

PEER REVIEW ARTICLE†

TWENTY-ONE MONTHS A SLAVE: CORNELIUS SINCLAIR’S ODYSSEY

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† For more information on the *Mississippi Law Journal’s* peer review process, see Jack Wade Nowlin & Brian Clark Stuart, *Foreword: The Mississippi Law Journal Peer Review Process*, 84 MISS. L.J. i (2015).

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We would like to thank Guy Charles, Adrienne Davis, Andrew Fede, Daniel M. Filler, Christopher Green, Mitu Gulati, Matthew R. Hall, Peter Hoffer, Martha S. Jones, Jack Nowlin, Gregg Polsky, Usha Rodrigues, Sarah N. Roth, and Robert J. Smith, for their comments, as well as the staff of the Tuscaloosa County Court and the librarians at the Historical Society of Pennsylvania, the Hoole Special Collections Library at the University of Alabama, the North Carolina State Archives, the Southern History Collection at the University of North Carolina, Wake Forest University’s Z. Smith Reynolds Library Special Collections, and Washington and Lee’s Leyburn Library Special Collections. We have benefitted from workshops at the University of Alabama School of Law, Campbell University School of Law, Duke Law School, the University of Georgia, the University of Mississippi, UNC, Savannah Law School, and the Society for Historians of the Early American Republic. We would also like to thank Elizabeth Carroll Lynn and Christopher Dwight and especially Alison Potts for their research assistance in far-flung archives.

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INTRODUCTION

Cornelius Sinclair's kidnapping in Philadelphia in August 1825, his sale in Tuscaloosa, Alabama, and then redemption from slavery through the efforts of Methodist ministers, a slave-owning Alabama judge and slave-owning jurors, invites attention for several reasons. First, it intervenes in a vibrant debate about the role of African Americans, both free and enslaved, in the legal system of the pre-Civil War South. While the traditional story is one of extremely limited—often non-existent—rights, some have recently challenged that picture. Though Sinclair's suit is successful, it reveals the limited opportunities for resort to law. Second, Sinclair's suit surprises us because of the number of people who participated in it, from religious leaders, to a judge with a rising political career, jurors, and supporters from as far away as Philadelphia, Pennsylvania. Thus it leads us to ask why the legal system supported freedom in this case, but not others? Why would jurors who were slave-owners and a judge who was also a slave-owner act to free Sinclair? How can we use this one case to reveal the nature of the rule of law in the old South, to understand the appeal of order instead of kidnapping? Finally, at the end we expand the scope from Tuscaloosa in the 1820s to point out, as other states made it even harder to make claims to freedom. This is one part of a story of evolution. Sinclair's case is not just a rule of law story; it is one part of a story about the evolution of a proslavery legal system. Cornelius Sinclair's freedom suit could not have happen later, or would have been

substantially harder at least. This story of evolution of the legal system reveals the declining sense of Union. Those changes are visible in cases like *Dred Scott* and others that followed it in the years between *Dred Scott* and the Civil War.

I. THE ENSLAVEMENT

On August 5, 1825, ten-year-old Cornelius Sinclair went looking for work along the Philadelphia waterfront. He met a man with the improbable name of John Smith, who offered him work unloading melons and peaches from a ship in the harbor. Cornelius accepted the offer, followed Smith to a little boat on the shore, got in, and the two of them paddled out to a sloop anchored near the shore.¹ Thus began an odyssey that took him more than a thousand miles away from home, to the heart of the slave-owning south, and eventually back to freedom.

When he stepped aboard the ship, Sinclair found no melons to be handled. Instead, several men he did not recognize assaulted him, bound him in shackles, and locked him in the vessel's cargo hold.² Three other young African American boys were already captive there. The oldest was a fifteen-year-old boy named Samuel Scomp, who was an indentured servant who had fled his master in New Jersey.³ The others were Enos Tillman (or perhaps Tilghman), a nine-year-old boy who had been an apprentice, and another small boy named Alexander Manlove.⁴ The little ones had been there since the day before.⁵

Or maybe Sinclair's odyssey began in a slightly different way. When he finally arrived home in Philadelphia, Sinclair swore in

¹ Sinclair v. Paul, Chancery Docket Record Book, 1825-1827, Tuscaloosa Cty. Cir. Ct., at 181 (available at the Tuscaloosa County Courthouse).

² *Kidnapping*, FREEDOM'S JOURNAL, June 22, 1827, at 3 (reprinted from the Philadelphia Daily Advertiser).

³ Samuel Scomp, *Narrative of Samuel Scomp*, THE AFRICAN OBSERVER 39, 39-40 (1828) (Scomp's deposition was sworn on June 30, 1826. This deposition was reprinted and is one of the few pieces of this story that is known to historians.) See Samuel Scomp, *Deposition to the Mayor's Office of the City of Philadelphia, June 30, 1826*, reprinted in SLAVE TESTIMONY: TWO CENTURIES OF LETTERS, SPEECHES, INTERVIEWS, AND AUTOBIOGRAPHIES 178-81 (John W. Blassingame ed., 1977). Sinclair's kidnapping was part of a larger story, told by Julie Winch. See generally Julie Winch, *Philadelphia and the Other Underground Railroad*, 111 PA. MAG. HIST. & BIO. 3 (1987).

⁴ Scomp, *supra* note 3, at 40.

⁵ *Id.*

an affidavit that Smith had offered him work but that instead of agreeing immediately he followed Smith from around Front Street for several blocks to the New Market at South and Second Streets.⁶ There he was overcome by a white man who held pliable plaster over his mouth so that no one would hear him screaming and pulled him into a covered wagon.⁷ Several miles away, they loaded him onto a boat near Philadelphia.⁸

However the initial kidnapping took place, Sinclair and the others were held on a boat in the Delaware River.⁹ There they remained for the rest of that day, the darkness of their prison only interrupted to see one more fellow, captured by a similar ruse, thrown in with them.¹⁰ He was a sixteen-year-old chimney sweep named Joe Johnson.¹¹ That was the last Johnson would ever see of Philadelphia. A short time later, a man the others called Collins came down and threatened to cut the throats of any of the boys who made noise.¹² At night, the anchor was drawn and the sloop sailed down the Delaware River.¹³ They were on the water for about a week.¹⁴ Eventually they saw the lighthouse at Cape Henlopen. They landed somewhere on the southern Delaware coast, about twenty miles from the house of their kidnapper, a man who also was named Joe Johnson.¹⁵ The slavers took the boys off the boat after sundown, at which point they traded their leg chains for neck-ropes.¹⁶ And so they were marched through marshes, cornfield, and brushwood, until they were taken up by a

⁶ *Kidnapping*, *supra* note 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Scomp, *supra* note 3, at 40.

¹¹ Scomp, *supra* note 3, at 40. The stories of Scomp and Sinclair differ slightly in that Scomp recalls Sinclair being the last one brought on board, while Sinclair recalled Joe Johnson coming after him. See *Sinclair v. Paul*, Chancery Docket Record Book, 1825-1827, Tuscaloosa Cty. Cir. Ct., at 181 (available at the Tuscaloosa County Courthouse).

¹² Scomp, *supra* note 3, at 40.

¹³ See *The Narrative of Peter Hook*, THE AFRICAN OBSERVER 43, 44 (1828) (reporting that Hook, who was kidnapped a few months before Sinclair, sailed past the capes where the captives “saw the light house”). It is likely that the sloop that took Sinclair down the Delaware followed the same route.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

carriage driven by Joe Johnson, and carried to his house; they were confined in irons 24 hours, then carried to Jesse Cannon's on a Sunday night, by him (Cannon) and Ebenezer F. Johnson; this was the first time the boys ever saw Ebenezer, they were kept at Jesse Cannon's about a week in irons in a garret.¹⁷ On a Saturday night, they were put into a wagon with Mary Fisher (and another woman who said she was a slave named Maria Neal). Mary Fisher declared she was a free woman, and had been kidnapped.¹⁸

They ended up at the house of Patty Cannon, the matriarch of a clan of thugs who lived in blatant defiance of the law. The Cannon-Johnson gang operated from the village of Johnson's Crossroads on the Maryland-Delaware border, at a place now known as Reliance, Delaware.¹⁹ Mrs. Cannon's notorious life inspired decades of storytelling by later authors fascinated by the notion of a cruel and ruthless female crime boss.²⁰ A variety of odious misdeeds are alleged to have been committed either by Cannon or under her auspice: she poisoned her husband; when a slave child's crying annoyed her, she threw the baby into a fire; one slave trader who made the mistake of having too much money on him when coming to buy some of her human captives was never seen again.²¹ The possibly apocryphal stories hint at the gothic tales of intrigue that captured the public imagination in the years before the Civil War. A biography printed in 1841 makes Patty Cannon's story out to be a gothic tale of viciousness and inhumanity so characteristic of the fiction of the era.²² When Philadelphia's mayor Joseph Watson wrote about the "mazes of [Cannon's] infernal plot"²³ his language evoked the gothic tales of intrigue,

¹⁷ Scomp, *supra* note 3, at 40.

