . . [440] $25 in addition [is] a fair allowance, as damages for the two or three months . . he was . . in jail, considering that his own silence as to his freedom . . contributed in some degree to the belief that he was a slave; and that, in point of actual hardship, there is not much difference between imprisonment and idleness . . and hard labor as a slave " Affirmed.

*Stewart v. Sowles et al.,* 3 La. An. 464, May 1848. " the defendants [partner] . . knew the slave was an habitual runaway, and deceived the plaintiff . . as to his place of birth and former ownership;"

*Ex parte Lewis,* 3 La. An. 467, May 1848. " Antoine Général, by his . . will, directed . . Louis to be liberated at . . twenty-one . . Until that age he was left under the care of his executor, . . Cousin, with an injunction . . to cause the slave to be taught a trade. Louis lately presented a petition . . representing that the period for his emancipation had arrived; that he was entitled to wages . . and to damages for ill treatment; and prayed for the appointment of a curator . . An order was granted . . set aside."

Affirmed: " The *statu-liber* is authorized to appear in court unaided " " to maintain an action for his liberty. . . [468] right either to the damages or wages . . is . . at issue in another action now pending "

*State v. Nelson et al.,* 3 La. An. 497, May 1848. Nelson and Edwin were convicted of murder, and from the judgment pronounced, they appealed. [499] " the confession of Nelson was made to the overseer . . who was also the son of his owner. The witness stated that the accused was in the stocks . . and that he ' told Nelson previously, that it would be better for him to tell what he had done.' . . [500] As regards . . Edwin, his confessions were repeated and voluntary. . . no other constraint than that necessary for his safe custody. But . . objected that, his confessions are the only evidence against him; that they are im-

perfect, stating only . . that [he] . . ' aided in killing two white men;' . . unsupported by any other proof of the *corpus delicti,*"

Judgment reversed as to Nelson and the cause remanded " with instructions . . to receive no confessions . . not voluntarily made. As regards . . Edwin, the judgment is affirmed." " Our jurisdiction is limited . . by the constitution . . ' to questions of law alone,' . . the question of the insufficiency of the proof . . can only be presented in bills of exception to the charge of the inferior judge." " constituted as the tribunal is, before which slaves are . . tried for criminal offences, in which the justices and freeholders have equal authority, there being no judge to preside . . the question of the insufficiency of proof . . can never be presented to the appellate tribunal, unless . . [it] be permitted to examine the evidence; . . The difficulty . . can only be remedied by legislative interference." [King, J.]

*Angelina v. Whitehead et al.,* 3 La. An. 556, August 1848. " action for liberty, instituted by the plaintiff for herself and her three children. She was born a slave in . . Mississippi, in . . 1812, . . This is the second action . . The instrument [dated 1820] under which she claims . . ' I, . . Holliday, of . . Louisiana, . . in consideration of a solemn promise made to me by . . Campbell, of the [same] State . . that he would manumit . . mulatto girl named Angelina, and the further consideration of [$150] . . to me . . paid, . . sell . . unto . . Campbell, with full . . authority to manumit ' . . [557] brought [to Louisiana.] " [556] " On the trial she was non-suited,"

[558] " decreed that, the judgment . . be reversed, and that . . Angelina, and her three children, to wit, Melinda . . about seventeen . . Felix . . about fifteen . . and . . Maria . . about two . . be slaves for years or *statu-liberi,* and not slaves for life. And . . that the defendants proceed without delay to emancipate the . . plaintiff . . and . . pay the costs in both courts." [557] " the plaintiff's having attained the age of thirty . . We have been referred to no authority which impugns the validity of [such] contracts . . under the Code of 1808, . . It was a common mode of securing the freedom of the slave for a friend, or patron, to purchase him for his liberty; [558] The Code of 1825, expressly recognizing the right of the slave to make a contract for his emancipation, . . seems to us to render clear the right of the plaintiff" [Eustis, C. J.]

*State v. Jerry,* 3 La. An. 576, September 1848. A slave was tried for murder. " No counsel having been previously provided . . he was defended by an advocate appointed by the court. . . [577] convicted after an impartial trial " and sentenced to death. Affirmed.

*Waters v. Grayson,* 3 La. An. 595, October 1848. [596] " ' in . . 1836 . . Caldwell got possession of . . Nancy, in . . Missouri . . was to return [her to his sister] . . whenever she repaid him ' . . brought [her] to Louisiana," " he spoke of the little profit . . [her slaves] were to his sister, . . and that she would do well to let him take them all to . . Louisiana and hire them out or work them."

*Hendricks v. Phillips,* 3 La. An. 618, October 1848. Slidell, J.: " action for the plaintiff's salary, as overseer . . The defendant's answer . . avers ' that the plaintiff treated the slaves . . with such cruelty, that . . he has been greatly damaged ' . . he prays for judgment in reconvention. The parties, before the institution of this suit, referred their difficulties to arbitration. . . awarded . . $350, as damages sustained . . from the maltreatment of one . . and also that the plaintiff should pay the bills of the physicians . . This award was not, however, carried out. . . testimony, while it establishes that the plaintiff . . made a good crop . . is extremely unfavorable to him with regard to the cruel treatment . . The details are of a most revolting character, and exhibit conduct on the part of the overseer utterly indefensible. . . [619] the value of the slave was permanently impaired " [618] " The verdict . . made a deduction from his salary. But . . we consider it our duty . . to assess the damages . . at a higher rate. . . [619] decreed that, there be judgment in favor of the defendant, and that he recover from the plaintiff . . $100, with costs in both courts."

*Henriette v, Duplessis,* 3 La. An. 658, November 1848. " The plaintiff claims her freedom under a nuncupative will, executed by her former master, Martin Duplessis,[1] under private signature, in the country, . . the testator . . was laboring . . under an attack of the cholera. . . Cornen . . ' took the persons present for witnesses . . because the state of the deceased admitted of no delay; . . he died an hour, or half an hour after ' " " four of the witnesses were residents of the parish . . The testimony in relation to the residence of the fifth, was contradictory . . The district judge, however, considered . . that a greater number . . could not . . have been obtained;[2] sustained the validity of the will; and decreed the plaintiff to be entitled to her liberty."

Affirmed: [658] " The evidence has not satisfied us that [the fifth witness] . . was . . a resident of the parish . . [but] sufficient cause has been shown to excuse the failure to procure a greater number " [King, J.]

*De Pontalba v. New Orleans,* 3 La. An. 660, November 1848. [661] " On the 20th of April, 1785, Don André Almonaster y Roxas . . made to the Ayuntamiento . . a donation . . ' un hospital para lazarinos con cuarto separaciones [*sic*] capaz de aloxar otras [ocho ?] familias blancas, y separamente, otro con el mismo aloxamiento para la gente de color."

*Cartwright v. McMillen et al.,* 3 La. An. 685, December 1848. " The plaintiff alleges that, in 1841, a judgment was rendered in his favor, in a suit brought by his slave Lewis . . for his freedom; that Lewis took a suspensive appeal, giving bond with McMillen and Nichols, as his sureties, in the sum of $1200; . . [686] ' Whereas . . Lewis, a free negro man, has . . filed a petition of appeal . . the condition of the above obligation is such, that . . Lewis, f. m. c. shall . . satisfy whatever judgment may be rendered . . otherwise that the . . sureties, shall be liable ' " [685]

[1] See Sophie *v.* Duplessis, p. 583, *supra.*

[2] In the country it suffices . . if the testament be passed in the presence of three witnesses residing in the place . . provided . . a greater number . . cannot be had." C. C. 1576.

" in 1844, the judgment was affirmed by the Supreme Court;[1] . . [but] the slave . . [686] could not be found until 1846, when he was . . delivered to the petitioner; . . Cartwright took the matter into his own hands before the final action of the Supreme Court. He actually regained possession of the slave, who subsequently escaped . . without the fault of the sureties." Held: the sureties are not liable for " the amount of the loss of the slave's services from 1841 to 1846,"

*Davis v. Janin,* 3 La. An. 712, December 1848. " action to recover the amount of a note . . for the price of a slave . . the defendants . . resist the claim on the grounds that . . the slave was addicted to running away . . was unsound, and has died . . The plaintiff . . avers . . that . . defendants were bound to take such care of the slave, which they intended to return, as a prudent father of a family would have taken of him; and that they have failed to show that a physician had been called during his last illness, which endured six weeks."

Ordered that the judgment for defendant be reversed, [713] " and that there be judgment in favor of the plaintiff for . . $525" with interest and costs in both courts.

*State v. Banton,* 4 La. An. 31, January 1849. [32] " The . . [second] count charges . . that, he ' did inveigle, steal, and carry away a slave ' . . verdict of guilty. . . Sentence was pronounced " Judgment affirmed.

*Botts v. Cochrane,* 4 La. An. 35, January 1849. " A slave belonging to the plaintiff . . secreted himself on . . defendant's steamer, . . The boat left . . in the afternoon, and sometime in the evening the slave was discovered . . Early the next morning the boat arrived at Baton Rouge, when the slave, who had been confined during the whole night, was placed in charge of the wharf-master, who had him put in jail . . and advertized as a runaway. All the intermediate jails were passed in the night time. The plaintiff recovered his slave about four months afterwards . . from the jailor . . and brought this action to recover . . the expenses . . in searching . . and the value of the slave's time at two dollars per day. . . By the fifth section [of the act of 1816] . . if a master [of a vessel] should discover a slave . . it should be his duty . . to land the slave at the nearest place " Held: [36] " The injunction . . is . . substantially obeyed by landing him at the nearest place where it can be done with reasonable facility,"

*Arnoult v. Deschapelles,* 4 La. An. 41, January 1849. " action . . to recover the value of . . Henry, formerly belonging to the plaintiff, . . proved that the defendant asked his slave Lewis, after Henry had received the wounds of which he died, ' Why did you stab that boy? ' and that Lewis answered: ' Because I found him in my cabin, with my wife.' The district judge was of opinion that the question put by the defendant presupposes the knowledge in him that the act was committed by Lewis, and gave judgment against him, . . [42] But the defendant contends that he is not liable in damages, and is dispensed from making

[1] See Lewis *v.* Cartwright, p. 558, *supra.*

the abandonment authorized by art. 181 of the Civil Code, because . . Lewis has been convicted . . on his own declarations and those of Henry, and sentenced to hard-labor for life, in consequence of which he has ceased to belong to the defendant, who has received from the State $300 for him." Held: " slave is represented by the sum received . . the defendant may exonerate himself by paying over this sum to the plaintiff, within three days "

*Blanchard v. Dixon,* 4 La. An. 57, January 1849. " action . . to recover damages for injuries done to a slave of the plaintiff, . . The defendant is the overseer of . . Stewart. On sunday, . . 1847, he met the slave . . in the high road, opposite to Stewart's plantation, . . in sight of the plaintiff's residence, and asked if he had a pass. The answer of the slave was in french, and was not understood by the defendant, but the latter, judging from the tone . . conceived it to be disrespectful. The slave was ordered to stop; but . . he fled and passed into the field of Stewart. The defendant returned into his house, armed himself . . mounted a horse, pursued and shot the slave . . at a distance of about six acres, fracturing his knee. Witnesses who have known [him] . . several years, stated that he is of good character, . . and submissive . . [58]The slave was confined for a year . . His knee has become stiff. . . The physician says he may be able, in a year or two, to walk without the aid of a crutch; . . The witnesses all concur . . that the slave was worth $1,000 . . and . . value has been lessened by at least two-thirds. . . also . . charge of $50 for medical services." [57] " The defendant . . relies upon sections 30 and 32 of the act of the 7th June, 1806." [1]

[58] " decreed that the plaintiff recover . . $700 [' a fair estimate of the damages '] . . with interest from the date of this decree, and that the defendant pay the costs of both courts." " Freeholders alone are authorized . . The defendant . . has neither alleged nor proved " himself such. " unnecessary to enquire whether a *freeholder,* under the circumstances . . would have been justified " [King, J.]

*Erwin v. Lowry,* 7 Howard (U. S.) 172, January 1849. [177] " forty-four negroes [[178] ' employed in . . growing cotton '] were appraised [in 1840] separately and in families, and the amount . . was $15,525, making the aggregate amount for the land and negroes $23,845. . . after repeatedly crying the said property, . . Erwin . . bid . . $16,000, . . the highest and last bid, and . . land and negroes were adjudged to him,"

*Gaulden v. McPhaul,* 4 La. An. 79, February 1849. [82] " deed of trust was executed [in Mississippi] . . ' in case . . Gaulden shall not pay . . note when . . due, . . Cooley is hereby authorized . . to . . sell . . slaves,' . . The defendant held a power of attorney from the trustee, . . ' empowered to take . . slaves wherever . . found,' . . the defendant, . . under the advice of counsel . . that the right to seize . . in Louisiana was identical with the right [in Mississippi] " went in March with two other men to

[1] B. and C. 53, 54.

Gaulden's [80] " wood-yard near Port Hudson, . . during . . absence [of the manager] . . The slaves ran off . . and were next heard of at the residence of the plaintiff ['thirty miles distant, in . . Mississippi'], with the exception of . . Albert, who was found dead on the roadside . . [81] three other slaves . . were injured from fatigue, . . unable to work for several days. . . Albert was worth $800, . . young, healthy, . . the jury . . [assessed] the damages sustained by the plaintiff . . at $800." Judgment accordingly.

Reversed: " The mere fatigue . . at that season . . to a slave of the . . constitution of Albert, is not a reasonable cause . . for his death. Nor does the alarm produced . . rest on anything . . but mere conjecture. . . [no] post mortem examination . . the cause of this journey may have been in the sense the slaves had of acting in the interest of their master, probably at his prompting, to save his property from the grasp of a determined . . creditor. . . But the plaintiff also claims damages for the interruption . . of the labor . . [82] No court in Louisiana would permit the defendant to take the slaves . . until after the default [in payment] should have been established. . . defendant . . has not made out . . a justification of his attempt to take . . Confining . . our estimate of the injury . . to the interruption . . we do not feel . . authorized to assess the damages . . higher . . than $100." [Eustis, C. J.]

*Louis et al. v. Ricard,* 4 La. An. 87, February 1849. " action for the freedom of Jean Louis the son of Dauphine, both . . plaintiffs . . who sue *in formâ pauperis.* Dauphine is a mere nominal party. . . [They] offered in evidence a judgment . . 1847, by which it was decided that Edward, a younger brother of . . Dauphine, was free, on the proof that the mother as well as the grand-mother of Edward were free in . . St. Domingo and Cuba long before the birth of either of the sons. . . Edward and the present defendants were parties," " They were non-suited " Affirmed: " The judgment in that case was not admissible in evidence in this; . . The testimony . . is far from establishing the freedom of the plaintiff." [Eustis, C. J.]

*Landry v. Peterson,* 4 La. An. 96, February 1849. " The slave was bought on the 5th . . found to be sick on the afternoon of the 7th. A physician who was immediately called in, pronounced . . typhus fever. The slave died on the morning of the 8th. The district judge decreed the restoration of the price," Affirmed.

*Brown v. Glathary,* 4 La. An. 124, February 1849. " In 1842, Craig [a resident of Kentucky] sold . . [Fanny] and her child Ellen to the plaintiff [his brother-in-law] . . [for] $450. . . [125] 1846, Brown hired to Craig, Fanny, and her two children born after the purchase. Craig . . took . . Fanny [to Louisiana] with him as a cook, . . Ellen, remained with the plaintiff. Craig . . held himself out as the owner of Fanny and her children. . . The Louisiana creditors . . seized the slaves." Held: " the proprietor would not lose his rights "

*Anderson v. Dacosta,* 4 La. An. 136, February 1849. Action to rescind sale. " Matilda, whilst in the possession of the warrantor . . absented

herself from Smith, to whom she was hired, from the 2d to 5th of July, and was brought back by her master, who declared she had runaway before. . . further in proof that she was taken up and lodged in prison . . September, being within three days after her sale to the plaintiff." Judgment for the plaintiff affirmed.

*Solomon v. Cavelier,* 4 La. An. 136, February 1849. [137] " action to recover the value of the services of a slave . . confined [' for nearly a year '] by the order of the defendant in one of the public prisons "

*Cox v. Myers,* 4 La. An. 144, February 1849. " The plaintiff . . obtained a provisional seizure, under which a slave . . found on the leased premises, was seized, and confined in the [[145] ' damp and unhealthy '] common jail, where he contracted a disease of which he died. . . judgment in favor of the defendant in reconvention "

Affirmed: " slaves are not subject to provisional seizure to secure the rent . . even when the tenant has no other property. This right . . can only be exercised on the moveable effects found on the premises." [1]

*State v. Morris,* 4 La. An. 177, March 1849. " The appellant was prosecuted for the cruel treatment of his slave, under the act of 7th June, 1806.[2] No person having been present . . the defendant tendered . . his own affidavit in exculpation, which was received. The judge, however, instructed . . that it was not conclusive of the appellant's innocence, but . . might be rebutted. . . The accused was convicted and sentenced " Judgment affirmed.

*State v. Dick,* 4 La. An. 182, March 1849. " The defendant was convicted . . of murder . . committed upon the person of a slave, and has appealed from the sentence . . After the court, composed of two justices and ten owners of slaves, had been sworn and organized, the defendant excepted to its jurisdiction, on the ground that the law [3] creating the tribunal violated the constitution of the State, which guaranties to all persons an impartial trial by a jury . . in the selection of whom the accused is entitled to the right of peremptory challenges. . . overruled . . [183] The next position assumed is, that slaves are not treated as persons by our laws."

Judgment affirmed: I. " The act of 1846 . . stands in no conflict with the constitution. Under its provisions slaves are not entitled to peremptory challenges. . . [II.] The first section of the Black Code, speaks of slaves as persons. They are classed as persons in the Civil Code, in the title treating ' Of the Distinction of Persons,' and were so classed in the Code of 1808, p. 10, art. 13. . . also held to be persons . . in the case of the State *v.* Moore,[4] . . there are at least two statutes under which the offence . . may be punished." [5]

[1] C. C. 2675.
[2] B. and C. 61, sects. 16, 17.
[3] Act of June 1, 1846.
[4] See State *v.* Seaborne *alias* Moore, p. 554, *supra.*
[5] B. and C. 59, 251.

*State v. Jerry,* 4 La. An. 190, March 1849. [191] "The accused was convicted of the murder of a slave, and from the sentence of the court [to be executed in February 1849] has appealed. The grounds . . 1st. That no statute . . makes the killing of a slave by another slave, murder. 2d. That the accused was not arrested in virtue of a writ issued upon a previous affidavit. 3d. That the district attorney did not assist at the trial, . . 4th. That . . proceedings [were] void, because the assisting justice was not notified to attend until the day of trial, and was not present to assist in selecting the slave owners who served as jurors. 5th. That the accused was not proved on the trial to be a slave. And 6th. That the sentence was signed by but one of the justices."

Judgment affirmed: "I. The first point has been determined in . . State *v.* Dick, p. 597, *supra,* . . II. . . no importance now to inquire by what authority he was arrested. . . III. . . presence [of the district attorney] is not made indispensable . . IV. . . If he permit [jurors] . . to be sworn without objection, his silence must be considered as a waiver of the irregularity. . . V. The defendant . . having submitted to a trial as [a slave] . . without objection, so far admitted his condition as to dispense . . proving . . VI. The signatures of both . . are not required" [King, J.] See Mc Dowell *v.* Couch, p. 615, *infra.*

*John F. Miller v. Sally Miller et al.,* 4 La. An. 354, May 1849. [355] "In the case of Sally Miller *v.* Louis Belmonti, . . the plaintiff was released from the bonds of slavery, and the cause was remanded for further proceedings as between the defendant and his warrantor, John F. Miller. No further proceedings have been had under this judgment, and . . the warrantor, Miller, has instituted the present action of nullity to set it aside, on the ground that it was obtained through fraud . . on the part of Sally Miller and her witnesses. The defendant excepted to the petition . . 1st. That it presents no sufficient ground to sustain an action of nullity. . . Belmonti . . intervened, and joined with the plaintiff in the prayer of his petition. The defendant's exception having been overruled, she answered on the merits. . . judgment in . . [her] favor . . John F. Miller has appealed. But Belmonti . . appears to have acquiesced"

Appeal dismissed: "the first exception should have been sustained. It is not shown that any further proceedings have been had under the former decree of the Supreme Court; nor has the plaintiff alleged or proved that he has refunded the price to Belmonti, . . He had no interest in contesting the former decree, and therefore no capacity to do so. To the observations of the counsel that the only object of the plaintiff in bringing this suit was to vindicate his character, . . We may . . state . . that we have carefully perused the new evidence discovered by him; that it stands in the record unimpeached, and is in direct conflict with that adduced . . in the former suit" "by the defendant [in this suit] . . to prove her birth and condition. If it can be true that the defendant

is of German extraction, we consider the plaintiff as exonerated from all knowledge of that fact." [Rost, J.]

*Bank v. Conner,* 4 La. An. 365, May 1849. [366] "in . . 1844, Freeman became insolvent, and . . ceded his property to his creditors" [365] "May, 1846, a judgment was rendered . . in the case of Sarah Conner, a free woman of color, against . . Freeman, . . decreed that the plaintiff was entitled to her freedom, and that the defendant emancipate [her.] . . The president, directors and company of the Bank . . creditors of . . Freeman, by virtue of a judgment obtained . . November, 1846, brought their suit against both Sarah Conner and . . Freeman, for the purpose of annulling this judgment . . and subjecting her . . to execution . . They obtained a judgment by default, . . confirmed. . . After an ineffectual attempt to obtain a new trial in the district court, Sarah Conner has appealed." Judgment reversed and petition dismissed, with costs: [366] "The syndic . . of the creditors . . is the party competent to institute an action of this kind."

*State v. Monasterio,* 4 La. An. 380, June 1849. "The defendant . . was . . sentenced, for the offence of selling liquors to slaves,[1] to forfeit any license . . to be forever deprived of the right of obtaining any . . to pay a fine of three hundred dollars, and the costs of prosecution," Appeal dismissed.

*Bertrand v. Arcueil,* 4 La. An. 430, June 1849. "1847, the plaintiff became the purchaser at auction of . . Harry, a field hand, Hannah, his wife, and their child, Huldah" "for a total price of $1100, payable at [*sic*] one year. . . 'tous . . sont garanties des vices et maladies prévus par la loi,' . . The mother and child became seriously ill two or three days after their delivery . . and died within three weeks after the sale. . . the disease . . existed in both anterior to the sale; . . probably accelerated, in the case of the mother, by a miscarriage . . after the sale." [433] "Harry, died of a disease contracted several months subsequent to the sale." The lower court rescinded the entire sale.

Affirmed: [431] "article 2518 of the Code . . declares that 'the redhibitory vice of one of several things sold together gives rise to the redhibition of all, if the things were matched, as a pair of horses' . . The principle . . is found in the roman law, Digest, Lib. 21, title 1; . . We are there told . . that, if four unmatched horses are sold at a single price, the defects of one would not be a cause of a *rescision* of the entire sale; . . the same if slaves be sold . . for an entire price, unless they could not be reasonably separated, as . . a company of tragedians, . . it may be true . . that the death of . . Hannah and Huldah did not affect the value of . . Harry . . to as great an extent as in the case of . . a company of tragedians, . . But the spirit of the rule is applicable. Slaves constituting a family would probably labor more cheerfully . . together, . . be more useful than those not so related; and besides . . humanity would dictate that they should be sold together." [Slidell, J.]

[1] Act of Apr. 2, 1832.

[432] " Pilié, for the appellant, for a rehearing. . . Is it not a fact of daily occurrence in this State, that slaves situated as these were, are sold separately?" " The judgment of the court (concurred in by three judges,) was finally pronounced by King, J. . . [433] We are of opinion that the rule does not embrace slaves sold together in families, as field hands, . . the loss of . . Hannah and Hulda, must be borne by the defendant, and that of . . Harry by the plaintiff." Slidell, J., dissenting: " I feel assured that any one desiring to purchase servants, if he had an offer of three . . bearing . . the relation . . as in this case, and of three others . . equal . . but not so related, would give a higher price for the former "

*Edmonds v. her Husband,* 4 La. An. 489, September 1849. " The plaintiff sued her husband for a separation from bed and board, on the ground that he kept his concubine in the common dwelling. . . The defendant introduced witnesses to prove adultery on the part of the plaintiff; but the judge of the District Court . . attached no weight whatever to their testimony."

Judgment for the plaintiff affirmed: " The virtuous indignation which he cannot conceal in redressing the wrongs of a poor colored woman, shows a proper sense of his duties as a guardian of public morals." [Rost, J.]

*Hill v. Spangenberg,* 4 La. An. 554, November 1849. " proprietor of a large sugar plantation . . and of one hundred and fifty slaves employed in its cultivation;"

*Walker v. Duverger,* 4 La. An. 569, November 1849. In 1835 " she owned several slaves, some of whom were in . . Tennessee, and others were hired on board of steamboats navigating the Mississippi river."

*U. S. v. the Ohio, 27* Fed. Cas. 218 (Newberry 409), November 1849. " This action is brought against the vessel to have her declared forfeited in consequence . . of her having brought into this port [New Orleans] a colored person from a foreign port or place.[1] It is shown by two officers of the custom-house . . that the master [of the vessel] declared that the negro boy . . was his slave. . . But . . Two of the crew . . testified that the boy came on board . . at Baltimore as a servant, and had continued . . in that capacity during the voyage to several foreign ports . . Another witness testifies that . . [in] 1842 . . he was . . employed as a servant in the family of the master [in New York City.] . . that he was the son of a free woman in Rio Janeiro, . . [219] the master, at the earliest opportunity, gave bond to take this negro boy away with the vessel according to the requisitions of the state law."

Held: " no decree of forfeiture can be given against this vessel." " The fair presumption . . notwithstanding the declaration of the custom-house officer, . . is, that he was free before he ever sailed "

*Succession of Dupuy,* 4 La. An. 570, December 1849. [571] " On the next day [after making his will] he made a codicil, ordering his executor to emancipate his slave Betty."

[1] Act of Congress of Apr. 20, 1818. 3 st. at L. 450.

*Succession of Lee,* 4 La. An. 578, December 1849. "Lee died in . . 1847, leaving . . land . . and . . about twenty slaves. . . [580] The highest rate fixed by the evidence, for the services of a competent . . manager, is from $400 to $500 a year."

*White v. Slatter,* 5 La. An. 29, January 1850. "The plaintiff . . claims the price paid . . [30] the slave was extremely delicate in her appearance; was small for her years; and had . . a bad cough . . The defendant offered the slave for six hundred dollars, without warranty; but . . asked $800, if required to warrant her health." [29] "The act of sale . . 'The girl is now and has been, so far as known to me, of good health, and also her parents . . but . . White takes her and runs the risk of her health.' A few days after . . the slave sickened, . . and finally died of . . consumption" Judgment for the defendant affirmed.

*State v. Levy and Dreyfous,* 5 La. An. 64, January 1850. The judge of the lower court permitted "a free person of color to testify against . . white persons."

Held: [65] "The judge did not . . err" [64] "Our legislation and jurisprudence upon this subject . . differ materially from those of the slave States generally, . . This difference . . has no doubt arisen from the different condition of that class . . At the date of our earliest legislation, as well as at the present day, free persons of color constituted a numerous class. In some districts they are respectable from their intelligence, industry and habits of good order. Many . . are enlightened by education, and the instances are by no means rare in which they are large property holders. . . such persons as courts and juries would not hesitate to believe under oath. Moreover . . entitled to the protection of our laws; . . the gravest offences against their persons and property might be committed with impunity, by white persons, if the rule for exclusion contended for were recognized. . . [65] No incompetency has been declared by our laws with reference to free persons of color. . . The provision of our code [article 2260], which makes [them] . . competent witnesses in civil matters . . is a recognition that they are *prima facie* worthy of credit, . . No reason has been suggested why a distinction should exist in respect to their competency in civil and criminal cases to which white persons are parties; . . The testimony of manumitted slaves was legal evidence under the Spanish and Roman laws. . . the opinion which we express in relation to the competency of this class . . is in accordance, so far as our experience has gone, with the uniform practice of our courts, which are in the daily habit of permitting them to testify in prosecutions where the defendants are white persons. . . It is further objected, that parol testimony was improperly received to establish the freedom of the witness. The testimony was, that the witness was born free, and had always been considered free. No higher evidence, therefore, than parol could have been adduced." [King, J.]

*Moore v. Lambeth,* 5 La. An. 66, January 1850. [72] "the slaves . . were employed on an estate of the plaintiff in North Carolina, under the supervision of . . her connexion . . In . . 1835, he, with her consent,

brought these slaves and others belonging to her brother, to Louisiana, under an agreement that they should be worked for their benefit."

*State v. Hackett,* 5 La. An. 91, January 1850. [92] "The petition . . is in the name of . . the sheriff . . averring, that he . . is entitled . . to the custody of all slaves, runaway and apprehended within . . parish, and of all free persons of color who may come . . to reside . . contrary to the statutes, and also of all free persons of color coming as mariners . . and to receive the fees . . that the defendant ['gaoler of the . . municipality'] takes upon himself to exercise the office of keeper . . He prays for a writ of mandamus, . . judgment . . that the prisoners named in the list annexed . . and all others, runaways and free persons of color residing without permission . . or . . coming by sea, be delivered to the sheriff, and that the defendant . . be perpetually prohibited from receiving such persons"

Held: [93] "the custody of [runaway slaves] . . belongs . . to the Second Municipality, the real party defendant . . It is admitted . . that by the act of 1806, slaves arrested within the city were to be disposed of as directed by the mayor and city council; . . But it is contended, that by an act of . . [March 16,] 1848, this right . . has been . . vested in the sheriff . . Previous to this act, the statutes . . provided fully for the . . custody . . depots were established at different points in the State, and certain municipal corporations were authorized to employ the . . slaves at labor, on their public works. They formed a system of police . . The law, which it is contended changes this system . . is entitled an act 'To regulate . . the fees to be paid by owners of runaway slaves' . . this act is unconstitutional . . [94] [as to] those portions of the statute which are [not] covered by the title," [93] "118th article of the Constitution . . provides that 'every law . . shall embrace but one object, . . expressed in the title.'" [Eustis, C. J.]

*Dolliole (f. m. c.) v. White,* 5 La. An. 98, January 1850. "The plaintiff claims his freedom . . He, at the time of instituting this suit, . . 1848, is declared to be under twenty-one . . The defendant is alleged . . to hold his right . . from a sale of his service for the term of five years from . . 1847, which expires long before the plaintiff can exercise his right of being emancipated, to wit, at . . thirty."[1] Judgment for the defendant.

Affirmed: "There is nothing before us which affects the right of the defendant . . for the term . . nor is he the proper party with whom the plaintiff's right to be emancipated must be litigated"

*Johnson v. Muncipality No. One,* 5 La. An. 100, January 1850. Judgment of the district court: "The law[2] makes it 'the duty of the keepers of the police jails . . to advertise in French and English in the State paper, and in the official gazette of the municipality . . once a week during three consecutive months, such . . slaves whose owners are unknown, or reside out of the State . . as . . may be detained' . . This duty was not performed . . It is also in proof that the plaintiff's agent called

[1] C. C. 185.
[2] Act of Mar. 10, 1845. Acts of 1845, p. 77.

at the jail and made enquiries for the negro, . . reply, that 'he was not there;' . . the second time . . it . . occurred to him to ask leave to . . examine all the slaves confined . . found the negro in a very cold room, without a bed, couch, or chair, with nothing but a single blanket to lie upon, and so emaciated and feeble as then to be unable to get up on his knees without the assistance of another man. . . he died a few days after he was removed to his master's house, notwithstanding he received good nursing and medical aid. The defendant's witness declares that he was indisposed when he entered the jail, . . [101] 15th of August; . . It could have been nothing serious, for the doctor ['of the jail'] was not called in to him, until the 29th October, . . he was but slightly indisposed, and . . on the second visit, he could perceive no progress in the disease. Now, taking into consideration the prison fare, and the prison treatment and accommodation, and the proneness of negroes in general to diarrhoea, . . it seems fair to infer, that if the boy had entered . . with disordered bowels, the disease would have made considerable progress, by . . October, . . since . . we find him reduced, about twenty-one days after, to a state of *incurability;* . . My opinion . . is, that the disease was contracted in the prison; . . aggravated by the prison fare; and that the circumstances in which the patient was found . . far from favoring a cure, were neither fit nor decent for a human being of any color. . . The plaintiff estimates his slave at nine hundred dollars; his witnesses adopt a higher figure. . . no doubt that his value was seriously diminished by his having absconded, . . the defendant's witness states, that he has seen runaway negroes sold for three hundred dollars. There is no evidence that this negro was a runaway in the sense of the law. C. C. art. 2505. . . decreed, that judgment be entered in favor of the plaintiff . . for . . six hundred dollars, and costs of suit." [Kennedy, J.] Affirmed with costs.

*Campbell v. Botts,* 5 La. An. 106, January 1850. "it was perfectly understood between the parties at the time of the sale that the slave was an habitual runaway;"

*McCarthy v. Sheriff,* 5 La. An. 115, February 1850. "The plaintiff claims the value of a slave . . received in the parish prison, and after a detention of ten days without any commitment . . taken ill, and shortly after being delivered to her owner died of the malady . . the attack took place . . the 17th . . and she was delivered to her owner . . the 19th . . during her illness in prison she was well attended, and . . her treatment in common with the other prisoners had . . been good. She had been received . . evidently under a mistake of the police officers." Judgment for defendant affirmed.

*Arnandez v. Lawes,* 5 La. An. 127, February 1850. [129] "Lawes, . . a freeholder, . . after nine o'clock at night, in front of his plantation, discovered two of the plaintiff's slaves in a skiff . . made them come ashore; demanded their passes; received a paper . . and when . . getting a light to read its contents, . . William broke away and fled, when the defendant, calling upon him several times to stop without being obeyed.

fired . . at . . thirty to thirty-two yards. . . believed . . gun . . loaded with little bird-shot, . . overseer . . had . . charged it with buck-shot, for . . shooting a crane." Counsel for plaintiff: [128] "This cause, after a full investigation before a jury, in which the plaintiff had to contend against the prejudices of many planters, about the necessity of extreme measures in the police of slaves, and the right of any one to shoot down a slave who does not instantly submit, terminated in . . a verdict for $1000 for the value of the slave, and . . interest from the . . death. . . proved that he lost not less than $1 per diem." Held: [131] "plaintiff is entitled to have the judgment amended so as to be for . . $1200 including damages."

*LeDuff (f. m. c.) v. Porche and Carmouche,* 5 La. An. 148, February 1850. [149] "action for . . labor done according to three distinct building contracts . . no controversy . . about two . . The other was for putting up a set of sugar kettles and a chimney." [148] "plaintiff would not assume the work; he alleged his inexperience . . yet defendants insisted . . because it was easier to get along with him, a man of color and well known, than with white men (Americans) who, . . [Carmouche] said, 'did not behave well;' . . defendants pointed out to him his brother . . who . . they said, was a very competent workman; then . . plaintiff agreed on condition that his brother should help him," [150] "jury . . deducted $200 on account of the defective work . . judgment was entered accordingly; . . ordered . . amended, so as to be in favor of the plaintiff" for $920.

*Mary (f. w. c.) et al. v. Brown,* 5 La. An. 269, April 1850. [270] "the plaintiff . . sues for her freedom and that of her four children. . . Read took them [in 1846] from his domicil in Mississippi to Ohio . . and, after having executed the act of emancipation . . returned with them" Counsel for the defendant: [269] "neither the act of emancipation passed in . . Mississippi nor that in Cincinnati . . recites any meritorious act done by the slave for the owner, nor any distinguished service rendered to the State." [1] [270] "administrator . . hired [them] out . . in this State." Judgment in favor of the plaintiffs reversed: "the status . . can be determined under no other laws than those of Mississippi." [Eustis, C. J.]

*Childers v. Johnson,* 6 La. An. 633, April 1850. Held: [639] "the child of a paraphernal female slave is paraphernal." "the issue of slaves . . were not considered fruits in the Roman law, from which our jurisprudence is so largely derived; . . it is proper also to bear in mind, the declared policy of our State, . . The statute of 1806 has humanely enacted, that 'every person is expressly prohibited from selling, separate from their mothers, the children who shall not have attained the full age of ten years.' Would we not violate the policy of this statute, by giving the mothers to the plaintiff, and the issue to the community?" [Slidell, J.]

[1] How. and Hutch. 166.

*State v. Fuentes,* 5 La. An. 427, May 1850. [428] "The counsel of the prisoner requested the court to charge . . 'that the use of grossly . . indecent language by a free man of color to a white man, naturally must excite the passions of a white man, and if immediately succeeded by a mortal stab, it may well be imputed to the weakness . . of human nature, and a jury may render a verdict of manslaughter,' . . The court declined . . and we think properly. It is one of the first . . principles in trials for homicide 'that no affront by words or gestures only is a sufficient provocation'[1] . . The law has made no distinction whether the affront proceeds from a white, or a free man of color. Indeed, as was well observed by the attorney general, since the law makes a distinction . . and punishes free persons of color, who, even by words, insult white persons, their situation imposes upon us, perhaps, a higher obligation to suppress our passions, and resort to the laws to punish their insolence, than in the case of white persons, against whose . . [429] verbal outrage there is no redress by prosecution. It is truly a painful duty to perform when the life of a fellow-creature is involved, but we are obliged to affirm the judgment" [Preston, J.]