¹⁸ *Id.*

¹⁹ Letter from Joseph Watson, Mayor, to David Holmes and J. E. Davis, of Natchez (Jan. 20, 1827), reprinted in *Kidnapping*, THE AFRICAN OBSERVER 37, 45 (1828) (giving some of the details of the kidnapers).

²⁰ See generally GEORGE ALFRED TOWNSEND, THE ENTAILED HAT OR PATTY CANNON'S TIMES (Harper & Brothers 1884); see also Richard H. Bell, "Thence to Patty Cannon's": Gender, Family, and the Reverse Underground Railroad, in 37 SLAVERY & ABOLITION 661, 661-79 (2016) (discussing Patty Cannon's gang and the network of kidnapers and transporters).

²¹ JOHN H. K. SHANNAHAN, JR., TALES OF OLD MARYLAND: HISTORY AND ROMANCE ON THE EASTERN SHORE OF MARYLAND 65-67 (Meyer & Thalheimer 1907).

²² *Id.*

²³ Watson, *supra* note 19.

which Edgar Allen Poe and George Lippard would soon make famous.²⁴ Eventually, at least one of these crimes landed her in jail, where she died while awaiting her trial for murder.²⁵

About a week after they were brought to Patty Cannon's property at Johnson's Crossroads, in southwestern Delaware, the victims saw "John Smith" again. He drove them to the coast, whence they were again loaded onto a small sailing vessel.²⁶ The men, women, and children needed no sextant or compass to know where they were going. They were headed into the South, into slavery.

Of the precise course the young captives took through the undeveloped South, we know little. Departing from Patty Cannon's, the children were loaded onto "a larger sloop," and then sailed southward.²⁷ One of the captives later estimated their second sea voyage to have been a week.²⁸ Reckoning of time for one locked in near total dark must have been difficult, and the victims may not have been too concerned with counting the days.

They landed at some unknown spot and there began the most onerous part of their odyssey: a march of at least six hundred miles through the woods and fields of the barely-settled South.²⁹ What we do know is that it was a brutally long, slow, and demoralizing trek. They embarked in late August or early September. The Johnsons had a wagon pulled by horses, and the two youngest captives were usually allowed to sit atop the wagon.³⁰ Cornelius, Samuel, and Joe, however, walked, without shoes.³¹ "[W]hen they complained of sore feet and being unable to travel, they were most cruelly flogged," Scomp reported.³² The three older boys were beaten the most often.³³ At one point, Scomp attempted an escape while in the Choctaw Nation, which was then

²⁴ DAVID S. REYNOLDS, *BENEATH THE AMERICAN RENAISSANCE: THE SUBVERSIVE IMAGINATION IN THE AGE OF EMERSON AND MELVILLE* 216, 249-50 (1988) (discussing the rise of the gothic crime story).

²⁵ *NARRATIVE AND CONFESSIONS OF LUCRETIA P. CANNON* 22-23 (New York, 1841).

²⁶ Scomp, *supra* note 3, at 40.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

limited to west-central Alabama.³⁴ He was captured by a Native American man and returned to Ebenezer Johnson, “who flogged him with a hand saw and hickories in a most dreadful manner.”³⁵ As before, they moved primarily at night, bound by neck-ropes and in fear of being shot. When the sun began to show over the trees, they were chained again and camped somewhere off the beaten path.³⁶

Scomp later estimated that they walked thirty miles each day, but their progress was slowed by various delays.³⁷ In addition to the layovers at Joe Johnson’s house and Patty Cannon’s, the seagoing portions of the voyage were slow, and the party also stopped for several weeks in some sort of ‘safe house’ apparently owned by Ebenezer Johnson “near a small town called Ashville, within 16 miles of the Cherokee Nation, low down in Alabama.”³⁸ The weather was turning cold and this caused further hardship for the poorly clothed captives. Young Joe Johnson became “frosted in the feet” while walking through Alabama and was thereby disabled.³⁹

After hundreds of miles of marching through the woods and fields of the frontier South and Indian territory, barefoot, poorly clothed, roped, fettered, cold, hungry, and beaten, Cornelius Sinclair and the other captives reached Tuscaloosa, Alabama, in October 1825 with their captor Ebenezer Johnson.⁴⁰ Sinclair was sold for \$300 to James Paul, a local tinsmith, whose shop was in the center of Tuscaloosa.⁴¹ Johnson continued west with the rest

³⁴ After 1818, the only land in Alabama that remained in Choctaw control was in west-central Alabama. That was finally ceded to the United States in the treaty of Dancing Rabbit Creek in 1830. See CLARA SUE KIDWELL, CHOCTAWS AND MISSIONARIES IN MISSISSIPPI, 1818-1918, at 164 (1995); see generally GREG O’BRIEN, CHOCTAWS IN A REVOLUTIONARY AGE, 1750-1830 (2002).

³⁵ Scomp, *supra* note 3, at 40.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 41. Something is amiss in Scomp’s affidavit, because Cherokee territory was in northeastern Alabama. See generally WILLIAM G. MCLOUGHLIN, CHEROKEE RENASCENCE IN THE NEW REPUBLIC (1986). Ashville, Alabama was incorporated in 1822 in St. Clair County, near Cherokee territory. See A DIGEST OF THE LAWS OF THE STATE OF ALABAMA tit. 62, chap. 121 (Harry Tomlin ed., Ginn and Curtis 1823).

³⁹ Scomp, *supra* note 3, at 41.

⁴⁰ *Id.*

⁴¹ Answer of James Paul, Sinclair v. Paul, Chancery Docket Record Book, 1825-1827, Tuscaloosa Cty. Cir. Ct., at 185 (available at the Tuscaloosa County Courthouse);

of his kidnapped humans, into Mississippi. Only a few months before, Cornelius had been free. Now he was almost a thousand miles from home, enslaved, friendless, with no cause for hope.

Or maybe not.

II. REDEMPTION: "IN THE CAUSE OF HUMANITY"

About twenty young people of African descent had disappeared from Philadelphia in the summer of 1825 and their families and friends began to wonder what had happened to them.⁴² In January 1826 some news began to trickle back to Philadelphia to answer those questions. A letter arrived in the office of the Joseph Watson, the mayor of Philadelphia, from a lawyer in Rocky Springs, Mississippi, John Henderson, with an astonishing story.⁴³ Ebenezer Johnston tried to sell three young men and two young women in late December 1825.⁴⁴ Rocky Springs, now a ghost town, was then along the Natchez trace, the road from Nashville, Tennessee, to the prosperous town of Natchez. One likely route from Tuscaloosa would have taken Johnson and his captives southwest to Meridian, Mississippi, then on to Jackson, and finally to Rocky Springs. As one potential buyer, James Hamilton, examined the people Johnston was trying to sell, one of them, Samuel Scomp, protested that he was free.⁴⁵ Hamilton undertook an investigation. Soon he found the body of a young man in Johnston's wagon.⁴⁶ The story emerged that the young man, Joe Johnston, a chimney sweep, had died from beatings just before the party arrived in Rocky Springs.⁴⁷ Joe was beaten frequently; about a day before he died Ebenezer Johnston had beaten him with a cart whip.⁴⁸

but cf. Scomp, *supra* note 3, at 40 (reporting having overheard that Sinclair was sold for \$400).

⁴² *Kidnapping*, THE AFRICAN OBSERVER 37, 37 (1828).

⁴³ Letter from John Henderson to Joseph Watson, Mayor (Jan. 2, 1826), reprinted in Eric Ledell Smith, *Rescuing African American Kidnapping Victims in Philadelphia as Documented in the Joseph Watson Papers at the Historical Society of Pennsylvania*, 129 PA. MAG. HIST. & BIO. 317, 330-32 (2005).

⁴⁴ *Id.* at 330.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Scomp, *supra* note 3, at 41.

Henderson's letter set in motion efforts by Mayor Watson to collect affidavits about the freedom of each of those people. It took several weeks.⁴⁹ Soon, however, Scomp and several other kidnapping victims were on their way to Natchez, then down the Mississippi to New Orleans and thence back to Philadelphia.⁵⁰ By the end of June 1826 they were home in Philadelphia, where Scomp gave an extensive affidavit about his kidnaping and redemption.⁵¹ Some victims were already home, but Sinclair's ordeal was far from over. At least people in Philadelphia knew his whereabouts, for Henderson's letter to Mayor Watson had news of Sinclair's sale in Tuscaloosa.⁵²

Although Scomp and the others were home in Philadelphia by the end of June 1826 the delay suffered by Sinclair was, according to the *African Observer*, due to the obstinacy "of a Shylock, who having been defeated in endeavoring to smuggle the boy out of the way, most tenaciously insists upon the ounce of flesh according to the bond."⁵³ James Paul would not let Sinclair go without a fight, and a long one. Paul's intransigence led to a constellation of four lawsuits.

Even before Scomp and the others had returned to Philadelphia there was a movement to help reclaim Sinclair. In April 1826 two local Methodist ministers, Reverend Robert L. Kennon and Joshua Boucher, located Sinclair and took him from the man who had purchased him back in October, James Paul. We know this because in October of 1826, Paul brought an action against Kennon and Boucher for trespass and conversion, "to recover damages for the Defendants taking from the Plaintiff his negro male slave named Cornelius on the 17th of April A.D. 1826 and has converted said Boy to their own use to the damage of the Plaintiff One Thousand Dollars therefore he sues &c." ⁵⁴

⁴⁹ Letter from Joseph Watson, Mayor, to J.W. Hamilton & John Henderson (Mar. 10, 1826), reprinted in Smith, *supra* note 43, at 334-36. See also EDWARD E. BAPTIST, *THE HALF HAS NEVER BEEN TOLD: SLAVERY AND THE MAKING OF AMERICAN CAPITALISM* 190 (2014) (discussing the Mississippi part of the Philadelphia kidnappings).

⁵⁰ Scomp, *supra* note 3, at 41.

⁵¹ *Id.* at 39-41.

⁵² Smith, *supra* note 43, at 331.

⁵³ *Kidnapping*, *supra* note 42, at 37-38.

⁵⁴ Paul v. Kennon, Records and Minutes, Common Law, 1826-1827, Tuscaloosa Cty. Cir. Ct., at 388 (available at the Tuscaloosa County Courthouse).

Unfortunately, we do not have the benefit of a jury verdict here to inform our appraisal of the facts alleged by Paul. The case was settled before a trial.

During the months between April and October, 1826, Paul was apparently heard by several townsfolk maligning the two men, accusing them publicly of thievery and other misbehaviors. Some of these verbal lacerations were quite personal, and eventually became an annoyance sufficient to incite Boucher and Kennon to each bring suit against Paul for slander. The February 1827 term of the Tuscaloosa County Court records these two lawsuits, which are identical in substance, the only differences being the names of the plaintiffs (Kennon brought one suit, Boucher the other). The complaint reads:

This action is brought to recover damages of Defendant for slanderous words spoken by him to of and concerning the plaintiff in the presence and hearing of Joshua Boucher & other good citizens—"I (meaning the defendant)" lost two negroes last night & have reasons to believe that you and Dr. Kennon (meaning the plaintiff) stole them; it is a pretty pass that you have left your religion and turned to kidnapping" (meaning that he the said Boucher & plaintiff on the day of 1826 in the presence & hearing of James Fears & others to the following purport—"Kennon (meaning plaintiff) and Boucher stole my negroes"— and also said at another time—"Kennon (meaning plaintiff) & Boucher stole two negroes of mine" and other words to same purpose and effect—the said charge of felony will be variously and in the several counts.⁵⁵

The most stinging insult that Paul dealt to Kennon and Boucher is also the most ironic in the context of Sinclair's case: "It is a pretty pass that you have left your religion and turned to kidnapping."⁵⁶ Not only does he condemn their restoration of Sinclair's freedom in religious terms, but Paul, the man who bought Cornelius Sinclair from a kidnapper for three hundred dollars, now lamented the loss of his ill-begotten property by libeling Sinclair's rescuers as "kidnappers." It is almost comical.

⁵⁵ *Id.* at 235.

⁵⁶ *Id.*

We can find no evidence of the outcome of this suit. Unfortunately, the details of any settlement agreement are lost. Whether Boucher and Kennon had freed another of Paul's slaves or whether Paul was exaggerating the number of people they freed is unknown. Perhaps both of the complaints were viable actions and the parties simply dropped both of them reciprocally to lessen the costs of litigation. It is very conceivable that Kennon and Boucher founded their slander cases on evidence that Sinclair had indeed been wrongfully kidnapped, and therefore was never the property of Paul, and that as such it would not have been possible for them to "steal" or "kidnap" Sinclair at all. Though we are unable to know at this point whether Kennon and Boucher had formulated a sufficiently solid case to support Sinclair's petition for freedom, we can infer from their willingness to provide Sinclair refuge sufficient to remove him from Paul's possession that they knew him and believed Sinclair's claim that he was not a slave. Paul was not going to be convinced easily, nor was he going to give up his claim on Sinclair without a fight.

At some point in 1826 Boucher had written the mayor asking for help in making Sinclair's case. That letter was never answered; perhaps it was never even received by the Mayor. In January 1827 Boucher wrote again and pleaded for help.⁵⁷ He reported that he was staying in this land of slavery only to prosecute Sinclair's case and that as soon as it was done, he was moving to Ohio.⁵⁸ Boucher asked the mayor for a white witness to come to Tuscaloosa before the second Monday in March to appear at trial.⁵⁹ The letter, which was received on February 8, 1826, in Philadelphia, apparently met with quick action by the Mayor.⁶⁰ At any rate, whatever efforts were made at an out of court settlement ultimately failed to resolve the issue of the legitimacy of Sinclair's slavery, so both sides of the dispute had their chance to try the case in court.

⁵⁷ Letter from Joshua Boucher to Joseph Watson, Mayor (Jan. 17, 1827), in *Joseph Watson Papers*, Box 1, Folder 11, Historical Society of Pennsylvania.

⁵⁸ *Id.* at 2 ("I am remaining in this county until the decision of the suit, at which time I shall remove to the state of Ohio.").

⁵⁹ *Id.*

⁶⁰ See Resolution by Philadelphia Select Council, Feb. 8, 1827, reprinted in Smith, *supra* note 43, at 340-41.

James Paul may have hoped to trust his luck to a jury with which he had more common interest than did Cornelius Sinclair. In Sinclair's case, the property interest asserted by James Paul was an interest that the jurors knew well. Sinclair and his supporters could rely only on the truth of his story as told by a white witness sent from Philadelphia and the depositions from free people who know him in Philadelphia, the skill of his lawyer, and their exhortations to "Justice." Indeed, as Mississippi attorney general Richard Stockton wrote, "the provisions of our humane statutes are enforced, and generally at the expense of our fellow citizens."⁶¹ For the jury, the substantial expense of their fellow citizen was inadequate to overcome the truth of Sinclair's claims. Justice was in this case blind, even if it came with a hefty cost in time and money.

How did this happen? Sinclair's freedom was won with the help of his benefactors in Tuscaloosa and Philadelphia. Even his own petition for freedom was brought "by his next friend Joshua Boucher." According to the records, he also had the help of other local men: Robert L. Kennon and Dennis Dent.⁶² Sinclair's case required a bond of \$1000 to be posted with the court to insure Paul against any damages occasioned by the loss of Sinclair's service, should a jury find his bondage to have been legitimate.⁶³ Also involved for the men who brought Sinclair's case to court were their reputations within the small community. Thus, while Sinclair himself obviously had the most personally at stake in the legal struggle for his freedom, the men who took his case to court also undertook substantial risks themselves.

This leaves open the most important question regarding Sinclair's benefactors: why did they do it? Who were these people and why would they take action for Sinclair? What drove these three (and many other) people to take upon themselves the

⁶¹ Letter from Richard Stockton to Joseph Watson, Mayor (May 26, 1826), reprinted in *THE AFRICAN OBSERVER* 42, 42 (1828).

⁶² Boucher's letter of January 17, 1827 also mentions a Mr. Gazzan and an unidentified lawyer. See Boucher, *supra* note 57, at 1.