*Heirs of Henderson v. Rost and Montgomery, Executors,* 5 La. An. 441, May 1850. See Executors of Henderson *v.* Heirs, p. 575, *supra.* Will of Stephen Henderson: [458 n.] "This is my last olographic will . . made . . 1837 . . Art. 3. . . every thing . . is to be continued . . as . . at my death. The executors . . to keep on each plantation a good planter and a man of humanity. He must not, under no circumstances, treat the blacks with cruelty, but . . with kindness; and they must allow for every grown person that labors, three pounds of good beef or pork per week, and in that proportion for all the young ones. There must be strict discipline . . I have always considered this allowance, with what they made upon their own patch of ground, which must be allowed to all . . that labor, an abundance; more particularly . . if they get as much good fresh corn-meal as they stand in need of. This treatment, in my humble opinion, places the black in a much . . happier situation than many of the lower order who has to labor in Europe, or even in the Eastern States. I have always treated my blacks with much indulgence, and even personal kindness. Art. 4. I have always been opposed to slavery, but as it is a property recognized by the Constitution of the United States, to take that away, you would at once destroy the greatest . . [459 n.] government now in the . . World. Therefore, all attempts made by the fanatics . . preaching, like evil spirits, against slavery, turns the heads of the unfortunate negroes, and prepares them for the commission of every kind of crime, which compels their masters to limit the very liberty . . formerly awarded . . a good master ought to be as careful of his slaves as he is of his own family. . . but I am decidedly opposed to the people of any other State or country, interfering . . Art. 5. There must be written rules for the government of all my slaves . . They are not to be taken out to work until nearly sunrise, nor . . kept in the field longer

[1] 4 Black. Com. 200.

than half an hour after sundown . . Sunday is to be a day of rest . . except the people who may choose to work upon their own piece of ground, or to be paid for their labor by their overseer, but under no circumstances . . to leave their respective camps without permission . . Art. 6. All the children . . born five years after my death, if females, are to be free at the age of twenty . . and male children . . at twenty-five; and at the end of the five years . . there may be drawn by lot . . five females and five males who will be furnished a free passage to our settlement in Africa, and one hundred dollars each; but they must go of their own free will, and . . return to slavery, if ever they return to this country. At the end of ten years twenty may be emancipated in the same manner . . and in twenty-five years all the first born free may be sent off with the entire remainder of the old stock that is willing to go, so . . that . . there will not be upon any of my estates any other slaves but the apprentice children. And if the other slaves did not wish to go . . they will remain . . as apprentices . . as well as all their offspring, . . Art. 7. It must be clearly understood, that the benefit . . is not to extend to a murderer or thief, or a confirmed runaway, or for any other high crime . . legally proved before the executors . . but I wish . . a fair . . trial . . as if . . before a judicial tribunal. Art. 8. . . [460 n.] the negroes upon the Houmas estate to be emancipated upon the same conditions . . one-half of them being already my property, Mr. Doyal ['one-half owner'] would, no doubt, make an agreement . . for those belonging to him. . . [461 n.] Art. 13. When funds can be spared after twenty years, I wish a large manufactory of negro shoes and coarse clothes to be erected at Destrehan . . [462 n.] plantation when it is incorporated as a city," Henderson made a second will on March 5, 1838, confirming the former one and making some additions: "In remuneration of their faithful services I give their freedom to my house servants Lucy and Agnes . . next fall," [462] "The court, not being prepared . . to express an opinion upon the . . provisions as regards the slaves generally, has . . retained that portion of the cause for further consideration. . . [466] Doyal binds himself to carry into effect a judgment, if such be rendered, recognizing the validity of the testator's disposition for the liberation of his half . . but . . expressly refuses, to sell his own half so as to enable the parties to carry out Henderson's desire to emancipate the whole. . . [467] If such validity should be adjudged, the moiety upon which the will . . will operate can be ascertained by a proceeding in the nature of a judicial partition." [Slidell, J.] See same *v.* same, p. 647, *infra;* see also Rost and Montgomery *v.* Heirs of Doyal, p. 679, *infra.*

*Beaulieu* (*f. m. c.*) *v. Ternoir* (*f. m. c.*), 5 La. An. 476, May 1850. "Baptiste Beaulieu, homme de couleur et libre, . . voulant donner des preuves de son amitié à Eulalie Ducloslange (mulatresse libre,) fille naturelle de Philippe Ducloslange, lui a . . fait donation [1819] . . d' un demi terrain"

*Frierson v. Irwin,* 5 La. An. 525, June 1850. Eustis, C. J.: [530] "We have always discountenanced the practice, upon which we have

been frequently called to act, of bringing slaves to this State for the purpose of defeating the rights of property in them, existing under the laws of the State from which they were taken;"

*Dugas v. Estiletts,* 5 La. An. 559, September 1850. " suit for the rescission of the sale of a slave, on the ground that he was in the habit of running away . . manifested . . by . . running away within three days after his delivery . . [560] None of plaintiff's witnesses show that the slave was a runaway before the sale. Some of them prove that he was a good slave and not a runaway. The defendant has introduced several witnesses who give him the same character. . . the slave was killed while a runaway, in attempting to make his escape." Judgment for the defendant affirmed.

*Dupré et al. v. Desmaret,* 5 La. An. 591, September 1850. " The payment of the price of John Bull is resisted . . [592] died more than fourteen months after the sale. The physicians who made the post mortem examination, state . . disease of the heart accompanied by a general dropsy. . . think . . brought on by dirt eating. . . that the disease must have existed two years. . . many witnesses who knew the slave, and had him under their charge during the eight years which preceded . . state . . that he was one of the stoutest men on the plantation; . . had none of the signs of a dirt eater " Ordered that there be judgment in favor of the plaintiffs for $875 with interest.

*Dupré et al. v. Prescott,* 5 La. An. 592, September 1850. [593] " The testimony of the defendant's overseer shows that although the health of the slave was very bad for more than two months before his death, and that he always complained of his breast, no physician was called . . until two days before his death." " Two days after his burial, he was disinterred and a post mortem examination was made by two physicians; . . chronic disease of the heart . . right lung . . diseased . . the affection of the lungs was the immediate cause of the death," Judgment in favor of the plaintiffs for $427.50 with interest.

*Young v. Young,* 5 La. An. 611, September 1850. " his agent . . purchased for him at Washington [D. C.] . . Rachel, and her two children " for $600, between 1814 and 1821.

*Adle v. Anty (f. w. c.),* 5 La. An. 622, September 1850. " The succession of Susanne Metoyer, a free woman of color, was opened . . 1838. . . appraisement amounting to . . $35,904. . . a family meeting . . recommended . . that the property . . be sold . . partition among the heirs of the estate amounting to upwards of sixty thousand dollars . . showing the sales . . extremely favorable "

*Bartlett v. Peck,* 5 La. An. 669, October 1850. Letter: [670] "January 5th, 1845. . . I never thought of selling the boy that is run away; . . nor would not sell him for any price, even run off. I did propose to swop him . . for a certain boy,"

*Matthews v. Wilson,* 5 La. An. 691, October 1850. "1846 . . made a clandestine departure from Arkansas and came to Louisiana, bringing the slave with him"

*Conant, Tutor of Mary (a negro woman), v. Guesnard and Wife,* 5 La. An. 696, November 1850. Suit for freedom. "The plaintiff was taken to France [in 1847] for the purpose of her services in attending on her mistress, who was in ill health." "She sent the plaintiff back to Louisiana . . [after] three months;" Judgment for the defendant affirmed.[1]

*Julia Arbuckle (f. w. c.) v. Bonny et al.,* 5 La. An. 699, November 1850. "1849 . . the plaintiff was adjudged to be a free person. . . [700] Talbot had purchased her as a slave in good faith;" [699] "sold . . to . . Mrs. Bonny, previous to the suit for freedom. The present suit appears to be for personal injury from violence and damages for loss of time in her imprisonment during the pending of the suit,"

Held: "the plaintiff's petition, though very inartificially drawn, is not without a cause of action." "We have in three cases [2] allowed a compensation in the way of damages to persons who have established their right to freedom . . dating from the pendency of the suit."

*Roca v. Slawson,* 5 La. An. 708, November 1850. [709] "the slave was purchased by the plaintiff [in October 1847] as an habitual drunkard;" [708] "A witness who had the slave in charge during several years testifies that . . he was . . always healthy, excepting once, when he . . had the *delirium tremens*. . . [709] A few weeks after the sale . . symptoms . . were first discovered . . plaintiff . . kept him at hard work all the time, and no physician saw him until" [708] "1st of March, 1848, . . two . . attended the slave until he died [March 31], and made a post mortem examination, . . ascertain the existence of" "pulmonary consumption," "The plaintiff claims the rescission of the sale"

Judgment in his favor reversed: [709] "when the symptoms were first discovered, it was the duty of the plaintiff to call in a physician . . negligence and want of humanity on his part, would, under all circumstances, prevent his recovery." [Rost, J.]

*Villars v. Kennedy,* 5 La. An. 724, December 1850. [727] "the Commandant General of Louisiana in 1730, repaired [the fortifications of New Orleans] . . and surrounded the city with a wide ditch to protect it, as well from . . hostile tribes of Indians as from an apprehended insurrection of the slaves,"

*Kock and McCall v. Slatter,* 5 La. An. 739, December 1850. "proved that the slave is rendered entirely worthless by a disease . . incurable. . . that the disease manifested itself within fifteen days after the sale;" "judgment rescinding the sale . . affirmed, with costs." "as the defendant has not proved that the slave had been more than eight months in

[1] Act of May 30, 1846. "The statute merely . . establishes as law the rule laid down by Lord Stowell, in the case of the slave Grace." See vol. I. of this series, p. 34.

[2] Eugenie *v.* Préval, p. 580, Arsène *v.* Pignéguy, p. 582, Coby *v.* Kock, p. 591, *supra.*

the State at that time,[1] the legal presumption is, that he was unsound when sold. . . cannot be overthrown by the testimony of the defendant's witnesses. The slave may have appeared healthy during the limited time they knew him in the defendant's slave yard, although affected with ailments which would soon be made apparent by labor and exposure." [Preston, J.]

*Allen v. Campbell,* 5 La. An. 754, December 1850. [755] "suit to rescind the sale of a slave . . brought into the State within less than eight months before the sale" "on the 15th February, 1849, . . He died six weeks afterwards. . . alleged that he died of diarrhoea, . . Mr. Archer and Vaught . . testify that the slave was severely afflicted with the disease in . . February. The latter . . having hired him a few days, he was sent home in a cart, being unable to work, or probably to walk; after a week he was sent back; but being unable to do the work of a hand, was again sent home. . . he was sick at the plaintiff's house for some time; . . attended . . by Dr. Preston; . . The defence is, that the slave . . died of the cholera. . . Dr. Bensadon saw him the day before he died in the collapsed state of the cholera, . . All proper attendance and medical aid was furnished by the plaintiff . . a physician set [*sic*] up with him a whole night." Held: [754] "there is nothing in the law which authorizes the warranty to be . . extended from one disease to another,"

*Frelson v. Tiner,* 6 La. An. 18, January 1851. Tobin of Arkansas sold to Frelson of New Orleans in 1848 [19] "five negro men, . . Jacob . . about twenty-eight . . Joseph . . about twenty-six . . Charles . . about twenty-one . . Lewis . . about twenty . . and Columbus . . about twenty [for $3500] . . 'under the express condition, that . . vendor shall have the right of redeeming' . . The district judge decided: . . 'The slaves at that time were in Arkansas, where the common law prevails. . . this contract would avail as a mortgage. But . . a mortgage of slaves . . out of this State, will not attach to the slaves when brought here, except from the time . . it is duly registered here. When slaves are brought into this State, they become immovables . . [20] There was no registry to interfere with the defendants' attachment. Judgment for the defendants,'" Affirmed.

*Romer v. Jane Woods (f. w. c.),* 6 La. An. 29, January 1851. "rescission of the sale of a female slave . . addicted to running away"

*Buddy v. Steamer Vanleer et al.,* 6 La. An. 34, January 1851. "The plaintiff claims from the master, mate and owners of the *Steamship* . . [$1300] . . for the value of . . Ned, and damages caused by his employment . . without his permission. . . the mate hired the boy . . 14th of March, 1849; . . he went with her . . to Attakapas and back to New Orleans, where she arrived about the 20th . . The cholera was then prevailing . . Ned, being at work on the levee, probably still in the service of the boat, took the cholera. He was requested by the clerk of the boat to go home to his master; . . but returned in half an hour, and was taken on board, where he had a brother in . . employment . . The brother was

[1] B. and C. 792.

sent to let his master know . . [35] From the time he was taken on board . . much exertion was made to save him, by rubbing him with brandy, cayenne pepper, and by administering Dr. Cannon's anti-cholera preparations: two persons having attended on him all night." " next morning . . son of the master . . took him away in a cab, and he died in his master's house the same day."

Held: [36] " The . . death had no connection whatever with his employment . . The plaintiff is entitled to recover the damage he has suffered by the loss of the time of his slave, because hired out without his permission, and without due precaution on behalf of the officers . . to ascertain that he was a slave,"

*Sargent v. Slatter,* 6 La. An. 72, February 1851. " The plaintiff claims the return of the price of a slave . . [who] died of an incurable disease, . . also . . damages. . . It is urged that four months elapsed after the purchase before the plaintiff called in a physician. But the slave was employed as a house servant. She was never exposed to the weather; . . was able to do house work, . . the plaintiff ['a humane master'] had no reason to believe that she was in a dangerous situation. . . the title of the plaintiff was executed in . . Maryland," Judgment for plaintiff affirmed.

*Carmouche v. Francis P. and L. Bouis,* 6 La. An. 95, February 1851. [96] " suit to recover from the defendants *in solido* the value of . . slave . . killed by . . Leon Bouis, while in the service of his father, the other defendant. . . the slave was . . crossing the fence of . . Bouis . . probably for the purpose of taking sugar cane, . . one or more negroes with him. . . the son, with the overseer, were keeping watch with fire-arms, by direction of the father, . . Leon . . fired, and the slave . . was severely wounded in the leg, . . died, notwithstanding all proper care . . and medical aid . . The overseer and son were instructed . . not to shoot the negroes . . but to frighten them by firing; and . . the son did not take aim when he fired the fatal shot. Nevertheless, he called to the negroes to stop, and they not doing so, he did take aim, . . but the gun snapped. . . [97] Believing with the jury, that the slave . . was either carelessly or unlawfully killed, we think they came to the correct conclusion in holding both defendants responsible . . Besides, the jury may have inferred the previous assent of the father . . from his subsequent declaration . . that the sole reproach he had to make to his son was, for having fired upon one alone, instead of firing upon the gang. . . judgment . . affirmed, with costs." [Preston, J.]

*Rosette Aubert* (*f. w. c.*) *v. Aubert et al.,* 6 La. An. 104, February 1851. " Rosette Aubert . . asks that the heirs . . be compelled to execute his will and to pay over to her the legacies . . in her favor and in favor of her . . [105] children. . . defendants have . . averred: . . 2. That . . Aubert was not of sound mind . . 4. That Rosette Aubert was the concubine of the testator, and her children are his adulterous bastards; . . Aubert died . . 1839. . . [106] Rosette . . assisted him in ascertaining the names of such of the slaves as he did not remember. . . [107] he made [his legitimate daughter] . . then about thirteen . . the depositary of $5000 for the

use of the plaintiff and her children," Held: [109] " the testator was not of sound mind "

*Badillo et al. v. Francisco Tio,* 6 La. An. 129, February 1851. Preston, J.: [136] " Augustin Macarty departed this life . . October, 1844, leaving an estate appraised at $58,610. He left an olographic will, dated . . 1844, . . probated . . October, 1844. He declared himself to be without forced heirs, and instituted . . Tio his universal legatee, and . . executor, . . He gave freedom to three of his slaves, being minors . . appointed Celeste Perrault their tutrix, and bound them to serve her until they attained the age . . to be emancipated, . . emancipated at her expense, if worthy . . if not, . . belong to . . Tio. He gave to Patrice Macarty his clothes and the furniture of his bed-chamber. He declared that the rest of the furniture and movables in his house belonged to Celeste Perrault, to whom he gave for six months after his death the use of the property on which he resided. . . [137] 1847, the plaintiffs instituted the present suit . . they are his sole legal heirs. They claim from . . Tio the whole succession . . on the ground that he was made universal legatee . . as a person interposed for the purpose of transmitting . . to persons incapable [1] . . 1. Josephine Macarty, a free woman of color, . . natural daughter of . . Macarty [[130] 'by Victoria Wiltz, his first concubine, and herself the concubine of the defendant'], with whom [Josephine] . . Tio has lived in concubinage for many years, and with whom he has contracted a religious marriage. 2. The natural children of Josephine, the issue of her concubinage with . . Tio. 3. Patrice Macarty, the natural child of Augustin Macarty by Celeste Perrault, a free woman of color. And 4. Celeste Perrault, . . and . . Philonise Macarty, another natural colored daughter of Macarty. . . [139] The testimony fully satisfies me that Josephine Macarty is the natural daughter . . Sanite Riviére [2] [who] . . had a child by him herself . . says . . Juan Macarty, an uncle of the child, and cadet in the same regiment, and Maria Chauvin, her aunt, were her god-father and god-mother. Bridgette Macarty " [130] " who represents herself as being also a natural child of Macarty by another mother . . testifies that Macarty always treated her and Joséphine as his daughters," Rost, J.; " we [3] cannot agree with [Judge Preston] . . that the evidence in the record proves her paternal descent. . . Victoria Wiltz, the mother of Josephine, did not reside in his house [4] when the latter was conceived, . . she was reared in the house of Marcos Tio, and as his child. . . Brigitte . . from her condition is not entitled to full credit, . . [131] an extract from the register of baptisms of free persons of color . . contains a statement that . . [Josephine's] father was a Mr. Macarty. . . he did not sign . . In the certificate of baptism of one of the children of the defendant by Josephine, . . in 1825, it is stated that his maternal grand-father is Augustin Macarty. . . signed by the defendant; . . could not affect Macarty " " Mr. Bacas . . says, that he had in succession several

[1] C. C. 221, 1473.
[2] The French accents are not used by Judge Preston except incorrectly here.
[3] Eustis, C. J., and Slidell, J., concurring.
[4] C. C. 227, sect. 3.

mistresses who had children whom he refused to recognize. . . Macarty ceased all intercourse with Victoria Wiltz at about the time of Josephine's birth; and we are satisfied that he had not the conviction that Josephine was his child, . . He must, at the same time, have thought it probable . . Céleste Perrault was the concubine of Macarty from 1799 to his death; . . lived as such in his house when her son Patrice was born." " proved to be his natural son," " in his correspondence with Patrice . . he . . invariably addresses him as *mon ami.* That correspondence is full of affection; and although he knew . . he was Patrice's father, he never could bring himself to speak or to write that humiliating truth. . . [132] It is probable, that . . unequal marriages [' conventions by which a woman of inferior condition gave herself or was given by her relatives in presence of witnesses to a single man, to live . . in . . concubinage '] were of common occurrence in Spain, while . . part of the Roman Empire; . . By an express law of the *Partidas,* the governors of the provinces were forbidden to marry, and authorized to have concubines. . . Such was the law of Louisiana . . under the dominion of Spain, and as there were . . in the colony but few women of the white race, and hardly any of equal condition with the officers of Government and of the troops . . the inevitable consequence was . . connections with women of color. This custom, coming as it did from the ruling class, soon spread throughout the colony, . . to remedy this . . the framers of the Code of 1808 first created the incapacities of which the plaintiffs claim the benefit. Macarty was a nobleman and an officer in the Spanish army. At the age of seventeen he dwelt with one of his uncles, also a Spanish officer, who lived with a woman of color. Augustin . . had in succession several *liaisons* with women of that class, until in 1799, he took Céleste Perrault, with whom he lived nearly fifty years, and until death parted them. . . [133] the correspondence between [Patrice] . . and his father clearly shows, that he and his mother were . . all that a legitimate wife and son could have been. In the latter part of his life he had no other society but that of Céleste, and no occupation save that of purchasing and sending goods and produce to Patrice, who kept a shop in Pensacola. His letters to his relations show that he was completely estranged from them, . . The defendant is not shown to have had any social or business relations with him. Their position in life, education and habits of thought were too dissimilar . . no apparent motive for making the bequest, except that the defendant lived with a woman whom Macarty had some reason to believe was his daughter, and that he was besides the confidential friend and agent of Céleste Perrault. . . nothing prevented him from making a donation to Josephine. But he was not, probably, aware of this, and may have been induced to select the defendant as the instrument . . for the transmission of his property *in fraudem legis.* . . the defendant suffered Céleste to retain possession of a portion of the property long after she ceased to have a right . . she contracted . . as if it had been hers; and . . the slaves on the Carrolton property were sold by her orders . . These facts, taken in connection with her sudden increase of wealth after the death of Macarty, by which she was enabled to travel in Europe during eight-

een months, raise an almost irresistible presumption, that the proceeds of the property sold were paid over to her. . . When . . it is further shown that the defendant has conveyed to her five of the slaves which he received from Macarty, there is no room left for doubt. . . [134] we are forced to conclude that the slaves were returned . . in execution of the *fidei commissum*. . . The defendant must restore to the plaintiffs all the real property and slaves . . he must account to them "

*Dupré v. Caruthers et al.,* 6 La. An. 156, February 1851. Dupré, a colored man, departed this life . . without legal ascendants or descendants. . . Caruthers and others claim his succession, . . natural brothers; . . In opposition . . claimed by Marie Lorenza Dupré, who alleges that she is the natural daughter . . offered to prove . . by . . testimony not amounting to a formal acknowledgment." [158] "excluded"

*Vail v. Bird,* 6 La. An. 223, March 1851. " The plaintiffs . . heirs of . . Vail . . allege, that the testator emancipated, by his will, . . Jane, and gave her two promissory notes of one hundred dollars each, and that these legacies should be annulled, because the testator lived in open concubinage with Jane; that the donation of freedom . . is a disposition of his immovable property in her favor, which is prohibited [1] . . that the testator could only give her a tenth part . . in movable property, . . pray that Jane may be made a party, and . . donations . . annulled . . Bird, the executor excepted . . that the plaintiffs could not make Jane a party. . . that the allegation of concubinage between master and slave, was . . not . . admissible, because the slave was entirely subject . . [224] sustained "

" reversed, and the cause remanded " I. [223] " Our code . . enables a slave to become a party to a civil action when he has to claim or prove his freedom.[2] . . [II.] [224] The slave is undoubtedly subject to the power of his master; but that means a lawful power, such as is consistent with good morals. The laws do not subject the female slave to an involuntary and illicit connexion with her master, but would protect her against that misfortune. It is true, the female slave is peculiarly exposed . . to the seductions of an unprincipled master. That is a misfortune; but it is so rare in the case of concubinage that the seduction and temptation are not mutual, that exceptions to the general rule cannot be founded upon it. . . [III.] The donation of freedom to a slave deprives the heirs of . . an immovable." [Preston, J.]

*State v. Read,* 6 La. An. 227, March 1851. " The indictment charges: That . . Read, . . of Louisiana, yeoman, . . did [in 1850] in public discourse . . utter the following language in substance . . ' The negroes . . are as free as the white men. This is a free country , and that the negroes have no right to call any man master; ' which . . [228] did . . have a tendency to produce discontent among the free colored population . . and to excite insubordination among the slaves . . contrary to the form of the

[1] C. C. 1468.
[2] C. C. 177.

statute [1] . . The jury found the accused guilty . . and recommended him to the mercy of the court." [227] " he was sentenced to be confined at hard labor in the penitentiary for . . five years, and to pay the costs of prosecution. . . [228] The motion to arrest the judgment was overruled,"

Judgment arrested: " The indictment contains no charge of any criminal intent, and the word *feloniously* . . is omitted, . . Nor is it charged that the words were uttered in the presence . . of slaves or persons of color. . . [229] When a man's life is put in jeopardy for language made use of, we think the language itself ought to be charged in the indictment . . with the same particularity as a libel." [Eustis, C. J.]

*State v. Capers,* 6 La. An. 267, March 1851. [268] " indicted and found guilty of stealing a slave."

*Walker v. Ferriere,* 6 La. An. 278, March 1851. Rost, J.: " It is clear to us that the slave was not affected with leprosy, unless that word is understood in the extended signification which one of the physicians . . states it formerly had, when it was considered as including all diseases of the skin. It is not used in that sense in the articles of the Codes of 1808 and 1825, . . The form of leprosy known by the name of *elephantiasis* is an African disease, which was common in Louisiana before the suppression of the slave trade, as it is at this day in . . Cuba, where that trade is still carried on. This is the form of leprosy which the lawgiver had principally in view. We do not mean to say that the general expression used in the code [2] might not be extended in cases of *lepra vulgaris*; but it is inapplicable to any other cutaneous disease. It is not shown satisfactorily that the disease in this case existed at the time of the sale, and that it is incurable, or that the value of the slave is materially diminished by it."

*Dupré, Administrator, v. Uzée,* 6 La. An. 280, March 1851. [281] " This is a suit by the administrator of Anna Sinnet, a free woman of color, with whom . . Uzée lived in open concubinage before his marriage [in 1843], against the minor heirs of Uzée, represented by their mother . . to recover from them a house and lot and a female slave, together with rents and profits, on the ground that in 1838 Anna Sinnet acquired . . slave from . . Hite, for . . $700 paid by her in cash, and that in 1841 she acquired the house and lot from . . Uzée for . . $3500, which he acknowledged in the act of sale to have received. The answer is . . that they are donations in disguise, prohibited by law,[3] . . That Uzée retained . . the possession . . The defendant prays . . that the house and lot and slave . . be decreed to be the property of her minor children. . . proved that Uzée himself bought the slave, and . . caused the sale to be passed to his concubine to evade the prohibition of the law." Judgment for the defendant affirmed.

*Dobard v. Nunez,* 6 La. An. 294, April 1851. " The slanderous words are alleged to be ' that the families of Martin and Lafrance are colored

[1] Act of Mar. 16, 1830.
[2] " The absolute vices of slaves are leprosy, madness, and epilepsy." C. C. 2502.
[3] C. C. 1468.

people.' The defendant . . avers that he persists therein, because they were founded upon probable cause, and uttered without malice. . . judgment against him for $500,"

" ordered, that the judgment . . be amended, and that there be judgment in favor of the plaintiffs for fifty dollars damages," " On the merits, the evidence is conflicting; . . There is nothing in the record to show that the plaintiffs were in any manner injured by what he said."

*Hyams v. Smith,* 6 La. An. 362, April 1851. [363] " The plaintiff who keeps a slave-yard in New Orelans, claims the amount of a bill for boarding, clothing and medical attendance furnished certain slaves, and also a privilege upon said slaves for the amount due her. . . the defendant, who resides in . . Alabama, had a life estate in the slaves attached; . . her husband was in possession . . as trustee. The slaves were brought by him to New Orleans and placed in the slave-yard . . to be sold. . . the slaves were to perform no labor, but to be boarded, cared for and safely kept." " he died soon after, and before a sale was effected. A curator . . left them . . in the plaintiff's slave-yard." Held: " the plaintiff has a privilege upon the slaves "

*McDowell v. Couch,* 6 La. An. 365, April 1851. [369] " The plaintiff brings this suit against the sheriff . . to recover . . a slave named Jerry. The State, by the district attorney, intervened. He alleges . . That . . Jerry . . was sentenced to be executed . . February, 1849. . . Supreme Court, . . in March, 1849, affirmed the judgment [1] . . At the session of the Legislature in 1850, a petition on behalf of the slave, in which he, and many of the inhabitants of the parish . . united, was presented to the Governor and Senate . . for the commutation of his punishment. . . commuted . . to imprisonment for life . . the sheriff was notified, . . The court . . rejected the claim of the plaintiff, and directed the sheriff to deliver the slave to the keeper of the penitentiary; the plaintiff, the owner of the slave, has appealed."

Judgment affirmed: I. " The property in a slave is such that . . the owner may lose it by the crimes . . of the slave; . . and yet the State generously accords . . an indemnification of $300, . . the full value of any slave convicted of a capital crime. . . [II.] the convicted slave was subject to execution, notwithstanding the day . . appointed . . had passed. . . [III.] an act . . approved the 5th of March, 1823, expressly gives power to the Governor and Senate to commute the punishment of death into a lesser punishment in favor of slaves ' whenever the circumstances . . are such as to entitle the offender ' . . [IV.] [371] counsel of the plaintiff [say] . . ' We have found nothing . . to warrant the commutation of the sentence of a convict without his . . assent; and a slave is incapable of giving . . assent without the authority of his master, which was not accorded in this instance.' The answer of the attorney general . . we . . quote and adopt . . as our opinion . . ' if the plaintiff . . did not intercede, either from indifference, prudential motives, or from a desire to have the slave executed, it is perfectly immaterial; . . When slaves commit

[1] State *v.* Jerry, p. 598, *supra.*

crimes and are prosecuted . . they are regarded as accountable beings, and not as things; and may be punished as the law directs, irrespective of the wishes of the master, who . . is only entitled to notice. C. C. 178.' " [Preston, J.]

*Jeter v. Deslondes,* 6 La. An. 379, April 1851. [381] " She removed to this State from Virginia . . bringing . . the slaves "

*Lombard v. Jacobs,* 6 La. An. 396, April 1851. " suit . . for the rescission of the sale of a slave . . and for the reimbursement of the price [$675], . . sold as a good axeman, and sound; . . not a good axeman, . . feeble . . and somewhat idiotic, at least at intervals. . . The evidence . . convinced [the district judge] . . that the slave was . . long anterior . . afflicted with a chronic nervous malady . . affecting both mind and body to such an extent as to render him utterly worthless; . . produced great bodily weakness and periodical imbecility;" Judgment for the plaintiff affirmed.

*Stackhouse v. Kendall,* 7 La. An. 670, April 1851. " No post mortem examination of the slave was made, . . [671] According to the opinion of Dr. Stillette, the disease [consumption] is not proved. . . the family physician of the plaintiff . . states it as his opinion, that the slave died of consumption, . . the consequence of his constitutional conformation. . . The physician who last saw the slave states, that the day before he died he was suffering from diarrhea and hectic fever, but . . showed no sign of approaching dissolution. . . the cholera was among the plaintiff's slaves . . and the rapidity and manner of the death point to that disease as the cause. The evidence induces us to believe . . that the diarrhea may have been, as it usually is, caused by a change of food and water on a subject lately come to Louisiana; . . aggravated by the damp and impure atmosphere of the pork warehouse in which the slave was employed, and . . terminated in cholera. . . defendant is entitled to a final judgment." [Rost, J.]

*State v. Powell,* 6 La. An. 449, May 1851. " The defendant . . convicted of larceny, moved for a new trial, . . proved on the trial that he was a negro of unmixed blood, from which the presumption arose that he was a slave; . . no evidence was given to rebut . . Consequently, it is said the court had no jurisdiction " New trial denied.

Judgment affirmed: " In civil suits . . fact [that he was a negro of unmixed blood] raises a presumption of slavery, which must be rebutted by testimony to establish freedom, or to admit the negro as a witness. But slight testimony . . is required . . as that the negro was in the actual enjoyment of his liberty. The bare fact of the prosecution of the accused as a free man, without plea to the jurisdiction . . without a question being raised . . on the trial . . was sufficient to rebut . . in the present case. It is true, he was not described in the indictment as a free man of color. This is required [1] from notaries and other public officers, in passing acts with regard to free persons of color; and also from auction-

[1] Act of Mar. 31, 1808. B. and C. 159.

eers and printers, in publishing advertisements of the sale of their property. It is not expressly required . . so to describe them in criminal proceedings, though it is usual . . and to be recommended in all cases."

*Benjamin v. Davis and Matt,* 6 La. An. 472, May 1851. "action brought . . for the value [$800] of . . Ned . . [473] This boy ['old negro . . of forty-five'] . . had given some offence; Davis [Benjamin's overseer] attempted to flog the boy, and Ned run;" [472] "the defendants came to the house of [Perkins] . . early . . the [next] morning with their negro dogs, and said they were going to hunt runaway negroes;" [474] "such means being customary among the planters of the parish, and the same means having been previously used by plaintiff to capture the same negro." [472] "the defendants . . were not long gone before . . [Perkins] saw them returning . . Ned lying across one of the horses, shot. . . also proved by Perkins, that they brought in with Ned a large carving knife that had been stolen or taken from his quarter, . . used . . for cutting up meat, when they issued out allowances to the negroes. . . [474] that the negro had a wife on the plantation of Dr. Perkins, and that the knife had been stolen from the house in which the negro was in the habit of staying when in the quarter of witness; that the dogs . . were bleeding and appeared to have been cut . . also in evidence that the plaintiff, when informed that the negro had been shot, replied, that he wished he had been killed." [473] "defendants . . borrowed a cart and sent him to the residence of plaintiff," [472] "next day he died of his wounds. . . [473] Benjamin all the while was absent from home. . . there has been one mistrial, and the last time the case was submitted, without argument . . the jury gave a verdict for the defendants."

[474] "The verdict is clearly erroneous, and the judgment must be reversed." "Armed, and prepared as they were, the shooting with ball or buck-shot was totally unjustifiable. . . It is further ordered, that the plaintiff recover from the defendants, *in solido,* $350, with . . interest, from . . October, 1847, till paid, and costs in both courts." [Rost, J.]

*Vinot v. Celeste Bertrand (f. w. c.),* 6 La. An. 474, May 1851. [475] "the record does not establish such criminal concealment or illegal hiring . . as will subject . . defendant to the penalties of the acts of 1807 and 1809.[1] . . The petition contains a claim for the sums expended in the recovery of the slave, and also a prayer for general relief. We are of opinion that the forged pass which the slave showed the defendant, when she hired a room from her, is not sufficient to protect her against this portion of the claim. She should have made inquiry . . the slave . . cost $500, and we cannot err in allowing as damages legal interest on that sum during the time she occupied a room in the defendant's house. The plaintiff is also entitled to recover three dollars for the taking up of the slave, under the act of 1848." [2] [Rost, J.]

*Sarah A. Leigh (f. w. c.) v. Meurice,* 6 La. An. 476, May 1851. "The plaintiff is the owner of . . Ellen; the defendant owns her mother,

[1] Moreau's *Digest,* pp. 119, 120.
[2] Sess. Acts, p. 166.

. . Phoebe. Ellen ran away . . and was arrested in a room occupied by Phoebe, in the house of Mr. Davis, to whom she had been hired. . . circumstances were proved which induced the district court to conclude she had been there a month. . . Mr. Davis searched twice . . Being also a girl of fifteen or sixteen . . she was as likely to run away from the service of her mistress as to be enticed away by her mother. Phoebe was . . convicted of harboring and concealing her . . penalty of two dollars a day . . cannot be recovered from the master, who is not answerable for penalties . . imposed for the acts of his slave. He is answerable, however, for the damages caused [1] . . the law allows but three" "dollars . . on account of . . arresting . . The court allowed a months' [*sic*] wages and five dollars for advertisements, . . [477] The fact that the mother harbored and concealed the slave . . no doubt injured her character and qualities as a servant; and the depreciation is sufficiently proved . . to require us to allow something on that account." [Preston, J.]

*Nicholson v. Ogden,* 6 La. An. 486, May 1851. "By an olographic will . . 1833, he distributed his property . . among his children . . except for the support of a family servant, who he declared had acted the part of a mother to his motherless children."

*Murphy v. Insurance Co.,* 6 La. An. 518, May 1851. Preston, J.: "The defendants insured the life of a slave . . for one year, from . . June, 1850. He died . . October, . . The policy contained a condition, that he should have had no chronic disease at the time of the insurance. By a post mortem examination, made fifteen hours after his death, physicians came to the conclusion that he died of chronic inflammation of the intestines, and ulceration. One . . attended on him in July, for diarrhea and fever. He became convalescent. He attended him again . . during his last illness. . . strong evidence to counteract the presumption [of the existence of chronic disease at the time of the insurance]. The slave was examined . . by the physician of the defendants, who was satisfied with his health. He had just been purchased from a negro trader, in whose depot Dr. Carr was the attending physician. The doctor saw him daily for some months before and on the very day he was sold, when he appeared to be in perfect health;" Held: the insurance company is liable.

*Haggerty v. Powell,* 6 La. An. 533, June 1851. "The plaintiff . . of Texas, instituted this action, to rescind the sale of a slave sold to him by the defendant, who is a trader in slaves, on the ground, that . . the . . slave . . ran away within sixty days . . and has never been heard of since. . . the slave had not been eight months in the State when he was sold;" Judgment for the plaintiff. Affirmed: "The case comes strictly within the provisions of the act of 1834. . . The ground, that the persons having charge . . were negligent . . is not a legal defence."

*Heres v. Powell,* 6 La. An. 586, June 1851. "suit, by a collector of State taxes, to recover . . from the defendant, who . . keeps a slave-yard

[1] C. C. 180, 2300.

in this city, five dollars a head on one hundred and fourteen slaves, placed and kept in his yard for sale, during . . 1848." [1] Held: " this tax . . is a license tax . . nothing . . which conflicts with the Constitution of the United States;"

*State v. Jackson (a slave),* 6 La. An. 593, June 1851. [594] " Jackson, . . belonging to Mrs. Newcomb, was accused of having . . set fire to the dwelling-house of Mrs. Shaw; . . convicted . . and sentenced to imprisonment for life in the penitentiary." [593] " This case was appealed . . agent for the owner of, and attorney and counsel for, the accused, . . doth depose . . that since the trial . . [he] has discovered evidence . . that the slave Eliza, the principal witness against the accused, had been previously . . convicted for an assault upon . . [594] a white woman. . . had been severely threatened and whipped until she made the disclosure, that the accused had committed the crime . . had made threats against the accused; . . character . . so bad . . as to have compelled her mistress to have her tried [tied ?] and confined for days at a time."

Judgment affirmed: [596] " The reasons given by the magistrates for refusing [a new trial] . . are satisfactory, even if this court could revise the exercise of their discretion on this subject, by a writ of error . . it has no power to do so."

*Rawls v. Rawls,* 6 La. An. 665, September 1851. [666] " By a decree of the court of probates . . made upon the petition of the defendant [tutor of his nephews], and the advice of a family meeting . . he was directed to keep the slaves in kind, and hire them out at public auction in families, or together,"

*State v. Jonas and Sam (slaves),* 6 La. An. 695, October 1851. [696] " Boseman . . was found dead . . the friends of the deceased . . the next day . . started in pursuit of the murderers with dogs; . . heard that two runaway slaves had . . been apprehended . . went to the jailor's house, . . the slaves were in a field at work: . . one of them walked with one of his feet turned out . . corresponded with the [track] . . which they had been pursuing . . [697] After they were . . separated, witness . . questioned Sam . . nothing was said about the murder . . Witness . . went back to Jonas, and said . . Sam ' says you are the rascal ' . . Jonas . . said . . I will tell you all about it. Dr. Turner . . said . . you had better . . he made the following confession . . he and Sam had stopt . . to camp for the night, . . and were preparing to beat up some corn to eat, when they saw a white man riding towards them . . Sam told . . Jonas, to get the guns, . . The man asked . . why they did not go to some house and grind their corn, . . told them that they might grind . . on his mill, . . they refused to go with him, . . The man then accused them of being runaways, and said they must go . . primed his gun, . . hallooed, . . Sam . . shot him. . . [698] Sam was then brought to where Jonas was, . . refused to answer . . Barton took out his pocket knife . . and said, I can make him talk. Witness . . told him not to do so, that it was not right, . . Barton then

[1] Act of May 3, 1847, art. 3, par. 6.

put up his knife, . . Sam did not appear . . alarmed, and was given to understand that he was not in any danger by what was said; he . . still refused to answer . . the jailor, spoke of using a hand saw and sending for a rope, and something was said by some one of the company about their ability to pay for him; . . arrested as felons . . On the next day . . Jonas . . told the same story . . Sam said . . you snapt your gun at the man. . . Jonas denied it," [695] " They were tried by a tribunal, composed of two justices of the peace and ten slave owners, . . found guilty and sentenced to death."

Judgment affirmed: [699] " we cannot say that the confessions should not have been received " [698] "*in favorem vitae,* too much strictness has been observed on this subject as to free persons. . . We are not prepared to say the same strictness should be observed, so as to exclude the confessions of slaves . . [699] humanity and charity ought to be extended to them; but if their confessions are obtained without a violation of either, and under such circumstances as to force the belief that the confessions are true, they should be received . . we would recommend, that the day for the execution of Jonas, be fixed at a period sufficiently remote, to enable his owner or friends, if he has any, to lay his case before the Executive and Senate, as possibly . . it might be deemed advisable to commute his punishment." [Preston, J.]