⁶³ Sinclair v. Paul, Chancery Docket Record Book, 1825-1827, Tuscaloosa Cty. Cir. Ct., at 184 (available at the Tuscaloosa County Courthouse). See also WILLIAM EATON, JR., *BOOK OF PRACTICAL FORMS: WITH EXPLANATORY NOTES AND REFERENCES TO AUTHORITIES: INTENDED AS A MANUAL TO THE PRACTISING LAWYER IN THE STATE OF NORTH CAROLINA* 6-7 (Lindsay and Blakiston 1854) (providing forms for bond for double the value of a slave when a plaintiff sought replevin of a slave).

strenuous effort demanded by the process of litigating the case of a strange, young, Northerner against a fellow local white man? Though it may be met with skepticism, perhaps the short answer is that they set Cornelius Sinclair free because it was the right thing to do. On this, all three of them agreed, though their individual reasons for pursuing the case may have differed. The motives of the ministers and their congregant may be easier to divine than the judge and jurors. For the latter, maybe kidnapping was beyond the pale of what was permitted within the proslavery southern legal system. That is, perhaps kidnaping was frowned upon as an interference with property rights and an offense to public order. Or perhaps it was a more mundane motive, such as dislike of their neighbor James Paul. Or maybe even for the judge and perhaps even some of the jurors, this was a blow—however small—struck at slavery.

The first glimpse into the motivation of the men involved in Sinclair's quest for freedom comes from the men themselves. The body of evidence indicates that Joshua Boucher was probably the primary sponsor of the young man's liberation. Boucher told Philadelphia Mayor Joseph Watson that he had instigated the lawsuit⁶⁴ and Boucher's name appears alongside that of Cornelius Sinclair in the complaint against Paul. The petition specifically states that at the time of the trial, Sinclair was "remaining with a friend," though it does not tell us exactly which of his friends it was.⁶⁵

Joshua Boucher was a Methodist minister. Church records tell us that he arrived at Tuscaloosa's First Methodist Church in 1825, and that his personal views were quite hostile to the institution of slavery.⁶⁶ He was not, however, a Northerner.

⁶⁴ Boucher, *supra* note 57, at 1 ("James Paul of this place ... has been sued by this boy for his freedom at my instance.").

⁶⁵ *Sinclair*, Chancery Docket Record Book, 1825-1827, at 182.

⁶⁶ JAMES B. SELLERS & CHARLES WILLIAMS FOSTER, HISTORY OF FIRST METHODIST CHURCH OF TUSCALOOSA, ALABAMA 39, 67-72 (1968); ANSON WEST, A HISTORY OF METHODISM IN ALABAMA 324-25 (1893). West discusses a controversy over the role of ministers and Free Masons that riled the Tuscaloosa Methodist Church, like many other churches in that period, in 1826. *Id.* One result of this controversy, in which both Boucher and Kennon sided with the Free Masons, was a decline in the Tuscaloosa Methodist church's membership by about one-third. *Id.* It may be more than a coincidence that this controversy coincided with Boucher's and Kennon's advocacy on behalf of Sinclair. *Id.* at 325-26.

Boucher was born in 1797 in Lee County, Virginia, and moved with his family to Tennessee in 1815, where his uncle, also Joshua Boucher, was also a prominent Methodist clergyman. Boucher's personal antipathy towards slavery is said to have originated in his relationship with a particularly pious slave owned by his father.⁶⁷ And here we have one facet of the anti-slavery sentiment as well, pure moral fervor. Methodists in the 1820s, even in the South, were often critical of the institution of slavery.⁶⁸

Robert L. Kennon was also a Methodist minister.⁶⁹ Born in Granville County, North Carolina in 1789, he began his career in ministry at an early age. He moved to Alabama in 1819, purportedly because:

The country was in the process of being rapidly settled, and those who went thither, generally, in their eagerness for worldly gain, lost sight of the importance of Divine institutions. It needed a powerful influence to stem the rising current of iniquity in that new country; and Mr. Kennon soon felt the obligation pressing upon him to consecrate his undivided energies to this work.⁷⁰

He moved to Tuscaloosa well before Boucher, and he was held in very high regard by those that knew him. Personally, he is also reported to have been a mild mannered and deeply spiritual individual. One contemporary recalls:

His social *status* was a high one. He was recognized as a man of large views, cultivated mind, and altogether of an elevated character; and he did not lower the dignity of the Christian minister, when he mingled in the innocent enjoyments of social life. All who knew him knew that he was a man of deep and ardent piety, abounding in labours, and self-sacrificing to the last degree. Cheerful and even buoyant whilst suffering

⁶⁷ MINUTES OF THE CINCINNATI CONFERENCE OF THE METHODIST EPISCOPAL CHURCH 64 (Cincinnati, R.P. Thompson 1868).

⁶⁸ JOHN W. QUIST, RESTLESS VISIONARIES: THE SOCIAL ROOTS OF ANTEBELLUM REFORM IN ALABAMA AND MICHIGAN 349 (1998).

⁶⁹ WILLIAM R. SMITH, SR., REMINISCENCES OF A LONG LIFE: HISTORICAL, POLITICAL, PERSONAL AND LITERARY 142-43 (1889).

⁷⁰ *Robert Lewis Kennon, of the Alabama Conference, 1809—1838*, in 7 ANNALS OF THE AMERICAN METHODIST PULPIT; OR, COMMEMORATIVE NOTICES OF DISTINGUISHED CLERGYMEN OF THE METHODIST DENOMINATION IN THE UNITED STATES 467-68 (William B. Sprague ed., 1861).

from bleeding lungs, he was always a delightful companion, beloved at home, and welcomed everywhere.⁷¹

It may come as no surprise that Kennon acted to help Sinclair, for his sermons “carried the understanding by force of argument, and then set the soul on fire.”⁷² It seems as though the hearts of both Boucher and Kennon were on fire in this cause. Regarding the enslavement of his fellow man, Kennon at the very least subscribed to a mild form of anti-slavery ideas. In 1830 when the Alabama Colonization Society was formed in Tuscaloosa, Kennon served as vice-president.⁷³

One other person, Dennis Dent, appeared on Sinclair’s side in one suit.⁷⁴ Dent offered bond in case Sinclair turned out to be a slave.⁷⁵ We know the least of his involvement in the case, and also of his motivations. He was not a minister like Boucher and Kennon, but he was nonetheless quite an important person in Tuscaloosa at the time.⁷⁶ Born in Maryland, he was later known as General Dennis Dent, because in 1836 he raised and commanded a company of volunteers in the Seminole Wars in Florida.⁷⁷ He was a Whig and, like Kennon and Boucher, a member of the Methodist Episcopal Church.⁷⁸ One source recalls that “[h]e was quite successful in acquiring the favor of . . . people by his plain and winning address, with a kind word for everybody, and his purse always open to the poor and needy. Gen. Dent frequently engaged in debate, was sensible in his views and quite

⁷¹ *Id.* at 469 (reprinting letter from Hon. & Rev. H. W. Hilliard on July 10, 1859) (emphasis in original).

⁷² *Id.*

⁷³ QUIST, *supra* note 68, at 322-23 (citing THOMAS MCADORY OWEN, 4 HISTORY OF ALABAMA AND DICTIONARY OF ALABAMA BIOGRAPHY (1921)); *State Colonization Society in Alabama*, 5 AFRICAN REPOSITORY 379-80 (Feb. 1830) [hereinafter *State Colonization*]; *Intelligence*, 6 AFRICAN REPOSITORY 178-79 (Aug. 1830) (listing members of the Huntsville, Alabama, auxiliary society, including James G. Birney). For further discussion of religious leaders in Kennon’s Tuscaloosa, see E. BROOKS HOLIFIELD, THE GENTLEMEN THEOLOGIANS: AMERICAN THEOLOGY IN SOUTHERN CULTURE, 1795-1860, at 218 (1978).

⁷⁴ See *supra* note 62 and accompanying text.

⁷⁵ See *supra* note 63 and accompanying text.

⁷⁶ WILLIAM GARRETT, REMINISCENCES OF PUBLIC MEN IN ALABAMA FOR THIRTY YEARS 159 (1872).

⁷⁷ *Id.*

⁷⁸ *Id.*

pleasant in his manner.”⁷⁹ Consistent with that description was the part he played in Sinclair’s case: it was Dent who offered the \$1000 bond for the petition.⁸⁰ His dedication to this cause must have been substantial, as must have been his trust in Sinclair, Boucher, and Kennon. Interestingly enough, Dennis Dent was a slave-owner.⁸¹ We are unable to detect how much moral discomfort Dennis Dent felt with the institution of slavery, but one explanation of his—and many others’—support of a kidnapped person’s suit for freedom is respect for the law.