*Dwyer v. Cane,* 6 La. An. 707, October 1851. " The plaintiff sues for his wages as overseer . . dismissed before the expiration of the year for which he had been employed. . . evidence . . shows, that he inflicted cruel and unusual punishments upon the male slaves, and that his conduct with the women of the plantation was grossly and openly immoral." Judgment against him affirmed: " Cruelty to slaves is a sufficient cause of dismissal, and *honeste vivere* forms part of the duties of an overseer." [Rost, J.]

*Hough v. Vickers,* 6 La. An. 724. October 1851. [725] " The defendant . . before . . the sale . . declared . . that the slave had been a runaway, and would be likely to run away, under certain treatment;" Judgment for defendant affirmed.

*Nachtrib v. Prague,* 6 La. An. 759, November 1851. " a sawmill . . and . . the slaves attached thereto;"

*Rhinehart v. Doswell,* 6 La. An. 766, December 1851. [767] " April, 1840, Fisher purchased her . . in . . Mississippi. Her son was born afterwards. In December, 1840, he found them in the possession of . . Deroll . . in the Republic of Texas, and instituted a suit . . Finding the slaves in this city in 1849, this suit . . has been instituted . . [768] defendant . . condemned to deliver the slaves . . to the plaintiff " Affirmed. " It is further decreed, that the defendant recover from his warrantor " $750.

*Bacon et al. v. Leeds,* 6 La. An. 804, December 1851. [805] " two of the [hired] slaves were sick, and . . two others runaway and continued absent during the greater part of the time the lease lasted. . . the first

slave who runaway was sent by his former master, to the plaintiffs' agent, who restored him . . and the agent has testified, that if he had received the notice which the code requires [1] . . he would immediately have attended to the sick, and caused the runaways to be apprehended and restored . . A reward, sufficient to insure the apprehension . . would, no doubt, have been offered, and the sick might have been brought back to the city and restored to health by means of appliances and skill not to be had on a remote and secluded plantation." "It is usual . . to stipulate that the lessee shall clothe them and furnish . . medical attendance . . but the contract . . in this case does not contain that stipulation,"

Held: "the right of the defendant to be indemnified on those accounts, cannot be doubted. . . [806] But . . [not] for the loss of the services" "where the disease or the unauthorized absence continues for any length of time, notice to the owner must be shown before the lessee can claim indemnity" [Rost, J.]

*Huntington v. Ricard,* 6 La. An. 806, December 1851. In 1846 [807] "witness . . had applied to Mrs. Huntington to hire the slave, at higher wages, for sea voyages, . . she refused, declaring her unwillingness to let him go to sea, because the slave disliked it," [806] "1847 . . the slave was hired [to Ricard] . . at . . $18 per month . . on board . . schooner . . between Mobile and New Orleans, . . [807] Her views may have changed" "1848 . . [Ricard] made a voyage from Mobile to Brazos St. Jago; and, without the petitioner's consent, took the slave with him . . the vessel never returned. . . full knowledge on the part of the husband, whom the wife permitted to administer her property," [806] "The slave had once been hired . . as cook, on . . a vessel employed in the Mobile and Pensacola trade, . . no agreement that . . vessel should confine itself to that particular trade. . . [807] final judgment in favor of the defendant;"

*Demoruelle v. Sugg,* 7 La. An. 42, February 1852. Two physicians [43] "express the opinion that he must have been in the habit of eating dirt for years; that he had the dropsy, of which . . he died," "The disease caused by the habit, is dropsy."

*State v. Benjamin,* 7 La. An. 47, February 1852. "indicted for inveigling, stealing and carrying away . . Maria . . a further count for aiding the slave in running away . . [48] the slave ran away from her mistress . . in July, 1849, and was arrested in the quarter of the accused, in February, 1850 . . the same day that he purchased her, as a runaway," [47] "The accused . . was found guilty, sentenced to two years' imprisonment" Affirmed.

*Terrebonne v. Walsh,* 7 La. An. 61, February 1852. "the plaintiff claims . . the ownership of a young child . . born of Polly before the sale."

Held: [62] "the defendant has not lost the ownership of the child, it being not an accessory of the mother, in an unqualified sense. But

[1] C. C. 2695.

until the child has attained . . ten years, or the death of the mother prior . . it cannot lawfully be separated from the mother; . . If . . the rearing . . be onerous, the burden is the result of the purchaser's own fault."

*Liza (c. w.) v. Dr. Puissant et al.*, 7 La. An. 80, February 1852. "The plaintiff was born the slave of . . Boisblanc. In 1821, Boisblanc went to Bordeaux, where his family were . . sojourning, for the purpose of bringing them back . . took with him . . for their education, Mrs. Puissant and her sister . . who were under ten . . and the plaintiff, then twelve . . went with them as a servant. Mr. Boisblanc remained two or three months . . and then sailed for Louisiana with his family and the plaintiff, . . She was given to . . Mrs. Puissant, at the time of her marriage, about twenty years ago, . . She has had seven children . . She alleges that she became free by putting her foot on French soil, . . judgment against her,"

Affirmed. Eustis, C. J.: [81] "I feel it to be my duty to state my reasons for dissenting from the opinion expressed in . . Marie Louise *v.* Marot [1] . . decided in May, 1836. . . [82] In all the cases of this kind which have been decided in this court, we have avoided anything which could be considered as an affirmance of the principle laid down in the case of Marot. . . In the case of Arsène *v.* Pignéguy,[2] . . we distinctly stated what we considered as exceptions to the rule in Marot's case, which we thought was too general in its terms. . . [83] A State may prohibit slavery within its limits . . but this imposes no obligation on other States [3] to hold the condition of persons domiciled there, as extinguished by reason of a presence in the State where the relation is not recognized. This court has held the *status* of a slave to be changed by a residence in a country in which slavery did not exist, when the residence, with the consent of the master, had a character of permanency, but not that the *status* was affected by a transit for a temporary purpose."

*Hooper v. Owens*, 7 La. An. 206, April 1852. Lea, J.: "Plaintiff sues for a rescision of a sale . . The evidence . . appears to establish . . that the slave is affected with abdominal dropsy, . . It is highly probable that the disease existed at the time of the sale [in February 1850], but it is not shown that she received medical treatment before . . August, . . This fact alone is, in my opinion, an insuperable barrier to a recovery." Affirmed.

*Cornelson v. Insurance Co.*, 7 La. An. 345, June 1852. [346] "Office of Board of Underwriters: 'One thousand dollars reward will be paid by this board, for the conviction . . of any free person, of mature age, and three hundred dollars for the conviction of any slave . . concerned . . in setting fire to any building . . in this city'"

[1] P. 509, *supra.*
[2] P. 582, *supra.*
[3] See Judge Scott's stronger language in March 1852, in Dred Scott *v.* Emerson, 15 Mo. 576.

*Coulter v. Cresswell,* 7 La. An. 367, June 1852. [10 *id.* 396] "On the 6th of March, 1851, . . Mrs. Tabary, sold to . . Creswell . . Clarissa and her two children, with the usual warranties, for . . $500. On the 17th, Cresswell sold . . to . . Coulter, for . . $600." [7 *id.* 367] "Immediately . . she was taken on board a steamboat, and conveyed to . . Arkansas, where the plaintiff resided. . . The slave became so unwell as to require medical aid within three days after the sale. . . the plaintiff . . engaged medical aid while it was yet supposed the disease might be but a cold, gave up his own state-room . . to her, and took the same care . . as if she had been a white person of his family. He took her . . from the landing . . to his plantation, in his wagon; but he made her as comfortable, with mattresses, and otherwise, as possible. . . no proof that she was jolted," "She died eleven days after the sale of . . *augina pictores* [*sic*], . . It was evident, on a post mortem examination . . that the disease was of long standing, . . [368] judgment [for the plaintiff] affirmed . . without prejudice to the defendant's right of action against . . [his] warrantor." [10 *id.* 396] "1852 . . action was instituted . . against the warrantor, . . [397] no evidence to show that Mrs. Tabary was aware of the malady . . The District Judge [fixed] . . the plaintiff's indemnity at . . $300, with interest, from judicial demand." Affirmed.

*Williamson v. Norton,* 7 La. An. 393, June 1852. Preston, J.: [394] "The slave of the plaintiff, being well dressed and of a genteel deportment, took a cabin passage, on the steamboat . . from New Orleans to the western country, . . His color was a shade lighter than a new saddle, his hair dark, but straight. He sat at the first table . . near the ladies. His appearance did not indicate African extraction, but that of a person born in the South, and exposed to the sun, a Mexican or Spaniard. No person suspected his negro blood, until, near Memphis, the steward expressed his suspicion. An *éclaircissement* was had, and the master of the boat took the responsibility of delivering him to the civil authorities at Memphis as, probably, a runaway slave. He was brought to New Orleans, and sold at auction. . . one of [the passengers] . . says, he had the appearance of a modest unassuming gentleman; another represents him as freely mingling with society. Even after the discovery, many thought the master [of the boat] to blame in acting without more indications of color, or proof. We think he boldly incurred risks, for the benefit of an unknown owner. . . judgment for the defendants [captain, etc.], with costs in both courts."

*Succession of Franklin,* 7 La. An. 395, June 1852. [422] "For a quarter of a century, Franklin was known in this city and State as a trader in slaves, and laid the foundation of his vast fortune in this State by that business." [409] "Franklin was born in [Tennessee] . . after he became of age . . he . . engaged in business, spending the summer months in the district of Columbia, and the remainder of the year in New Orleans and Natchez. He soon became wealthy, purchased the Fairview estate . . and erected . . the finest country residence in Tennessee. . . here he had . . picked servants," [409] "one hundred and thirty slaves," Let-

ter of Franklin, January 1846, "in which, after attending to the misconduct of his slaves on the Fairview plantation, he says: 'I will be compelled to break up that whole establishment, if I do not change my mind. I will take the greater part of the hands off next fall, and put them on some of my lands in Louisiana; they give me more trouble than all my other property.'" He died in April 1846. [422] "In . . 1847, the state of Tennessee incorporated the literary institution founded by Franklin . . under the name of 'Isaac Franklin Institute,' and gave it full powers to receive . . the bequest for the purposes prescribed by the will."

*Badillo v. Tio,* 7 La. An. 487, June 1852. Held: [489] "the charge of $100, paid for the mourning dresses given to the slaves . . should not have been opposed."

*Sherrod v. Calleghan,* 9 La. An. 510, June 1852. [511] "In 1847, the parties moved with the slaves [from Alabama] to . . Texas, . . Shortly after . . [the husband] clandestinely left . . took the slaves . . and . . sold them" in Louisiana.

*Winfield v. Little,* 7 La. An. 536, September 1852. "The plaintiff seeks to recover . . the price of a female slave, who died about nine months after he had purchased her . . affected with pulmonary consumption, . . The plaintiff has stated that he became aware of the nature of her disease three weeks after the sale, and yet no physician was sent for until the day which preceded her death. Under the settled jurisprudence of this court, this omission would be sufficient to defeat the plaintiff's action, even if the existence of the disease, at the time of sale, had been shown, which is not the case." [Rost, J.]

*Beebe v. Robbins,* 8 La. An. 470, September 1852. "Before the day of sale, Debaume caused the slaves to be run off [from Arkansas] to Louisiana."

*Baker (f. m. c.) v. Tabor,* 7 La. An. 556, October 1852. Rost, J.: "The defendant excepted to the action . . on the ground, that the plaintiff was born a slave; . . has never been emancipated in conformity with the laws . . without capacity to stand in judgment. . . sustained in the court below, . . We are . . under the painful necessity of affirming the judgment." "Although the plaintiff's master may have lost his right of dominion . . by receiving from him . . money for his emancipation, and by permitting him to enjoy his liberty for more than ten years, the act of emancipation . . according to the forms of law, can alone give him the *status* of a free man, which he must have before he can prosecute a claim, such as this, in a court . . Before emancipation, he can only appear in court to claim his freedom. . . We deem it our duty to state, the cause of the plaintiff appears . . just . . and, that he is not without a remedy. His master may claim . . the benefit of the contract . . and the damages resulting from the breach of it by the defendant, and he will, no doubt, deem it his duty . . The right of the master to claim the services of his slaves may cease, but his duty to protect them, terminates only with their

life. Even after emancipation, he is bound, not only to protect, but also to maintain them, when they are no longer able to maintain themselves. . . judgment . . affirmed, . . without prejudice to a future action."

*Temple v. Smith,* 7 La. An. 562, October 1852. [564] " The petition alleges . . that the defendant enticed, harbored, and carried away a slave . . and claims damages to the amount of the value . . When the negro was apprehended . . by the officers of a steamboat . . a paper purporting to be a pass, signed Moses Smith, . . was produced by him."

*Succession of Pipkin,* 7 La. An. 617, November 1852. " Pipkin, who was the owner . . of slaves, valued . . at near thirty thousand dollars, died . . in . . 1850, . . ' It is my will . . that my slave Julia Ann Crenshaw, and her child . . have their freedom, . . I beg my wife and daughter . . to offer no impediment . . and I beseech my wife and daughter . . to let them have their liberty . . and grant this, my last will and request.' . . He directs, that his slaves shall be hired out for two years, . . the deceased, for a number of years previous to his death, lived in New Orleans, and his wife and daughter, in Virginia; . . his business . . was the hiring of his slaves as laborers, on the levee, in loading and discharging vessels "

*Carmelite (a slave) v. Lacaze,* 7 La. An. 629, November 1852. " This suit was commenced for the purpose of effecting the emancipation of the plaintiff, . . sold . . to Lacaze " in 1844 for $800 by a free woman of color, Françoise E. Denbrere. " Lacaze bound himself to emancipate her after seven years service . . to reward the faithful services . . [630] received from the slave who had nursed one of her children; . . Lacaze . . alleged, that he could not comply with the condition of emancipating her, in consequence of her having been guilty of such offences as prevented [1] . . true." [629] " judgment . . dismissing the plaintiff's petition . . no appeal . . taken. On this suit was engrafted another . . Françoise . . [630] prays that, inasmuch as Lacaze cannot emancipate the slave, she be restored . . and that judgment be rendered against Lacaze for her wages. The district judge decreed the delivery of the slave to the intervening petitioner, and allowed her wages from the date of the decree, at $25 per month."

Judgment reversed, " and judgment rendered for defendant, with costs in both courts, without prejudice." " the misconduct of the slave, which was the obstacle to emancipation, was the necessary result of the vile and profligate employment and associations to which Lacaze subjected her, and it is strongly pressed upon us, that we cannot permit a man to falsify his title by his own infamy. It is matter of regret that we are not permitted to act upon this suggestion, and to visit upon the party the consequences of his iniquity. But the question before us [now] is one exclusively of property, and must be determined according to the rules of law. . . the present action cannot be sustained." [Eustis, C. J.]

[1] C. C. 185. " No one can emancipate his slave, unless the slave . . has behaved well at least for four years preceding."

*Sarah Haynes, alias Mielkie, v. Forno,* 8 La. An. 35, January 1853. [36] "Mielkie, whose domicil and residence were in Vicksburg, . . died there in . . 1846. . . the plaintiff, . . the slave of Mielkie, left his service in April, 1843, for Cincinnati . . under the following permit: 'My negro woman, Sarah Haynes, about thirty . . has permission to pass unmolested to Cincinnati and the State of Ohio generally, or any other free State she may choose. [Signed] Edward C. Mielkie.' Her passage was provided for by her master, and she was sent . . for the purpose of being made free. . . she remained . . several days . . and came to New Orleans in the same spring. . . has remained here since, with this exception, that in 1844 or 1845, she went to Vicksburg. We infer that she remained there but a short time."

Judgment of the district court in favor of the defendant, guardian of Mielkie's child, affirmed: "As the plaintiff has violated the law by coming into and remaining in this State,[1] . . she cannot be considered as having acquired any rights dependent on . . residence here. . . Her status must be determined according to the laws of the domicil of her master.[2] . . On the principles recognized . . in Liza *v.* Puissant,[3] . . the plaintiff would not be considered as having acquired her freedom by her presence in Cincinnati." [Eustis, C. J.]

*State v. Geze,* 8 La. An. 52, February 1853. "prosecution . . for unlawfully selling . . intoxicating liquors to a slave, without the consent . . of his master[4] . . counsel for the defendant moved the Court to instruct the Jury, if they should be of opinion, from the testimony . . that the owner . . sent the slave to buy . . for the purpose of entrapping . . the material ingredient of the offence would be wanting, . . refused" "The defendant was . . found guilty . . and condemned . . to a fine of five hundred dollars, with the costs of prosecution, and imprisonment for thirty days, unless the fine and costs were paid." Judgment reversed and a new trial awarded.

*Lucy Brown (f. w. c.) v. Smith,* 8 La. An. 59, February 1853. Eustis, C. J.: "the plaintiff . . was born a slave, and in . . 1823, belonged to Elijah Mix . . in the District of Columbia; . . [60] An instrument of writing was produced at the trial, . . acknowledged before the Mayor of Georgetown, . . May, 1823. It purports to be an indenture of apprenticeship of Lucy Brown, in favor of Elijah Mix, . . as his servant . . until she shall attain . . twenty-one years. It is signed with the mark of Lucy Brown and her father . . and Elijah Mix. . . witnessed by . . an officer in the Army . . an act of emancipation of Mr. Mix, in her favor, dated in 1823 ['entrusted [by the plaintiff] to a gentleman of the bar of this city' in 1849] . . has been lost. . . these instruments . . point to the conclusion that the plaintiff was to have her liberty so far as the intention of her master could give it . . and are explained by the fact of his projected removal . . to New York. She could not remain in servi-

[1] Rev. St. 285.
[2] See Hinds *v.* Brazealle, p. 286, *supra.*
[3] P. 622, *supra.*
[4] Act of 1832. Rev. St. 555.

tude for more than nine months after her arrival . . and the purpose of the indenture was to secure her services until she was twenty-one. She was, at the time, fifteen," [59] " in 1825, he removed back to Georgetown, and in 1829, . . back to New York, . . she was . . in 1832, in the service of Capt. Wells . . in this city, as a slave, who sold. her to . . Taylor, from whom General Smith, her present owner, purchased her. . . [62] Mr. Mix resided in New Orleans from 1838 till his death, . . the judgment in favor of the plaintiff must be maintained."

*Audige (f. w. c.) v. Gaillard (f. m. c.),* 8 La. An. 71, February 1853. " The servant of the defendant, a boy about fourteen . . had gone into the yard of the plaintiff, at the request of the plaintiff's servant, and picked up from the ground where it lay [' for months '], what . . seemed a walking cane, . . it went off and killed the plaintiff's slave." Held: " her negligence . . is sufficient to prevent her recovery."

*Simon and Brother v. Burnett,* 8 La. An. 84, March 1853. Rost, J.: " Weil . . took charge of the slave . . for the plaintiffs, on the day they purchased her . . two days after the sale she was sick and unable to work; . . After ten or twelve days . . she was sent to the plaintiffs, in this city, and placed . . under the care of a skilful physician . . until she died. . . the disease was of long standing; . . incurable . . the defendant, besides refunding the price of $650, must re-imburse the expenses incurred during the prolonged illness, which we assess at $100. . . pay costs in both Courts."

*Adams v. Routh,* 8 La. An. 121, April 1853. The plaintiff " is the forced heir of the one undivided fourth of his son's estate, . . the testator had lived in open concubinage with . . Nancy . . valued in the inventory at $1000, and the property . . without including her, at $4750." " Judgment . . declares void the provision in the will . . emancipating . . Nancy, and bequeathing her . . money, the watch and furniture . . The plaintiff . . has prayed that the judgment be amended in his favor, by setting aside two legacies of $1000 each to two bastard children of the testator, which the District Court has allowed, on the ground, that the legatees had not been legally emancipated, and if they had been, that the acknowledgment of the father in the will is insufficient to give them capacity to take the legacy."

Held: I. " The right . . to oppose the emancipation of . . Nancy is undeniable. . . under . . [C.C.] Article 1468, . . [the testator] could only give her movables equal in value to one tenth . . of his estate. Admitting that the emancipating . . should, in favor of liberty, be considered . . as a donation to the slave of his own value, yet that value must not exceed the disposable portion. . . The disposition is . . excessive, as it cannot be reduced, . . properly set . . aside. . . [II.] as after . . [plaintiff] has received his share sufficient assets will remain to pay the legacy of $1000 to each of the children, he has no interest or standing in Court to contest " [Rost, J.]

*Succession of Cresswell,* 8 La. An. 122, April 1853. Elihu Cresswell's will, 1848: " I . . will the freedom of my man servant Gabriel . .

acquired by inheritance . . and . . fifty dollars to him for long and faithful services, that he may acquire his freedom in the slave States, or be sent to the free United States of America, as he may desire. . . I . . will . . the freedom of all slaves that . . belong to me . . and that the slaves shall be sent to one of the free States . . and there liberated: and . . registered in the Court as free . . expense of such removal to be paid . . out of any . . assets . . and in case there is no assets, that the slaves shall work at wages until a sufficiency is obtained . . My executors shall appoint some trustworthy man to attend the removal" "claim, made in behalf of the slaves . . for the wages earned . . since his death, . . waived."

*Cecile (f. w. c.) v. Lacoste,* 8. La. An. 142, April 1853. [144] "will . . of . . widow Simon Porche [dated 1846]. . . 'I give . . in consideration of her good and faithful services, to the free *griffe* woman Cecile, three arpents front of my land . . with the whole depth, to be enjoyed by her during her life in usufruct, . . after her death, to belong to her children.' . . the plaintiff had eight children living" [7 La. An. 53] "The testatrix . . gave their liberty to certain slaves," Held: [144] "The succession is rich, and . . the plaintiff is not bound to discharge the debts for which the property bequeathed is mortgaged."

*State v. Executors of McDonogh,* 8 La. An. 171, April 1853. Will, executed in 1838: [174] "I, John McDonogh, a native . . of Baltimore, . . now an inhabitant of the Town of MacDonogh in . . Louisiana, . . do make this, my Olographic Will, . . I have never been married, . . I . . bequeath, their freedom, (as a reward for their long and faithful services,) to my [ten] old servants, Gabriel [*et al.*] . . I direct my executors, . . immediately after my death, to correspond with the American Colonization Society, at . . Washington, . . for the purpose of ascertaining, when said Society, intends sending a vessel to Liberia . . with emigrants, from New Orleans, and by the first vessel . . to send all the rest . . of my black people, . . (with the exception of the black man Philip [*et al.*] . . all of whom I have lately purchased, as it is my will, that they . . [175] with any other black, or colored people, whom I may acquire . . subsequent to the date of this . . Will, . . shall serve those, (by being hired out . . or kept employed on my plantations, . . ) to whom I have . . willed the . . residue . . of my Estate . . fifteen years from . . my death; when . . my Executors . . will deliver [them] . . up to the American Colonization Society . . to be also sent to Liberia, . . ) And to pay a proportionate part of the Charter of . . Vessel . . furnishing them with provisions, stores, medicines, etc., . . for the Voyage.—I also direct my Executors . . to . . expend for the use of those, my people, who are to go immediately after my death, . . *One thousand dollars* in such Articles as ploughs, hoes, spades, axes, nails, common locks, hinges, clothing, garden and other seeds, etc., . . and divide . . among them in equal proportions, and see them put on board . . My Executors will also . . give letters of recommendation to those my people, directed to the inhabitants of that Colony, setting forth . . the morality of their lives, . . and purchase and place in the hands of each . . at the moment of sailing

. . the Old and New Testament, as the most precious of all the gifts we have it in our power to give . . I Give . . all the rest . . (subject to the payment of . . several annuities . . hereinafter directed . . ) Unto the Mayor, Aldermen and inhabitants of New Orleans, . . and the Mayor, Aldermen and inhabitants of Baltimore and their Successors, ( . . one-half to each, of said Cities . . ) . . for the establishment and support of Free Schools . . wherein the poor, (and the poor only) of both sexes of all Classes and Castes of Color, shall have admittance, free of expense . . provided . . that the Holy Bible . . shall be . . forever made use of . . as one, (and the principal one) of the reading or class books, . . [176] annuities . . Firstly, I give . . to the American Colonization Society . . an Annuity for . . Forty Years . . of the one eighth part . . of the net yearly revenue of rents of the whole of the Estate [1] . . but [it] shall not entitle the . . Society . . to receive . . in any one year [more than $25,000] . . Trusting . . that the inhabitants of this free and happy land . . from Maine to Louisiana, will sustain this institution, (one of the greatest glories of our country,) . . Secondly, I give . . to the Mayor, Aldermen and inhabitants, . . of New Orleans . . and their successors . . for the . . purpose of establishing an *Asylum* for the *poor,* of both Sexes and of all ages, and castes of Color, . . [177] an annuity of the one eighth part, . . until . . [it] shall amount, to [$600,000.] . . [178] Fourthly, I give . . to the Mayor, Aldermen, and Inhabitants of . . Baltimore . . and their successors, . . for the . . purpose of establishing a *School Farm,* . . for . . the *Poorest* of the *poor,* male children . . of Maryland . . and . . of *all* the great maritime Cities of the United States . . [179] of all castes of color, . . An annuity of the One Eighth part . . until . . [it] shall amount to . . *Three Millions of Dollars*; . . [182] the . . Commissioners . . of my General Estate . . are . . Authorized by me, (if they should see fit . . so to do,) at such time, as the Fifteen years, are near expiring, during which the Slaves are to labor for my General Estate, . . to take the nett amount of two or three crops . . and purchase therewith, an equal number of Slaves, (if there are still Slaves in our Country for sale.) . . which Slaves . . shall labor . . for fifteen years . . and . . be also in their turn, sent to Africa; and their number may be again renewed . . and so on, . . [185] in case there should be a Lapse of both the Legacies to . . New Orleans . . and Baltimore . . or either of them . . Then, both, or either . . *shall Inure* . . to the State of Louisiana, and . . [186] to the State of Maryland, that the Legislatures of those States, respectively, may carry my intentions . . into effect, . . [188] I nominate [as executors] . . Eight . . of New-Orleans, . . six . . of Baltimore, . . Henry Clay, . . the present President of the American Colonization Society of Washington, . . R. R. Gurly, Secretary" Memoranda of instructions to the executors, undated: [190] "whereas, Mr. Andrew Durnford, a free man of color, is . . indebted to me in a large sum . . by mortgage on his sugar estate, . . I . . request my Executors, ( he being a worthy and an honest man, and my friend,) . . to give him time to pay it off, . . And whereas, in my

[1] See New Orleans *v.* Baltimore, p. 661, *infra.*

. . Will . . I did not, in relation to my old servants, . . provide any support, (as I did not wish to . . add to its length,) I . . now add a request . . that should any . . from age or weakness, (as they are now all hearty and strong,) stand in need of support, that fifty cents a week may be paid to such . . [191] and that such be permitted to occupy one of the houses they have been accustomed to live in with me, until their decease. . . [193] Whereas, eight or ten more bricklayers, carpenters, painters, etc., . . will be constantly wanted to . . keep in repair . . I recommend . . to the Commissioners . . to employ Black mechanics, which shall . . be owned by . . General Estate, (so long as there are slaves in the country,) for said purposes, (letting them go out Free to Africa every fifteen years, and replacing them . . ) as a means of great economy, . . [203] The slaves mentioned in my . . Will . . to be sent to Africa, are already sent . . [204] I recommend that great care be taken in selecting . . overseers and managers . . pious and christian men, . . That application be made to the Legislature . . for permission to educate the black people . . (a good English education,) as they are to be sent to Africa. . . See that the overseers, every morning and evening, assemble the people in prayer . . have them taught . . (little children and all,) the Ten Commandments, the Lord's prayer, and the Creed, and (if permitted by law,) hold Sunday Schools. . . for . . old and young, and they made to attend it the whole day. Let there be a house erected on each plantation for a Church, . . slaves and cattle . . shall cease work at sundown on Saturday evening and commence again . . at sundown on Sabbath evening. . . Having been the friend of the black and colored man through . . my long life, I will now . . give to them, (the free black and colored man, wherever he may be throughout our . . country,) a parting counsel . . that they separate themselves from the white man. . . and depart to the land of their fathers, . . where they and their posterity . . may be safe—may be happy . . having none to make them afraid." [216] " McDonogh died in . . 1850. . . [222] The will . . was sustained; but the States [1] took an appeal," Affirmed.

*Rountree v. Steamboat Co.,* 8 La. An. 289, May 1853. [290] " the plaintiff had given her consent to the employment of the slave on another steamboat; but . . she was ignorant of his discharge . . as soon as he was discharged, he applied for service on . . defendant's vessel. The officer . . knew who his owner was, and his previous employment . . asked him for no . . authorization " [289] " the boilers . . exploded; . . the slave was badly scalded . . and . . died." " he was worth the amount awarded by the judgment below;" Affirmed.

*State v. John Kentuck (a slave),* 8 La. An. 308, June 1853. " charged with having . . made . . assault with a knife on . . a white man, . . beating and cutting him," " sentence of death pronounced " Affirmed.

*Trahan v. Trahan,* 8 La. An. 455, September 1853. " The act [of emancipation] was executed by Michel Trahan jointly with his wife . .

[1] [252] " The heirs at law . . have elected to exercise their legal rights in the Federal Courts," See McDonogh *v.* Murdoch, p. 631, *infra.*

the consideration stated being the long and faithful services of the slave. The slave . . belonged to the community,[1] and was . . over thirty " The collateral heirs of Mrs. Trahan brought suit to set aside the act " for informalities " preceding its execution.

Held: [456] " the plaintiffs cannot maintain this action." [455] " As head . . of the community, . . Trahan had . . the right . . to alienate the property . . Under . . our Code (Articles 174, 177,) a slave has the right to make a contract for his emancipation,"

*Executors of McDonogh v. Murdock et al., Heirs,* 15 Howard (56 U. S.) 367, December 1853. " The bill was filed by . . the heirs at law . . to set aside . . will." [2] Counsel for the appellees: [398] " free schools in which poor white and colored children are to be received indiscriminately, and placed on an equality, would be intolerable in States where slavery is recognized as a legal institution." " decreed . . that this cause be . . remanded . . with directions . . to dismiss the bill "

*Eulalie and her Children v. Long and Mabry,* 9 La. An. 9, January 1854. " The petitioner sets forth that she is . . over sixty-five . . the mother of some and grandmother of others of the plaintiffs . . sixteen in number, . . [10] that for the last forty-five years she has been in the full enjoyment of her freedom . . as also her . . children and grandchildren, until . . 1852, when they were forcibly taken from their homes . . at night, by . . armed persons to them unknown, and transferred to . . the defendants, . . The defendants rely on an exception, that the matters . . exhibit . . no right . . to be free, . . judgment . . sustaining the exception and dismissing the petition "

[11] " reversed and annulled; and the cause remanded . . the defendants to pay the costs of this appeal." [10] " if the master is denied a right of action to recover possession, after suffering his slave to enjoy . . liberty for a certain length of time [3] there is no principle on which a resort to violence, in order to reduce him again to slavery, could be . . tolerated by any one." [Ogden, J.] See same *v.* same, p. 645, *infra.*

*State v. Porte,* 9 La. An. 105, February 1854. " found guilty of selling spirituous liquors to a slave, without the consent in writing of his master,[4] . . sentenced to pay a fine of [310] . . and to be imprisoned . . one month;" Affirmed.

*Bean v. Evans,* 9 La. An. 163, March 1854. " agreement . . that for all the cotton made . . over 200 bales . . [the overseer] was to receive $2 per bale, the defendants . . asserted . . it was only $1 per bale . . [164] the crop of 1851, was between 250 and 270 bales, . . verdict in favor of plaintiff for $120 . . correct."

*Bird, Executor, v. Vail,* 9 La. An. 176, March 1854. Vail's will: " It is my request that my executors set my girl Jane free, and give her

[1] " Every marriage, contracted in this State, superinduces of right, partnership or community of acquets or gains, if there be no stipulation to the contrary." C. C. 2639.
[2] See State *v.* Executors of McDonogh, p. 628, *supra.*
[3] C. C. 3510.
[4] Act of Mar. 18, 1852.

the money of two notes . . each of one hundred dollars." " executor . . sues for the possession of . . Jane, . . The defendant . . claims . . he is entitled to her services . . until her emancipation shall legally take place. Judgment . . in favor of defendant," Affirmed.

*State v. Lethe, Biner, Hal, and Chloe (slaves),* 9 La. An. 182, March 1854. " a capital prosecution . . before a tribunal, composed of two Justices of the Peace and ten slaveholders, organized under the Act of the 1st June, 1846. After the conviction, a motion was made before the two Justices who presided, for a new trial; . . granted. . . rescinded,"

Reversed: [183] " The Supreme Court, in . . State *v.* Jackson,[1] . . recognized the power of granting . . new trials, as resting in the discretion of the justices who preside over the trials of slaves. . . [Moreover] the conviction . . cannot produce effect until the sentence is signed . . by the Justices . . who presided . . thus recognizing . . a position . . similar to . . Judge in relation to the jury, . . in consequence of the abolition of the office of Parish Judge, by the . . Constitution . . [of] 1845, it became necessary to create a tribunal for the trial of slaves accused of capital crimes, . . In practice under . . old organization,[2] it is believed that motions for new trials were always addressed to the Parish Judge alone." [Buchanan, J.]

*Buhler v. McHatton,* 9 La. An. 192, March 1854. " a redhibitory action . . to annul the sale of a slave and for the return of the price. The vice alleged is madness. . . further . . the slave . . was, by a verbal contract, warranted a good cook, . . [but] had no acquaintance whatever with cooking. . . [193] witness, states that the slave was a servant for five years . . [in] Kentucky, (which . . [she left] a short time before the purchase by plaintiff,) . . sound in mind and body and considered a very valuable servant." [192] " Dr. Devall . . hired the slave from plaintiff some ten days after the sale and retained her eight months, . . [193] though she acted . . ' oddly ' . . it . . was not noticed for a month or more. That she refused, from religious scruples, to eat or take medicines on Fridays, and later, on Saturdays, saying that God had appeared to her and forbidden it. This, and the fact of her having on one occasion burnt her clothes, . . induced the belief . . that the girl labored under an aberation [*sic*] of mind, which they ascribed to religious enthusiasm and grief at being separated from her children." Judgment for defendant affirmed.

*Taylor v. Paterson,* 9 La. An. 251, April 1854. " suit for . . three hundred dollars . . for his wages as overseer for the year 1850, . . defence . . that plaintiff . . wantonly and without any just cause shot one of the slaves . . value . . greatly diminished . . verdict in favor of the plaintiff, for . . $231 91, . . wages due for the term that he acted as overseer, . . after deducting . . $55 75, . . allowed defendant for loss of the services of his slave, and for medical care and attention. Judgment

[1] P. 619, *supra.*
[2] Act of 1825. Sess. Acts 206.

. . in conformity . . defendant . . appealed" Reversed and the case remanded [253] " with directions . . not to receive in evidence . . [certain] depositions"

*Wooten (f. w. c.) v. Harrison et al.,* 9 La. An. 234, April 1834. [235] " claim . . upon a note signed by Morris . . 1846, for $2000, payable on demand . . The defendants contended that this note . . was . . a disguised donation . . to the plaintiff . . who had once been his concubine;" Judgment in favor of defendants affirmed. See Nolasco *v.* Lurty, p. 661, *infra.*

*Lusk v. Swon,* 9 La. An. 367, June 1854. " suit to recover . . the value of a negro hired by the defendant . . and taken to St. Louis as a waiter on a steamboat . . the negro having absconded at St. Louis [[13 *id.* 360] ' and escaped into . . Illinois '] . . the defendant relied on a special plea that the negro . . was free, as . . [he] had discovered after hiring him. . . judgment . . discharging him from all responsibility" See Lusk *v.* Church, p. 663, *infra.*

*Stewart v. New Orleans,* 9 La. An. 461, June 1854. " 1852, a detachment of police officers, was ordered . . to suppress unlawful assemblages of slaves in cabarets; . . they entered a dram-shop, . . the slave was neither drunk nor disorderly; . . [462] seated by the fire warming himself, and made no resistance;" [461] " attempted to escape, . . in capturing him, wounds [with clubs] were inflicted of which he died." Held: [463] " the municipal government is not liable"

*Compton (f. w. c.) v. Compton (f. m. c.),* 9 La. An. 499, September 1854. " sues . . for separation of bed and board, on the ground of ill-treatment, by beating . . turning . . out of doors, and neglecting to provide; also . . habitual intemperance. Defendant pleads ' that plaintiff . . has committed acts of adultery ' . . He demands a divorce." Held: " these allegations of adultery are . . too vague to allow the introduction of evidence"

*State v. Raymond and José Martinez,* 9 La. An. 530, November 1854. " Convicted . . for selling spirituous liquor to a slave . . sentenced to pay a fine of [$350] . . each. Affirmed.

*Dowty v. Templeton,* 9 La. An. 549, December 1854. " The slave of plaintiff went on board of a steamship moored . . to sell milk to the steward . . and on his return . . fell into the river . . by the slipping of the planks, . . staging, and was drowned." Held: the master or owner of the ship is not liable.

*Berret v. Adams,* 10 La. An. 77, January 1855. " The plaintiff sues . . upon . . note: ' One year after date . . I promise to pay [$500] . . for a negro boy . . Nelson,' . . subject to fits of insanity previously to the sale, and subsequently . . But . . the purchaser . . served upon a jury of freeholders before whom Nelson was tried, about six months before the sale, upon a capital charge of having assaulted his master with an axe, and bitten him, drawing blood. The defence urged . . by the counsel who

defended the slave, was insanity; . . There was a miss-trial [*sic*]; and subsequently the slave was discharged . . proved by many witnesses, that the price . . was less than one-half of what the negro might have been sold for in cash, had he been of perfectly sound mind." Judgment for plaintiff affirmed.

*Roussel v. Phipps,* 10 La. An. 119, February 1855. "At a probate sale . . 24th February, 1853, . . Adeline, aged 23 . . and her three children were adjudicated to . . Roussel, for [$1800] . . 1854, Roussel brought an action . . alleging that . . Adeline had died . . of a disease of the lungs, with which she had been affected at the time of the sale; and claiming to have [$800] . . deducted . . The evidence shows that some days, or perhaps some weeks, after the purchase, . . Adeline complained of being sick—her symptoms, shortness of breath and tumors. Her belly also appeared swollen. A physician was called in on the 19th March, . . found her laboring under a pulmonary disease which in his opinion had existed at least six months. . . a cavity in the upper lobe, . . told Mr. Roussel that he thought she was too far gone to do anything . . except . . temporary relief. . . health . . continued declining. She was occasionally employed in cooking and in field work, but was the greater part of the time confined to her bed. On the 16th July . . the physician paid her a second visit, and two more on the 30th and 31st August. She died on the 14th September." Held: "Having failed" "either to [place] . . the slave under continued medical treatment after the first visit . . or [to offer] at once . . to return her . . he must support the loss."

*State v. Thompson,* 10 La. An. 122, February 1855. "information against . . Thompson, for employing a large number of slaves on his plantation . . without having permanently . . a white person for . . every thirty slaves working thereon, to oversee"[1] Held: [123] "the Act of 21st December, 1814,[1] . . did not create an indictable offence,"

*Rider v. Wright and Marshall,* 10 La. An. 127, February 1855. "The sale was made . . December, 1851, the vendors being residents of Kentucky. . . [128] The plaintiff declares . . that in a few days . . he discovered that the slave was afflicted with most serious redhibitory vices and defects, both of body and mind." "The main defect . . imbecility of mind." [127] "The boy died . . September, 1852. No offer to return the slave . . the last illness . . was the result of an acute disease and lasted but a few days." Judgment for defendants.

*State v. Hannah (a slave),* 10 La. An. 131, February 1855. "convicted of the crime of manslaughter [of a slave], by a tribunal composed of two Justices of the Peace and ten freeholders. She was sentenced to imprisonment in the penitentiary at hard labor for life, . . her counsel relies for reversal . . on three bills of exception . . first . . Constitution . . requires . . Judges shall be elected . . The freeholders [however] do not act as judges, but as jurors . . Were it otherwise . . slaves . . have no rights guaranteed to them by the Constitution. The next objection

[1] B. and C. 65.

was taken to the admission . . of the confessions . . [132] to her master's son, under whose charge . . [she] was, during the absence of her master. . . no inducements . . [or] threats . . as it is alike the interest and the duty of the master to protect . . [such] confessions . . ought to have the highest moral weight as evidence. . . last . . the dying declarations . . were admissible. . . judgment . . affirmed," [Ogden, J.]

*Lebeau v. Trudeau,* 10 La. An. 164, February 1855. Lebeau's will, 1853: "je donne la liberté à mon petit nègre . . il restera sous la surveillance d'Elizabeth Wilson, f. d. c. l.,[1] jusqu'à l'âge de vingt-un ans," Elizabeth Wilson, free woman of color, is made one of his eight residuary legatees. She was [166] " the concubine of the testator,"

*Virginie and Celesie (f. p. c.) v. Himel,* 10 La. An. 185, March 1855. [186] " In one suit Celesie, a *quateroon* [*sic*], and her children . . and in the other Virginie, a sister of Celesie and her child claim their freedom. Celesie and Virginie were the children of a mulatress slave . . Melite, who belonged to . . Bernard. They were born in . . Louisiana . . In 1835, Bernard left . . with the petitioners and their mother and carried them to . . Ohio. From Ohio . . to . . Missouri, and subsequently they returned . . to . . Louisiana, where Bernard died about . . 1842. . . heirs . . took possession of . . Celesie and Virginie . . Celesie was bought . . by Claivelle, and Virginie by . . Himel. . . The plaintiffs claim their freedom by virtue of an act of emancipation executed by . . Bernard . . 1835, in . . Cincinnati, and acknowledged, first, before the Mayor of that city, and afterwards before the Circuit Court . . of St. Louis . . They also claim . . by virtue of the removal . . to a free State, with the intention of residing there . . and furthermore set up a title . . by prescription."

Held: [188] " the plaintiffs are entitled to their freedom." [187] " The principal difficulty . . arises out of our system of forced heirships. . . the property he left . . including Melite and her children, only amounted to $1368. . . [188] The plaintiffs offered in evidence to prove the property owned . . at the date of the emancipation, and the defendants objected . . To sustain the charge of fraud [toward his heirs], proof was necessary of what property Bernard then owned. . . It is in vain [now] for the defendant's counsel to argue . . that the plaintiffs were bound to establish what property Bernard then had, . . Another ground of defence is, that Melite was the concubine . . and that the emancipation was a gift of so much of his estate, which . . is prohibited . . The law has declared what causes shall be sufficient to render the enfranchisement of a slave null and void,[2] and this is not one of them." [Ogden, J.]

*White v. Hill,* 10 La. An. 189, March 1855. " at the time of the sale . . the boy's knee was exhibited; . . the plaintiff [vendee] . . examined it; . . swollen, but the injury was thought to be temporary, and was so stated by Dr. Skipwith . . and that it was occasioned by a fall a few days

[1] Femme de coleur libre.
[2] Rev. St. 548.

previous. . . required rest and attention. Instead . . the boy was put to the plough, 'the worst work to which he could have been put.' No attempt to return the slave . . [190] until more than a year . . the slave appears to have been attacked with scrofula, which aggravated the lameness, . . now . . worthless. But the circumstances . . do not require the loss to be thrown on the vendor." [Spofford, J.]

*Gentile v. Plasencia,* 10 La. An. 203, March 1855. "Plasencia by his . . will emancipated certain slaves, to whom he also bequeathed a legacy . . 'Je donne . . à . . mulâtresse agee d'environ six ans, enfant de Louise, émancipée par acte . . ainsi qu' à chacun des [3] enfans [*sic*] sus-nommés, . . cinq cent piastres, . . Je prie mes . . fils . . de se charger de l'execution' . . [204] Judgment . . maintaining the will; declaring the legatees to be *statu liberi*; ordering . . executor to retain [$2000] . . to be used for the purposes expressed . . and to take the necessary steps to procure the freedom of the legatees," Held: the attorney's fee of the contesting heirs "cannot be paid out of the . . $2,000,"

*Robertson v. Wallis,* 10 La. An. 214, March 1855. "The negroes were sold as a family, consisting of the mother and her three children . . at auction . . for . . $1376, . . the mother and the oldest child, about eight . . had been . . injured by burns on the body . . The fact . . was made known at the sale, but it was stated that they had recovered, . . As to the boy . . and the infant, it is not shown that they died of any disease which existed at the time of the sale"

Held: [215] "a deduction of [$300] . . would be a sufficient allowance for the diminution in value of the other two" [214] "the purchaser could not judge by a superficial examination whether the injury was a serious one. . . we are satisfied that the injury . . very materially impaired their value."

*Hardesty v. Sukey Wormley,* 10 La. An. 239, April 1855. "The heirs of . . Hardesty seek to reduce Sukey Wormley to slavery, and to deprive her of all her property, upon the alleged grounds that she was the public concubine of Hardesty, that her enfranchisement and the sale to her of her daughter and grandchildren are disguised donations . . and that . . her acquisitions belonged to his heirs. . . verdicts in favor of Sukey, and a new trial was refused,"

Affirmed: "a non-suit . . would involve a monstrous injustice, . . The evidence . . does not prove [concubinage.] . . But suppose there was . . the woman would still be entitled to judgment. As far back as 1834, Hardesty presented to the Police Jury . . petitions in which he prayed leave to enfranchise Sukey and her child . . declaring that when he bought them, Sukey had advanced about half of the money, and, besides paying [him] her wages, had also paid the balance . . [240] that the price was reduced by . . the vendor, in consideration of the long and faithful services . . to himself and his deceased father, and the promise of Hardesty to emancipate her and her child as soon as she should refund . . decree of emancipation. . . by the indulgence of her former owner, she had amassed a considerable *peculium*; . . by unusual industry, econ-

omy, and good character, she afterwards made a great deal of money, laboring day and night for the purpose of purchasing her offspring; . . even if concubinage were proved, there is nothing in the fact that the master had degraded himself by debauching the slave under his dominion, which could discharge him . . from the fulfilment of his promise of emancipation . . This suit is a cruel experiment upon the liberty and hard earnings of an humble and deserving woman," [Slidell, C. J.]

*Stoppenhagen v. Verdelet,* 10 La. An. 263, April 1855. Buchanan, J.: " The plaintiff purchased at auction . . July . . a slave man . . The bill of sale was not passed until . . August . . in his possession on trial for a week or two previous to the sale. . . 13th December . . sent to Dr. Stone's Hospital. . . [264] known to be ailing for some time previous . . But no attention was paid . . until . . he was compelled to . . take to his bed," [263] " He died . . on the 26th . . Dr. McIlhenny . . says ' he was afflicted with urinary abscess, with mortification of the tissues of the perineum and surrounding parts. . . produced by stricture of the urethra, which must have existed for several months ' . . easily cured, if taken in time. . . [264] judgment for the defendant, with costs in both courts."

*Fellowes and Co. v. Young,* 10 La. An. 267, April 1855. " suit upon a . . note. The defence is . . that the note was given for . . a slave, who was affected with a redhibitory malady, . . sale of the slave . . 2d January, 1852. . . sick two days after . . but no physician . . called . . until . . April . . was found . . to be affected with scrofulous ulcers. . . continued to increase in number until the slave took a diarrhoea, and wasted away until he died [in September]."

Decreed, " that plaintiffs recover [$690] . . with eight per cent. . . interest from January 2d, 1852, until paid, and costs in both courts." " The neglect of defendant to call in medical advice for so long a time . . constitutes, under the established jurisprudence of this court, a bar to his action of redhibition. Neither is there any proof that any tender was made of the slave to the vendor " [Buchanan, J.]

*Bloodgood v. Wilson,* 10 La. An. 302, April 1855. [303] " The slave was purchased . . 2d June . . then examined by a physician called . . by the plaintiff [vendee], and pronounced . . sound. . . 11th June . . examined by another physician, with a view to effecting a life insurance . . after auscultating her lungs, pronounced them diseased, and advised that the application be withdrawn. . . She was set to work in the reeling-room of a cotton factory, . . does not appear to have complained or to have labored under any suffering while . . at work " " no physician . . called . . until . . August. . . The same physician who reported her unsound to the insurance company, attended her in her last illness, and testifies that she died [in October] of *phthisis pulmonalis,* . . No post mortem examination " Held: the vendor is not liable.

*Dupré v. Executor of Boulard (f. w. c.),* 10 La. An. 411, May 1855. Spofford, J.: " We prefer to pass the details of this record in silence. . . [412] they illustrate the wisdom of [C.C. 95] . . which strikes with

nullity the marriage of a free white person with a person of color. . . Whatever validity might be attached in France to the singular marriage contract, and subsequent unnatural alliance there celebrated . . the Courts of Louisiana cannot give effect to these acts,"

*Young (f. m. c.) v. Egan,* 10 La. An. 415, June 1855. [416] " Francis Gay . . of Alabama, made his will on the 22d November, 1850, . . probated on the 2d December, . . ' I give . . Albert, to my friend . . Charpentier, (barber in Mobile,) . . to hold in his own right. Hereby requesting him, . . however, as soon as he can with convenience, to have [him] . . taken to some State or country, where slavery . . is not known, there to be . . free . . I . . bequeath unto [him $100] . . for the purpose ' . . names . . Charpentier his universal heir and executor. . . Charpentier sold the slave . . to McRae, Coffman, and Co., at New Orleans, . . April, 1851; and he passed by several mesne conveyances, into the hands of . . Egan, whom he has sued . . for his freedom . . and also for [$500] . . damages for illegal detention." The district court adjudged him free.

[418] " decreed, that the judgment . . be reversed, and that there be judgment for defendant and warrantors, with costs in both Courts." [417] " The law of Alabama prohibits emancipation . . by last will. . . The trust, if voluntarily executed, has nothing illegal in it; . . [418] It does not seem to be carrying out the intentions of this will, to set the plaintiff free in Louisiana," [Buchanan, J.]

*State v. Dick (a slave),* 10 La. An. 461, June 1855. " A jury, organized under the Act of June 1st, 1846, to try . . Dick, accused of a felonious assault upon a white woman, found . . verdict: ' Guilty, without capital punishment; to be sentenced to perpetual imprisonment.' Whereupon the presiding Justice sentenced the accused ' to be . . lodged in the State Penitentiary for life.' " Affirmed.

*Lewis v. Peets,* 10 La. An. 489, July 1855. [490] " The plaintiff remarked . . that he did not care about the negro running away; that if he did . . he had dogs to catch him," He paid $737.50 for him. The slave " died while a runaway;" Judgment for defendant affirmed.

*Kemp v. Hutchinson,* 10 La. An. 494, July 1855. " plaintiff was overseer on defendant's plantation from May to November, 1853; . . September, plaintiff caused defendant's slave to be whipped twice on the same day, on suspicion of having committed a theft, and threatened her with further chastisement, unless she produced the stolen articles; . . she denied the theft, but said she would try and find the articles; went to the river, into which she threw herself, and was drowned. Immediately . . plaintiff wrote to the defendant . . Defendant appears to have answered . . expressing dissatisfaction " About six weeks later, he gave the note sued on [495] " which was a settlement of account," [494] " Defendant reconvenes, claiming damages . . for the value of . . [the] slave . . who had drowned herself, as the answer alleges, ' to avoid the plaintiff and his excessive cruelty.' . . [495] The verdict and judgment [for the plaintiff] are silent as to the reconventional demand;"

" Judgment . . amended, by dismissing the reconventional demand;" " were there not . . implied waiver . . we should hesitate much before making plaintiff responsible for the suicide . . positive proof that the death was not the physical result of ill treatment, . . the owner . . or his delegate, is only . . responsible for the immediate and necessary consequences of his acts." [Buchanan, J.]

*Kennedy v. Mason,* 10 La. An. 519, July 1855. C. Voorhies, J.: [520] " The slave Jim Crack had runaway and been absent some time . . captured and brought back . . January, 1852, about seven in the evening, the weather being extremely cold. He was shortly afterwards stripped of his clothes, tied down with his belly to the cold ground, and beaten with a hand-saw and whip; . . at least an hour and a half, during which the beating continued with short intermissions. . . then rubbed with a mixture called No. 6, and . . castor oil was administered . . Mr. Butler, whose testimony stands unimpeached, says: ' I saw the boy standing up with a negro on each side, holding him up; when they turned him loose, he staggered and fell. . . helped him up,' . . conducted to his cabin, and about four hours later, found dead in his bed. Dr. Roane, who made a post mortem examination . . says; . . ' That amount of whipping under ordinary circumstances, would not produce death. I thought it imprudent to whip the boy at that time . . more likely that death was caused by a congestive chill, than by the whipping; but more likely . . by a combination of all the circumstances.' . . [521] Had the plaintiff taken proper care of him after he retired to his cabin, he might have averted the unfortunate consequence: but he did not. This was gross negligence . . Conceding to the plaintiff the fair reputation which he seems to enjoy as a good and humane overseer, and the approbation of the defendant during the long period he was employed by her . . yet, we think in this instance, he permitted his passions to mislead him . . The punishment . . notwithstanding the opinion of some . . witnesses to the contrary, was excessive and cruel; . . plaintiff is liable to the defendant for the value of the slave . . as provided for in the reservation [1] made between him and the defendant in their settlement."

*Talbert v. Stone,* 10 La. An. 537, July 1855. [538] " wages as overseer . . for the year 1847, under a special contract, . . ' to receive . . one-fifth of the corn, fodder and crop of cotton made . . during said period.' "

*Matilda (f. w. c.) v. Autrey et ux.,* 10 La. An. 555, July 1855. Spofford, J.: " The plaintiff alleges that she is a free woman of color . . the defendants . . plead the prescription of fifteen years' possession as owners. . . [556] She belonged originally to Richard Baker of Kentucky. By his last will, admitted to probate . . in 1826, he bequeathed her to his wife . . for . . life, and at her death, ' to be free . . as if she were free born.' . . Shortly after . . [his] death . . Mrs. Baker removed . . to

[1] " When he was discharged . . he . . asked for . . the payment of the amount due him." [520] " Sharp, agent for the estate . . refused to pay the balance, $600, until it shall be ascertained judicially, whether the death . . was caused by any improper treatment . . [by] Kennedy."

Alabama, with Matilda, . . then a *statu libera,*" " dying request of [Mrs. Baker in 1835 that defendants] . . would take charge of her until she was eighteen . . and then take her back to Kentucky to be free, . . The conduct of the defendants in hurrying [her] away . . from Alabama immediately . . and detaining her for so many years in Louisiana in violation of the trust . . indicates a desire . . to avoid the tribunals of those states. . . [557] the burden was upon them to show . . some legal obstacle to . . freedom. This they have failed to do. . . error in allowing the plaintiff . . $1000, for services . . judgment proper . . was one, not for damages, but for 'wages,' and, under the pleadings and evidence the prescription of one year, seems to apply . . reduce . . to $100."

*Murphy v. Cook,* 10 La. An. 572, July 1855. " I, Sarah Murphy, . . of Alabama, . . for [$600] . . sell . . to . . Cook . . Cotta, and her two children, . . under . . condition that, after the death of . . Cook, . . negroes shall revert to Duncan W. Murphy . . but should . . Duncan . . die [first] . . Cook shall . . appoint . . any other person . . to take charge . . and should . . Cook desire it at his death, and it should become practicable, their freedom shall be obtained. . . 1848." " The slaves . . were brought [by Cook] in . . 1849 to Louisiana. Cook died in possession "

*Buie v. Doyal,* 10 La. An. 575, July 1855. [576] " Received [$1100] . . for . . a man . . about 28 . . and . . his wife . . about 19 or 20 . . The right and title . . I warrant . . and furthermore, I warrant the said negroes to be sound both in body and mind to the best of my knowledge . . April 1834." The sale took place in Natchez.

*McCall v. White,* 10 La. An. 577, July 1855. [578] "1836 . . removed [from Mississippi] into Louisiana, with his slaves,"

*O'Hara v. Conrad,* 10 La. An. 638, September 1855. " William Weeks, by act before the parish Judge . . 1817, gave to his son David [$16,000] . . as an . . extra portion in his inheritance, being the disposable portion . . On the same day . . David executed his bond . . for [$16,000] . . payable in four installments . . 1829, 1831, 1833 and 1836, . . And the obligees . . promised to pay the interest annually for the boarding, clothing and schooling of . . [four] free persons of color [639] 'the offspring of . . [William Week's] illicit connexion with his slave']. and the installments of the principal to [them] . . severally, at . . maturity." Held: the notes were void. C.C. 1478.

*Leonora (f. w. c.) v. Scott, Executor,* 10 La. An. 651, September 1855 " the testator, died . . 1847, and his succession . . was inventoried at . . $62,725 28." " After acknowledging in his will that Joseph Douglas and Charles Dudley are his natural children by the plaintiff, a mulattress, and providing that the manumission of mother and children should be perfected . . 'I . . give to . . Leonora an annuity of [$150] . . a year during . . life, . . I give . . Joseph [$3,000] . . and . . Charles [$2,000] . . to be paid to them respectively on their attaining . . twenty-one years. . . further . . as soon as they shall be old enough to be separated from

their mother, my executors shall send them to some State . . where slavery is not tolerated, to be instructed in reading, writing and arithmetic, and in some mechanical art or trade. . . further . . that interest at . . 8 per cent. . . on the said sums . . from . . my death, shall be appropriated for the maintenance and instruction . . to be equally divided between [them.]' . . The emancipation . . was effected, . . Joseph . . died [in 1849]; the plaintiff is tutrix of . . Charles" Held: [652] "The gift [to Joseph] is absolute;" Leonora, his heir, is entitled to the interest also.

*Overton v. Simon,* 10 La. An. 685, September 1855. "the defendant avers that the plaintiff was employed by his overseer . . to superintend the moulding and burning [of bricks] . . on his plantation . . 20 slaves . . were employed"

*Semeré v. Semeré (f. m. c.),* 10 La. An. 704, September 1855. "suit . . instituted by Julien Semeré, as universal legatee . . to annul an authentic act of sale . . The plaintiff annexes . . interrogatories . . 1st. Was the sale to you of . . Joseph, by Miss Marie Marthe Semeré . . 1849, a sale by which Miss Semeré intended to transfer . . any title . . [705] 4th. Was not the sale . . made for the sole object that the proceedings for his emancipation should be conducted in your name? . . The petition expressly negatives any fraudulent intent" [12 *id.* 681] "Defendant says . . 'Marie Marthe Sémère [*sic*], passed a sale of . . Joseph . . for the purpose of having him emancipated. As I could not succeed to do so, I went to Miss Sémère (about a year before her death) to give her back the slave, she abandoned the slave to me.' . . 'I did not pay any price' . . [682] 'When I went . . to tender . . Joseph, . . [he] was not with me, he being runaway' . . 'the slave went over to Julien Sémère, who, when requested by me to deliver [him] back . . refused' . . In December [1849] . . the testatrix made her [nuncupative] will . . by which she made provision for the emancipation of five other . . slaves, but she took no notice of [Joseph.] . . [683] during the lifetime of the testatrix, the defendant applied to the proper authority for the emancipation of the slave, but, owing to his bad conduct, in vain, . . proceedings . . are still pending [in August 1856] . . but are opposed by sundry planters"

Held: "we believe her intention is more likely to be carried out, by leaving the title to the slave, where she placed it, and with a person who has shown a disposition to perform the trust . . than . . with the plaintiff who does not appear to have such object in view." [Merrick, C. J.]

*Barry v. Kimball et al.,* 10 La. An. 787, December 1855. "action for the value of a slave . . taken on board a steamboat . . lost [by drowning.] . . [788] The defendants answered that the slave . . with the . . consent of . . plaintiff, hired himself as fireman . . for a voyage up Red River and back," [12 *id.* 372] "The plaintiff relies entirely on the rigorous provisions of the Act of 1840 . . We have . . the testimony of two competent witnesses, and corroborating circumstances, establishing . . facts . . irreconcilable with the hypothesis that the defendants carried

[him] away . . without his master's consent . . judgment for the defendants," [Spofford, J.]

*Succession of Fletcher (f. m. c.),* 11 La. An. 59, January 1856. "Fletcher . . died in New Orleans, leaving a succession inventoried at about $10,000. . . [60] in an act of manumission passed before a notary and two witnesses, [he] described Marie Louise . . as his 'natural daughter slave.' . . both the executor and the State . . were permitted to show that . . she must have been the offspring of an adulterous connection." Held: [62] "the succession will belong to the State." C.C. 222, 914. See same, p. 660, *infra.*

*Peyton v. Richards,* 11 La. An. 62, January 1856. [63] "Richards made . . special contract with . . Thompson ['to put up the iron front'] . . no control . . over Thompson." [62] "The plaintiff's slave . . walking along the sidewalk . . was killed by the falling of . . columns" Held: Richards is not liable.

*Manette and Virginie Duplessis (f. w. c.) v. Young (f. w. c.),* 11 La. An. 120, February 1856. "The defendant, widow of . . Duplessis, a free colored man, was put in possession of his estate by order of court. Five years afterwards the . . natural sisters . . brought this suit," Held: "the defendant is entitled to this inheritance."

*Griffing v. Routh,* 11 La. An. 135, February 1855. "The defendant was absent at the north. One of his slaves ran away. A runaway was . . lurking about the premises. The . . overseer, supposing him to be the runaway slave of the defendant, sent the driver with another of the hands to the fodder-house, with orders to capture him. They found . . [136] fugitive . . concealed under the fodder. With a view to frighten or force him out, one . . began thrusting a broadsword (used for pruning hedges) down into the fodder. . . wounded him so severely that he died in a few hours, notwithstanding surgical aid was procured as soon as possible. It turned out that he was the slave of the plaintiff. . . verdict in favor of the plaintiff for the value . . $1200,"

Judgment thereon affirmed: "The master is liable for the damage done by their inexcusable negligence and barbarity, to the extent of being compelled to pay . . or to abandon his own guilty slaves to the person injured." C.C. 180, 181, 2300.

*Hunter, Murphy, and Talbot v. Insurance Co.,* 11 La. An. 139, February 1856. "The plaintiffs shipped . . from Richmond to New Orleans, fourteen slaves, . . insured to the extent of $70 75 . . 'solely against loss by drowning in consequence of the stranding or shipwreck . . the assurers being warranted against all other risks, and especially against mutiny, elopement, natural death, and the interference of foreign governments on these subjects.' The vessel . . stranded near Abaco, and to save the crew and the remainder of the cargo, including the slaves, a jettison of a portion of the cargo became necessary. The plaintiffs . . seek to recover . . [what] they were obliged to pay as their apportionment of a general average contribution." Judgment for plaintiffs affirmed.

*Hill v. White,* 11 La. An. 170, March 1856. "The plaintiff, residing in Nashville, . . through her agents consigned to the defendant, a dealer in slaves in New Orleans, a bright mulatto boy . . [171] The plaintiff had owned [him] but about a month . . [Her] agent, who accompanied [him] . . as far as Vicksburg, . . was in constant apprehension that the boy would run away . . kept the most scrupulous watch . . when he left the boat at Vicksburg, . . he pretended to have hired him . . as a cabin-boy, and the deceit was carried out until he was landed at the slave mart. . . nothing of this was communicated to the defendant. . . a letter was placed in his hands . . authorizing him to sell, with full warranty, representing the boy as honest, humble and obedient; . . raised on a plantation, being a good ploughman, etc." [170] "After the arrival of the boy . . he informed the defendant that he had forgotten his clothes . . He asked leave to go to the boat for them, and the defendant sent him, accompanied by one of his own slaves . . whom he kept for such purposes, and whose fidelity is not brought in question. The plaintiff's boy went on board, and thence made his escape." Judgment for the defendant, with costs in both courts.

*State v. Bob (a slave),* 11 La. An. 192, March 1856. " a Jury empannelled under the law for the trial of slaves . . [193] found the prisoner guilty, (of administering poison,)" [192] "sentenced [him] to death" Appeal dismissed: "Our appellate jurisdiction in criminal cases is limited to questions of law. . . presented by bills of exception or assignments of errors. . . no bill of exceptions in the record. The counsel of appellant states . . that the Justices presiding . . were of the erroneous opinion [1] that they had no power to sign bills of exceptions. . . no assignment of errors filed in this court. . . one . . appears to have been filed in the inferior tribunal . . [193] The first point . . refers to the admissibility of the prisoner's confession, which . . should have been presented by a bill of exceptions . . or by something in the record equivalent to a bill of exceptions." [Spofford, J.]

*McCall v. Henderson,* 11 La. An. 209, March 1856. [210] "parol proof . . that the slaves were sold with the express understanding that they were not to be removed [from Mississippi] to the swamps of Louisiana; that the purchaser knew . . that they were unsound,"

*Dixon v. Chadwick,* 11 La. An. 215, March 1856. "The defendant . . avers that the slaves were sold as unsound; . . both . . died of incurable maladies, although they received careful treatment under proper medical advice." Held: "He is . . liable in damages caused by the trouble and expense . . incurred during the sickness . . $100 will be . . sufficient"

*George v. Greenwood and Co.,* 11 La. An. 299, April 1856. "slave runaway a short time after the sale [to plaintiff], . . appears to be in the Indian territory, and beyond the reach of any civil process." "suit brought for the price, and for expenses incurred in pursuit" Judgment for plaintiff affirmed.

[1] But see State *v.* Nelson, p. 591, *supra*; see also State *v.* Henderson, p. 667, *infra.*

*Fitzgerald v. Ferguson and Brunet,* 11 La. An. 396, May 1856. "Brunet held the slave for the benefit of some person in England, and hired [him] out . . as agent [to Ferguson.] . . While driving . . [he] drove against the plaintiff . . [397] judgment against the defendants . . for $1000 . . [399] amended . . [it] shall be discharged . . by the . . surrender of the slave . . or his proceeds to the sheriff within three days after . . [this] judgment . . shall be ordered to be executed by the lower court,"

*Delphine (f. w. c.) v. Widow Guillet,* 11 La. An. 424, May 1856. "In 1839, Aimé Guillet made his . . will . . among the bequests to his wife: . . 'trois de nos domestiques à son choix, à l'exception d'une jeune enfant nommée Delphine, âgée de six à sept ans, et née de notre domestique . . Mimi, à qui je donne par le présent la liberté et qui sera emancipée par ma femme le plutôt que faire se pourra.' In 1847, the testator having died, the will was . . proved. In 1854, Delphine brought this suit . . alleges that she has often applied to the Widow . . to emancipate her . . but has met with a refusal, . . The answer . . averred that the plaintiff was not then twenty-one . . nor could they . . declare that . . [she] had behaved well any four years since . . the date of the will. . . [425] the plaintiff offered to prove . . that she was of good character . . and had always . . conducted herself respectfully towards white persons, . . the defendant objected . . that said facts were not alleged in the petition, . . sustained" Verdict: [424] "We . . find that the plaintiff is not free, but . . entitled to her freedom, and require that the defendant be instructed to institute such proceedings as will ensure the emancipation"

Judgment thereon reversed and the cause remanded: [425] "Were this an ordinary case of private right, we might perhaps have presumed that the plaintiff was able to establish the facts which the defendants improperly objected to as inadmissible . . but as it concerns the public that none but worthy persons should be admitted to the *status* of freemen, it is our duty to exact the proof." See same *v.* same, p. 661, *infra.*

*State v. Taylor,* 11 La. An. 430, May 1856. "a free man of color, indicted for the murder of a slave, . . A mulatto, named Charles Robinson, was offered by the State as a witness, . . In cross-examining . . the prisoner's counsel asked . . if he had ever been a slave, . . he replied that he was once the slave of Mrs. Robinson, and since her death, had become free, . . The Attorney General was then called upon by counsel to produce evidence . . declined . . whereupon the defendant moved to exclude his testimony . . refused." "convicted of manslaughter and sentenced to imprisonment at hard labor for seven years." Affirmed: [431] "his whole statement . . shows that he was competent."

*Henrietta, alias Mary, v. Heirs of Barnes,* 11 La. An. 453, June 1856. Barnes's will, 1847: [454] "I . . bequeath to my servant girls, . . Henrietta, *alias* Mary, and her child, Mary, *alias* Marietta, their . . emancipation, according to law, from . . my decease, and . . one thousand dollars, and all my house furniture, to . . Henrietta . . and . . five hundred dollars to be invested in a lot . . is hereby given to my little servant girl Mary,

. . If possible, my executors will purchase for Henrietta . . a lot and dwelling with said one thousand dollars," " Barnes, [two years] after making his will, took her and her child . . to California . . with the avowed intention that she should be free; in which State . . she still resides." In 1852 the plaintiff sued, for herself and for her minor daughter, for the legacies.

Judgment of the lower court in her favor reversed and the suit dismissed: " Emancipation . . concerns the State, inasmuch as its tendency is to substitute a free colored population for the system of compulsory labor, which involves to such a vast extent the fortunes of our citizens and the production of our agricultural staples. . . 1842 masters were forbidden . . to take their slaves into free States.[1] . . 1846 it was enacted that no slave should thenceforward be entitled to . . freedom, under the pretence that he . . has been . . where slavery does not exist,[2] " [Buchanan, J.] [455] " Although, by the law of California, . . she possesses the status of a free person, and . . cannot . . be reclaimed . . because she is not a fugitive . . still the policy of our local statutes forbids that she should stand in judgment in the courts of Louisiana for any other cause than to sue for her freedom. . . As, if she returned hither, she would be a slave until . . enfranchised according to our laws," [Spofford, J.]

*Eulalie and her Descendants v. Long and Mabry,* 11 La. An. 463, June 1856. See same *v.* same, p. 631, *supra.* Buchanan, J.: [464] " Some years before . . Porche's death [about 1821], Eulalie, with his permission, married a free colored man, an illegitimate brother of Porche's wife, who had a farm in Porche's neighborhood; and lived with her husband in the full enjoyment of her freedom . . being more than thirty years, . . Mrs. Widow Porche frequently spoke of formally emancipating Eulalie and her children, . . After . . [her] death [in 1852] . . Eulalie and her children and grandchildren appear to have been taken by force . . notwithstanding an ineffectual resistance on the part of her aged husband, and brought to a slave mart in New Orleans, where they were conveyed as slaves for life to the defendants. There is no doubt that the heirs of Mrs. Porche were privy to this abduction . . yet they do not figure in the conveyance . . neither, although the defendants ostensibly paid [$12,000] . . in cash . . do they make any call in warranty. . . their vendor is declared . . to be dead and insolvent. . . circumstances calculated to inspire a suspicion that the true parties in interest are keeping out of sight. And if so, the reason may be easily imagined. Judgment [for plaintiffs] affirmed, with costs."

*State v. Bass,* 11 La. An. 478, June 1856. Spofford, J.: " The prisoner complains that the court erroneously admitted evidence touching the general character of the slave whom he was accused of killing. It is true . . [such] evidence . . is inadmissible. . . But, in this case, the defendant's counsel opened the subject by . . eliciting answers . . which had a tendency to cause the jury to form an unfavorable estimate . . cannot

[1] Acts of 1842, p. 314.
[2] Acts of 1846, p. 163.

complain that the State . . sought from the same witness evidence, of a general character, calculated to rebut this . . impression. . . Judgment affirmed "

*Bush* (*f. w. c.*) *v. Decuir,* 11 La. An. 503, June 1856. Spofford, J.: " the defendant's ancestor once lived in concubinage with the plaintiff. . . that fact did not incapacitate him from making a donation *inter vivos* to her of movables not exceeding one-tenth . . of his estate. C. C., 1468. The act of donation was most formal . . of a specific sum . . the note . . was given . . merely to facilitate the donee in disposing of the amount donated, should she wish . . the heir is bound . . decreed that the plaintiff recover [$2,000] . . with eight per cent. interest . . from . . March, 1849, . . and costs in both courts."

*Brack v. Wood,* 11 La. An. 512, June 1856. [513] " The plaintiff's testimony proves that, in 1839, a negro boy, answering to the description of the one in controversy, was lodged in jail in . . Arkansas, . . Ervart presented himself, with a written title from . . Weymouth, dated . . 1838, identified . . and sold him the same day to . . Irvine for $810. In 1844, Irvine sold to . . Polk . . 1846, Polk sold to . . Trigg. . . 1848, the slave absconded. In October, 1851, Trigg regained a negro, which plaintiff's witnesses identify as the one runaway, having taken him out of the jail in . . Mississippi, . . lodged as a runaway. The slave absconded again in January, 1852, . . recaptured the same month, . . sent to New Orleans, and sold . . at auction, . . bought by the plaintiff . . [who] hired the slave on the steamboat . . from which the defendant took [him.] " " The defendant's testimony establishes these facts . . that the identical negro . . was in the possession of . . McDonald as owner from 1836 to 1840 and 1841, when McDonald left Natchez; . . 1848 . . lodged in jail as a runaway; . . seized under an execution . . and bought by the defendant . . for $475; . . remained . . on his plantation in Louisiana, up to October, 1851, when he ran away, . . recovered . . in August, 1852, by taking him from the steamboat " Judgment in favor of the defendant: [514] " *In pari casu potior est conditio possidentis.*"

*Dorwin v. Wiltz,* 11 La. An. 514, June 1856. [517] " Plaintiff and defendant were married in . . 1825 . . In 1831, plaintiff abandoned his wife and his children, without any . . cause, and lived with a woman who had been his mother's slave; . . never seeing his family or contributing . . defendant . . had no resources save her labor and that of a slave girl Anaïs, purchased in 1828, for [$350] . . cash " [515] " Anaïs had nine children, five of whom died quite young;"

*Person v. Rutherford,* 11 La. An. 527, June 1856. Spofford, J.: " on an order given by the plaintiff's factors in favor of Rutherford [' notice that he returned the slave on account of a redhibitory vice '] " Rutherford's "agents, whom he left in charge of his slave-mart in New Orleans . . took the slave . . from the steamboat and again put her on the market for sale. . . it was the manifest duty of the defendant to have notified the plaintiff's agents, residing in New Orleans, of her serious illness, to have given her all requisite medical attention and as it could so readily

have been procured to have had a post mortem examination. . . [528] The girl was sold at $750, and the plaintiff's expenses were $25." Judgment in his favor for $775.

*Heirs of Henderson v. Executors,* 11 La. An. 541, June 1856. See same *v.* same, p. 605, *supra.* Buchanan, J.: [542] " Judge Martin . . says: ' The draft and transportation . . were legitimate ' [1] . . Under this dictum, we consider the legality . . as no longer an open question. . . At the moment of his death . . the condition of his slaves were [*sic*] fixed. They were *statu liberi* . . Every child . . became free when its mother became free. . . even if its mother should die before that time. C. C., Art. 196. . . But . . only . . on condition of going to Liberia with their own consent. . . they return to slavery, if ever they return . . to this country. Upon this clause Judge Martin seems to have based his conclusion that . . a formal emancipation [was] . . [543] unnecessary. In fact [it] . . would, perhaps, have rendered their subsequent reduction to slavery, in case of their return . . impracticable, as the law stood at the date of the will. . . decreed, that all the slaves of which . . Henderson was the undivided proprietor . . and all . . which, by partition . . may fall . . to . . [his] succession, shall be sent to Liberia . . at the expiration of twenty-five years from . . [his] death, . . But if any . . refuse to go . . forfeited all claim . . further decreed, that the transportation . . shall not bar the heirs . . in case . . thereafter . . found within . . Louisiana."

*Bryan v. Day,* 11 La. An. 601, July 1856. [602] " a receipt . . 1843, for [$150] . . price of a mulatto child . . four years of age, sold [in Georgia?] "

*Wilson v. Bossier,* 11 La. An. 640, July 1856. Lea. J.: " The defendant avers that the discharge of the plaintiff [overseer] was justified . . he having shot at one of the negroes who was endeavoring to escape punishment. This fact is not disputed, and we concur with the District Judge . . that . . such an abuse of the authority delegated . . justified his discharge. . . wholly inadmissible and cannot be justified under the pretence that it was . . merely for . . intimidation. . . no error in allowing . . wages up to . . his discharge."

*Wood v. Hardy,* 11 La. An. 760, July 1856. " Martin Wood . . left a will, made in 1849, . . ' I give . . unto my wife . . all the negroes and their increase, say about fifty negroes in number, . . during her . . life; then, if it can be done by my executors, all . . to be set free, and carried to the near part of Mexico, beyond the river Rio Grande. I also set aside [$3-000] . . to accomplish the same.' "

*Figuras v. Benoist,* 11 La. An. 683, August 1856. Merrick, C. J.: " suit . . to recover . . for services rendered by the plaintiff and his wife as nurses during the prevalence of the yellow fever in 1853 . . in attendance on the family and negroes thirty-five days. . . we think ten dollars per day . . ample "

[1] Executors' of Henderson *v.* Heirs, p. 575, *supra.*

*Phoebe (f. w. c.) v. Sheriff et al.,* 11 La. An. 688, August 1856. " The plaintiff sues for the recovery of . . lots . . [689] The defendants . . allege that the purchases in her name were . . made with funds furnished by Shultz . . with whom she had been living in concubinage for many years, . . judgment . . decreeing the lots . . to be the property of the plaintiff,"

*Templet v. Baker,* 12 La. An. 658, August 1856. " One John Saunders, sold in 1841, in Kentucky, the slave . . to Bayles . . vendor of defendant and his partner." They had " possession . . in Louisiana, until 1844, when the slave ran away. . . The plaintiff . . presents an act of sale . . bearing date May . . 1845 . . wherein one John Saunders of . . Missouri, professes to sell to . . Johnson . . Carter, about twenty-seven . . for $400. . . [659] July, 1845, the slave having been for some time in the jail . . as a runaway, . . Johnson . . sold [him] . . to the plaintiff for $400. . . ' without any kind of warranty ' . . and the vendee ' further declared, that he is fully acquainted of the manner in which . . Johnson became possessor . . and the . . vices of said slave ' . . 1850 . . he sold . . to . . Gaudin, with warranty, both as to title and redhibitory vices. The slave ran away . . and was lodged in jail . . about . . December, 1851. The defendant having been informed by the jailor . . obtained possession . . Gaudin retroceded . . to the plaintiff," Judgment for defendant affirmed.