James Paul, Sinclair’s “owner” and opponent, was a well-known figure in Tuscaloosa. He had arrived around 1821 from Tennessee, as a tinsmith and he established a small shop in town.⁸² Paul started with little, but by dint of his work ethic and also sharp dealings with Tuscaloosa residents he acquired a small fortune, some land, and then human beings.⁸³ His desire to acquire land appears in a letter he wrote in 1831 to the Secretary of War, asking whether individuals might purchase property that the United States had recently acquired from Choctaws.⁸⁴ A life-long bachelor, he loved his work but seemed not to have much compassion for people.⁸⁵ In fact, Tuscaloosa’s late nineteenth century historian recalled that Paul “had little to do with the frivolities of charity”⁸⁶ As the man who bought Sinclair from a slaver (and therefore financially supported his detestable activities) and consistently fought against the cause of freedom, he is the villain of this tale. At any rate, the lawsuits between Paul and the two Methodist ministers set up a classic conflict of a

⁷⁹ *Id.* at 159-60.

⁸⁰ The bond was required as part of a freedom suit. *See Negroes and Mulattoes, Bond and Free, A DIGEST OF THE LAWS OF THE STATE OF ALABAMA* tit. 46, chap. 2, § 2, at 632 (Henry Toulmin ed., Cahawba: Ginn & Curtis 1823) (“An Act to prevent the Liberation of Slaves, only in cases hereafter named . . .”) [hereinafter *Negroes and Mulattoes*].

⁸¹ *Crabb’s Adm’r v. Thomas*, 25 Ala. 212, 214-15 (1854).

⁸² *See SMITH, REMINISCENCES*, *supra* note 69, at 183.

⁸³ *Id.* at 196.

⁸⁴ *See* Letter from James Paul to the Secretary of War (July 29, 1831), in H.R. DOC. NO. 76, at 6 (1st Sess. 1831) (asking whether land acquired from Choctaw Nation could be sold to individuals).

⁸⁵ *See SMITH, REMINISCENCES*, *supra* note 69, at 183-201 (discussing “Paul, the Tinner”); *see also* *Smith v. Paul*, 8 Port. 503, 506 (Ala. 1839) (affirming judgment in favor of Paul on a contract).

⁸⁶ *See SMITH, REMINISCENCES*, *supra* note 69, at 192.

proslavery man who sought to make money against anti-slavery religious leaders.⁸⁷

The remaining records do not contain the complete arguments of the parties, but it appears that Paul contended that he bought Sinclair from the Johnson brothers in good faith and for a substantial amount of money and that Sinclair was a slave. Thus it is possible that for all he knew, Sinclair's claims to freedom were false, and that he was legitimately due the labor that could be wrung from his \$300 investment. The Johnson gang could be punished by death for kidnapping,⁸⁸ but perhaps Paul genuinely believed that he was entitled to payment for Sinclair. And in fact it seems that he offered to settle the case for the payment of the \$300 he spent on Sinclair.⁸⁹

Sinclair might never have had his day in court had his plight not first come to the attention of Boucher and company. In January 1827 Boucher wrote to the Mayor of Philadelphia asking for additional documentation of Sinclair's free status.⁹⁰ So how, exactly, did it happen? This has proven to be one of the more evasive mysteries behind the case of Cornelius Sinclair. What little record remains is almost silent on the issue. The trial record only says that at the time of his petition for freedom, Sinclair had "lately been taken out of the possession of the said Paul and is remaining with a friend—being apprehensive—that he might have been again removed and sold into slavery."⁹¹

⁸⁷ See generally *SLAVERY'S CAPITALISM: A NEW HISTORY OF AMERICAN ECONOMIC DEVELOPMENT* (Sven Beckert & Seth Rockman eds., 2016) (exploring the profit motive in slavery).

⁸⁸ *Negroes and Mulattoes*, *supra* note 80, at 207 (making knowing selling of a free person punishable by death). Later the Alabama code also made it a crime to purchase someone knowing they were free. See *A DIGEST OF THE LAWS OF THE STATE OF ALABAMA* chap. 3, §§ 24-27, at 415-16 (Tuskaloosa, Maramaduke J. Slade 1843) (criminalizing knowingly holding a free person as a slave).

⁸⁹ *Just Reciprocity*, *THE AFRICAN OBSERVER* 219, 219 n.* (Apr. 1827) [hereinafter *Just Reciprocity*].

⁹⁰ Boucher, *supra* note 57, at 1.

⁹¹ *Sinclair v. Paul*, Chancery Docket Record Book, 1825-1827, Tuscaloosa Cty. Cir. Ct., at 182 (available at the Tuscaloosa County Courthouse). Unfortunately, the record does not indicate whether "been taken out" means that Sinclair was actually removed by Boucher and Kennon, or whether the young man escaped his captivity and fled to the two ministers, and is his actions are given a passive voice simply to have the record's language match the inferior legal status that the law placed upon him. Thus, we are left unaware of who began the chain of events leading up to Sinclair's legal battle.

A. The Freedom Suit

In March of 1827, twenty months after being captured and enslaved, and nearly a year after he had been taken from Paul by Boucher, Cornelius appeared in the Circuit Court for Tuscaloosa County.⁹² Sinclair was there for a trial on a petition filed on his behalf against his purported owner.⁹³ The action, titled “Petition for Freedom,” was brought on Sinclair’s behalf “by his next friend Joshua Boucher,” tried before a local jury.⁹⁴ The South Carolina-born and educated Judge John Gayle, Jr. who was then on the Alabama Supreme Court and was sitting as a circuit judge, presided over the trial.⁹⁵

B. Petition for Freedom, by Cornelius Sinclair, a boy of Colour

The primary account of the central events of Sinclair’s tale is the trial record of his petition for freedom. The allegations that formed Sinclair’s case are summarized in the record:

Your petitioner Cornelius Sinclair, by his next friend, Joshua Boucher, respectfully represents to Your Honor that on or about the tenth day of August in the Year of our Lord One thousand eight hundred twenty five the said Cornelius then a resident of Philadelphia P^a was decoyed by a mulatto man by the name of John Smith on board of a vessel there being in the river near the navy Yard of that city. That the said John Smith applied to your petitioner Cornelius to go on board of said Vessel and aid him in bringing away some Water Mellons & peaches. After being on board a short time the Captⁿ of the Vessel forcibly seized upon him the said Cornelius and by the aid of two others forcibly thrust him him [sic] down in the Hold, where he was beat & ironed & where Your petitioner found three other boys ironed. That in a very short another Boy was brought and treated in like manner & then the vessel Sailed. They were afterwards landed this petitioner

⁹² *Id.* at 181.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*; see also DIGEST OF CASES DECIDED AND REPORTED IN THE SUPREME COURT OF THE STATE OF ALABAMA: FROM 1ST ALABAMA REPORTS TO 7TH PORTER INCLUSIVE 1 (Mobile, R.R. Dade 1840) (listing John Gayle as justice for the third circuit); CAROL BLESER, IN JOY AND IN SORROW: WOMEN, FAMILY, AND MARRIAGE IN THE VICTORIAN SOUTH, 1830-1900, at 17 (1991) (discussing John Gayle and his wife, Sarah).

knows not where but was taken to the House of one Joseph Johnston who was an active participator in the whole business & afterwards Ebenezer F. Johnston, a brother of the said Joseph, brought all of them off & about the month of October last sold your petitioner Cornelius to one James Paul of the County of Tuscaloosa [sic] & State of Alabama and your petitioner Cornelius further represents that he has lately been taken out of the possession of the said Paul & is remaining with a friend—being apprehensive—that he might have been again removed & sold into slavery. Your Petitioner alledges [sic] that he is free—was born free[,] that his parents obtained their freedom previous to his being born, that they at this time reside in the City of Philadelphia, all of which your petitioner can amply prove in such manner that your Honor may require from the consideration of all of which your Petitioner prays your Honor that he your petitioner my be decreed free and released from Slavery. That he may be decreed wages for the time he has been held as a slave by said Paul and that said Paul & all other Persons may be restrained by such process & in such penalties as to your honor shall deem meet—From Removing or otherwise intermeddling with Your Petitioner during the pendency [sic] of this suit &c. And may it please Your Honor to grant unto your petitioner Cornelius such other processes & such other relief as is applicable to his case and as to Your Honor may seem proper and consonant with Justice and your petitioner as in duty bound will ever pray &c.⁹⁶

The answer to the allegations provided by James Paul was much less detailed:

The defendant answereth and saith he does not know the facts stated in said Petition are true or false other than those stated relative to this defendant Purchasing said Boy from one Ebenezer Johnston for the sum of three hundred Dollars from which purchase this defendant claims said Boy as his Slave, and prays that he may be returned back to his

⁹⁶ *Sinclair*, Chancery Docket Record Book, 1825-1827, at 181-82. This petition was entered on April 24, 1826. *Id.* at 183. The bond was accepted on April 29, 1826. *Id.* at 184.

possession out of which he has been taken not without there is any other matter or thing necessary &c.⁹⁷

The trial itself took place in March of 1827, many months after the critical events themselves occurred. Because Alabama law did not permit testimony by people of African descent,⁹⁸ Reverend Boucher asked Mayor Watson to send affidavits and even a white man to Tuscaloosa.⁹⁹ The expense of all of this was something like \$450.¹⁰⁰ Sinclair's petition for freedom was tried and granted on the ground that he was, as the jury found "born of free parents and is himself free."¹⁰¹ Thus, the issue at trial involved Sinclair's origins before the "purchase" by James Paul. It seems that a successful petition for freedom usually required the testimony of a witness who could identify the victim and attest to personal knowledge of that victim's status as a free person.¹⁰²

Twelve Tuscaloosa jurors believed the account of Sinclair's life before he was sold to James Paul. After hearing the evidence, the twelve white men returned a unanimous verdict: "Cornelius Sinclair is not the property of the defendant, but was born of free parents and is himself free . . ." ¹⁰³ Their verdict in Sinclair's favor was to the substantial expense of one local white man and slaveowner. Soon Boucher wrote to Mayor Wilson to inform him of their victory.¹⁰⁴

⁹⁷ *Id.* at 185.

⁹⁸ The very first provision of the Alabama code of 1823 prohibited the use of a slave's testimony, except in criminal cases against another slave. *See Negroes and Mulattoes*, *supra* note 80, at 627.

⁹⁹ Boucher, *supra* note 57, at 1.

¹⁰⁰ *Just Reciprocity*, *supra* note 89 (mentioning that Sinclair "might have been bought for 300 dollars; the expense of his recovery was about 450 dollars.").

¹⁰¹ *Sinclair*, Chancery Docket Record Book, 1825-1827, at 81.

¹⁰² Letter from D.S. Walker to Hon. Joseph Watson (Feb. 25, 1827), *reprinted in THE AFRICAN OBSERVER* 47, 47 (May 1827).

¹⁰³ *Sinclair*, Chancery Docket Record Book, 1825-1827, at 81. The jurors were William Robertson, Charles Harrell, John Hargrove, James Cartwell, Humphrey B. Rogers, Henry Pickard, Hiram Colbut, Manning Clemmons, Robert S. Foster, William Forester, Jesse Bramlett, and John W. White. *Id.* The jurors and the verdict are also recorded at *Sinclair*, Chancery Docket Record Book, 1825-1827, at 185. Costs of the suit were charged to Paul. *Id.*

¹⁰⁴ Letter from R.L. Kennon and Joshua Boucher to Joseph Watson, Mayor, (Mar. 23, 1827), *reprinted in Smith*, *supra* note 43, at 341-42; *see also* CAROL WILSON, *FREEDOM AT RISK: THE KIDNAPPING OF FREE BLACKS IN AMERICA, 1780-1865*, at 30 (1994) (citing letter from Boucher to Watson dated March 1827).

Judge Gayle, who was a slave-owner himself,¹⁰⁵ issued the order: “It is therefore ordered, adjudged, and decreed that the said Cornelius Sinclair be set free and that he be absolved and discharged from the custody and control of the said James Paul the defendant. It is further decreed that the said defendant pay the costs of this Suit.”¹⁰⁶

Judge Gayle harboured some anti-slavery sentiments, it seems. For three years after Sinclair’s lawsuit, in 1830, Gayle, who was then living in Greensboro, Alabama, was named a co-vice president of the newly formed Alabama State Colonization Society.¹⁰⁷ In fact, many powerful Alabamians, including five justices of the Supreme Court, supported it.¹⁰⁸ It is difficult to interpret precisely what support for colonization meant in terms of attitudes towards slavery. On the one hand, colonization was the only form of acceptable anti-slavery action in the South.¹⁰⁹ The American Colonization Society struggled to gain support in Alabama because many believed it was in favor of even more anti-slavery action than colonization.¹¹⁰ University of Alabama

¹⁰⁵ THEODORE WELD, *AMERICAN SLAVERY AS IT IS: TESTIMONY OF A THOUSAND WITNESSES* 172 (New York, American Anti-Slavery Society 1839) (reprinting John Gayle’s advertisement for a runaway slave); THE JOURNAL OF SARAH HAYNSWORTH GAYLE, 1827-1835: A SUBSTITUTE FOR SOCIAL INTERCOURSE xxviii-xxix (Sarah W. Wiggins ed., 2013) (discussing Gayle’s ownership of humans and the need to sell some of them to pay family debts); Letter from John Gayle to Sarah Gayle, (July 7, 1826), in 2 Bayne and Gayle Family Papers, Southern Historical Collections, University of North Carolina Library, at 360 (asking for the slave Hampton to be sent to Tuscaloosa to wait on the justices because it was Gayle’s turn to provide a slave for the court term and “[servants] are scarce about the tavern and we need to wait upon ourselves”). Gayle’s wife, Sarah Haynsworth Gayle, also wrote about slavery occasionally. For instance, she condemned the Nat Turner rebels. See JOURNAL OF SARAH HAYNSWORTH GAYLE, *supra*, at 196.

¹⁰⁶ *Sinclair*, Chancery Docket Record Book, 1825-1827, at 186. In one of the surprising twists of fate, we have a letter written by Judge Gayle to his wife on March 23, 1827. Although he does not mention Sinclair’s case, he does say that “the business of [the] court has been very arduous, and I have been somewhat dejected and in a bad humor.” Letter from J. Gayle, Jr. to “My dear wife,” (Mar. 23, 1827), located in 2 Bayne and Gayle Family Papers, Southern Historical Collections, University of North Carolina Library, at 361.

¹⁰⁷ *State Colonization*, *supra* note 73.

¹⁰⁸ *Id.* at 379.

¹⁰⁹ See, e.g., NEELY YOUNG, *RIPE FOR EMANCIPATION: ROCKBRIDGE AND SOUTHERN ANTISLAVERY FROM REVOLUTION TO CIVIL WAR* 136-45 (2011).

¹¹⁰ LACY K. FORD, *DELIVER US FROM EVIL: THE SLAVERY QUESTION IN THE OLD SOUTH* 311-12 (2009). Meanwhile, those who would soon be strenuously arguing

professor Henry Tutwiler, a recent transplant from the Shenandoah Valley, supported it.¹¹¹ Likewise, James Birney was active in colonization activity in Alabama before he abandoned the state and moved north.¹¹² He ran for President on the Liberty Party in 1844.¹¹³ On the other hand, the core principle of colonization was the removal of enslaved people and free people of African descent from the United States.¹¹⁴

But Gayle was no abolitionist. Four years after that Gayle became the governor of Alabama. Interestingly, and perhaps in illustration of the speed with which southern anti-slavery sentiment died, in 1835 Gayle requested that the governor of New York extradite abolitionist writer R. G. Williams for his allegedly insurrectionary publication of the *Emancipator*.¹¹⁵ As governor, Gayle clashed with President Andrew Jackson by asserting the

against slavery were saying in 1827 that colonization was not radical. See J.B. Harrison, *The Colonization Society Vindicated to Virginia*, 3 AFRICAN REPOSITORY AND COLONIAL JOURNAL 193-208 (Sept. 1827). Five years later, in the wake of the Nat Turner rebellion, Harrison rebutted Thomas Dew's proslavery essay. See generally JESSIE BURTON HARRISON, REVIEW OF THE SLAVE QUESTION (Richmond, T.W. White 1833). See also ALL CLEVER MEN, WHO MAKE THEIR WAY: CRITICAL DISCOURSE IN THE OLD SOUTH 55-56 (Michael O'Brien ed., 2008) (discussing Harrison's biography).

¹¹¹ Alfred L. Brophy, *The Law of the Descent of Thought: Law, History, and Civilization in Antebellum Literary Addresses*, 20 L. & Lit. 343, 349 (2008) (discussing Tutwiler's association with the American Colonization Society).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ The latest analysis is from DAVID BRION DAVIS, THE PROBLEM OF SLAVERY IN THE AGE OF EMANCIPATION 105-26 (2014). But this is a contentious issue and, probably because so many people were in some ways affiliated with colonization, unlikely to be resolved definitively. That is, the movement sheltered people of widely differing views, so it is hard to use membership with the American Colonization Society as a definitive gauge of attitudes towards slavery. See generally Matthew Spooner, *I Know This Scheme is from God: Toward a Reconsideration of the Origins of the American Colonization Society*, 35 SLAVERY & ABOLITION 559 (2014). Quist interprets the activities in Tuscaloosa as an indicator of anti-slavery sentiment. See, e.g., QUIST, *supra* note 68, at 322-23. But cf. Alex Lovit, "The Bounds of Habitation": *The Geography of the American Colonization Society, 1816-1860*, at 30-31 (2011) (Ph.D. dissertation, University of Michigan) (discussing American Colonization Society in Tuscaloosa) (on file with author).