*Lambert v. King,* 12 La. An. 662, August 1856. " The defendant was employed . . as overseer . . in November, 1853. . . he was to receive ' ten dollars for every 1,100 pounds of sugar ' he should make . . and ' should there not be seed cane enough, . . plant cotton, and receive one-fourth of the nett proceeds ' . . The plaintiff . . agreed to furnish . . nine slaves, and . . first of January, 1854, to add two . . August, 1854, the plaintiff considering [him ] . . guilty of mis-conduct in the management of the plantation, and the treatment of the slaves, as well as in his personal demeanor towards herself, . . discharged him . . brought suit . . that the defendant be enjoined not to interfere further . . The defendant . . claims compensation " [663] " judgment in favor of the plaintiff . . decreeing the injunction herein issued . . perpetual, and that the defendant . . recover [$350.] "

*Duperrier v. Dautrive et al.,* 12 La. An. 664, August 1856. [665] " Recent disorders among the slaves in . . New Iberia, had made it a matter of importance that the laws relative to the police of slaves, should be strictly enforced." " established that the plaintiff's . . valuable and confidential slave . . was going on horseback with the . . standing permission of his master, to the residence of Mrs. Dubuclet, with whom his wife resided, . . [on August 1, 1855,] at about 11 o'clock at night, when about entering the town, he was ordered to stop by the patrol. That the slave did stop . . but, either for the purpose of escaping because of his apprehension of the consequences of an arrest, or in consequence of the shyness of an unbroken horse, he started back in a gallop, when the defendants . . fired . . three times . . at . . about thirty-five yards, after having . . called upon him to stop. The negro . . returned home and died the next

day." Held: " they were protected by the terms of the 65th section of the Act of 1855, . . The ' use of *arms* ' . . necessarily implies at least a risk of killing,"

*Collins v. Administrator,* 12 La. An. 678, August 1856. " alimony claimed on behalf of two illegitimate colored children of the deceased. . . who are destitute . . unless the title to a lot . . with improvements, of which a donation was made to one of the children, be recognized as valid, which is disputed by the appellant [defendant]. . . wholly overlooked in the judgment . . the position of the appellee precludes an objection," Judgment allowing alimony affirmed.

*J. B. J. Louis (f. m. c.) v. Richard,* 12 La. An. 684, August 1856. " Plaintiff purchased of . . Landry in 1849, by public Act . . a negress . . for [$400] . . the seller reserving . . the usufruct . . during his life, and . . should the slave die before her delivery . . her loss should be for the purchaser, . . In 1856, . . Landry having died, leaving five children [' forced heirs '], the plaintiff sues for possession . . The children . . defend . . that no consideration was given . . that the slave . . was all the property of their father . . judgment annulling the sale . . founded in part on testimony . . seller had said . . that he had given back . . the [$400.] " Held: the plaintiff has established the validity of the sale; but the [685] " forced heirs . . [must] be declared owners of two undivided thirds of said slave and her increase."

*Succession of Emilie Peyran (f. w. c.),* 11 La. An. 694, November 1856. " The evidence is clear that . . avowed father [of the intervenors] was, at the time of their conception, the husband of another woman, . . the District Judge did not err in repelling their claim " C. C. 201.

*McLellan v. Williams,* 11 La. An. 721, December 1856. " The slave was purchased . . 15th . . November . . and died suddenly on the 22d . . not ascertained of what disease . . medical assistance could not be obtained " Judgment for defendant, vendor, affirmed: " The vendor . . does not warrant that the slave . . will resist the disease without the aid . . of medical art."

*State v. Harrison (a slave),* 11 La. An. 722, December 1856. " Harrison was tried by a tribunal composed of two Justices of the Peace and ten owners of slaves . . for killing another slave, on the 2d July, 1855. . . found guilty . . and sentenced to imprisonment at hard labor for life. . . contended, that . . Act [of March 15, 1855, ' relative to slaves and free colored persons,'] " " under which the tribunal was organized . . is in violation of the Article 115 of the Constitution . . ' Every law . . shall embrace but one object,' "

Judgment affirmed: I. [724] " the whole [act] must . . be declared void for unconstitutionality." " in the eye of the Louisiana law, there is, (with the exception of political rights, of certain social privileges, and of the obligations of jury and militia service,) all the difference between a free man of color and a slave, that there is between a white man and a slave. . . The free man of color is capable of contracting . . can acquire by in-

heritance and transmit property by will. He is a competent witness in all civil suits. . . he is . . tried with the same formalities, and by the same tribunal, as the white man. . . [II.] [725] the conclusion at which we have arrived . . will not relieve the prisoner . . For those sections . . which relate to . . tribunals for the trial of slaves . . are copied from an Act of June 1st, 1846,[1] . . still in force." [Buchanan, J.]

*Reynolds v. Batson; same v. Brenford,* 11 La. An. 729, December 1856. "The slave in the possession of Brenford disappeared from the plantation of the plaintiff . . in . . Alabama, in the spring or beginning of summer, 1845, and the other two . . in August . . Batson bought . . two . . at public auction, at the Arcade, in this city . . September . . title was made by a person representing himself to be . . Teral, of . . Alabama, and the act of sale was passed before . . Marks, Notary Public. . . employed them [since] on the levee and as stevedores. . . George was sold by . . Bach . . 1846, to . . Gardere, the act reciting that Bach had purchased . . from . . Teral . . the same day that Batson purchased. Gardere sold . . 1849, to . . Brenford. The suits were commenced . . 1856. The good faith of . . the defendants, has not been questioned. The plea of prescription of five years was interposed by the defendants and sustained" Affirmed. Rehearing refused: [731] "we consider our reasoning equally applicable . . if it be conceded that the slaves were stolen,"

*Maranthe, Genie et al. v. Hunter et al.,* 11 La. An. 734, December 1856. "The plaintiffs allege that they were the slaves of the late Julien Poydras, who died in . . 1825; . . that they have . . complied with the conditions of . . will;[2] . . have attained the legal age to be emancipated; . . that the defendants . . refuse . . Wherefore, they pray that they may be declared free. They further claim remuneration for their services" Judgment for defendants. Plaintiffs appealed. [735] "the defendants have excepted . . 1st. That . . they can maintain an action only for their freedom. 2d. That by the Act . . of the 15th of March, 1855, . . all suits for the emancipation of slaves must be prosecuted by citation directed to the State . . 3d. That said Act . . so far as . . defendants are concerned, is . . void, as imposing charges . . not assumed by them . . and as all other statutes on the . . subject have been repealed, that they are not bound to emancipate them at all."

Judgment reversed and the cause remanded, the defendants paying the costs of this appeal: "the first exception . . is well taken. The plaintiffs' action must be restricted to a claim for freedom, . . upon the second . . the defense is untenable. . . the statute of 1855 . . has been declared . . unconstitutional.[3] . . [As to] the third exception, . . [736] An obligation to emancipate . . twenty-five years hence, . . and to incur all necessary charges . . has reference . . to such legislation . . as might be in force when the contract is to be carried into execution. We cannot suppose that it was contemplated . . that a change in the form, or even the

[1] Sess. Acts, p. 114.
[2] See introduction to the Louisiana cases, pp. 393-396.
[3] See State *v.* Harrison, p. 649, *supra.*

legal charges . . might deprive the plaintiffs of . . freedom. . . As, however, . . the statute of 1855 . . [is] unconstitutional, it . . [is] unnecessary to consider the effect of the repealing clause." [Lea, J.]

*State v. Adeline (a slave),* 11 La. An. 736, December 1856. " The accused was tried by a special jury, organized under the Act [of March 9, 1855,[ for the murder of . . John Blakely. . . [737] Without being interrogated, or even called, she went to the officers and told them that she knew . . they had come . . to take her to the calaboose; that . . if she had it to do over, she would do it again. . . had killed . . with a sword-cane . . said she had thrown it into the well. . . corroborated by the discovery " [736] " The jury found the accused guilty of manslaughter, and condemned her to the penitentiary for twenty-five years." Affirmed.

*Nixon v. Bozeman and Mrs. Bushy,* 11 La. An. 750, December 1856. [752] " Macmurdo expressly refused fully to guarantee the slave . . as . . he suspected that the slave had stolen money, and that he pretended to be sickly, . . it does not appear that Macmurdo knew that the slave was subject to fits," He sold the slave to the defendants [751] " partners in buying and selling slaves." They sold the slave in 1853 to the plaintiff for $950. " the slave was tendered the defendants [by him] . . and he disappeared on the following morning." "verdict in favor of plaintiff rescinding the sale, and awarding [him] $950 . . and $250 damages," Affirmed.

*Farwell v. Harris and Morgan,* 12 La. An. 50, January 1857. " 1853, a slave . . was shipped . . at . . New Orleans . . to Galveston . . a clearance . . was granted . . upon oath . . made . . by the shipper and by the master of the ship, that, to the best of their knowledge . . [he] was not imported . . since the 1st of January, 1808,[1] and that, under the laws of this State, he was held to service "

*Barrow v. McDonald,* 12 La. An. 110, February 1857. " A claim for damages for the malicious killing of a slave . . owned by the plaintiff and the defendant [manager of their sugar plantation] . . three-fourths by the former . . These damages the plaintiff has assessed at $1500."

*Phipps v. Berger,* 12 La. An. 111, February 1857. " Defendant being sued on . . notes, given for the price of a slave purchased at probate sale, pleads that the slave was affected . . with a chronic disease . . which he was informed was brought on by eating dirt, . . rendered entirely useless by the . . disease, which caused his death about six months after the sale. . . proved . . that he was proclaimed . . unsound from the stand," Judgment for plaintiff affirmed.

*Miller v. Stewart,* 12 La. An. 170, March 1857. C. Voorhies, J.: " The plaintiff sues to recover . . $800 for services . . as overseer . . at . . $400 per annum, from . . March, 1853. He alleges that he was discharged . . without any good cause . . June, 1854, . . [171] The defendant . . pleads . . that he had urgent cause . . because . . plaintiff . . in total disregard of

[1] Act of Congress Mar. 2, 1807.

his duties . . most wantonly and cruelly whipped to death . . Tom, of the value of $1250, which he claims as damages in reconvention; . . All the witnesses concur . . as to the extreme severity . . one . . says . . that from his neck to his heels, there were stripes . . so close together, that the witness could not put his finger between them; . . had never before seen one whipped so badly . . There is not a scintilla of evidence showing . . that Tom was vicious or that his character was bad; nor . . any attempt to show the nature of . . [his] offence . . The plaintiff in his letter to the defendant merely states that it was for abusing his [Tom's ?] wife. . . two physicians at the post mortem examination. One . . thinks that the death . . was produced by over exertion and exhaustion, and the other by the whipping or treatment of the overseer; . . that, in some cases, excessive whipping will produce death by exhaustion. . . If he died of exhaustion, the plaintiff was . . certainly guilty of gross negligence in not taking proper care of him when he retired to his cabin. . . the defendant is entitled to recover . . $1200 . . proved to be the value of his slave, deducting . . $344 . . balance due the plaintiff on his salary"

*Owen v. Brown et al.,* 12 La. An. 172, March 1857. "sued . . Brown, for damages for harboring three runaway negroes, and for . . permitting one of them, by collusion, to go aboard of a flatboat descending . . to New Orleans, from whence, he escaped to Cairo, and thence to Pittsburg . . verdict in favor of the plaintiff for $1300, the value of . . Tom, and $160, the value of the services of the other two whilst in . . [defendant's] possession . . After the rendition of the verdict, the defendant, having discovered that the plaintiff had received from the owners of the steamboat [$600] . . compromise in full for the . . value of the slave . . carried away by said boat, moved . . for a new trial, and thereupon the plaintiff entered a *remittitur* of $600 upon the price, and the motion . . was overruled."

Judgment reversed and new trial awarded: "If the plaintiff had already . . received the value . . this *litis aestimatio* . . has transferred the property . . to the persons so paying." Final judgment was in favor of the defendants, "and that they recover costs in both courts." 13 *id.* 202.

*Montan v. Whitley,* 12 La. An. 175, March 1857. [176] "The plaintiff seeks the redhibition of the sale of a slave man and his three children, . . sold together [in 1855 for $2300.] . . The death of [the youngest] . . within a year after the sale, of a disease of which the symptoms showed themselves prior . . notwithstanding proper medical attention, makes out a *prima facie* case . . which has not been rebutted. . . value . . $375 had she been sound. . . Twenty-five dollars were expended by plaintiff upon her in medical and burial expenses." Decreed, that the plaintiff recover $400.

*Lewis v. New Orleans,* 12 La. An. 190, March 1857. "The plaintiff alleges . . that . . January, 1855, he placed Jesse . . in the parish jail . . for safe keeping and correction; that . . defendant . . derived . . a pecuniary profit by receiving a per diem compensation; that . . he was employed in . . labor incident to the daily routine . . in the course of which

he was unnecessarily exposed to cold and wet, . . became dangerously ill, and no care was taken of him; that the jailkeeper . . failed to notify . . that . . three or four months after . . he heard by accident . . [191] took him away . . he died a few days thereafter;" Held: " the city cannot be made liable . . for the . . misfeasance "

*Mahier (f. w. c.) v. Le Blanc et al.*, 12 La. An. 207, March 1857. [208] " The defendants . . pleaded . . that the . . draft [for $5533.92] held by plaintiff was a disguised donation to a concubine,"

*Gil v. Williams and Davis,* 12 La. An. 219, March 1857. " Williams having been convicted of importing slaves . . in violation of the first section of the statute of the 29th January, 1817,[1] the slaves were judicially declared forfeited to the State . . [220] Subsequently . . Davis executed the following obligation . . ' 1850. . . I promise to pay to . . Dunn, . . Gil and . . Patterson [$1500] . . on condition that the State . . shall pay indemnity for . . slaves . . seized . . as the property of . . Williams, indemnity for which is now claimed by . . Davis and . . Williams.' . . The plaintiff has appealed from a judgment dismissing his claim for [$500] . . on this agreement. . . The plaintiff alleges that the consideration . . was his professional services as a lawyer, in presenting . . the claim . . before the Legislature . . indemnity granted " Affirmed: " law, public order and good morals strike all such contracts with nullity."

*Molaison v. Hébert,* 12 La. An. 232, March 1857. " judgment setting aside that portion only of the will which purported to manumit the slaves. The curator *ad hoc* [who had been appointed to represent the slaves] alone has appealed," Appeal dismissed: " no law authorizing [him] . . to stand in judgment "

*McGowan v. Laughlan,* 12 La. An. 242, March 1857. " plaintiff alleges that he acquired [Jerry] . . from his father, prior to . . 1839. . . enticed [in 1839 or 1840] . . from . . Tennessee . . Defendant avers that her title is derived from . . Stotts . . of Arkansas, who sold . . to . . Laughlan, at Vicksburg, . . 1841, for . . $740 " Judgment for defendant affirmed.

*Barclay (f. w. c.) v. Sewell,* 12 La. An. 262, April 1857. " the plaintiff . . paid for the property claimed . . the only question . . is, whether the plaintiff has the legal capacity of holding property. . . was absent for two months [in 1839] in . . Ohio, where she was emancipated, and . . ever since . . has been residing here as a free person of color, . . Botts (her former master) has been residing in this city "

Judgment in her favor affirmed: [263] " the general policy of the Louisiana Legislature . . was undoubtedly always adverse to the indiscriminate manumission . . and now it has become altogether prohibitive of emancipations in the State,[2] probably in consequence of injudicious and impertinent assaults from without upon an institution thoroughly interwoven with our interior lives. But . . in 1830, the Legislature recog-

[1] See State *v.* Williams, p. 558, *supra.*
[2] Act of Mar. 6, 1857.

nized the validity of such emancipations as the one under consideration.[1] . . upon her return hither she subjected herself to all the penalties imposed on free persons of color for entering the State. But we do not find one . . to have been a forfeiture of her freedom . . The Act of March 16th, 1842,[2] . . prohibited, for the first time, the carrying of slaves . . into free States;" [Spofford, J.]

*Whann v. Hufty,* 12 La. An. 280, April 1857. [281] "The night before Mrs. Christian left [New Orleans] . . Mary ran away, and . . when found, [said] that she was willing to stay with any one who would purchase her in the city, but would not return to the country. Whereupon . . negotiations were set on foot for the sale . . [to] a resident of New Orleans. . . left . . on trial, for a month . . sold . . 1855, for nine hundred dollars cash."

*Daret v. Captain Gray,* 12 La. An. 394, May 1857. "The plaintiff was . . the owner of a mulatto man, a mulatto woman and their two children. These slaves being in possession of forged papers [[395] 'well calculated to deceive'], obtained tickets from the Pacific Mail Steamship Company . . to Aspinwall . . March, 1854, and proceeded . . to the Balize, where they were discovered through the agency of a telegraphic dispatch . . and returned with the pilot . . The plaintiff alleges that . . [395] the defendant caused him damages to the amount of [$400] . . for depreciating the value . . and [$45.25] . . for telegraphic dispatches, public notices in several papers, jail fees, etc."

[396] "decreed, that the plaintiff recover [$34] . . and that the defendant pay the costs of both courts." I. [395] "it is true, . . that the plaintiff sold . . and . . suffered large deductions from their apparent value, on account of their having runaway. The habit . . is a vice inherent in the slave. . . had developed . . before the slaves went on board . . [II.] by the third section of the Act of 1816,[3] masters of ships . . are prohibited under any pretence whatsoever from transporting . . any negro, mulatto or other person of color from New Orleans, without taking . . before the Mayor . . and having obtained . . a written certificate. . . [396] This precaution . . was not observed . . and the defendant is liable for the reasonable expenses of the plaintiff in recovering his property,"

*Williams v. Talbot,* 12 La. An. 407, May 1857. Jack was sold to plaintiff January 1, 1853. [408] "two or three weeks afterwards . . [the overseer] discovered he was affected with a bad cough, . . in July or August . . expectorated blood . . and complained of fever and night sweats. He was employed at chopping wood up to the middle of October, . . Dr. Favrot was first called . . in July or August . . afterwards in October . . Dr. Vaughan . . examined Jack in December, . . found him in an advanced state of tubercular consumption. Drs. McKelvey and Picton examined him in the spring of 1854," He died in June. Held: "The neglect . . to send for medical aid for so many months after the first manifestation . . constitutes . . a bar to . . action of redhibition."

[1] Acts of 1830, p. 94, sect. 16.
[2] Acts of 1842, p. 314.
[3] B. and C. 253, 254.

*McCay v. Chambliss,* 12 La. An. 412, June 1857. "sued on . . note . . in payment of . . Riley, sold . . with full warranty. . . [413] about a week or two before he died, he seemed to be in bad health . . attributed to his exposure while runaway. . . 'Riley had so little mind or sense as to render him utterly worthless.' . . nothing showing the nature of the disease of which . . [he] died, . . No physician appears to have been called in." Judgment for plaintiff affirmed: Riley's mental deficiency "must have been apparent to an ordinary observer at the date of the sale."

*Cornish (f. w. c.) v. Shelton,* 12 La. An. 415, June 1857. "suit . . for the recovery of the price . . the slave . . died of yellow fever within three days after the sale. . . her attending physician was employed by defendant. and at one time he considered her out of danger. . . plaintiff rendered good attention to the deceased, . . slave died of a *relapse*" Judgment in favor of plaintiff affirmed.

*Turner, Curator, v. Smith et al.,* 12 La. An. 417, June 1857. Buchanan, J.:" Turnbull . . made . . declaration in writing before a notary public and two witnesses . . 1855: 'That he does . . acknowledge Mary, . . of mulatto color, aged about seven . . Eliza, . . of mulatto color, . . about six . . Dudley, . . of mulatto color, . . about four . . Charles, . . of mulatto color, . . about two . . and Minerva, . . of mulatto color, aged about five months, to be his children, . . begotten of . . Rachel, a mulattress or griffe, aged about twenty-three years; said children and their mother being now his slaves.' On the same day . . he . . made his olographic testament . . 'I give . . to my natural children . . their freedom, and direct my executor to take the steps necessary to obtain their emancipation according to the laws of this State, or to send them to some country or State, to be by them selected, where slavery is not recognized, if their emancipation with leave to remain [here] . . cannot be . . obtained; . . expenses . . to be borne by the mass of my estate. I also give . . her freedom to . . Rachel . . I also give . . to my natural children, duly acknowledged by me by public act . . and to their mother . . one-third of my entire estate,' . . [418] died . . 1856 . . the plaintiff, was appointed by the court curator . . and has brought this suit [in September 1856] against the executor, who is also universal legatee, as well as against the next of kin and heirs at law . . No steps had been taken by the executor . . towards manumitting . . In the meantime, the Act . . of the 6th March, 1857, . . has been promulgated. . . 'That from . . [its] passage . . no slave shall be emancipated in this State.' . . The enfranchisement of Rachel and her children having thus become legally impossible, the legacy . . has lapsed." "the so called act of acknowledgment . . besides being offensive to morality, is without any . . effect in law." "The object of an acknowledgment . . is to confer certain rights . . But a slave can neither sue for alimony nor inherit."

*State v. Clay (f. w. c.),* 12 La. An. 431, June 1857. "The prosecution is based upon the second section of the Act of February 21st, 1828, which makes it a crime to prepare combustible materials, and to put them

in any place with an intention to set fire . . repealed by the Act of 1855" "judgment . . quashing the indictment." Affirmed.

*Reed v. Crocker,* 12 La. An. 436, June 1857. "By his will [made in 1854] . . [Crocker] appointed H. H. Crocker, one of his natural children, his executor, and distributed his property ['a large estate'] between his housekeeper ['Sofa'], who is a colored woman and was once his slave, and his children whom he had by her, and who were legally acknowledged by him previous to his death. . . [437] certain assignments . . were made [in 1855] by some of the heirs [residing in the state of New York] to . . H. H. Crocker. . . [439] 'whereas, any legal proceedings to defeat the benevolent intentions of the . . testator . . is [*sic*] entirely contrary to our wishes . . and whereas, [testator] in his lifetime, . . did advance [us] . . property of considerable value . . Now in consideration of the premises, . . and from regard to the children of . . deceased, and of their mother . . and . . five dollars . . paid . . by . . [H. H.] Crocker, . . we . . [quit-claim] in [his] favor . . all . . rights'"

Held: [442] "the portions of the assignors . . must be given to . . [H. H.] Crocker. . . the dispositions of the will in favor of 'Sofa,' the concubine . . [are] null and void;[1] . . the dispositions . . in favor of the natural children . . H. H. Crocker, Mary Bosworth and Susan Crocker, [must] be reduced to one-fourth[2] of the testator's estate;"

*Riggin v. Kendig,* 12 La. An. 451, June 1857. Cole, J.: "suit . . to recover the price of a slave and damages, . . Dick was a notorious runaway . . Kendig . . bought Dick of . . Loupe . . who knew him to be a runaway. . . They were both negro traders of the city, and that class of society is not easily imposed upon." "We think that Kendig was cognizant of this vice . . when he sold him, fully guaranteed to plaintiff. . . Plaintiff . . avers that . . [Kendig] bought . . from Loupe without warranty . . notified Kendig to bring . . his bill of sale . . produced [another] . . made an affidavit . . that when his counsel pointed out the error he . . could not find it. . . did not cause Loupe to be cited to defend the warranty, which he pretends to have received . . [453] The evidence establishes that Dick was absent . . from March to July, 1855" [452] "'had been laying [*sic*] exposed in a shanty ["back"] in the woods for three or four weeks . . sick' . . [453] was brought in a dying condition to the house . . Dr. Browning was sent for, and he died in about three days of inflammation of the bowels. Dr. Browning testifies that 'inflammation of the bowels is caused from exposure to dampness, . . eating indigestible food,' . . [454] We think that whenever the death is . . a direct sequence of the vice of character, it can . . be no more regarded as a fortuitous event than a death . . from a vice of body. . . a slave like Dick, having . . no defects, was worth one thousand dollars and upwards in July, 1855. . . plaintiff is entitled to recover [that amount] . . with legal interest from judicial demand,"

[1] C. C. 1474.
[2] C. C. 1473.

*State v. Judge,* 12 La. An. 455, June 1857. " ' Perkins instituted . . 1st of May, 1857, his redhibitory action against Shelton to recover the price of . . Jane, . . purchased . . March . . he charges that the slave was afflicted with a chronic disease of the heart and lungs, and the disease called Tonsils, . . On the 16th May, . . agent of Perkins . . addressed a letter to Shelton,' notifying . . that the slave was left with . . Screnes, in this city, . . at a charge of 40 cents per day; that the plaintiff looked to him for the return of the price, interest . . expenses and damages, and that the slave was at his disposal whenever the same should be refunded. . . On the 20th of May . . Shelton took a rule on Perkins to show cause why he should not be allowed to bond said slave, . . ' Several witnesses testified to the danger the slave would incur by remaining in the slave-yard, and the bad condition and structure of the place.' The Judge permitted the defendant to bond the slave, but ' required a bond with good security in the sum of [$2000] . . [456] for the forthcoming ' . . declined to allow " Perkins an appeal.

[457] " ordered . . that a peremptory mandamus issue . . commanding . . Judge to . . allow an appeal " [456] " the defendant will be fully protected by the appeal bond and the unfavorable effect which the conduct of the plaintiff [if proved] will produce upon his cause, and the slave herself by the penal laws made for her protection." B. and C. 56, sect. 39.

*State v. King (a slave),* 12 La. An. 593, July 1857. " found guilty of stabbing . . a white man, with intent to kill, . . sentenced to be hung," Reversed, [595] " and it is further ordered . . that the prosecution be dismissed, and the prisoner . . discharged." [596] " The laws upon this subject, in force at the time of the alleged offence . . were the Acts of 1816 and 1843 [re-enacted in 1855 and in 1857]. . . Sections two and four, of the Act of 1857 . . repealed [' all laws on the same subject-matter '] without any saving clause,"

*Johnson v. Bloodworth,* 12 La. An. 699, August 1857. [703] " agreed [in 1853] . . that . . Bloodworth . . shall receive . . Henry . . about thirty-eight . . for [$1400] . . and . . Ephraim . . about nine " for $500.

*State v. Populus (f. m. c.),* 12 La. An. 710, August 1857. " indicted for wounding, with a dangerous weapon, with intent to kill. . . [711] convicted and sentenced to the penitentiary for twelve months."

Reversed and new trial granted: the jury " were permitted to separate from the adjournment of the court [' after they had received the charge of the court '], . . until the next morning, when they rendered their verdict."

*State v. Morgan,* 12 La. An. 712, August 1857. " indicted . . for buying . . from a slave [in 1856], one bag of corn . . without the owner's consent. . . found guilty and sentenced " Reversed, and [713] " ordered . . that the prisoner . . be discharged from custody." " the Act of 18th March, 1852, was repealed by the Act of 19th March, 1857 [' on the same subject-matter ']."

*Carmouche, Administrator, v. Carmouche et al.,* 12 La. An. 721, August 1857. "In 1831 . . Carmouche . . made a donation *inter vivos,* to his daughter Cydalise . . of . . Hélène . . about thirty . . with the reservation of the . . usufruct . . for . . his life. Four or five years after . . Hélène gave birth to . . Claire . . [who] grew up in the same cabin with her mother, . . She did light work about the house. . . Some of the witnesses speak of her as Carmouche's slave, although indulged as a house servant; whilst others say, she was treated as a free person, and spoken of in the family as free. . . In . . January [1853] . . Carmouche . . applied to the Police Jury . . for permission to emancipate Claire, . . refused." "Cydalise . . attempted to do [so] by selling her to herself . . October, 1853." Carmouche died in 1854. Held: "The donation of her mother . . was radically null. . . her freedom . . has never been lawfully accomplished."

*Déjol v. Johnson,* 12 La. An. 853, August 1857. "Déjol and his wife . . were free people of color . . [He] died, leaving a small estate, . . [854] plaintiffs, alleging themselves to be the only legitimate children . . opposed the distribution suggested by the administrator, upon the ground that three of the alleged heirs, . . Patrick Déjol (*alias* Johnson), Murvin Déjol (*alias* Gay), and Matilda Déjol (*alias* Gay) , , were adulterous bastards . . offered to show that [they were] . . alleged to be such by their father and openly acknowledged to be such by their mother" who "had abandoned her husband . . and lived . . remote from him . . evidence was rejected" No error.

*Oreline v. Heirs of Haggerty,* 12 La. An. 880, August 1857. [881] "The petition sets forth, that . . John Haggerty . . made his . . will . . 1851 . . and thereby bequeathed to his slaves, petitioner and her children, their freedom . . to take effect from the day of the testator's death. . . [882] makes no disposition . . of any [other] . . property" [881] "The heirs . . opposed the probate . . on the grounds: 1. That the will . . is contained in . . the same act[1] with the will of . . Haggerty's wife. . . 2. That . . emancipation . . in this State is prohibited.[2] 3. That the will is contrary to law and good morals, the petitioner and her children, being the concubine and the adulterous bastards of the testator. The District Court decided . . exclusively upon the 1st" Judgment for defendants.

Affirmed: [882] "he must have deemed it important to secure the coöperation of his wife . . and her will, as dictated, is but a repetition of his own" "The preamble of each . . has blended both together"

*Trowbridge v. Carlin,* 12 La. An. 882, August 1857. [883] "favorite servants of the master were found disrespectful to their [new] mistress, and had to be chastised or sold."

*Bair v. Abrams,* 12 La. An. 753, November 1857. [754] "the slave . . was brought hither by him from Texas, . . In his letter . . [he] declares: . . 'I sold a light colored girl . . I was to have [her] back at the

[1] C. C. 1565.
[2] Act of Mar. 6, 1857.

same price [$600] . . when I returned from California, or at the expiration of twelve months.' "

*Maples et al. v. Mitty and Sarah (f. w. c.),* 12 La. An. 759, November 1857. Buchanan, J.: " suit instituted by the children . . of Nathan Maples, deceased, to set aside sales, made by [him] . . of the defendants . . to . . Jenny Broxton, their mother, . . the plaintiffs moreover pray that the emancipation of . . Jenny . . and of her husband, Phillip Broxton, made many years before the sales . . be also revoked . . The question of the validity of the emancipation . . cannot be considered by us. . . Both . . were dead at the time of the institution of the suit; . . Mitty and her child . . [were sold in] 1831; . . [760] a witness . . testifies that . . [they were worth from $800 to $1000.] . . Nathan Maples . . possessed, at the time of his death [in 1841], . . property to the amount of [$3,128.] . . the value of Mitty and her child did not equal the disposable portion . . plaintiffs cannot revoke the sale . . As to the sale of Sarah and her [three] children [in 1840] . . The consideration . . was ' eight hundred dollars, all cash ' . . On the same day . . Jenny Broxton, made a sale to Mrs. . . Nathan Maples . . of two lots . . for [$800] . . cash . . they . . originally cost Jenny only [$120] . . subsequently adjudicated . . for [$100.] . . But these variations . . do not avail to make out the case of plaintiffs."

*Girod v. Belknap,* 12 La. An. 791, December 1857. " suit for the rescission of the sale of a slave . . afflicted with stricture of the rectum . . plaintiff . . caused, under the advice of physicians, a surgical operation to be performed, . . a perfect cure cannot be attained. . . [792] incapable of rendering any services . . a previous owner . . sold her to . . Kendig, the vendor to defendant, and only warranted her in title;" Judgment for plaintiff affirmed.

*State v. Kitty (a slave),* 12 La. An. 805, December 1857. [808] " Kitty was tried before the Judge of the First District Court of New Orleans and a jury of six slaveholders, pursuant to the Act of March 9th, 1855, . . two counts, one for administering poison to . . Smelzer, and the other for the murder . . [809] ' witness said: " the accused came to my yard . . she said she came . . because . . I was the friend of her master; she said that she had been hand-cuffed; she had the manacles on her hands; that she was afraid she was going to be carried . . to Texas. . . [810] she said, . . ' I have something to reveal . . about Mr. Smelzer's death. He was a poisoned man.' . . I . . said . . ' she must now tell all . . that it would be better for her ' " . . the court refused ' ' to instruct the jury to disregard the confessions ' " [808] " The prisoner was [on March 14, 1857] found ' guilty without capital punishment,' . . sentenced to hard labor in the penitentiary for life "

Affirmed: [809] " The first count . . could not now . . sustain a judgment of conviction." " the law of March 19, 1857, ' relative to slaves,' . . repeals all laws on the same subject-matter . . the offences of slaves, specially made such by statutes relative to slaves alone, . . But the second count contains a formal charge of murder. And the Act of March 14th,

1855, . . declares, that '*whoever* shall commit . . murder, on conviction thereof, shall suffer death.' . . 'whoever' comprehends slaves" The circumstances were [810] "sufficient to justify the refusal . . to instruct . . to disregard entirely the confessions" [Spofford, J.] Buchanan, J., concurred. Cole, J., and Merrick, C. J., dissented: [811] "the Act of [March 9,] 1855 . . under which the prisoner was tried, has been repealed" by the act of March 19, 1857. Merrick, C. J.: [813] "The first section of the Act of [March 14,] 1855, relative to crimes and offences, is . . [also] repealed, so far as it affects slaves,"

*Marciacq v. Steamer, Captain, and Owners,* 13 La. An. 27, January 1858. [28] "Jacko was absent (runaway) . . from the last of January until . . September . . all of which time . . employed on board the steamboat [as understeward] . . at $20 per month, . . paid to himself." [27] "had a pass . . filed amongst the ship's papers; but . . cannot be found, . . plaintiff was offering a reward in the newspapers . . When he was found on board . . by persons sent by plaintiff, the slave had no written permission . . [29] evidence . . appears sufficient to establish that Captain . . did not receive the boy . . with intent to deprive his owner"[1] [28] "The defendants are liable . . for [$140] . . wages"

*Succession of Fletcher (f. m. c.),* 13 La. An. 29, January 1858. See same, p. 642, *supra.* "the State . . assigned its rights . . to . . Aspasie and Catiche Bohan, free women of color, . . by a legislative Act, approved March 19th, 1857. (Sess. Acts, 202). . . [They] obtained an order of appeal from . . judgment of the 14th January previous, sustaining the opposition ['to the amount of $5141 24'] of Duquesnay . . [31] successor in office of the Rev'd Curé Maenhaut." [30] "founded upon the allegation that . . Fletcher was accountable . . for the rents of certain real estate . . as . . executor of the Widow Bernard Couvent, from . . 1837, to . . 1847. . . In her . . will, the Widow Couvent, f. w. c., left . . bequest: . . 'que mon terrain . . soit . . employé à l'établissement d'une école gratuite pour les orphelins de couleur du faubourg Marigny. . . sous la surveillance du révérend Père Maenhaut, et . . de ses successeurs en office. Mes dettes et mes legs . . payés, dans le cas qu'il resterait quelque chose, je . . institu . . Fletcher ['previously appointed executor . . *with seizin* of her property'], mon légataire universel, pour par lui en disposer . . [31] suivant les instructions que je lui donnerai de vive voix.' . . [She] died . . 1837. . . In April [1847] . . a number of free colored persons formed themselves into a voluntary corporation . . 'La Société Catholique pour l'instruction des Orphelais [*sic*] dans l'indigence.' . . May following, by an authentic act, to which . . Fletcher was a party, Maenhaut ceded to this society the property . . bequeathed . . No judicial demand was made . . for an account of . . rents ['from the death of the testatrix up to the date of the cession'], until . . 1856, . . nearly three years after . . [Fletcher's] death."

Judgment, [32] "so far as it respects the opposition of . . Duquesnay . . reversed, and . . opposition . . dismissed, the said opponent paying

[1] Act of Mar. 25, 1840. Acts, p. 87.

the costs thereof in the District Court, and the costs of this appeal." [31] "the will gives [Duquesnay] . . no right of action for those rents."

*Nolasco v. Lurty,* 12 La. An. 100, February 1858. [101] "Nolasco died testate, bequeathing to . . his [three] acknowledged natural children, born of Ellen Wooten,[1] a free woman of color, . . $1,000, and [one half] the residue of his estate . . to his brother, James . . James . . also died testate, bequeathing one-half of his estate . . to . . [said] children . . [Two] died at the age of minority without issue," Held: "Ellen Wooten inherited both [of their] estates"

*McClure v. King,* 13 La. An. 141, March 1858. "undertook to build ten double negro quarters . . for . . $5000"

*New Orleans v. Baltimore,* 13 La. An. 162, March 1858. See State *v.* Executors of McDonogh, p. 629, *supra.* [165] "experts . . reported the present value of the [legacy] . . to the American Colonization Society . . at $84,230 27, . . and the court decreed, that on the payment . . said [annuity or legacy] . . be extinguished." Affirmed: [163] "the Legislature has so far assimilated bequests of this character to usufructs, as to limit their duration to thirty years from the testator's death."

*Delphine (f. w. c.) v. Mrs. Guillet et al.,* 13 La. An. 248, April 1858. See same *v.* same, p. 644, *supra.* "Upon the new trial there was again a verdict . . that the plaintiff was 'entitled to her freedom as soon as practicable,' and a judgment was rendered . . February, 1857, decreeing that 'the defendants proceed without delay to emancipate . . under the law of this State,' . . Thereupon a suspensive appeal was taken by the defendants."

Judgment reversed and plaintiff's petition "dismissed, as in case of nonsuit, she paying costs in the District Court, and the costs of this appeal." "The judgment was probably correct, at the date of its rendition. . . Since then the Act of March 6, 1857 . . has been passed, declaring that . . after the passage . . no slave shall be emancipated *in this State.* . . It is now impossible to affirm . . If the law should be changed, her remedy might be revived." [Spofford, J.]

*Dickason v. Bell,* 13 La. An. 249, April 1858. "May, 1853, sold at public auction to . . Richardson, a negro man for $1265 and a negro woman and child for $1325. The one-third . . was paid in cash, . . April, 1854, Richardson brought an action of redhibition to rescind the sale of the negro man," [12 *id.* 296] "The testimony . . established . . that the slave died of a redhibitory disease, which existed prior to the sale, to the knowledge of the defendant." Judgment for plaintiff affirmed.

*Clague et al. v. New Orleans,* 13 La. An. 275, May 1858. "plaintiffs' slave was put into the police jail . . *for safe keeping,* in the summer of 1855; . . in October, 1856, plaintiffs demanded delivery . . answered by the jailor, that the slave had runaway from the custody of the driver, while out at work in the chain-gang, . . August preceding," Suit dis-

[1] See E. Wooten *v.* Harrison, p. 633, *supra.*

missed. Reversed and the cause remanded: " timely notice " should have been given.

*Nesom v. D'Armond,* 13 La. An. 294, May 1858. " At a probate sale . . 1836, . . Nesom became the purchaser of . . Julia and her child [for $1800,] . . payable in three . . annual installments,"

*State v. Oscar (a slave),* 13 La. An. 297, May 1858. " Convicted and sentenced for a capital offence . . a single bill of exceptions . . On the day fixed for his trial, of which his master had previous notice, the prisoner appeared by counsel, and objected to going to trial, contending that the case should go on only as a preliminary examination." Held: " no error in overruling the objection." [1]

*Alexander v. Hundley,* 13 La. An. 327, May 1858. Buchanan, J.: " the disease of which . . Lewis is proved to have died (chronic diarrhoea), does not come within the definition of apparent defects contained in . . Article [2497 C.C.] . . The boy was apparently ill at the time of the sale; but no declaration is proved to have been made by defendant . . in relation to the nature . . which might have exonerated [him] . . from liability to restore the price, under Article 2498."

*Harper v. Price,* 13 La. An. 340, June 1858. In 1850 Kinney sold a mulatto boy, aged about twelve, for $600 " cash paid."

*Landry v. Klopman,* 13 La. An. 345, June 1858. " the slave . . ran away from plaintiff's plantation in May, 1854. . . July . . committed to jail in Vicksburg . . as a runaway . . advertised for six months . . and not being called for . . he was then advertised for sale for thirty days and sold [in March 1855] to Mizel, a dealer in slaves, for $809. The purchaser brought the slave to New Orleans and sold him to . . Klopman, for $1100, on the 20th of March, 1855, and this suit was brought on the 27th " Judgment for plaintiff.

Reversed: [349] " the judgment . . should have been in favor of defendant, and the plaintiff left to obtain the proceeds of the sale to his credit in . . Mississippi. . . and . . pay the costs of both courts." [345] " The question was before the court in 1848,[2] when the court was equally divided . . But . . a single decision is not . . conclusive . . [346] the Article of the [U. S.] Constitution [3] is not to be taken literally " " cannot . . be applied to controversies arising between two persons claiming the ownership . . depending upon the laws of different States although the slave was a fugitive from labor; for the slave is not discharged from labor . . but the right to his . . labor is the subject-matter of a controversy . . If we hold the contrary . . a slave, the moment he becomes a fugitive, acquires a sacred character under the Constitution and is above the laws and *extra commercium.* . . the provisions of law which are common to . . nearly all, of the slave States on the subject of arrest of fugitive slaves partake of a two-fold character, the one being a matter of

[1] Act " relative to slaves," approved Mar. 19, 1857.
[2] Oates *v.* Caffin, p. 589, *supra.*
[3] Art. 4, sect. 2.

police essential . . against the depredations of this class . . the other, a municipal regulation . . for the protection of the owner . . they are no violations of the [U. S.] Constitution . . and if not essential to the existence of the institution of slavery itself, still of the last importance to the internal peace and quiet of these States. . . [348] After a bona fide effort . . to find the owner, . . the State may presume that the owner prefers to abandon the slave" [Merrick, C. J.] [349] "Spofford, J., took no part in the decision of this cause."

*Louisa Marshall v. Mrs. Charles Watrigant et al.,* 13 La. An. 619, June 1858. [621] "the plaintiff was born about . . 1822 the slave of George Belcher, of . . Kentucky; . . [he] died in 1824, leaving a will . . that the plaintiff was to have her freedom at the age of thirty; . . when she was about thirteen . . she was removed to . . Missouri, by . . Wood, who had married . . [Belcher's] grand-daughter, . . probably the legatee of Louisa, . . she was subsequently removed to New Orleans, . . sold as a slave for life, . . passed through several hands, . . finally purchased by . . Mrs. Watrigant, in good faith . . 1854. Not long after . . 'She fled . . to . . Kentucky,' where she instituted suit . . obtained a judgment decreeing her to be free, and awarding her execution against the defendants, for costs, although . . [not] notified of the proceedings . . She then returned to Louisiana, armed with her Kentucky judgment." [620] "brings suit for her freedom . . and calls upon the court for a writ of sequestration, and causes herself to be placed in the . . custody of the Sheriff." She appeared "before a magistrate, two months afterwards, to make an affidavit for the purpose of obtaining a commission to take the testimony of witnesses residing out of the State. . . [621] The judgment of the lower court was in favor of the plaintiff; . . The defendant . . appealed." There were two motions to dismiss the appeal. "ordered . . that the rule [taken to dismiss] be dismissed, at the costs of the mover." "As . . [plaintiff] has removed from the jurisdiction of the court [to the town of Franklin] in violation of law, appellant is not obliged to search for her beyond that pale, and service upon her counsel must be considered . . good"

Judgment on the merits reversed, and "ordered . . that there be judgment in favor of the defendant, as in case of nonsuit, the plaintiff paying the costs of both courts." [622] "when Woods [*sic*] removed with her to Missouri, that became her domicil. When he . . removed her to Louisiana, . . Louisiana became her domicil; . . The decree of the [Kentucky] court . . could not then bind the defendants, . . [623] [The act of 1857] is a bar . . to her emancipation." [Merrick, C. J.] Spofford, J., dissented: "This is not the suit of a slave to procure an emancipation; it is a suit brought by a person alleging herself . . free . . but tortiously restrained . . [624] The wrongful act of a usurper in . . selling her as a slave for life, could not destroy her vested rights."

*Lusk v. Church,* 13 La. An. 360, June 1858. "The plaintiff purchased of . . Dougherty, in June, 1846, . . Dennis, who had been purchased by Dougherty in March, 1846, from the defendant. . . the seller, besides his

own warranty, assigned . . all his rights . . of warranty against the defendant. The slave ran away in . . 1847;[1] and plaintiff . . seeks to recover his value . . upon the warranty of title; . . alleging . . that . . Dennis was free. . . No fraudulent practice is charged upon the defendant. . . Dennis himself has never claimed his freedom in any legal proceeding."

Judgment in favor of defendant, as in case of nonsuit: [361] "the present suit . . is an action for freedom of a slave, instituted . . by . . purchaser . . the state of facts . . is identical with that . . of Louisa Marshall *v.* Watrigant [*supra*], . . upon which we held that, in the present legislation of the State, an action could not be maintained for freedom." [Buchanan, J.] "Spofford, J., took no part in this case."

*State v. Whetstone,* 13 La. An. 376, July 1858. "the defendant owns two tracts . . separated . . by a forty acre lot . . house is on one . . and his principal negro quarters and gin on the other, . . he works fifteen or twenty hands, . . all . . getting their daily rations at the house; . . he has about 200 acres . . in corn and cotton at the house place, and about 180 acres at the other; . . no white or free colored person slept at the quarter on the other place, although the overseer was usually there until after dark, and before day in the morning." "judgment condemning him to pay the State . . fifty dollars per month for sixteen months, during which he is alleged to have violated the 18th section of the Act of 7th June, 1806, (Sess. Acts, p. 209,)" Reversed, and judgment for defendant: "His two tracts . . are cultivated *as one plantation,*"

*Ford v. Simmons,* 13 La. An. 397, July 1858. "suit . . to recover . . the value of . . Lewis, hired to [defendant,] . . on the ground that the slave was illegally and by violence killed on the premises of defendant who refuses to account for his death, and to pay the petitioner his value. . . 'the defendant for answer denies all . . and especially . . the ownership of . . Dennis, charged with killing' . . judgment in favor of plaintiff" Affirmed: [398] "defendant . . was obligated . . to explain"

*Jones v. State,* 13 La. An. 406, July 1858. [Merrick, C. J.]: "suit . . instituted under the Act of 15th March, 1855, relative to slaves and free people of color, . . to procure the emancipation of . . Maria" [407] "with leave to remain in the State." [406] "judgment in favor of the emancipation, the State has appealed. . . The slave . . has so far intervened . . as to file a brief by counsel, and a motion to dismiss the appeal, on the ground that the State is without interest, . . Maria does not appear to have any *legal interest* in the suit. The proceedings instituted by her master appear to have been conducted gratuitously on his part, . . Her motion . . cannot be considered. . . the statute was decided . . unconstitutional,[2] and . . the Legislature has . . declared that slaves shall no longer be emancipated in Louisiana.[3] . . judgment in favor of the defendant."

[1] See Lusk *v.* Swon, p. 633, *supra.*
[2] State *v.* Harrison, p. 649, *supra.*
[3] Acts 1857, pp. 55, 229.

*Chaffe v. Steamboat and Owners,* 13 La. An. 415, July 1858. " Plaintiff alleges that . . Dave, left [Shreveport] . . was seen . . in . . New Orleans, carrying boxes, etc., on . . boat " " The plaintiff recovered the slave during the pendency of the suit " Held: [416] " The proof is sufficient to entitle the plaintiff to recover . . $78 90, the value . . while absent and the costs of his recovery."

*Wilkins v. Bobo,* 13 La. An. 430, July 1858. " executions issued . . Wilkins, the surety, pointed out . . Edy, worth over eight hundred dollars, belonging to Daniels, upon which the Sheriff, Bobo . . undertook . . to levy. . . [His deputies] followed her from the field . . into the house . . when Daniels . . menaced them with violence . . they desisted . . Immediately thereafter, Daniels ran the slave . . out of the State and sold her." Judgment for plaintiff for $728.10.

*Boulard v. Calhoun,* 13 La. An. 446, August 1858. " action sounding in damages for a tort committed by defendant's slaves. The petition charges, that by the . . procurement of the defendant, certain white men, . . together with about twenty-nine slaves, all belonging to defendant, . . in the night . . ejected her . . removed her stock of goods, . . which, . . with [her] . . person . . [they] placed in a flatboat . . adrift in the Red River. . . did set fire to plaintiff's house, . . The plaintiff lays her damages at twenty thousand dollars. . . The evidence shows that plaintiff resided . . in a shanty . . of the meanest description . . The defendant is a planter, having four cotton plantations . . on the opposite side of the Red River . . Although . . [he] resided on one . . they were all under the superintendence of a general manager, Mr. Benjamin; and each . . was provided with a separate overseer. . . Dr. Murray, a planter, living immediately contiguous . . and Mr. Benjamin . . determined to remove the plaintiff . . The parties present and aiding . . were . . Dr. Murray, Johnson and Swim, two of the defendant's overseers, and . . a herdsman . . in . . [his] employ . . The two overseers brought . . by [Benjamin's] directions . . a force of ten each of the slaves . . under their charge, to do the laboring work of the removal . . the defendant was not present . . distinctly refused to give . . his sanction, . . [447] said . . that he had prosecuted her in Natchitoches, and would probably get her off in that way. . . ' but did not peremptorily forbid any others from proceeding ' . . [448] fifteen days after this event, the plaintiff was re-established at her old stand," " None . . estimate the actual loss . . at more than one thousand dollars;" [446] " The case has been before two juries. The first time there was a mis-trial; and the second jury has returned a verdict of five thousand dollars; from which defendant appeals. . . [448] bill of exceptions . . to the refusal of the district court to permit . . in mitigation of damages, proof of the nature . . of the business carried on by the plaintiff; . . chiefly of illegal trafficking with slaves . . habitually and notoriously "

" decreed, that the judgment . . be reversed, and that the plaintiff recover . . one thousand dollars, with costs of the court below;" " The mischiefs to our agricultural population, arising from shops . . where whiskey is furnished to slaves in exchange for articles pilfered from

their masters, have been frequently the object of legislative attention. . . The nature of the traffic, almost exclusively nocturnal, with parties incompetent as witnesses, makes it peculiarly hard of detection. . . this excluded testimony . . should have been admitted" [Buchanan, J.]

*Mackie v. Davis,* 13 La. An. 475, August 1858. "a physician . . says, that 'it could not be ascertained from the appearance after death' (there was an autopsy) 'whether the death was caused by a rupture produced by sudden exertion, or from the natural course of the disease of aneurism.'" Judgment for vendor sustained.

*Laparouse v. Rice,* 13 La. An. 567, August 1858. "suit to recover the value of . . slave . . [568] in the habit of running away. . . defendant is a planter and slave-holder, and lives" "about 45 or 50 miles distant from the [plaintiff.] . . defendant and . . Merriman were hunting for some runaway negroes. Merriman testifies thus: 'When we came across this boy he was in a thick palmetto swamp—he had a camp; there was a large quantity of provisions there. He ran, but picked up a belt, before running, to which was attached a scabbard. I ordered him to stop three times . . not more than twenty or twenty-five steps from him. So did defendant order him to stop. We were both afoot and had no dogs. If he had gone ten feet further he would have been out of sight. He was shot in the butt.' The left arm . . was also struck . . and broken."

Held: "the defendant is . . justified by the law.[1] . . the policy of the law, humanity, and a just regard to the interests of slave-holders require that the gun should not be aimed at him; but . . discharged for the purpose of inducing him to stop. When this is ineffectual . . the pursuer ought not to try to give him a mortal wound, . . If, however, the slave be killed, the homicide is a consequence of the permission to fire upon him."[2] [Cole, J.]

*State v. White and Ward,* 13 La. An. 573, August 1858. "The defendants were indicted for inflicting inhuman and cruel treatment on a slave, the property of one of them" "A fine of $400 was imposed upon . . White,"

Judgment affirmed: "the offence charged . . was not repealed by the Act of 1855 . . (Acts 1855, p. 131,) nor by the Act . . of 1857, p. 229. No section in either . . treats of the subject-matter of the sections No. 16 and 17 of sec. 41 of the Act of 1806,"[3]

*Julienne (f. w. c.) v. Touriac,* 13 La. An. 599, August 1858. "brought . . suit . . April, 1857, for her freedom and that of her children. She avers, that . . 1837, her former mistress, Mrs. Cydalise . . Thompson, sold her to the defendant's ancestor upon condition . . 'que la . . veuve Don Louis Touriac donnera la liberté à la . . négritte Julienne, sitôt que faire se pourra.'" The condition was not fulfilled.

[1] [567] "The Act of 1855 . . having been declared unconstitutional; and the Act of 1857 . . not having been in force at the time of the killing . . the decision . . must depend upon the effect of the Act of 1806." B. and C. 49.

[2] Duperrier *v.* Dautrive, p. 648, *supra.*

[3] B. and C. 61.

"Judgment against the plaintiff's claim, as in a case of nonsuit," "The Act of March 6th, 1857 . . is a bar to the action. . . If it should hereafter become possible, the plaintiff will have a remedy." See *infra.*

*Cydalise Thompson v. Touriac,* 13 La. An. 605, August 1858. Spofford, J.: "The day after Julienne brought . . suit [*supra*] . . Mrs. Thompson instituted the present action against the . . heirs of . . widow . . Touriac, to dissolve the sale made . . 1837. . . The sale was made for $600. . . The performance of the condition was not limited to any specific time. . . [606] it is urged that there *was* . . eight months between the time when Julienne attained . . thirty and the passage of the Act of March 6th, 1857, . . But they were not put in default. The plaintiff neither demanded a specific performance nor a dissolution, . . Nor is it proved that a specific performance was possible . . Act [of March 15, 1855] having been declared void, the Act of March 18th, 1852, p. 214, must be considered . . in force. . . it does not appear that . . Julienne was willing, or that . . Cydalise Thompson, desired that she and her children should be banished to Liberia; . . [607] as we cannot say that it never will be possible at a future day for [defendants] . . to give Julienne her liberty, the plaintiff has no ground at present for demanding a resolution of the sale. . . if it should become legally possible hereafter . . they would be bound under their contract, . . judgment . . against the plaintiff, as in a case of nonsuit,"

*State v. Thompson and Baer,* 13 La. An. 515, November 1858. "indicted under the third section of the Act of 6th March, 1819. . . the first [count] charges the defendants with having inveigled, . . stolen and carried away . . John; and the second . . with having aided said slave in running away . . Thompson was found guilty of the first, and acquitted of the second . . Baer was acquitted of the first, and found guilty of the second. . . both sentenced to five years imprisonment, at hard labor," Baer appealed.

Affirmed: [516] "one may steal a slave and at the same time may aid him in departing . . When a slave is stolen he is not always carried away by force, perhaps, as a general rule, the slave is induced to run away under the promise of liberty in a free State, whilst the real object of the criminal is to induce him to leave, so that he may sell him."

*State v. Henderson (a slave),* 13 La. An. 489, December 1858. Merrick, C. J.: [493] "the accused was charged with . . having, . . January, 1857, . . stabbed his master . . with a large pocket knife . . inflicting several . . dangerous wounds . . with the intent to kill . . convicted and sentenced . . March . . 1857." [489] "He has appealed; but the transcript of appeal was filed by the District Attorney. . . it is suggested that there are no bills of exception and no assignments of error, and that the accused has not appeared by counsel, and, therefore, it must be inferred that he has abandoned the appeal. This by no means follows. It is possible that the accused, shut up in prison, . . does look to this court to see that his life shall not be forfeited except upon sufficient ground, . . [494] The forty-third section of the Act approved 19th of March, 1857,

has repealed the offence . . There being no saving clause, it operates a general pardon to the accused, and he is entitled to the benefit of the statute, although passed subsequent to his conviction."

*Summers v. Insurance Co.,* 13 La. An. 504, December 1858. "suit . . brought . . to recover the amount insured, on one of three slaves . . as laborers in a tobacco warehouse, . . the policy declares that they are not to be employed in a more hazardous occupation. . . could not be taken to more southern localities." "at Lobdell's landing [north of New Orleans], whilst walking on the plank from the steamer . . to the shore . . [505] a strong wind . . caused . . him to lose his balance" [504] "he was . . being sent by plaintiff to be employed upon a sugar plantation, which defendant avers is a more dangerous occupation" Judgment for plaintiff affirmed: "the slave was not lost while working thereupon."

*Wright v. Railey,* 13 La. An. 536, December 1858. "suit . . upon a . . note . . [537] The defence . . is . . that the consideration . . has failed, . . slave having been sold [in 1857 for $1318.50] as a cook, and being affected with . . drunkenness and inflammatory rheumatism . . with epilepsy and addicted to theft."

*Pope v. Anderson,* 13 La. An. 538, December 1858. Long of Tennessee sold [544] "Absolom [*sic*], aged about fourteen, of a copper color, or griffe," for $350 cash.

*Jamison v. Bridge,* 14 La. An. 31, January 1859. "Petitioner avers . . that in 1855 Berry died, leaving an olographic will, . . donated to petitioner his freedom;" Nonsuit, "for the plaintiff may hereafter have a right of action for his freedom . . in the event of a change of the law" [1]

*McCutcheon v. Angelo,* 14 La. An. 34, January 1859. "The plaintiff is the owner of a . . slave, whose eyesight was utterly destroyed by shot fired . . by the defendant. . . [35] seeing some one going from his chicken-house, he called three times . . to stop, which not being done, he fired; . . Judgment in favor of plaintiff for $1500," Affirmed: "the proof does not enable us to say that . . [defendant] was a freeholder," [2]

*Brown (f. w. c.) v. Raby,* 14 La. An. 41, January 1859. "defendant . . of Mississippi . . came to New Orleans with plaintiff in his possession, and a short time afterwards he was obliged to leave . . without [her] . . she having run away." "lodged in jail as a runaway . . she presented a petition, averring that she was purchased from . . her former mistress, by . . Walden, . . of Mobile, with the special condition of emancipating her; that she . . is entitled to be emancipated; that . . [he] will emancipate her, as soon as he will come . . prays for a writ of sequestration . . she was sequestered. . . The suit was dismissed" Affirmed: "she . . ought to resort to the courts of Mississippi,"

*Roquest v. Boutin,* 14 La. An. 44, January 1859. "action of redhibition . . to annul a sale of a female slave sold . . to plaintiff for $1000, and alleged to be afflicted with an incurable disease of a scrofulous

[1] Sess. Acts of 1857, p. 55.
[2] Rev. St. 59, sect. 71.

character, and addicted to drink. The slave was sold in March, and no physician was called until August, although . . witnesses swear the slave had a swollen foot and leg immediately after the sale. . . one [physician] called . . in August, calls it ' Edême,' (an edemetous tumor). One of the two called . . in November, terms the disease ' Elephantiasis,' and says it is incurable. The other says it was a tertiary syphilis, and if it had been attended to three or four months previously, he presumes . . might have been cured long ago. . . the plaintiff had several conversations with a broker . . previous to August, in regard to . . sale, giving as a reason that his family was about to move away, and fixing her price at $1200; . . no mention of her being sickly, . . finally . . changed his mind . . judgment . . in favor of the defendant."

Affirmed: "If it be even conceded that the disease, as a syphilitic tumor, lessens her value one half, still . . he did not procure . . medical assistance which . . her situation required, until four months after the sale."

*Kessee v. Mayfield and Cage,* 14 La. An. 90, February 1859. "proved that the instructions of defendants to plaintiff, as their overseer [in 1856 on a sugar plantation], were, that he was not to chastise the slaves himself; but, in case they merited chastisement, that the same was to be inflicted by the driver, with the assistance, if necessary, of other slaves, under the direction of the overseer; that all personal collision between the overseer and the slaves . . was strictly prohibited. . . proved, that the plaintiff told witnesses that he would not obey . . and that he actually flogged slaves with his own hand." Held: "a sufficient cause for his discharge."

*George v. Demouy,* 14 La. An. 145, March 1859. "The plaintiff sues to recover his freedom. Since bringing the suit he has become a fugitive . . Leon George, the plaintiff, and his mother were the slaves of . . Richard.[1] . . In 1834 . . Richard desired to place the plaintiff under the charge of [Mrs. Willis] the wife of the overseer of Benjamin Poydras, the plaintiff . . being about twelve months old, the reason given was the bad behavior of the mother . . Richard died the next day of the cholera, and the child, with a servant to take care of him, was sent to the house of the overseer by Poydras. . . Poydras acted for the heirs (who resided in France) . . In 1838 he sold the mother . . and her other children to the defendant . . Leon George . . was expressly exempted from sale, though then but about five"[2] [147] "condition sans laquelle la présente vente . . serait . . annullée si les . . acquéreurs venaient à l'exiger. . . [In 1843] defendant, who is the god-father of plaintiff, asked Mrs. Willis to send plaintiff to see his mother . . [148] saying that he desired to make him some presents, and that he would not keep him but a week. . . kept him at his house up to about the time of the institution of this suit in 1857." [145] "much testimony . . that . . Richard and

[1] Purchaser of the share of one of Julien Poydras's legatees. 2 Rob. La. 1 (6).

[2] "Every person is expressly prohibited from selling separately from their mothers, the children who shall not have attained the full age of ten years." Act of 1806. Rev. St. 523.

his heirs intended that Leon George should be free, and some conversations are testified to in which the defendant promised to procure the freedom . . and one or two in which he said he was free. . . shown by [other] witnesses . . that defendant treated Leon George as he did his other slaves." Judgment in favor of plaintiff.

[146] " decreed . . that the judgment . . be . . reversed, and that there be judgment . . in favor of the defendant, and that the plaintiff pay the costs of both courts." " the plaintiff had [not] acquired the *status* of a free person of color prior to the promulgation of the Act of 1857," Cole, J., dissented.

*Pauline (f. w. c.) v. Hubert,* 14 La. An. 161, March 1859. " The plaintiff and her mother, Arsène, were the slaves of . . Bourgeat. Arsène contracted, in 1850 or 1851, with [him] . . for the emancipation of herself and Pauline. The condition (it seems) being the payment of $1,500. Arsène . . paid $600, . . and received an act of emancipation for herself alone. . . [In 1852] a friend advanced [$900] . . In the mean time Pauline, had given birth to . . Julie, . . Bourgeat insisted on [$100] . . more as the price of Julie. This was paid, also, . . Bourgeat passed the act of emancipation of Pauline. Mention of the child was omitted . . After the death of . . Bourgeat, Julie was inventoried as the property of his succession, and an order obtained for her sale. This suit is brought . . to restrain [the administrator and the auctioneer] . . from selling, and to have the freedom of Julie recognized."

[163] " decreed . . that the injunction granted . . be perpetuated; that . . Julie be delivered to the plaintiff," " The judgment of the lower court . . so far as it decrees the freedom of Julie, must be reversed;" [162] " Julie has never been emancipated . . [163] the child of the *statu libera,* like the *statu libera* herself could only become free by the consent of the public authorities." [Merrick, C. J.] Cole, J., dissented: " Article 196 of the Civil Code . . plainly declares, that at the moment the mother is entitled to be enfranchised, the child becomes free. . . no ratification . . by a court of justice is necessary. . . If my interpretation . . be incorrect . . Why . . should slaves [' vested with the same right of contracting as to their emancipation [C.C. 174], as freemen are as to any other species of contract '] be deprived of the benefit of Article 105 of the Constitution of 1852, which prohibits the passage of any law impairing the obligation of contracts, or the divestiture of vested rights. . . [164] it becomes a serious question as to the power of the State to practically annul [by the act of 1857] . . the anterior contract."

*Underwood v. Lacapère,* 14 La. An. 276, April 1859. " the boy . . six weeks old . . was sold . . with his mother . . for [$800.] . . the child . . really diminished the then value of the mother. . . Between four and five years afterwards, . . the boy . . and his mother [were sold] . . [277] for one thousand dollars. At this time, the boy is estimated to have been worth [$250] . . and the mother [$750.] "

*Succession of Woodruff,* 14 La. An. 295, April 1859. " Baker Woodruff died . . May, 1857, leaving . . will . . dated . . 1855. . . ' As soon as

possible after my decease, I wish all my negroes freed that I will name ['a large number'] . . and sent to Pennsylvania, and bread and meat found them for one year, all at the expense of my estate.' . . [296] executor applied for an order of court authorizing him to remove the slaves to . . Pennsylvania, to be there emancipated, . . rejected"

Affirmed: "the intention of the will was, they should be liberated in this State. The statute approved March 6th, 1857, prevents . . the sending . . to Pennsylvania, which was to be the consequence of their freedom, cannot then be effected." [Cole, J.]

*Logan (f. w. c.) v. Hickman,* 14 La. An. 300, April 1859. "The plaintiff sues . . for . . her freedom, and caused herself to be sequestered . . *without giving bond.* . . the defendant . . excepts . . having his domicil in the parish of Rapides . . not subject to the jurisdiction of this . . court [of New Orleans]; . . The exception was overruled, and the defendant took a rule to show cause why the writ of sequestration . . should not be set aside . . neither bond nor affidavit as required by law. The rule was discharged . . judgment for the plaintiff,"

[301] "decreed, that the judgment be reversed; the verdict . . be set aside, and . . suit be dismissed . . without prejudice to the plaintiff's right of action at the domicil of defendant." See Hickman *v.* Judge, p. 673, *infra.*

*McDermott v. Cannon,* 14 La. An. 313, April 1859. "The contract sought to be rescinded is the sale of a slave alleged to be affected with scrofula and addicted to running away. . . the merchants of the plaintiff, addressed a note to the defendant, . . that the negro was unsound and a runaway, and in jail . . at defendant's expense, . . delivered to a negro boy . . in front of the door" Held: "not sufficient proof of an offer to return"

*Dohan v. Wilson,* 14 La. An. 353, May 1859. "action . . to recover the price of two slaves . . The negro women were delivered . . 21st of January, 1854, to the plaintiff, and taken to his plantation in the Parish of Tensas, where they were received on the 23d, apparently in good health. On the 25th, they were employed in picking cotton, and on the 26th, . . taken violently ill with the cholera, and subsequently died. On the 30th, . . among the other negroes . . the first one attacked died the next day . . Eight or nine other cases . . followed, and the disease disappeared . . after the negroes had been made to abandon their houses, and disperse and encamp . . no cholera in the Parish . . since 1851," "The disease having made its appearance in fifteen days after the sale, is presumed to have existed on the day of sale, the slaves not having been eight months in the State.[1] . . defendant has attempted to rebut by proving . . that they walked the day of sale a mile to the steamboat landing . . in fine spirits . . no cholera in the slaveyard of defendant from the 28th November, 1853, to the 28th February, 1854; . . defendant's physician, who visited the establishment almost every day, . . will not . . state ['positively'] as to January," Held: [355] "the loss must fall upon defendant"

[1] B. and C. 792.

*Vienne v. Harris,* 14 La. An. 382, May 1859. "January, 1857, the plaintiff purchased . . a negro man [for $1000] . . in cash. . . [383] hired the slave to . . master of the steamboat . . at the rate of thirty dollars per month"

*State v. Jack (a slave),* 14 La. An. 385, May 1859. "prosecuted for the murder of the slave Joe, was found guilty of manslaughter by the jury, who . . decreed his punishment by five years imprisonment with hard labor, and the infliction of the whip at stated periods during the incarceration. The verdict . . was set aside, and judgment arrested by the District Judge, on the ground that a slave cannot . . be found guilty . . of manslaughter, and because the commutation of punishment . . apart from the cruelty of the substituted penalty, is unwarranted in law." [386] "decreed . . that the verdict . . be reinstated, and that the District Judge pass sentence in accordance" [I.] [385] "the 11th section of the Act of 1806 . . embraced every species of criminal homicide known at common law. . . [II.] [386] we think, that the infliction of both [punishments] . . was a lesser punishment [1] in comparison with the death penalty,"

*Lewis v. Morgan,* 14 La. An. 401, May 1859. [403] "the defendant . . a practicing physician [sold two women slaves to plaintiff] . . carried . . [one] in a carriage to the house of the plaintiff . . six miles . . represented her a strong, healthy, field hand, capable of doing as much work as a negro man belonging to plaintiff, . . within three or four days after the delivery of the slave . . discovered . . afflicted with some disease, and a physician was called . . the disease proved to be . . *procedentia uteri,* and is of a character to render the slave utterly valueless." Both slaves died of pulmonary consumption. [401] "no tender appears to have been made, . . [403] judgment for defendant, as in case of nonsuit,"

*Gaiennie v. Freret,* 14 La. An. 488, May 1859. Merrick, C. J.: "action . . to rescind . . and recover back the price . . The negress was sold to the plaintiff on the third day of February . . and immediately removed to the parish of Natchitoches . . About the 15th or 20th . . plaintiff . . discovered [her] . . unsound. . . it is but reasonable to suppose that it was not without delay and reluctance that . . [489] [she] communicated to her new master, a disease [[488] 'ulceration of the uterus'] which she had carefully concealed from her former one." [488] "A physician . . visited her four times. . . advised she should be returned" "the defendant verbally consented . . was notified of her arrival . . had her treated at the hospital by skillful physicians, but . . the slave died." Judgment for plaintiff affirmed.

*Poree v. Captain Cannon et al.,* 14 La. An. 501, May 1859. "suit . . to recover . . damages for the loss of a slave killed by the . . explosion of the steamboat *Louisiana,* in . . 1849. . . The negro was . . employed at the scales of another steamboat, about thirty feet distant, weighing freight. He received an injury in his side, and his nostrils were filled with

[1] Acts of 1857, p. 233, sect. 35.

. . some substance carried by the steam. . . taken to the hospital . . died the next day." Judgment in favor of plaintiff for $900. Affirmed.

*Hickman v. Judge,* 14 La. An. 504, June 1859. See Logan *v.* Hickman, p. 671, *supra.* " the Judge of a District Court in New Orleans has granted an order of sequestration of a slave who intends to bring suit at the domicil of her master for her freedom—as a conservatory measure, to insure the jurisdiction of the court (that of Rapides,) in which the action is to be instituted." Writ of prohibition prayed for by Hickman, master of the slave, was refused: " Should the suit not be brought within a reasonable time, in Rapides, it will be the duty of the court in New Orleans to quash the sequestration."

*State v. Peter (a slave),* 14 La. An. 521, June 1859. Cole, J.: " tried and convicted, under the Act of 19th March, 1857, for attempting to commit a rape on the person of a free white female, . . sentenced to capital punishment. . . [522] The counsel for the accused asked the Justices to charge the jury, that the testimony of Samford . . should not be considered . . because he stated . . that the confessions . . were made in answers to questions put directly . . to Peter, . . handcuffed. . . The Justices . . refused . . on the ground that there was no law authorizing them to give any charges. . . The laws . . do not appear to contemplate that the presiding Justices of the Peace should charge . . [523] upon points of law, although, perhaps, it would not be illegal, if they thought proper . . The counsel of defendant offered to prove an alibi by . . the owners . . of . . Peter. . . objected to, on the ground of interest in the witnesses, . . excluded . . This testimony ought to have been admitted. . . subject to the credibility which the jury may attach to it." " The point at issue is not . . [the] value, but . . guilt . . decreed, that the . . judgment . . be . . reversed, and . . case be remanded "

*Bowman v. McKleroy,* 14 La. An. 587, June 1859. " the owner of fifty-eight slaves . . heavily mortgaged in . . Mississippi . . [in] the night . . 1855 . . without the knowledge . . of his creditors, placed all . . on a passing steamer, landed them . . on the Louisiana side . . at the plantation of his brother-in-law . . made a pretended sale . . to . . the overseer " Held: fraudulent.

*State v. Charles (a slave),* 14 La. An. 649, July 1859. " Charles was tried before a jury of two Justices of the Peace and ten slaveholders . . charged with having . . maliciously struck his overseer, a white man, . . so as to cause a shedding of blood . . [650] verdict . . ' We, the court and jury, . . acquit him of any capital offence, and from motives of policy and not from justice of the case, sentence him to receive one hundred and fifty-four lashes by the Sheriff, but not so as to break the skin . . on the first Monday of September, A. D. 1859.' "

[651] " decreed . . that Charles be discharged." [650] " As . . the jury acquitted the prisoner of an offence punishable with death, it had not the right to inflict corporal punishment." Sess. Acts, 1857, p. 232.

*Faulk v. Hough,* 14 La. An. 659, July 1859. " The plaintiff sues for the price of a slave . . sold . . with an exclusion of warranty. . . [660]

The defendant expects to prove . . the plaintiff's statement, that the slave had no other disease but chills, at the time of the sale; and . . that she died of the dropsy . . contracted previously"

*State v. Marion Fuller,* 14 La. An. 667, July 1859. "The indictment charges that the prisoner 'did . . incite . . aid, hire and counsel . . Robert Fuller [1] and . . Holmes . . to inveigle, steal and carry away'" a slave. Held: the act of 1819 (Acts, pp. 62, 63) was not repealed by the act of 1855.

*State v. Davis,* 14 La. An. 678, July 1859. "indicted . . for having . . made an assault upon a slave, by willfully shooting at him . . The motion to quash the indictment, was sustained,"

[679] "order . . set aside . . and the case . . remanded" "Slaves are treated in our law as property, and, also, as persons;" "The ninth section of the Act of 1855 [2] . . applies to an assault upon a slave or upon a free person." [Cole, J.]

*Price, Guardian, v. Executor,* 14 La. An. 697, July 1859. "Hyde . . left two wills, directing the manumission of . . Minnie and of her eight children, making them his universal legatees. The plaintiffs, as heirs-at-law . . claim . . on the ground that the legatees cannot be manumitted under our laws, and . . that the testator lived in concubinage with . . Minnie. The defendants set up the plea of . . prescription"

Held: "It is no objection to the slave's right to manumission . . that she was the concubine . . With regard to the children . . the petition does not allege that they were the natural children of the deceased; . . that [he] . . had stated, in conversation, that such was the case, . . [is] of no legal . . effect. . . At the time of the death of . . Hyde, it was lawful for him to emancipate . . their inchoate right of freedom was subject to be defeated by subsequent legislation, . . [698] Unless . . law [of 1857 [3]] he repealed . . the slaves . . cannot stand in court for any purpose. . . the question . . is one of State policy; and the mere lapse of five years since the probate . . could not have the effect to defeat the intervening provisions of the Act of 1857," [A. Voorhies, J.]

*McLean v. Fulford,* 14 La. An. 711, July 1859. "Plaintiff sold . . a slave, warranted sound in mind and body, in March, 1857, for eight hundred dollars, . . [712] This suit was instituted upon . . note . . a physician, who attended the slave for dysentery . . says, . . 'if she was not imbecile, she was not far removed from it.'"

Held: "the mental weakness . . is to be classed among those apparent defects which . . do not give rise to the action of redhibition." C. C. 2297.

*State v. Robert Fuller,* 14 La. An. 720, July 1859. See State *v.* Marion Fuller, *supra.* "The prisoner is charged with the offence of . . 'concealing . . a runaway slave . . knowing'" The sureties "ask the reversal of the judgment of forfeiture of the bond signed by them . . on the ground that

[1] See State *v.* Robert Fuller, *infra.*
[2] Acts of 1855, p. 131.
[3] Acts of 1857, p. 55.

there is no offence charged" Affirmed: "The statute punishing the offence [1] . . is not repealed by the Act of 1855,"

*Dyson v. Phelps,* 14 La. An. 722, July 1859. "1850 . . Vanhook . . conveyed to . . Green . . Vina and her two children, for . . $980; . . surety . . transferred . . 1852 . . Vina and her four children, to . . Phelps, for . . $1,150."

*Satterfield v. Keller,* 14 La. An. 606, August 1859. "obligate themselves [in 1858] to sell . . eighty-three head of slaves (names omitted);"

*Gardiner v. Thibodeau,* 14 La. An. 732, August 1859. [733] "Simms . . asked defendant who had killed the negro? . . 'Defendant stated that he had. . . that he had found the negro on his premises, stealing chickens; that he would kill any negro or any white man. . . that he had hallooed to the boy to stop; that the boy continued to run,' . . a butcher knife, six or seven inches long" "was found in the pocket of his coat"

Judgment for defendant reversed, and judgment for the plaintiff for $1150 and costs of both courts. "The proof shows, that he was addicted to theft; but . . none . . that he was a runaway.[2] . . the defendant is left without sufficient justification." [Merrick, C. J.]

*Deshotels et al. v. Soileau,* 14 La. An. 745, August 1859. Will of André Deshotels, who died in 1855: [755] "I will . . unto my nephew . . and to his wife . . all the residue . . including slaves, . . with the following conditions, . . that they, . . immediately after my death, take such steps as shall be necessary, under the . . laws of the State . . to emancipate . . [fourteen] slaves . . upon such terms as will permit them to remain in the State . . and should this not be permitted . . they shall have them emancipated, and furnish each one . . with one hundred and fifty dollars, to remove them from the State . . And . . from the date of my death and the emancipation . . furnish them all necessary food and clothing, and treat them with kindness and humanity: and on their failure to comply . . this legacy is to become . . void, so far as [my nephew and his wife] . . are concerned. And in order fully to carry out this provision . . I give . . unto my said slaves their liberty, with the right to claim the same from my said legatees immediately after my death. . . however, in the event [of] my said slaves refusing to leave the State, should the laws . . require this as a consideration of their emancipation, . . I will them to my said nephew and niece, and discharge them from the conditions . . and only require them to have said slaves emancipated, whenever the law . . will permit them to remain" The nephew testified: [749] "He has never taken any steps to have these slaves emancipated; . . desired that [they] . . should be retained in slavery."