¹¹⁵ DELOMBARD, *infra* note 136, at 51. Alabama law made it a felony to publish or distribute literature that incited insurrection. See *Crimes and Misdemeanors, A DIGEST OF THE LAWS OF THE STATE OF ALABAMA* § 55, at 110 (Philadelphia, Alexander Towar 1833) ("Should any person distribute, circulate, or publish . . . any seditious papers, pamphlets, or writing, tending to produce conspiracy, or insurrection . . . among the slaves or colored population, such person, upon conviction thereof, shall suffer death.").

rights of Alabama citizens to settle land reserved for Native Americans of the Creek nation. While Jackson is remembered for his brutal policy towards Native Americans, the dominant perspective among Alabama's white population was even harsher in regard to white claims to natives' land.¹¹⁶

III. INTERPRETING THE TUSCALOOSA FREEDOM SUIT

If this verdict comes as a shock to modern observers, we are to be forgiven. For Tuscaloosa was the capital of the state where in 1830 117,000 people were owned by other people; more than one in three people in the state were enslaved.¹¹⁷ Looking to more recent history, the state elected a man who entered office by announcing his dedication to "Segregation now. Segregation tomorrow. Segregation forever."¹¹⁸ Indeed, Sinclair won his freedom in a courtroom that was less than two miles from the very spot in which Governor Wallace stood in the schoolhouse door more than one hundred years later.¹¹⁹ Thus is it unexpected that a young, penniless, friendless person of African descent would be aided by two local men, who helped him challenge his bondage in court, and that he would win his freedom by a unanimous verdict from a jury of twelve local residents.

A. *The Central Tendency of Southern Slave Law*

The success of the lawsuit also tells us something about the legal system and therein lies an oddity that invites explanation. The legal system developed sophisticated rules to adjudicate

¹¹⁶ Frank L. Owsley, Jr., *Francis Scott Key's Mission to Alabama in 1833*, 23 ALA. REV. 181-92 (1970); TIM ALAN GARRISON, *THE LEGAL IDEOLOGY OF REMOVAL: THE SOUTHERN JUDICIARY AND THE SOVEREIGNTY OF NATIVE AMERICAN NATIONS* 166-67 (2002) (discussing Governor John Gayle's grant of a pardon from a white man, Joseph Caldwell, who killed a Native American man, Fushatchee Yoholo, on Creek lands); *see also* *Caldwell v. State*, 1 Stew. & P. 327, 327 (Ala. 1832). Gayle was later elected to the U.S. House of Representatives for one term, and was appointed federal district judge in 1849, in which office he served for the remaining ten years of his life.

¹¹⁷ ADHA: Alabama History Timeline 1830, State of Alabama Archives, <http://www.archives.alabama.gov/timeline/al1801.html> [https://perma.cc/58EJ-PUGR].

¹¹⁸ GLENN T. ESKEW, *BUT FOR BIRMINGHAM: THE LOCAL AND NATIONAL MOVEMENTS IN THE CIVIL RIGHTS STRUGGLE* 116 (1997).

¹¹⁹ *See generally* E. CULPEPPER CLARK, *THE SCHOOLHOUSE DOOR: SEGREGATION'S LAST STAND AT THE UNIVERSITY OF ALABAMA* (1995).

claims between owners and claimants on slaves¹²⁰ and to protect the property rights of owners.¹²¹ For so much about slavery, at least from the perspective of the slave, is the absence of law. Slavery required, as Justice Thomas Ruffin aptly phrased it in his 1830 opinion in *State v. Mann*, the “uncontrolled authority over the body” of the slave.¹²² For slaves had to be made to feel that they had no choice but unconditional obedience to the will of the owner.¹²³ The end of slavery, Ruffin wrote, was “the profit of the master.”¹²⁴

Such insights about slavery were quickly turned by abolitionists to their purposes of demonstrating the harshness of slavery. Ruffin’s opinion revealed the logic of slavery and that slaves could not expect help from the legal system.¹²⁵ Barely a decade later, the Mississippi Supreme Court, for instance, struck down a will in which a plantation owner left his estate to his son — who was also the child of a slave owned by the man.¹²⁶ The testator had taken his son and the mother to Ohio and emancipated them there, but made the mistake of returning with them to Mississippi.¹²⁷ When the testator died, his intestate heirs successfully challenged the emancipation and returned the son and his mother to slavery.¹²⁸

This became even truer in the wake of the Fugitive Slave Act of 1850.¹²⁹ One of the most controversial parts of the Fugitive

¹²⁰ See generally ARIELA J. GROSS, DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM (2000); Bonnie Martin, *Slavery’s Invisible Engine: Mortgaging Human Property*, 76 J. S. HIST. 863 (2010).

¹²¹ See generally CHRISTOPHER TOMLINS, FREEDOM BOUND: LAW, LABOR, AND CIVIC IDENTITY IN COLONIZING ENGLISH AMERICA, 1580–1865 (2010) (discussing law’s protection of slavery from Revolution to Civil War); Alfred L. Brophy, *Thomas Ruffin: Of Moral Philosophy and Monuments*, 87 N.C. L. REV. 799 (2009) (discussing ways that Justice Thomas Ruffin’s slavery decisions in tort and criminal law protected the rights of slave-owners).

¹²² See *State v. Mann*, 13 N.C. (2 Dev.) 263, 266 (1830).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ See, e.g., HARRIET BEECHER STOWE, A KEY TO UNCLE TOM’S CABIN 77 (Boston, John P. Jewett & Co. 1853).

¹²⁶ See *Hinds v. Brazealle*, 3 Miss. (2 Howard) 837 (1838).

¹²⁷ *Id.* at 838.

¹²⁸ *Id.* at 837.

¹²⁹ See, e.g., Alfred L. Brophy, “Over and Above . . . There Broods a Portentous Shadow,—The Shadow of Law”: Harriet Beecher Stowe’s Critique of Slave Law in *Uncle Tom’s Cabin*, 12 J. L. & RELIG. 457, 466-68 (1995) (discussing reaction to the Fugitive

Slave Act of 1850 was the prohibition of northern courts investigating the legitimacy of the claim of a slave-owner over a purported fugitive. That is, the only inquiry permitted was the issue whether the alleged fugitive was in fact the person being sought. The alleged fugitive could not testify and other defenses, such as claims by the fugitive that she was not a slave, had to be decided in the home jurisdiction of the supposed owner.¹³⁰ Such lack of due process drew the special attack of opponents of the act.¹³¹ And the difficulties that Sinclair faced in Tuscaloosa illustrate why adjudication of claims of freedom by southern courts were less than satisfactory to abolitionists. The story that abolitionists told is how the law abandoned enslaved people. Law was interpreted by anti-slavery legal treatises like William Goodell's *The American Slave Code in Theory and Practice*,¹³² non-fiction memoirs like Solomon Northup's *Twelve Years a Slave*,¹³³ and fiction like Harriet Beecher Stowe's *Uncle Tom's Cabin*,¹³⁴ as setting slave-owners free from control. Law only rarely called them to account and it stacked the deck in favor of owners at almost every turn. The presumption was that all people of African descent were slaves; such presumption could only be disproven by testimony of white people, often in person.¹³⁵

As abolitionists successfully indicted the legal system from the late 1830s to the Civil War,¹³⁶ proslavery writers had several

Slave Act of 1850 and explaining how abolitionists thought that law abandoned enslaved people).

¹³⁰ Fugitive Slave Act of 1850, ch. 60, § 6, 9 Stat. 462, 462-64.

¹³¹ See ALBERT J. VON FRANK, *THE TRIALS OF ANTHONY BURNS: FREEDOM AND SLAVERY IN EMERSON'S BOSTON* 96-106 (1998) (discussing critique of Fugitive Slave Act of 1850).

¹³² WILLIAM GOODELL, *THE AMERICAN SLAVE CODE IN THEORY AND PRACTICE* (New York, American and Foreign Anti-Slavery Society 1853); see also WELD, *supra* note 105, at 172.