Decreed that [757] "the said slaves . . [are] the property of . . heirs-at-law" [756] "the right of a slave to freedom under the will of his master . . [is] not vested, until the formalities required by law . . [have] been complied with. . . by the Act of the 6th of March, 1857, the right . . has been annihilated. Dating from the passage . . we understand

[1] Acts of 1819, p. 64.
[2] Acts of 1857, p. 233, sect. 41.

the policy of this State to be, that the slaves within her borders shall remain slaves. In this, there is nothing unconstitutional. . . [757] The *residuary legatees* are directed . . to remove [them] . . *after having had them emancipated.* . . . a very different thing from authorizing *the executor* to remove [them] . . *without being emancipated.*" [Buchanan, J.]

*Hardy v. Voorhies, Sheriff,* 14 La. An. 776, August 1859. "Modeste . . was tried for the murder of her mistress, found guilty by a special tribunal organized under the statute of the 19th of March, 1857, and ordered to be executed, . . 'Whereas . . Modeste and Joseph, have been . . May, 1858, . . adjudged guilty . . that . . Joseph, . . June, 1858, . . be hanged . . Modeste . . also . . fifteen days after she has brought forth her child, she being now pregnant.' . . Over a year having elapsed since . . the warrant [was] placed in the hands of the Sheriff, the District Attorney called upon [him] . . to execute the culprit. This request not being complied with, the former instituted proceedings before the District Court . . [777] contended on behalf of the prisoner, that . . condition [of giving birth to a child] has never been fulfilled." "the District Judge decreed that the Sheriff should proceed"

Reversed: "The District Court was . . without jurisdiction . . The remedy of the State might possibly be, to apply either to the Governor, or to the Justices who had presided . . for the purpose of having a day fixed for the execution."

*Adams v. Preston,* 22 Howard (U. S.) 473, December 1859. In 1830 Pope mortgaged [481] "seventy working hands and thirty-one children to Hampton."

*In the Matter of the Interdiction of Rosette Rochon (f. c. w.),* 15 La. An. 6, January 1860. "The appellant has been appointed curator . . bond [fixed] at $8,000. . . The slaves, eight in number, were inventoried at $5,000. Houses and lots in New Orleans . . at $12,700." Judgment affirmed.

*Levy v. Wise et al.,* 15 La. An. 38, January 1860. [39] "The appellants are the sureties of . . Mary Wise, to whom certain premises ['a house in . . New Orleans'] were leased by the plaintiff. They urged . . that [Mary Wise] . . was a slave . . and that the contract . . is null" Case remanded "for the purpose of allowing the appellants to prove their allegations"

*Tom v. Ernest (a slave),* 15 La. An. 44, January 1860. "The petition represents that . . Marchesseau left . . to go to California about . . 1849, and . . deposited in the hands of Marie Louise Duseau . . Ernest, a mulatto boy . . slave . . born about . . 1848, from . . [45] Mary, the property of . . Peters . . That the expenses . . amounted to $570 . . [in] 1857, when . . Peters took possession . . until he should be ten . . Marchesseau has never returned . . writ of provisional seizure issued, but . . was set aside," Affirmed: "A slave is not a thing, in the sense of . . 4th section of Art. 245 of the Code of Practice."

*Isaac Bateman v. Frisby and Kendig,* 15 La. An. 58, January 1860. " The testator [a resident of Arkansas] . . declared that . . [on] death [of his wife] . . two of [his slaves] . . should be liberated . . and that his other slaves, with their increase . . should be appraised and hired out, after her death, until their hire should amount to two-thirds of their appraised value; then . . set free . . codicil . . that . . Isaac . . should, after his own death, be hired out, . . The testator died in 1850, and his widow in 1851, and after her death, Isaac was appraised at [$600] . . and his hire in . . Arkansas was worth [$150] . . per annum. Some four years after the death of . . widow, the plaintiff was removed [to Louisiana] . . by the administrator, with the will annexed . . and sold as a slave for life to . . Kendig. The defence . . is, that . . the plaintiff is not entitled to his emancipation . . until the hire of all . . amounted to two-thirds of their appraised value . . [59] verdict . . awarding damages in the sum of [$300] . . to the plaintiff." Judgment thereon in favor of plaintiff affirmed: [58] " the plaintiff was not bound to prove more than . . that his own hire exceeded two-thirds of his appraised value, before his sale "

*Carreta v. Lopez,* 15 La. An. 64, February 1860. " suit to have the sale of a slave rescinded, on account of . . insanity. . . the evidence . . and the defendant's answer . . show . . the vendor's knowledge. . . infirmity was not apparent at the date of the transfer;" Judgment in favor of plaintiff affirmed.

*Bloom v. Beebe,* 15 La. An. 65, February 1860. " the slave was affected before, and at the time of the sale, with a chronic cold in the head . . apparent" Held: " the plaintiff [vendee] has no right of action to avoid the sale and to recover back the price,"

*State v. Gore,* 15 La. An. 79, February 1860. " convicted of stealing a slave and sentenced to five years imprisonment in the penitentiary." Affirmed: " Slaves are not classed under our law as . . personal chattels. The Act of 1819, was not, therefore, repealed by the Act of 14th of March, 1855."

*Pousargues v. Steamer Natchez et al.,* 15 La. An. 80, February 1860. " The slave of plaintiff, while rowing a skiff . . was run over and drowned by the steamer . . Judgment . . against the captain and owners " for $1400, affirmed.

*Maille v. Blas,* 15 La. An. 100, February 1860. [101] " the death of plaintiff's slave was the result of a combat, which he had . . provoked, . . continued with billets of wood, and finally with knives " Judgment for plaintiff affirmed: [100] " The use of deadly weapons in combat by slaves should be discountenanced." Merrick, C. J., dissented: [102] " as the conduct of plaintiff's negro cannot be justified . . it seems that the loss must fall on the owner."

*State v. Bill (a slave),* 15 La. An. 114, February 1860. " The appellant asks the reversal of the judgment . . because he was not allowed to challenge for cause the two justices, who sat in the case, and two jurors."

Judgment reversed and the cause remanded: I. " The Justices do not act as jurors only, but as judges, . . they are competent, after a mis-trial, to sit again . . [II.] jurors who have made up their mind as to the punishment . . in case of a verdict of guilt . . [are not] incompetent. . . [115] when the jury has the discretionary right of commuting the punishment . . the competency of each juror, whether in the trial of slaves or of freemen, is to be determined in the same way. . . But, in overruling . . State *v.* George,[1] upon the authority of which the prisoner has rested his case . . the court must . . grant him relief. . . Justice, as well as humanity, dictates this course;" [A. Voorhies, J.]

*State v. Joshua (a slave),* 15 La. An. 118, February 1860. " found guilty of the crime of committing a rape on the person of a white woman, and sentenced to be hung " Affirmed.

*Perrine v. Planchard,* 15 La. An. 133, March 1860. [134] " The plaintiff . . a free woman of color . . was arrested . . for disturbing the peace and being drunk; at the same time, Anaïse, a slave of Mr. Rousseau, was arrested as a runaway, and both were put together in the lock-up . . On the following morning . . Anaïse was called out; she sent plaintiff in her place, . . lodged in jail under the name of the *slave* Anaïse; . . Mr. Rousseau called . . with an order from the Recorder for the release . . and being satisfied of the identity . . from the description . . in the entry book . . requested the jailer [Planchard] to inflict ten lashes . . before bringing her out; but the deputy . . informed Mr. Rousseau that the woman claimed to be free, . . Mr. Rousseau replied, . . she has the habit of saying so, but she is not yet free; thereupon, the deputy executed the order." " stretched [her] on a platform where slaves only are whipped," She claimed " as special and exemplary damages," $2000, as, " in consequence of said ill-treatment, and her state of pregnancy, she was prostrated . . Dr. Vionet who attended upon [her] . . says he believes she remained in her room 25 or 26 days, and that the whole costs . . exclusive of nurses, are about one hundred dollars. . . another witness, says that he had [her] in his employ, as a cook and washer, . . very industrious . . supposes . . [she] suffered between four or five hundred dollars damages for doctors, nurses, time lost, etc."

Held: " the defendant was not actuated by malicious designs, . . we think that plaintiff is only entitled to one hundred dollars for the entire expenses of her sickness, and . . [135] fifty dollars . . for her lost time."

*State v. George (a slave),* 15 La. An. 145, March 1860. " The prisoner is appellant from a judgment sentencing him to death. . . [146] two counts . . arson, and . . larceny. . . the witnesses, who procured the confessions [' made under the influence of promises and threats '], were not public officers, nor . . the owners or overseers . . they arrested the accused, however, . . ' following the confessions, the things stolen were found.' " Judgment reversed and the case remanded.

[1] P. 556, *supra.*

*State v. Gutierrez,* 15 La. An. 190, April 1860. " found guilty and sentenced, under the provisions of ' an Act for the prevention and punishment of selling liquor to slaves, in the parish of Orleans,' approved March 17, 1859. . . [191] This case was tried before one of the Recorders . . assisted by a jury of three slave-holders, in conformity with the 3d section " Affirmed: the act is not unconstitutional. Merrick, C. J., dissented.

*Foster v. Mish,* 15 La. An. 199, April 1860. " To establish the alleged freedom of his mother, the plaintiff offered a deed of manumission, signed, sealed and delivered by John Foster . . 1838, and duly recorded . . in . . Kentucky, . . anterior to . . [plaintiff's] birth. . . He further proved that, *his acknowledged status* in . . Kentucky was that of a free person of color, from . . birth up to . . removal from that State, . . some fifteen years."

Judgment in favor of defendant reversed; [200] " decreed, that there be judgment in favor of the plaintiff, and that he be declared a free person of color, . . and . . recover the costs . . in both courts." [199] " If no right of action existed in such cases, then free negroes might be kidnapped . . and sold into slavery in this State with impunity—a species of slave-trade, which our Legislature never intended to legalize by the Act of 1857, prohibiting emancipation." [Land, J.]

*Folse v. Kittridge,* 15 La. An. 222, April 1860. Suit for the price of " Adam . . sold by plaintiff . . April, 1857. . . He died . . February, 1858. A post mortem examination, by dissection, was made by a physician, who proves that the heart and kidneys were . . in a diseased condition. . . may have existed for several months . . not proved that the slave received any medical treatment . . until . . eight months after the sale." Judgment for plaintiff affirmed.

*Palmes v. Kendig,* 15 La. An. 264, April 1860. " The existence of the redhibitory malady at the time of the sale, to the knowledge of defendant is proved." Letter from plaintiff: " Mr. B. Kendig: Sir—I now hereby tender to you . . Clara, or Hager [*sic*], purchased by me from . . Rhodes, to whom you sold her . . December, 1856, fully guaranteed, and who subrogated me to all his rights . . Said slave is now at Dr. Stone's hospital, subject to your order," " It is proved . . that the slave was . . so sick as to render a bodily tender of her . . out of the question, consistently with prudence or humanity." Judgment for plaintiff affirmed: " The proof of tender is sufficient."

*Rost and Montgomery v. Heirs of Doyal,* 15 La. An. 265, April 1860. See Executors of Henderson *v.* Heirs, p. 575, Heirs of Henderson *v.* Executors, p. 647, and same *v.* same, p. 605, *supra.* " notarial act . . 1839 . . ' Doyal . . declares, that he does hereby expressly refuse his assent . . [266] and that as owner of the undivided half of the . . slaves [" attached to the Mount Houmas plantation "], he objects to their emancipation,' . . By the same notarial act . . the heirs at law and residuary legatees of . . Henderson . . sold to . . Doyal the undivided half-interest of their ancestor . . [for $125,000] in ten promissory notes, .

Three . . are the subject of the present suit. . . [267] judgment . . 'that the Houmas plantation and slaves be . . sold . . to satisfy the amount due,' . . affirmed,"

*Syndic v. Bollinger,* 15 La. An. 293, April 1860. "He alleges, that he bought the mother of Susan at Sheriff's sale when . . Susan was but three . . and avers that the child became his in virtue of that sale."

Held: [294] "The child . . having neither been seized, advertised or sold with her mother, did not pass by the Sheriff's sale. Perhaps this might have been a ground for annulling the sale of the mother, . . as the child is now over ten . . it is idle to inquire whether he could . . have compelled [her transfer] . . to him also."

*State v. Henry (a slave),* 15 La. An. 297, May 1860. "convicted of murder, and condemned to be executed." Affirmed: the act of March 19, 1857, relative to slaves, does not contravene Article 115 of the constitution, that "every law . . shall embrace but one object, . . expressed in the title."

*England v. Gripon,* 15 La. An. 304, May 1860. "Plaintiff sues for the value of a slave . . hired to the boat as a fireman. He fell overboard . . might have been saved, had the *Cora* been provided with a yawl." Decreed that plaintiff recover $1250 from the owner of the steamboat.

*Succession of John Taylor (f. m. c.) and Mary Jane Taylor (f. w. c.) v. Clara Taylor (f. w. c.),* 15 La. An. 313, May 1860. "Taylor [who died in 1853] . . made, . . 1847, his . . will, wherein he acknowledged, as his natural children, Célestine, Martha, Charles and Georgiana, whom he instituted his universal heirs . . born of an illicit union between [him] . . and Clara, a slave, . . Clara and her . . children were . . emancipated . . 1845. . . [314] The license and certificate of marriage prove that . . Taylor and . . the plaintiff, f. p. c., were married . . in . . Indiana, . . 1843, by . . an Episcopalian minister, . . Taylor filed, in . . New Orleans . . 1848 . . petition for a divorce . . divorced . . 1851. . . [Their] child . . was born in 1846, . . [315] will . . annulled"

*Howes v. Steamer, Captain, and Owners,* 15 La. An. 321, May 1860. "Tom, the property of the plaintiff, was drowned while under the employ . . of the defendants. . . a stage was made, . . two planks . . about two feet apart . . not made fast; . . [322] Tom . . was . . engaged in carrying sacks of corn from the *Touro* to the *Chief,*"

[325] "decreed that the plaintiff have judgment" for $1500. The fellow-servant rule does not apply to slaves, [323] "in as much as the slave . . [324] cannot decline any service, still less leave the service," [1]

*Succession of Minvielle: Domec v. Executor and Lalande (f. w. c.),* 15 La. An. 342, May 1860. "Cora Lalande . . obtained judgment against the succession . . Domec [a Gascon], took a rule upon the executor . . to show cause why he should not pay the money . . to him as the husband . . Cora . . denied that she was the wife of Domec, because . . [he] is a white man and she is . . colored . . and such a marriage is prohibited by

[1] See Railroad Co. *v.* Yandell, vol. I. of this series, p. 427.

Article 95 of the Code. . . have for a long time ceased to live together, and that he has publicly . . denied that she was his wife. . . the plaintiff offered in evidence the certificate of the marriage, . . 1847, by . . Curate of Annunciation Church, by virtue of a license from . . Justice of the Peace." Held: [343] " the defendant was at liberty to show the absolute nullity of the pretended marriage . . without . . having . . brought an action to annul "

*State, ex rel. Cook, v. Keeper of Prison,* 15 La. An. 347, May 1860. " John Cook and George Logan, free men of color, being incarcerated . . under . . the Act of 1859, entitled ' An Act relative to free persons of color coming into the State from other States or foreign countries,' applied to the . . District Court for the writ of *habeas corpus.* The rule . . was dismissed, and the applicants remanded " Appeal dismissed: " we have no jurisdiction "

*State, ex rel. Micieses, v. Recorder,* 15 La. An. 406, June 1860. " conviction in the Recorder's Court, for selling liquor to a slave without the consent of his owner. Fine of $500 imposed." Held: " The relator is . . entitled to the appeal prayed for;"

*Simons and Co. v. Jacobs,* 15 La. An. 425, June 1860. " The defendant is an Englishman. . . In . . 1858 . . he sold out . . with the exception of a negro boy, for whom he left verbal instructions with his agent for the collection of debts, to give him his freedom . . 1st of January, 1859. He left no agent on whom service of citation could be made, . . Defendant not having returned, . . plaintiffs [to whom he owed $952.37] sued out the attachment, and obtained judgment in February, . . 1859, . . executed by the sale of the [slave] . . attached. . . [426] if he returned at all, it was after the second season abroad, and after the attachment suit had been carried forward to final judgment, and the money made by the sale of the slave . . Judgment [for plaintiffs] affirmed."

*Beverley v. Captain and Owners,* 15 La. An. 432, June 1860. " The plaintiff, who resides in . . Ky., was the owner of a slave which he hired to the defendants on board their steamboat . . as a fireman. . . the boat was running . . between Louisville and this city. . . After the slave was hired the boat made one trip to Cincinnati, where he disappeared. It is in proof that it is customary to leave slaves at Louisville or to land them at Covington, Ky., where boats are about to land at Cincinnati. . . there is great risk in taking slaves to Cincinnati. The witness says: ' It is a matter of almost absolute impossibility to prevent them from being run off.' . . judgment . . in favor of the plaintiff for $1200,"

Affirmed: " The fact, that the boat was in the habit of landing . . in [Madison,] Indiana . . does not change . . the case, so long as it is not shown that there was equal risk with Cincinnati."

*Buie v. Kendig,* 15 La. An. 440, June 1860. [441] " the slave was purchased in New Orleans . . February, 1857 . . He left home several times without permission, and ranaway first . . [in] May, and after staying out some time came in and surrendered himself . . ran away again [in June], and while in the woods was pursued by plaintiff—his

overseer Mr. Fluett and neighbor Isaac Doyal—in trying to escape from them he jumped into the river, probably to try to swim across, and was drowned. The judgment . . condemned the defendant [vendor] to refund . . the price . . $1225, with legal interest " from the time of drowning.

Affirmed: " We are satisfied, from the evidence, that . . [he] is the identical one sold to the defendant by Tobin of Arkansas, as a confirmed runaway and a vicious negro, on the very day, or the day before the sale to the plaintiff, which latter . . was made with a full legal warranty."

*African M. E. Church v. New Orleans,* 15 La. An. 441, June 1860. " October, 1848, ten free men of color organized themselves into a private corporation having a religious object, under the Act of 30th April, 1847," [444] " own three churches . . of the alleged value of $21,000. . . their meetings were orderly, . . In 1850 an Act . . was passed,[1] amending . . ' Provided, that in no case shall the provisions of this Act . . apply to free persons of color . . incorporated for religious purposes, or secret associations;' . . April, 1858, an ordinance was passed by the Common Council . . reciting the dangerous tendency of frequent and numerous assemblages of free persons of color. It ordains that [such] . . ' shall be under the supervision . . of some . . white congregation ' . . prohibits any slave, or free person of color, from holding meetings and delivering discourses, unless permission . . [is] obtained from the Mayor by the . . white congregation . . renewed annually. . . The corporators, . . under the advice of counsel, closed their places of worship. . . brought suit . . Judgment . . declaring the Act of 1850 and the ordinance null and void as to the . . plaintiffs, and condemned the city to pay $110 per month, from . . April, 1858, in the nature of rent, until plaintiffs obtain possession "

Reversed, [443] " and decreed . . that there be judgment for defendant," " ordinance . . is general . . and does not seem to overstep the legitimate bounds of the police administration . . Act [of 1850] is . . a legislative interpretation of the word ' persons ' in the Act of 1847. Had the question been submitted . . in the absence of this Act of 1850, whether the Legislature intended to sanction . . the formation of corporations composed entirely of colored persons, a majority of this court is of opinion . . negative. The African race are strangers to our Constitution, and are the subject of special and exceptional legislation. . . We are not . . denying the members . . as individuals, the right of property in what they may have acquired in a social name; a right as fully acknowledged by our laws, in the case of colored persons, as of white persons. C. C. 437." [Buchanan, J.] Merrick, C. J., concurred in the decree, but for different reasons.

*State v. Solomon (a slave),* 15 La. An. 463, July 1860. " tried for . . murder, and, although acquitted . . [464] sentenced to receive corporal punishment." " decreed, that the judgment . . in so much as it acquits . . be affirmed; and . . in other respects . . annulled." " The course pursued by the special tribunal . . is unwarranted in law."

[1] Acts of 1850, p. 179.

*Callaway v. Sheriff,* 15 La. An. 467, July 1860. [468] " Three runaway slaves of the plaintiff . . were lodged in the Parish Jail, . . [He] paid the costs incurred for the woman and took her away. He left the men . . with the request that they should be kept in close confinement. Subsequently, one . . being sick, was, upon the advice of a physician, removed . . The Sheriff went further: he took them both upon his farm. . . no charges were preferred for keeping the negroes during that time [' several months ']." Held: the plaintiff has not been injured.

*Brainard v. Sheriff,* 15 La. An. 489, July 1860. " the defendant seized a slave . . under a writ of *fieri facias* . . and placed [him] . . for safe keeping in the Parish Jail . . [He] escaped . . in consequence of its defective construction, or its want of . . repairs " " not retaken " Held: defendant is not responsible.

*Atkinson v. Atkinson,* 15 La. An. 491, July 1860. " The negroes . . were taken from . . Alabama to Texas "

*Burnham v. Hart,* 15 La. An. 517, July 1860. " The slave was a boy . . ten or eleven . . affected with . . blindness, resulting from an organic disease of the optic nerve (which is shown to be incurable) at the time he was sold by the defendant . . and also . . by the warrantor to the defendant."

Judgment in favor of the plaintiff for the price ($1000), with interest at five per cent from the date of sale, and for the expenses incurred, excluding attorney's fees; [518] " and that the defendant recover of his warrantor . . the price [he] paid, . . $800," with interest from judicial demand.

*Virgin v. Dawson,* 15 La. An. 532, July 1860. Suit on a note. [533] " the defendant, . . a physician, was requested by the vendor and . . other persons who were in treaty for the slave previous to his own purchase, to examine her . . and he reported her . . diseased. After he purchased her, he treated [her] . . as a physician," and she died. Judgment for plaintiff affirmed.

*Estate of Maillon (f. w. c.) v. Lynch,* 15 La. An. 547, August 1860. " the land . . was acquired by M. Maillon at a Sheriff's sale . . 1842 . . at the date . . Maillon was a slave, . . she was emancipated according to the forms of law . . 1843, by her . . owner, Luke Valentine, f. m. c." Held: [548] " a purchase made by a slave cannot be inquired into . . by one who is not affected by it; . . the master . . alone is at liberty, at any time, to claim the object;"

*Louisiana (f. w. c.) v. Estate of Baillio,* 15 La. An. 555, August 1860. " The plaintiff . . sues by injunction to arrest the sale, and to establish the freedom of herself and her two minor children. . . relies . . [on] a notarial act of sale by . . Grant, her former owner, . . January, 1856. This act . . purports to have been made in consideration of [$1350] . . paid in cash . . by the plaintiff . . duly recorded . . The administrator avers . . That Baillio purchased the plaintiff and her eldest child from Grant . . in . . 1855 . . [556] That Baillio, who lived in concubinage with

the plaintiff, returned his act of sale to Grant, and induced him to pass the act of . . 1856, . . the sister of the deceased . . intervened . . and claimed title to the plaintiff and her children . . by virtue of a notarial act of sale from . . Baillio . . 1857 . . consideration . . purports to have been [$2000.] . . the plaintiff and her children . . remained in the possession of the vendor (F. Baillio) until his death," [557] " decreed, that the plaintiff and her children be declared . . the property of the succession of F. Baillio,"

*Hyman v. Bailey,* 15 La. An. 560, August 1860. Duffel, J.: [562] " M. Maillon [f. w. c.] was the concubine of . . Bailey . . up to the date of . . [his] marriage . . 1852 (M. Maillon died in November, 1853)." [560] " The property [a plantation] . . was sold by . . Bailey to . . Hughes . . 1840, who sold . . 1847, to . . Waters . . who . . May, 1853, sold to Merrick Maillon, through her special attorney in fact, . . Bailey; . . for $5000 . . in two notes of $2500 each, made by the agent, . . The power of attorney . . was executed . . 1851, and it authorizes the agent to sell all her property, real and personal, lands and slaves, but is silent as to . . acquiring property and signing notes. . . [562] Maillon moved on the land . . and took her slaves with her; . . no evidence of an acceptance by Merrick Maillon of the sale made without authority to her agent;" [561] "The testimony of Waters . . is such as to convince us that he never considered himself as the owner . . but simply as holding [it] . . for . . Bailey. . . [562] we conclude that Maillon never acquired a title to the land, and that it was legally seized . . as the property of . . Bailey."

*Decuir v. Lejeune,* 15 La. An. 569, August 1860. [570] " The spouses, although living under the same roof, had ceased to cohabit . . Lejune kept a colored concubine in the neighborhood . . publicly and notoriously. . . sued his wife for a divorce . . dismissed. After . . three years, . . sued his wife . . for a separation . . on the ground of abandonment. An answer . . admitted that she had withdrawn herself from the common dwelling . . because . . [he] there kept his concubine. . . [571] marriage . . dissolved;"

*Lazare, Wife, et al. v. Jacques (f. w. c.),* 15 La. An. 599, August 1860. " The plaintiffs . . sue the defendant for the purpose of annulling an act of sale made to her by the deceased, . . she was . . his concubine," Held: [600] " an absolute nullity." C. C. 1468.

*Ney v. Richard,* 15 La. An. 603, August 1860. " The plaintiff's wife . . was arrested under a charge of cruel treatment of their slave, . . . Frozine. . . the magistrate . . ordered the slave . . to jail during the pendency of the prosecution; . . Ney . . applied to the District Court for a mandamus . . The . . Judge . . decided that the decree was valid,"

Reversed: " no law which authorizes a magistrate in such cases to place a slave beyond the . . control of the master. The right . . is conferred upon the Judge and jury who try the prosecution for the cruel treatment."

*Cahn v. Costa,* 15 La. An. 612, November 1860. "the slave was, at the date of the sale [in 1858], affected with . . consumption . . [613] of which she died shortly afterwards; . . the plaintiff took the very best care of the patient." Judgment against the vendor for $1020, "and the further sum of sixty-two dollars with . . interest;"

*Mitty Broxton v. Bloom,* 15 La. 618, November 1860. Land, J.: [619] "The mere sequestration of the plaintiff and her children . . claimed as slaves,[1] did not, *per se,* entitle her to damages . . but . . her right of recovery depends on proof of actüal damage. The evidence shows, that [they] . . had been in the enjoyment of their liberty for several years prior to . . the sequestration suit, . . were indolent, lazy and thriftless, . . made but a meagre support. . . that during the sequestration suit, . . [they] were well fed, well clothed, and well treated, with little or no restraint upon their personal liberty, and that the hire . . was insufficient to defray their expenses, or . . did not exceed the same. . . [620] It cannot . . be said, that the sequestration suit was . . malicious,"[2] Judgment rejecting the plaintiff's claim for damages on the sequestration bond, affirmed.

*Paty v. Martin,* 15 La. An. 620, November 1860. "Plaintiff purchased, in July, 1858, . . Nancy, guaranteed against redhibitory maladies. . . [621] a tumor on the neck . . was made known to the purchaser; who assumed the risk of the same." [620] "October, 1858, the slave was sent to Mercier's hospital . . examined by Drs. Mercier and Alpuente, who pronounced her affected with chronic inflammation of the womb, which they *conjecture* to have been . . of six month's standing. . . in opposition . . the testimony of Drs. Martin and Turpin, . . the physicians . . of defendant, . . also . . of . . an intimate . . visitor in defendant's family; of . . a white servant in that family; and . . of Dr. Rancé . . employed, on behalf of the plaintiff, to examine the slave . . at the time of . . purchase. . . Dr. Martin proves that an inflammation of the womb may assume the *chronic* form in . . three months from its commencement; . . [621] Dr. Mercier alone declares it incurable;" Judgment for defendant: [620] "The conjectures of medical men as to the probable duration of a disease, have not, *per se,* the weight of proof of the fact of duration."

*Walker v. Hays,* 15 La. An. 640, December 1860. "suit . . brought upon a draft for $1375. . . On the 12th of November, 1857, the defendant took from the plaintiff a bill of sale of a negro woman and her child about eighteen months old. . . delivered . . the draft . . The slaves were suffered to remain in the plaintiff's possession, . . On the 23d . . she drowned herself and child."

Judgment in favor of plaintiff affirmed: I. [641] "The contract of sale was . . complete, and the property was at the risk of the buyer. . . [II.] the only evidence of insanity . . was the unnatural act of drowning . . The inference . . sought to be drawn . . is, to some extent, rebutted by the proof . . that the . . woman was endowed with 'good sense.' . .

[1] Maples *v.* Mitty, p. 659, *supra.*
[2] *Ibid.*

very proper to be submitted to a jury, and their finding . . must be held conclusive."

*Courcelle's Syndic v. Vitry (f. w. c.),* 15 La. An. 653, December 1860. " Courcelle and the defendant had been, for . . nineteen years, living together in concubinage. Upon breaking up . . connection, the former instituted . . a suit for the purpose of recovering a large amount of real estate and slaves, which, he averred, had been purchased . . with his own funds, but the title . . made in the name of the defendant. . . Vitry . . obtained a judgment rejecting the plaintiff's pretensions. Subsequently, Courcelle made a surrender of his property to his creditors, and . . syndic . . instituted this suit," Judgment for defendant affirmed.

*Boulin v. Maynard,* 15 La. An. 658, December 1860. " The defendant bought the slave without warranty, and sold him with full warranty to the plaintiff. The habit of running away is sufficiently proved; but . . at the time the slave absconded, he was permitted to hire his own time, and was not required even to sleep at the residence or place of business of his owner. . . The slave was present at the trial, . . The defendant . . was aware that the slave was in the habit of running away. This knowledge was not communicated to the plaintiff."

[659] " decree, that . . sale . . be rescinded, and . . slave be restored to the defendant; and . . that the plaintiff do recover . . the price paid [$700] . . and . . interest . . from the judicial demand, and . . $6.50 costs of the act of sale, $6 for advertising . . slave as a runaway, and $25 paid for lodging him in jail."

*Blair v. Collins,* 15 La. An. 683, December 1860. " evidence . . that the defendant, . . a negro-trader in New Orleans, sold, . . December, 1857, under full warranty, to the plaintiff, a slave . . imported into this State a month or two prior thereto; . . that in July or August . . the plaintiff wrote to the defendant that he was compelled to throw the negro back on his hands, as he had run away four or five times; but . . as the slave was then at large, he desired to know if he could be sent to him when caught; that the defendant requested the factor of the plaintiff to write . . asking him not to send [him] . . back before the fall, as the fever was then raging . . but that he would make it all right by giving him another negro, or returning the price; that the slave was arrested, and a few days after, . . [684] November, 1858, he died of a chronic *peritonitis,* brought on by exposure when out in the woods as a runaway; that the slave had been well treated, and had received, when sick, medical aid." [683] " judgment against the defendant, for the return of the price . . with costs and expenses." Affirmed.

*Girault v. Zuntz,* 15 La. An. 684, December 1860. " The plaintiff . . 1843 . . through her agent, . . Kendall, purchased at Sheriff's sale, in . . Mississippi, in the suit of . . Hickey *v.* . . her husband, . . Eliza, and her child Joe, . . 1846, . . Kendall obtained possession of . . Joe, from her husband, . . [685] executed and delivered to him . . writing . . 'I . . have this day advanced to Mrs. . . Girault . . $300, upon . . Joe, five years old, and black complexion, . . son of Old Billy, formerly belonging

to . . Girault, which . . money, if returned . . with ten per cent., within five years, the . . boy is to be delivered to . . Mrs. . . Girault. . . I also bind myself to clothe, feed and pay all doctor's bills' " *Zuntz* purchased the boy from Kendall in 1856. Judgment for plaintiff affirmed.

*Mehle v. Lapeyrollerie,* 16 La. An. 4, January 1861. " The evidence shows that . . [her husband] has committed adultery with a negro woman . . Indeed, he appears to have kept her as his concubine. . . bonds of matrimony . . dissolved;"

*Pelham v. Steamboat, Captain, and Owners,* 16 La. An. 99, February 1861. " suit . . brought to recover $1300, the value, and $500, the penalty, under the Act of 1840, for the loss of a slave . . drowned, . . The proof . . is ample, that the slave with another was hired by the plaintiff himself to the steamboat. . . two of the witnesses who prove the hiring were employed on the boat . . but left . . before he was lost overboard, and were engaged in business elsewhere when their depositions were taken." Judgment for defendants affirmed.

*Morrison v. White,* 16 La. An. 100, February 1861. Buchanan, J.: " Plaintiff alleges . . that she was born free . . of white parents; . . kidnapped, and . . brought . . to . . New Orleans, where she is held . . as a slave. . . [102] she has not made the faintest approach toward establishing these allegations . . by proof." [100] " relies altogether upon speculative opinions of physicians and others, as to indications of a Caucasian extraction . . [102] is proved to be of fair complexion, blue eyes, and flaxen hair." [101] " Defendant gave in evidence . . act of sale from . . Haliburton . . of Arkansas. . . offered . . depositions . . as to the origin of plaintiff; . . rejected," Verdict for plaintiff.

Judgment thereon reversed and the cause remanded: [102] " evidence . . was improperly rejected. . . We . . find full proof therein that the plaintiff was born a slave, the offspring of a mulatto woman slave, and that she passed, by a . . chain of conveyances, from . . the owner of her mother, to the defendant. . . the presumption of freedom, arising from her color, is not a presumption *juris et de jure.* It must yield to proof of a servile origin. . . as it is possible she may have evidence which her counsel deemed it unnecessary to introduce, all the evidence of origin [offered by defendant] . . having been ruled out, we will remand "

*Gause v. Bullard,* 16 La. An. 107, February 1861. " The evidence shows . . that the disease which caused the death of the slave [purchased in Georgia for sale in New Orleans] nine days after the sale, pneumonia, had manifested itself two days after the sale;" Judgment for plaintiff affirmed.

*Ford v. Danks,* 16 La. An. 119, February 1861. " overseer . . having . . wantonly broken to pieces a pair of stocks which belonged to the place, and which he had made with the assistance of one of the negroes."

*Ranson v. Labranche,* 16 La. An. 121, February 1861. " as the river rose, the plantation hands were kept working on the levee all the time, keeping a watch during the night;"

*State v. Karn,* 16 La. An. 183, March 1861. "convicted of the offence of selling . . liquor to a slave without the written consent of the owner [1] . . judgment imposing a fine of $301, and one month's imprisonment." Affirmed.

*McCaleb v. Douglass et al.,* 16 La. An. 327, May 1861. [328] "Dorsey [a lawyer] . . says: . . Douglass died in 1856. . . On the day before . . he . . wanted me to write his will. . . His chief object was to dispose of his property to his two nephews . . and to provide for a negro woman, who had been very attentive to him whilst sick, and for some time. . . the daughter of a Mr. Cammack, residing some six miles off. . . asked me if he could make her a present of . . five or six thousand dollars, I do not recollect which. My reply was . . that I supposed she was the slave of Mr. Cammack, and a donation . . would not invest the proceeds . . in her. His reply was, that she was either manumitted, or that she was about to be sent out of the State to be manumitted." Bland's deposition: [332] "That portion of the will which gave Cornelia Cammack $5,000 was modified . . with the condition that she should be maunmitted by her master . . [333] A few moments before Dorsey and I went out to make the will, . . [five] slaves . . or most of them, came into Douglass' room, and called his attention to a previous promise to emancipate them, when he said, 'I did,' and made some remark to the effect that he would free them. When the will was read, Keziah's name had been left out, and she . . burst out weeping, when Douglass exclaimed, 'and Keziah!' and her name was then inserted." Judgment upholding the will reversed, as it did not comply with the requirements of C. C. 1574.

*Jones and Daugharty v. Goza,* 16 La. An. 428, February 1862. "The plaintiffs, attorneys-at-law, sue to recover a fee of six hundred dollars for assisting in the defence of a slave charged with . . murder. The evidence shows that in the absence of the owner . . the Justice of the Peace before whom the accusation had been made, appointed . . Lawrence, Esq. to act as counsel . . that . . Daugharty . . with the assent of the Justice . . assisted . . that the trial resulted in the acquittal . . that the magistrate considered Daugharty as . . jointly interested with Lawrence in the fee to be paid by the defendant; and that a fee of fifty dollars has been . . paid to Lawrence."

"decreed, that the plaintiffs' demand be rejected," "The first assignment of counsel exhausted the magistrate's authority under the 17th section of the Act of 1855. See Acts of 1855, p. 152."

*Hall v. McLauren,* 17 La. An. 35, May 1865. "The plaintiff, . . of Alabama, states that he is the . . owner of . . Adeline, aged about fifteen . . worth $1,200. . . That . . he placed [her] . . in the possession of his agent . . in . . New Orleans, and that . . McLauren, . . of Georgia, . . went to the dwelling house . . and forcibly seized [her.] . . The testimony shows that the plaintiff's possession was . . held . . for the defendant;" Judgment for defendant affirmed.

[1] Act of Mar. 19, 1857.

*Huntington v. Brown,* 17 La. An. 48, May 1865. Suit to rescind the sale of a slave [49] "guaranteed . . in title only," and to recover his price. [50] "he was taken by Brown, to be sold, out of the Touro Infirmary, wherein he had been from August, 1859, till . . February, under medical treatment for a progressive disease. The fact that Dr. Bensadon offered only $300 for the slave, for hospital purposes, shows that defendant was aware that he was physically unsound;" Judgment for plaintiff affirmed. C. C. 2480.

*Mouras v. Schooner, Captain, and Owners,* 17 La. An. 82, May 1865. "the plaintiff claims [$2,000] . . the value of his slave . . transported out of the State . . in June, 1859, . . [$200] damages . . in consequence of the loss of . . services, . . and [$500] . . penal fine" [83] "vessel was . . chartered . . to transport . . emigrants to . . St. Domingo," Judgment in favor of plaintiff for $2000, the value of the slave, and for $400 for loss of his services; "the statute imposing the fine . . has been repealed," Howell, J., dissented: "If it be true that the man . . was a passenger . . no one witness establishes any . . negligence . . calculated to make [defendants] . . responsible, independently of . . repealed legislation."

*Succession of Chappel: Ida Hannah (f. w. c.) v. Eggleston,* 17 La. An. 174, June 1865. "Chappel made his will . . 1853, by which he emancipated . . Ida Hannah and Clementine her daughter . . [175] and appointed them his heirs and universal legatees. . . probated . . 1854. It is admitted that Ida Hannah was . . fully emancipated . . before his death, but Clementine remained a *statu liber* under the will. . . 1861 . . Ida Hannah filed her petition, stating . . that the testamentary dispositions concerning . . Clementine . . falls [*sic*], she . . being incapable . . the actual laws of the State . . prohibiting the emancipation of slaves. . . Clementine being a minor, . . the court appointed . . curator *ad hoc,* to defend this suit. . . judgment of nonsuit against . . plaintiff,"

Reversed and plaintiff's demand dismissed; "decreed that . . Clementine be recognized as universal legatee with her . . mother, each for one undivided half" "In the actual state of things, . . Clementine has been put in the full enjoyment of absolute freedom"

*Dejona (f. w. c.) v. Steamboat, Captain, and Owners,* 17 La. An. 277, December 1865. [279] "suit . . to recover . . $510, alleged to be due for the wages of her minor son, as cook on the steamboat . . at . . thirty dollars per month, for two months from . . February, 1859, and fifty . . for nine months thereafter. . . the boat was provisionally seized." Judgment for plaintiff for $56.90: [281] "the wages for the last [month] . . were forfeited . . by abandonment before the end of the month; and the privilege is limited . . to six months. . . deduct . . the payments made on account"

*Gatlin v. Kendig,* 18 La. An. 118, February 1866. "The sale was made . . February, 1858, and the slave ran away in May . . Suit was instituted . . March, 1860. . . shown that the defendant was aware at the date of the sale of the existence of the . . vice, . . plaintiff became aware

in the fall of 1859, . . that the slave was a runaway when he bought him;" Sale rescinded.

*Chapman v. Matthews,* 18 La. An. 118, February 1866. [119] "The sale was made . . June, 1860, and the slave died . . October . . of the same disease with which he was affected at the time of the sale. . . [120] The petition was filed . . December," Held: "the want of tender cannot be invoked against the plaintiff to defeat his action,"

*Morphy v. Blanchin,* 18 La. An. 133, February 1866. "action to annul the sale of a female slave, bought . . 28th March, 1861, for . . $800 cash. . . at the time she was to have been delivered, the 15th May, . . she was already sick, and the plaintiff refused to receive her. Dr. Fagot . . examined the slave, about 22d May . . [134] discovered the tubercles in the lungs by auscultation, . . says . . The disease existed . . probably several months before . . The slave died in November," Judgment for plaintiff affirmed.

*Henderson v. Montgomery,* 18 La. An. 211, March 1866. "appeal from an order . . obtained . . 1861, 'commanding the Sheriff . . to seize and sell . . the slaves' . , Counsel for the appellee . . ask the affirmance of the judgment . . and suggest that, if it cannot be affirmed because of the . . abolition of slavery, this is a clear case for allowing damages . . [as] but for the appeal, the slaves would have been sold, and the debt paid."

Held: "we cannot affirm . . because there are no slaves . . We cannot reverse the judgment, because, *at its date,* it was authorized by the law and evidence. . . the parties must be left as they were"

*Walker v. Cucullu,* 18 La. An. 246, March 1866. [249] "September, 1857, plaintiff purchased a plantation . . with about fifty-seven slaves [[248] 'without seeing the slaves'] . . March, 1858, plaintiff instituted suit . . claiming a reduction of $16,000 . . on account of . . vices and diseases existing in some . . and others being of greater ages than represented; . . recovered $2,300, . . 1859, the present suit was commenced . . for the same causes . . the District Judge allowed plaintiff . . further . . $2,000, and he . . appealed." Counsel for plaintiff: [248] "the evidence shows that when slaves pass the age of thirty . . they look much younger than they really are," Affirmed.

*Cutliff v. Battle,* 18 La. An. 570, August 1866. [571] "lived in Alabama, until 1833, when they removed to Louisiana, bringing . . the negro woman . . and children."

*Estate of Marie Olivier,* 18 La. An. 594, September 1866. [595] "The slaves . . being mostly young, and women, made no crops,"

*Lynch and Wieman v. McRee,* 18 La. An. 640, November 1866. "The plaintiffs sue . . to annul the sale . . and for a return of the price, $950, . . [641] The boy had been lately brought . . from Texas, and was sold . . 24th December, 1858, in New Orleans. . . overseer on Bethel's plantation . . says the boy came there sick about 1st of January . . and grew worse . . spit blood nearly all the time . . two doctors . . examined the

boy thoroughly, in May, and pronounced him consumptive. The boy was offered back . . refused . . died in July . . of the disease of the lungs." Judgment for plaintiffs affirmed.

*Succession of Poindexter,* 19 La. An. 22, January 1867. [23] " The slaves were emancipated in January, 1863; . . and a large portion of the plantation movables taken off by the emancipated negroes, and other parties."

*Whitehead v. Watson et al.,* 19 La. An. 68, February 1867. " The defendants have appealed from a judgment annulling . . a clause in the will . . made in 1859, . . bequeathed . . slaves, in trust, . . pay over to his mother annually . . the net income " Held: " this Court can render no decree recognizing property in man." [Howell, J.]

*Roth and Deblieux v. Moore,* 19 La. An. 86, February 1867. " allege that the defendant and . . Combs, . . of Kentucky, were . . partners, trading in slaves, horses and mules, in . . 1857 and 1858."

*Nancy Fenn v. Carr,* 19 La. An. 106, March 1867. " 1st day of January, 1865, the defendant sold to the plaintiff a negro woman, with full warranty, for . . five bales of cotton and a note . . for $200. . . The defendant . . says that he did not warrant the . . negro a slave for life," Judgment for defendant reversed: " this sale was an absolute nullity, the negro . . being a free person . . See the Constitution of 1864."

*Folse et al. v. Transportation Co.,* 19 La. An. 199, April 1867. " The defendants are sued as common carriers for the value of a slave . . which [they] . . undertook to convey . . to the plaintiffs' plantation, . . The slave was a runaway, and was received . . by the captain, who promised to have an eye on him, and he was fastened by handcuffs to the hog-chain of the boat on the boiler deck. . . [200] ' asked to go to the privy, . . the porter [" a colored man "] . . accompanied him, both his hands being in the handcuffs, of which the porter had the key.' . . officer accompanied him a part of the way . . the porter . . holding him by the tail of his coat; that as the slave went round by the barber's shop, the officer lost sight of him, . . almost instantly afterwards the porter turned back with the boy's coat tail in his hand; . . said that the slave had jumped overboard." " the porter . . perfectly trustworthy." Judgment in favor of plaintiffs reversed.

*Wainwright v. Bridges,* 19 La. An. 234, May 1867. [241] " The plaintiff's action . . was to recover the price of slaves, sold with full legal warranty . . 1860," [235] " a mortgage was retained upon the slaves to secure the payment . . [236] The plaintiff avers the loss of his mortgage right by the emancipation of the slaves, and asks against the defendants a personal judgment."

Judgment in favor of plaintiff reversed; [240] " judgment . . rendered in favor of the defendants, releasing them from the obligations . . the plaintiff . . paying costs in both courts." " The fiat of the sovereign is potent to release the contracting parties, as well as potent to set the bondman free. . . With the ownership perished the obligation to pay the price "

[Taliaferro, J.] Ilsley, J., dissenting: [241] "as no question of graver import has ever been presented for solution to any tribunal, I deem it proper to state the reasons which have brought me to a conclusion, differing *toto coelo* from the one reached by three of the other judges. . . [244] one thing is certain, that but for the rebellion, the day was distant when the change [in the status of slaves in Louisiana] would have been wrought; and, indeed, the change . . was, even with that cause, more attributable to policy and expediency than to any consideration of philanthropy" [243] "The question . . is purely one of warranty . . [249] A slave, by the abolition of slavery, has perished as *property* as completely . . as . . by death." [248] "the abolition . . had no retroactive bearing whatever on contracts which had been entered into," Labauve, J., concurred. See Boyce *v.* Tabb, p. 701, *infra.*

*Austin v. Sandel,* 19 La. An. 309, June 1867. [321] "the consideration of the note was the price of an African slave" [320] "The defence is: . . Failure of consideration, arising from the emancipation . . by the sovereign authority." [321] "judgment . . in favor of the defendant, releasing her from the obligation" "For the reasons assigned in . . Wainwright *v.* Bridges," *supra.* Judges Labauve and Ilsley dissented.

*Tate v. Fletcher,* 19 La. An. 371, June 1867. Suit to "recover the purchase price of the 'slave Dick,' [bought in 1860.] "This suit . . was filed . . 1862, but was not tried until . . 1866." [372] "The judgment . . below, released the defendants from the obligation of paying the notes . . but allowed the plaintiff [$600] . . for hire of the slave during the time . . [defendant] had him in possession." "judgment . . releasing the defendants from all obligation to pay the notes . . affirmed, . . that part of the judgment allowing hire . . reversed," Judges Labauve and Ilsley dissented.

*Gremillon v. Crousillac,* 19 La. An. 377, June 1867. [379] "The notes . . given for the price of slaves" "are dated 17th January, 1863," Judgment in favor of defendant affirmed.

*Martin v. Kelly et al.,* 19 La. An. 444, August 1867. "action . . to compel payment . . [445] no doubt that the slave had been continuously afflicted, at intervals . . for two or three years previous to the sale [in 1859], with a serious infirmity incident to females . . of which she . . died a short time after she was purchased by one of the defendants." Judgment for defendants affirmed.

*Halley v. Hoeffner,* 19 La. An. 518, December 1867. [519] "June 1861, the plaintiff sold a negro woman . . and her three children . . for . . $1,800, payable $800 in cash and balance at twelve months, for note . . secured by mortgage . . This suit is brought . . on that . . note . . The case was submitted to a jury, with a strong charge . . in favor of the plaintiff's right . . notwithstanding this, a verdict was rendered in favor of defendant . . May, 1866," Judgment thereon affirmed, following Wainwright *v.* Bridges, *supra.*

*Armstrong v. Bach,* 20 La. An. 190, March 1868. "April, 1862, . . for his personal safety he was forced to leave the city . . [191] taking with him all of his family and servants, except an old slave woman too infirm to be moved, with whom he left the keys"

*Posey v. Driggs,* 20 La. An. 199, March 1868. Howell, J.: "Driggs, has appealed from a judgment condemning him to pay the amount of . . notes, given on 7th January, 1863, for . . a negro . . As contended by the appellant, the slaves . . having been emancipated . . by the operation of the Emancipation Proclamation . . the binding force of which was one of the effects of peace, he acquired no title . . In addition . . the doctrine in the case of Wainwright *v.* Bridges [*supra*] relieves him from any obligation to pay."

*Levee Commissioners v. Harris,* 20 La. An. 201, March 1868. "action to recover the penalties imposed by law [1] on the defendant for not sending his male slaves, above . . fifteen . . and under sixty, at the call of the inspector, to work during high-water in 1858, on the levee . . [202] The work done by defendant . . was . . without the consent . . of the inspector" Judgment against defendant affirmed.

*McAllister v. Burton and Co.,* 20 La. An. 205, March 1868. "Defendants sold the slave . . December, 1859. . . May, 1860, the slave came in from the field complaining of sickness, and Doctor Miller was immediately sent for . . had chronic pleurisy . . overseer . . testified that . . from the time plaintiff bought him, . . he was unable to do a hand's labor" He died in July. "decreed that the plaintiff recover [$1800] . . with . . interest . . from . . June, 1860," Howell, J., dissented: [206] "If the price cannot be recovered of the vendee,[2] the vendor cannot be compelled to return the price"

*Jennings v. Gosselin,* 20 La. An. 214, March 1868. "The petition alleges that the girl was, with her mother, hired to the defendant, . . and accidentally was severely burned . . prior to the 15th January, 1859," "became a helpless cripple, owing to the . . mismanagement of the defendant in the treatment . . petition and citation were served . . March, 1860." "The defendant pleaded prescription . . C. C. 2294, 2295, 3501." Judgment in his favor affirmed.

*Fisk v. Bergerot et al.,* 21 La. An. 111, February 1869. "In April, 1854, a female slave, alleged to have been owned by Fisk, . . escaped from a negro trader's yard in New Orleans, and concealed herself in the city until December, . . when, disguised in male attire, she sailed . . to Havre on a ship owned by defendants. . . 1858, this action was instituted . . dismissed . . barred by the prescription of one year." Affirmed.

*Kleinpeter, Administrator, v. Harrigan et al.,* 21 La. An. 196, March 1869. "Know . . that I have this day [December 31, 1866] sold to Nancy Trim, my colored servant, and a good and faithful one she has proved to me. I gave her her freedom about ten years ago, yet she holds fast, and . . cares for me in the most tender manner, and for her

[1] Acts of 1852, p. 237, sect. 23.
[2] Wainwright *v.* Bridges, p. 691, *supra.*

good conduct, I have this day sold her fifty acres . . as a payment for her services to me, as I have paid her nothing for a number of years past." [197] " witness . . testifies . . the services . . he thinks . . were worth from one hundred and fifty to two hundred dollars a year. . . no attempt at obtaining possession seems to have been made for twelve months or more " Held: [198] " the act . . is evidence of no contract known to our law."

*Casanave v. Bingaman,* 21 La. An. 435, May 1869. " James Adam Williams, or . . Bingaman, was one of three natural children who survived their mother, Mary Ellen Williams, a free woman of color who died . . 1861. She bequeathed a considerable amount of property . . [436] 1862 . . Bingaman ['a free white man'] . . was appointed their tutor. . . the son, perished . . 1866. . . His succession was appraised to $25,196 12. . . defendant filed his petition . . setting out his claim to the succession . . had by notarial act, . . July, 1865, formally acknowledged the decedent as his natural son; . . 1867, an order was rendered recognizing the defendant as sole heir "

*V. W. Porter v. Brown,* 21 La. An. 532, August 1869. " action to recover the amount of a . . legacy with interest. In . . 1846 . . Porter died, leaving a will . . ' that my executors shall purchase from . . Metoyer a . . child, the son of a girl they call Meme, provided the same can be purchased at a reasonable sum, and in [that] case . . I give . . unto it its freedom, with [$1000] . . to be put at interest . . the proceeds . . to go to the support and schooling . . and when the boy arrives at . . eighteen . . that the [$1000] . . be paid over to him, and in case of the death . . to my brothers and sisters.' . . [533] receipt . . ' I, Victorin [W. Porter], the child of Meme, a legatee under the will of . . Porter, and eighteen . . do hereby acknowledge to have received of . . Brown, executor [$1000] . . March 4, 1863.' . . it was shown that the . . payment . . was made in Confederate notes and while the plaintiff was a minor." Judgment for plaintiff affirmed: " He cannot be held to have given a legal consent to the payment and thereby bound as equally participating in the circulation of an illicit currency." [Howell, J.]

*Dranguet v. Rost,* 21 La. An. 538, August 1869. " It is urged that, as the defendant promised to pay the note [given for a slave] after the emancipation of slavery, he became legally liable for the debt, for which he was already bound, *in foro conscientiae.*"

Judgment for defendant affirmed: " The decision in the Wainwright case [1] is predicated upon the theory that the sovereign power had abrogated slavery, and all contracts based on slavery. If this be true (and we have reaffirmed it too often to question its correctness now), the State Constitution [of 1868] did not affect the obligation of these contracts by prohibiting courts from enforcing them, or by declaring, that they were null." [Ludeling, C. J.]

*Succession of Rice,* 21 La. An. 614, September 1869. " 1860, John M. Rice, . . being temporarily in . . Ohio . . made his will . . he gave . .

[1] P. 691, *supra.*

ten thousand dollars to the American Colonization Society. . . [615] ordered [in 1867] to be executed" Affirmed.

*Succession of Patin,* 21 La. An. 661, September 1869. [662] "died in 1861, . . December, of that year, a sale . . certain slaves were purchased by the heirs—one . . for $2040; one . . for $2430, and two . . for $3660. . . 1867 . . the administrator, presented an account . . ordered . . that the items . . be stricken out . . from the list of debts due" "To recognize them as such would be, practically, to enforce them. 19 An. 234; Constitution, article 128;"

*Lefevre v. Haydel,* 21 La. An. 663, September 1869. [664] "1850 . . Lefevre sold to . . Haydel twenty-four slaves for . . six hundred dollars, to be paid annually during . . life of the vendor, with the reservation of a mortgage" Held: "the contract cannot be enforced. Wainwright *v.* Bridges [p. 691, *supra,*] . . State Constitution, article 128."

*Sandidge v. Sanderson,* 21 La. An. 757, December 1869. "In 1858 Sandidge sold . . land, personal property and slaves for . . $18,000, estimating . . the slaves . . at $9000. . . All . . notes were . . paid . . except the last . . due . . 1862."

Held: [760] "We can only refuse to enforce the slave part of the debt." [759] "Eviction by emancipation is not such a failure of consideration as the vendor was bound to warrant against. . . the doctrine of immorality is also inapplicable. . . The slave part of the consideration was then no more immoral that the other part" [Wyly, J.] Ludeling, C. J., dissented: [765] "a contract which is tainted, in part, with an *immoral* consideration, is void *in toto,*" Howell, J., concurred in the opinion of the Chief Justice.

*Satterfield v. Spurlock,* 21 La. An. 771, December 1869. "October, 1857, Satterfield sold to Spurlock . . sixty slaves . . [772] Satterfield, in April, 1865, urged . . Spurlock, to reconvey to him [thirty-nine] . . desiring to remove to Texas and still to cling to the desperate fortunes of the Confederacy. . . Spurlock replied . . [773] 'if the negroes run off on account of your making an effort to remove them, it must be at your loss . . At present, they are all satisfied and doing well, and I am fearful that an effort to remove them will cause trouble' . . The terms . . were accepted . . 'All I ask, that they be put in line, named and delivered;' . . he moved them to Texas in vain; they were emancipated, . . He now contends that the act of retrocession . . was unlawful" Held: "He cannot expect this court to relieve him from the consequences of his own immoral transaction." [Wyly, J.] Ludeling, C. J., and Howell, J., absent.

*Rodriquez v. Bienvenu,* 22 La. An. 300, May 1870. [303] "When the note sued on was given [March 1, 1864], the services [of the slaves] had been rendered under the contract of hire,"

Held: [301] "The existence . . of slavery . . [302] lay at the foundation of the contract of hire . . The laws, which authorized and enforced the contract, were necessarily abolished by the subversion of slavery." [Taliaferro, J.] Wyly, J., dissented: [303] "the framers of our con-

stitution . . deemed it necessary only to prohibit the enforcement of contracts for the sale of persons; . . [304] Immorality is the only ground . . not a substantial one. . . We cannot say that our illustrious predecessors degraded this tribunal by encouraging immorality . . by . . enforcing contracts reprobated by law. . . if [the contract] . . was . . moral [when made] . . which it was, the contract ever afterwards remained moral"

*Succession of Woodward,* 22 La. An. 305, May 1870. Held: [307] "no claim . . whether for the price or hire of slaves, can be . . enforced."

*Barrow et al. v. Heirs of Bird,* 22 La. An. 407, May 1870. "Bird departed this life in 1860, leaving a large estate, . . executed his . . will . . wherein . . he donated to each of the two petitioners [$8000] . . [408] provided for the emancipation . . and enjoined on the executor to cause their enfranchisement, with the right of remaining in the State, as soon as it could be done under the laws thereof. . . his heirs renounced all their right . . and acquiesced in . . legacies . . but . . left the legacies . . unpaid. The prayer of the petition is for judgment . . for the amount . . The defendants pleaded . . that the plaintiffs are the issue of an adulterous concubinage . . the mother . . was his slave . . and, under a prohibitory law . . could not be emancipated . . incapable of inheriting" Held: [409] "however barbarous the statute of 1857 may appear, we cannot give the plaintiffs the relief which they seek" [Wyly, J.]

*Barre v. New Orleans,* 22 La. An. 612, December 1870. "The plaintiff, as agent of . . the heirs at law of their grandmother, Marie St. Jean, a free woman of color, institutes this suit to recover a portion of the batture . . alleging that their ancestor was the owner of a lot . . measuring two hundred and forty feet front on the river, . . numbered . . on Trudeau's plat . . and marked . . 'Marie, negresse,' . . testimony, that Marie St. Jean bought the lot . . 1789; . . resided upon it for several years with . . Ternoir, . . in a state of concubinage; that upon the death of Ternoir, . . 1792, his creditors . . seized [it.] . . [613] Marie St. Jean persisted in remaining . . for a considerable . . time . . occupying a shed in the rear . . complained . . 'See, they have sacrificed my property to pay the debts of my husband!' Her occupation . . was that of a nurse and a midwife of much reputation and large practice in respectable families . . and . . she accumulated a considerable amount of property and purchased several slaves. But notwithstanding the intelligence and facilities which these facts imply, it does not appear that any legal measures were ever taken . . to . . rectify the injustice" [615] "plaintiffs . . admit, they had lost [title to the lot] by prescription." Held: "If it be true that alluvion had been formed . . it belonged to the [purchaser] . . of lot"

*Generes v. Campbell,* 11 Wallace (U. S.) 193, December 1870. "Campbell sued Generes, . . 1868, . . as indorser of a promissory note, given as the price of certain slaves, and executed at New Orleans April 4, 1861," Campbell [196] "was a regular slave-dealer, and had his depot on Baronne Street, in New Orleans, and was engaged in that business for several years." [194] "in the fall of 1861, the city of New

Orleans being then besieged by the Federal fleet, the plaintiff closed his business and went to his summer residence" " judgment in favor of the plaintiff for . . $6300." Affirmed: [199] " the propositions upon which the plaintiff in error insists are not so presented that we can take cognizance of them."

*Handlin v. Wickliffe,* 12 Wallace (U. S.) 173, December 1870. [174] " During the late civil war, . . Brigadier-General G. F. Shepley, . . military governor . . commissioned W. W. Handlin as judge of the Third District Court of New Orleans. . . Subsequently, while the war was yet flagrant, . . Hahn was elected governor, and was also appointed military governor in place of Shepley . . Handlin . . was removed from office by him on account . . of a decision to the effect that slavery still existed in the parish of New Orleans, which had been exempted by President Lincoln from the operation of the Proclamation of Emancipation." A writ of mandamus sued out by Handlin to compel payment of his salary was dismissed. Judgment against him affirmed: [175] " We are unable to approve the reason assigned for removal, but we cannot doubt the power." [Chase, C. J.]

*Powell v. Daniel,* 23 La. An. 289, March 1871. " The plaintiff sued the defendant for services rendered in carrying her slaves and other property to Texas, . . and taking care of the same . . under a written contract. The defense is . . that the contract ' is illegal . . and is reprobated as immoral and opposed to all laws human and divine,' " Judgment for defendant reversed, " and that there be judgment in favor of the plaintiff " " the contract was lawful at the time it was entered into." [Ludeling, C. J.]

*Osborn v. Osborn,* 23 La. An. 496, May 1871. " in 1854 . . Hubbard . . purchased the undivided half of a plantation, and sixty-five slaves, . . the value of . . the slaves [was] $15,000,"

*Smith v. Henderson,* 23 La. An. 649, July 1871. [652] " The plaintiff, a judgment creditor of . . Temple, of date . . 1869, enjoins the execution of the other judgment creditor, . . of date . . 1866, on the ground that the property . . will not be sufficient to pay both . . but that . . [the earlier] judgment is based upon a debt for the price of a slave " [651] " judgment in favor of the plaintiff perpetuating the injunction," Wyly, J., dissented: [655] " article 128 . . applies to contracts to be enforced subsequent to the adoption of the Constitution [of 1868]."

*Palmer v. Marston,* 14 Wallace (U. S.) 10, December 1871. " Motion . . to dismiss a writ of error " " Palmer sued Marston . . [11] upon a . . note . . dated October 1st, 1863, . . The defendant answered . . that $949 of it was a part of the purchase price of an African negro claimed to be a slave, and . . freed by sovereign authority, . . The court held that ' whilst the law remains as . . in . . Wainwright *v.* Bridges,[1] . . the plaintiff must fail ' ' by this plea of failure of consideration.' " Writ dismissed for want of jurisdiction: [12] " the provision of the State constitution

[1] P. 691, *supra.*

upon the subject of slave contracts was in no wise drawn in question." [Swayne, J.]

*Heirs of Hoover v. York et al.,* 24 La. An. 375, May 1872. [376] "In August, 1859, . . Hoover died . . and having no forced heirs he instituted . . York and E. J. Hoover his universal legatees . . The estate consisted mainly of the White Hall, the Home and the Marengo plantations . . together with some five hundred slaves . . [380] The value of the property . . exceeded a million of dollars." [378] "after York and Hoover . . had mortgaged White Hall and Home plantations . . and finally surrendered them in bankruptcy, . . Hoover informed the attorney of plaintiffs that he and York had never had a valid title . . because there was a counter letter . . [379] York gives . . the substance of the missing counter letter . . 'I . . wish that the proceeds . . from the annual sales of my cotton crops shall be disposed of: *First*—In purchasing servants, slaves and mules, to cultivate all the vacant land . . and further, to build houses for said servants, . . *Third*—My boy Jimmy, or James Hoover [[378] 'son of the deceased by his . . concubine and slave, Lydia, . . about two years old at the death of . . Hoover'], I wish . . to have sent to school, and no . . expenses spared in having him thoroughly educated. And when he shall arrive at . . twenty-one . . I desire . . York and E. J. Hoover shall . . put him in possession, of his own right, [of] White Hall and Home Place; . . should he be capable of protecting and not squandering the same. Should he . . be a reckless man or an imbecile, I request that none of my property be put in his possession; but . . York and . . Hoover shall amply provide for his . . maintenance. In case of the death of my son, . . and my woman Lydia shall be the mother of no more children during my lifetime, all my property shall belong absolutely to . . York and E. J. Hoover. . . signed . . January, 1859.'" Held: [380] "The lapse of the particular legacy in favor of the boy . . by reason of his incapacity, inured . . to the advantage of York and Hoover,"

*Succession of Caballero (Mrs. Conté) v. Executor,* 24 La. An. 573, November 1872. "The plaintiff . . claiming to be the sole heir . . sues to set aside his will, . . Her claims are opposed by the universal legatee and by the particular legatees. . . [574] Caballero, a native of Spain, came to New Orleans in . . 1832, became a citizen . . lived in intimacy with a colored woman, by whom . . he had several children, the plaintiff . . being the only one . . now living. She was born in . . 1840. Caballero made . . will . . 1852, and ratified it in January, 1856 . . making various legacies for charitable purposes . . In March, 1856, Caballero left . . for Cadiz . . and at Havana, in April . . he was married to . . the plaintiff's mother. . . He was a man of ample fortune. He sold his family tomb in New Orleans for a large price and carried with him the remains of his children and placed them in a tomb . he had built in Cadiz at . . [575] $25,000. He purchased there a costly dwelling house . . and resided in it with his family. It is fully proved that such a marriage . . is legal by the laws of Spain. A judicial order was rendered by a competent judge legitimating the daughter, and upon that occasion the record

of her birth and baptism in New Orleans was transcribed in the record of baptisms in Havana. . . Mrs. Conté . . never returned to Louisiana to live, . . is a subject . . of Spain." [583] "After an absence of three years . . [her parents] returned . . [her mother] dying in 1860 and Caballero in 1866." Held: [581] "It is not against the policy of the laws of Louisiana . . to permit the plaintiff, a legitimated child, to take by inheritance the property of her father. Neither has it ever been the policy of Louisiana to attempt to regulate marriages beyond her territorial jurisdiction." Wyly, J., dissented: [585] "the law of the domicile of birth fixes the status of the child." [583] "the contract of marriage . . was utterly without effect in this State, being at the time in contravention of its policy."

*Slaughterhouse Cases,* 16 Wallace (U. S.) 36, December term, 1872. [57] "Mr. Justice Miller, . . April 14th, 1873, delivered the opinion of the court. . . [68] whatever auxiliary causes may have contributed to bring about this war ['of the rebellion'], undoubtedly the overshadowing and efficient cause was African slavery. . . When the armies of freedom found themselves upon the soil of slavery they could do nothing less than free the poor victims . . these men . . offered their services and were accepted by thousands to aid in suppressing the unlawful rebellion, . . The proclamation of President Lincoln expressed an accomplished fact as to a large portion of the insurrectionary districts, . . But the war being over, those who had succeeded in re-establishing the authority of the Federal government were not content to permit this great act of emancipation to rest on the actual results of the contest or the proclamation . . Hence the thirteenth article of amendment . . [69] To withdraw the mind from the contemplation of this grand . . declaration of . . personal freedom . . and with a microscopic search endeavor to find in it a reference to servitudes, which may have been attached to property in certain localities, requires an effort, to say the least of it. . . [70] circumstances, whatever of falsehood or misconception may have mingled with their presentation, forced . . the conviction that something more was necessary . . the fourteenth amendment, . . [71] A few years' experience satisfied . . the authors of the other two . . that . . these were inadequate . . Hence the fifteenth amendment, . . [73] the first clause of the first section [of the fourteenth amendment] . . overturns the Dred Scott decision by making *all persons* born within the United States and subject to its jurisdiction citizens of the United States."

*Spencer v. U. S.,* 8 Ct. Cl. 288, December 1872. [290] "the overseer, left . . in February, 1863, . . foreman . . and the colored men on the place compressed the remaining ginned cotton into forty bales . . and hauled [them] . . out to Mrs. Blackburn's . . 'to save it for their old master, who had been kind to them.' . . she promised to take care of it. But . . shipped it to Memphis . . where it fell into the hands of . . a special agent of the Treasury Department. . . sold . . by [his] order . . the colored men . . followed the cotton . . claimed it . . 'said . . they were forced to sell . . to Mrs. Blackburn at a price quite below the market value. . . [291] settled by Mrs. Blackburn agreeing to pay the further sum of $2,000.' . . 1864, paid under the direction of . . Treasury agent, to nineteen colored men be-

longing to the claimant's [plantation, less $184 paid to other persons.] . . $4,628.49 were paid . . to Mrs. Blackburn's attorneys,"

Petition dismissed: [294] "the Government of the United States is not answerable . . for the proceeds . . which never reached the Treasury," Affirmed in 1875 by the Supreme Court of the United States. 1 Otto (U. S.) 577.

*Walsh v. Lallande,* 25 La. An. 188, March 1873. Ludeling, C. J.: "The defendant claims under an entry made . . 1844. . . in an *ex parte* proceeding the commissioner of the general land office ordered the cancellation of Lallande's entry . . 1860, on the ground that he was a *free negro,* and the plaintiff was permitted to locate . . statement of facts . . shows that . . Lallande was born of free parents, in this State, . . His grandfather was a white man, a Spaniard; his grandmother was an Indian. Their issue was the father . . the defendant's mother was a mulattress. . . By the laws of Louisiana native born free persons of color were in the full enjoyment of . . [private] rights in 1844. . . By the treaty whereby Louisiana was acquired, the free colored inhabitants . . were admitted to citizenship of the United States. . . [190] judgment in favor of the defendant, decreeing him to be the owner"

*Bruin v. Sasser,* 25 La. An. 224, March 1873. [225] "The slave was a mechanic, and defendant paid $1600 cash, and gave besides the note . . sued upon . . set free by the Government, in 1864 or 1865." Held: "no authority for the judgment . . against the defendant."

*Widow of Benjamin Poydras de La Lande et al. v. Poydras,* 25 La. An. 405, May 1873. "At a probate sale . . 1854 the defendant purchased from the estate of Benjamin Poydras a plantation . . with twenty-four slaves upon it, who were among the slaves entitled to their freedom by . . the will of Julien Poydras,[1] . . [406] 'The said slaves have been detached' from 'the plantation on which he resided'" [405] "Three other . . slaves . . were sold with this lot . . The plaintiffs sue on the last note . . The judge *a quo* ordered an appraisement to ascertain the relative value [of the land and slaves.] . . judgment in favor of the plaintiff for two-thirds the amount of the note . . The defense is that the twenty-four . . were free at the time of the sale . . and that the sale of free persons being *contra bonos mores* . . violates the entire contract. . . [406] It is in evidence that the twenty-four . . were not emancipated by the defendant, . . whatever the obstacles in the way, the defendant made no effort to surmount them." Judgment affirmed.

*Succession of Taylor,* 25 La. An. 446, May 1873. [447] "The petitioner alleges . . that these pretended heirs were adulterous bastards . . and that their mothers were slaves; and by the laws of Kentucky ['the domicile of the deceased'] and Louisiana . . incapable of inheriting" [24 La. An. 327] "a statement . . to his executors, that . . [they] are not his children . . appears to have been written under the influence of displeasure, and to be outweighed by abundant evidence." Suit dismissed. Reversed and cause remanded.

[1] See introduction to the Louisiana cases, pp. 393-396.

*Boyce v. Tabb,* 18 Wallace (U. S.) 546, October 1873. "Boyce, . . February, 1861, gave to Tabb a . . note, as the consideration for the sale of certain slaves. . . [547] in 1867 the Supreme Court of Louisiana adjudged . . that contracts for the sale of persons were void,[1] . . 1868, Tabb sued Boyce . . The court . . charged: 'It is not a legal defence . . that such note was given as the price . . of slaves . . the obligation cannot be impaired by laws of a State passed subsequently' . . Verdict and judgment . . for the plaintiff,"

Affirmed: [548] "This subject received the careful attention of this court in White *v.* Hart,[2] and we are satisfied of the soundness of the views there presented. The case of Osborne *v.* Nicholson[3] is also decisive . . It is urged . . as the highest court in Louisiana has, on grounds of public policy, refused to enforce contracts like this since the abolition of slavery, that the thirty-fourth section of the Judiciary Act of 1789 obliges this court to follow that rule of decision. This is an erroneous view" [Davis, J.]

*August and Joseph Pierre v. Fontenette et al.,* 25 La. An. 617, November 1873. [618] "The father of these plaintiffs was a slave, who . . [[617] 'purchased'] his freedom and died before the abolishment of slavery . . possessed of a small amount of property. Their mother died a slave; her death preceding" [617] "lived together as husband and wife, with the consent of their masters." [620] "the general custom among the slave population in the matter of marriage . . The formality of a marriage ceremony by a priest or other person authorized to solemnize marriage was sometimes resorted to, but this was by no means a general usage." [619] "Magdeline Vincent was the sister of . . the father . . during the existence of slavery became free, . . succeeded as heir . . She died in 1869, . . constituted . . Fontenette her universal legatee. The status of the plaintiffs was that of slaves up to . . the general emancipation." They [617] "ask to be recognized as her heirs,"

Held: [618] "The legitimation . . of these plaintiffs became impossible as a result of marriage, by the death" of their mother "before emancipation. The parties' rights . . were dead; and the subsequent emancipation . . could not resuscitate the marriage," [Morgan, J.] Taliaferro, J., dissented: [619] "all the requisites necessary to constitute marriage were complied with." C. C. 182.

*Hart v. Administrators,* 26 La. An. 90, February 1874. [100] "From . . 1854 to . . his death . . in 1869, . . Hart lived in concubinage with the plaintiff . . his slave. . . 1867, he married her. None of the children were born after the marriage. . . Subsequent to their marriage the children were baptized . . as the children of Hart." [96] "The Catholic priest testifies that prior to his marriage . . Hart desired him to take a conveyance of all his [[90] 'large'] property in trust for his children." [100] "the priest . . advised him that marriage would legitimate them." [96] "He called the children his own, caused them to be educated as such,

[1] Wainwright *v.* Bridges, p. 691, *supra.*
[2] P. 103, *supra.*
[3] 13 Wallace 655.

and as his children employed physicians to attend them . . the mother . . testified that . . in 1857, [he] made a will in which he acknowledged as his own her two children then born, and provided for them and herself, . . [97] destroyed the will after their marriage."

Held: "the children . . are his legal heirs," [93] "The constitution of 1864 made [them] . . free persons. The act of Congress of April, 1866 ['Civil Rights Bill'], made them citizens of the United States, and relieved them of all previous disabilities . . [95] By the former laws of this State the children . . could not have been legitimated . . [because] at the time of their conception, their parents could not have entered into marriage; but . . in 1867, the incapacity . . had been obliterated." [Taliaferro, J.] Morgan and Wyly, JJ., dissented.

*Succession of Randall,* 26 La. An. 163, March 1874. Held: [164] "His having lived in Mississippi with another woman as his wife, while a slave, did not prevent his marriage in Louisiana, where he resided, after his emancipation." [Ludeling, C. J.]

*Boedicker v. East,* 26 La. An. 209, March 1874. [211] "Jim Moore, a freedman who was owned by Carter, was on Carter's place from 1833 until 1863,"

*McLean v. Elliot,* 26 La. An. 385, May 1874. Suit on a note. [386] "Plaintiff presses upon us that what we now call the slave consideration in contracts should not be entertained; but the jurisprudence of the State, we think, is settled . . reduce the amount allowed to plaintiff" [Morgan, J.]

*Heirs of E. A. Johnson v. Bradish Johnson,* 26 La. An. 570, May 1874. "George W. Johnson died in September, 1856. He owned large estates in New York and in Louisiana. . . He . . owned twenty-five slaves in his own right, twelve slaves in common with his brother Bradish, and the eleven-sixteenths of one hundred and sixty-one others. . . To Bradish he gave . . plantation . . imposed a charge . . that after enjoying the fruits and revenues . . with the result of the labor of all the slaves thereon, for five years, he was to liberate them all, send them to Liberia, and give them each fifty dollars. His will was accepted by his heirs . . [571] In 1857, the Legislature . . passed a law prohibiting the emancipation of slaves. In 1858, J. D. Johnson and E. A. Johnson (father of the present plaintiffs) instituted suit . . prayed that all the provisions . . relating to . . the negroes . . might be declared null . . decided by the Supreme Court to be premature. . . Subsequently, John Johnson instituted another suit . . declared that Bradish . . contemplated the emancipation . . and, averring that he feared they would be removed out of the State, . . obtained an injunction . . prohibiting him . . This suit . . November, 1861, . . was dismissed. . . Plaintiffs contend [in the present suit] that . . as the terms of the will were not complied with, . . the legacy lapses"

Held: [573] "the heirs can not . . be heard, when they seek to annul the will in any of its parts." [571] "Every one who was in Louisiana at the time knows, that it would have been impossible for any one to have emancipated a slave in September, 1861, and . . equally impossible to

have sent one, much less one hundred and ninety-eight to Liberia. Late in April, 1862, the United States forces took possession . . By a military order, issued in May, 1863, the statute of 1857 was declared never to have been in force during the occupancy . . by the federal troops, and owners of slaves were authorized to manumit them on presenting a petition to that effect, to any court of record. In March, 1864, Bradish Johnson filed a petition . . [572] prayed leave to emancipate . . granted. The slaves were freed. It is contended that this proceeding was unnecessary . . as two months before, General Banks . . had declared all slavery laws null . . They were not sent to Liberia . . but this was not the fault of the legatee. . . he tendered to those who wished to go, the means . . which they declined. . . The first privilege of freedom is the right to choose a home . . whether they went or staid was not a matter in which the heirs . . had any say." [Morgan, J.]

*Succession of Hebert,* 27 La. An. 300, April 1875. "He claims a deduction . . on the ground that the note was given, in part, for the price of slaves." Held: the deduction cannot be allowed. "Slavery had not been abolished when this note fell due [in February, 1862], and as it was in his hands when he was appointed tutor, it must be considered as so much cash belonging to the minors." [Morgan, J.]

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