¹³³ See, e.g., SOLOMON NORTHUP, *TWELVE YEARS A SLAVE* 206 (New York, Miller, Orton & Mulligan 1855) (1853) (mentioning that the institution of slavery permits wickedness).

¹³⁴ See generally HARRIET BEECHER STOWE, *UNCLE TOM'S CABIN* (Boston, John P. Jewett & Co. 1852).

¹³⁵ See GEORGE M. STROUD, *A SKETCH OF THE LAWS RELATING TO SLAVERY IN THE SEVERAL STATES OF THE UNITED STATES OF AMERICA* 77-78 (Philadelphia, Kimber and Sharpless 1827).

¹³⁶ To use Jeannine DeLombard's apt phrase, abolitionists put "slavery on trial." See generally JEANNINE MARIE DELOMBARD, *SLAVERY ON TRIAL: LAW, ABOLITIONISM, AND PRINT CULTURE* (2007).

responses. One was that enslaved people did not deserve rights. The empirical investigations of the past and the present both revealed that additional rights for enslaved people were a bad idea. This was developed by proslavery treatise writers,¹³⁷ who argued that slavery was nearly ubiquitous in human history, that slavery was a natural condition of humans, and the efforts to free slaves often resulted in demographic disasters (for the owners). They often pointed to the revolution in Haiti and to the emancipation in the British West Indies.¹³⁸ Judges, too, argued that slaves must be subject to the control of their owners and that courts should not question the treatment of enslaved people by their owners.¹³⁹ Another response was that enslaved people were treated well and did not need additional rights. This appeared in proslavery novels written in response to *Uncle Tom's Cabin*, and also in legal treatises and pamphlets. Frequently ministers spoke about the duties owed to slaves by owners.¹⁴⁰ One upshot of those sermons was that, while slaves did not have legally enforceable rights, they were owed moral duties and that owners often abided those duties. And then there was the pseudo-empirical literature that claimed slaves were treated well. Georgia Supreme Court Justice Ebenezer Starnes' novel, *Billy Buck: Or, The Slaveholder Abroad*, compared the lives of slaves to those of free workers in England and even had an enslaved character proclaim the superiority of slavery to freedom.¹⁴¹ Starnes also conducted an

¹³⁷ See, e.g., THOMAS R.R. COBB, AN INQUIRY INTO THE LAW OF NEGRO SLAVERY 301-02 (Philadelphia, T. & J.W. Johnson & Co. 1858). For more on Cobb, see ALFRED L. BROPHY, UNIVERSITY, COURT, AND SLAVE: PROSLAVERY THOUGHT IN SOUTHERN COLLEGES AND COURTS AND THE COMING OF CIVIL WAR 227-53 (2016).

¹³⁸ Thomas R. Dew, *Professor Dew on Slavery*, in THE PRO-SLAVERY ARGUMENT: AS MAINTAINED BY THE MOST DISTINGUISHED WRITERS OF THE SOUTHERN STATES 287, 424-26 (Charleston, Walker, Richards & Co. 1852); see generally GEORGE S. SAWYER, SOUTHERN INSTITUTES: OR, AN INQUIRY INTO THE ORIGIN AND EARLY PREVALENCE OF SLAVERY AND THE SLAVE-TRADE: WITH AN ANALYSIS OF THE LAWS, HISTORY, AND GOVERNMENT OF THE INSTITUTION IN THE PRINCIPAL NATIONS, ANCIENT AND MODERN FROM THE EARLIEST AGES DOWN TO THE PRESENT TIME (Philadelphia, J.B. Lippincott & Co. 1858).

¹³⁹ See, e.g., *State v. Mann*, 13 N.C. (2 Dev.) 263 (1830).

¹⁴⁰ See generally JAMES HENLEY THORNWELL, THE RIGHTS AND THE DUTIES OF MASTERS: A SERMON PREACHED AT THE DEDICATION OF A CHURCH, ERECTED IN CHARLESTON, S.C., FOR THE BENEFIT AND INSTRUCTION OF THE COLOURED POPULATION (Charleston, Walker & James 1850).

¹⁴¹ See generally EBENEZER STARNES, THE SLAVEHOLDER ABROAD: OR, BILLY BUCK'S VISIT, WITH HIS MASTER, TO ENGLAND (Philadelphia, J.B. Lippincott & Co. 1860).

investigation of crime in the North and South to suggest that enslaved people committed less crime than free people.¹⁴² William and Mary professor Thomas Roderick Dew, for instance, wrote – perhaps in a self-conscious response to David Walker – that “[a] merrier being does not exist on the face of the globe, than the negro slave of the U[nited] States.”¹⁴³ A final, minor, response was that enslaved people had some rights. John Belton O’Neill of the South Carolina Chancery Court wrote about the (minimal) rights of slaves.¹⁴⁴

In the 1850s, as a robust proslavery legal literature matured, the focus was on the limited rights of enslaved people.¹⁴⁵ In fact, they argued that the natural state of humans was slavery and, thus, the law needed—if such a thing could be imagined—to be more proslavery.¹⁴⁶ This reached its high point in two lines of thought in *Dred Scott v. Sanford*. First, Chief Justice Roger Taney argued that people of African descent could not be citizens of the United States and thus silenced them in federal court in diversity cases.¹⁴⁷ Second, Taney supported Missouri’s change in the law that had previously allowed enslaved people to claim freedom when they traveled to a free state or territory. That is, Taney supported Missouri’s constriction of the instances in which enslaved people could be freed.¹⁴⁸ The growing proslavery doctrine in the judiciary reflects and may even be a key to gauging the growing proslavery sentiment in southern culture. But even back in the 1820s, before the robust proslavery sentiments swept

¹⁴² *Id.* at 466-71.

¹⁴³ Dew, *supra* note 138, at 459.

¹⁴⁴ See generally JOHN BELTON O’NEALL, *THE NEGRO LAW OF SOUTH CAROLINA* (Columbia, John G. Bowman 1848).

¹⁴⁵ See, e.g., COBB, *supra* note 137, at 301.

¹⁴⁶ James P. Holcombe, *Is Slavery Consistent with Natural Law?*, 27 S. LIT. MESSENGER 401, 408 (1858).

¹⁴⁷ *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 407-17, 426-27 (1857) (discussing status of people of African descent around the time of the American Revolution and framing of the Constitution and concluding that people of African descent are not citizens of the United States); see generally Alfred L. Brophy, *Antislavery Women and the Origins of American Jurisprudence*, 94 TEX. L. REV. 115 (2015) (reviewing SARAH N. ROTH, *GENDER AND RACE IN ANTEBELLUM POPULAR CULTURE* (2014)).

¹⁴⁸ *Dred Scott*, 60 U.S. at 446-52 (concluding that United States federal government cannot prohibit slavery in the territories); see also ANDREW FEDE, *ROADBLOCKS TO FREEDOM: SLAVERY AND MANUMISSION IN THE UNITED STATES SOUTH* 305-314 (2011) (discussing the increasingly proslavery approach of the Missouri Supreme Court).

through the southern judiciary, the opportunities to escape slavery were extremely limited.

Especially in Alabama. For Alabama, even more than many other slave states, made it difficult for enslaved people to claim their freedom. When a testator offered his slaves a choice of slavery or freedom, many states permitted the slave to make that choice.¹⁴⁹ Alabama did not; that would have been too much recognition of the slave's legal authority and such provisions in a will were routinely ignored. The slaves were kept in slavery.¹⁵⁰ When other states might construe a deed of manumission in favor of freedom, Alabama construed it narrowly.¹⁵¹ Where North Carolina thought that someone who had been free for thirty years

¹⁴⁹ See, e.g., COBB, *supra* note 137, at 301-02 (discussing states that permit slaves to choose freedom or slavery). But in the 1850s states began to retreat from allowing enslaved people such choices. See, e.g., Bailey v. Poindexter's Ex'r., 55 Va. (14 Gratt.) 132, 132 (1858); Cleland v. Waters, 19 Ga. 35, 43 (1855). *Contra* Thomas Dixon's Will, Rockbridge County, Virginia, Will Book 13, at 80, Virginia State Library, Rockbridge County Records (probated May 1, 1854) (providing that "Negro woman Fanny to be set at Liberty provided she is willing to go to Liberia, if she does not wish to go she shall have the privilege of choosing her own master and home."); Arthur B. Davies' Will, Amherst County, Virginia, Will Book 13, at 51, Virginia State Library, Amherst County Records (probated Mar. 21, 1853) (providing that "It is my will and desire that all my slaves, fifteen in number . . . shall be liberated and become invested with their freedom at my death, and for the purpose of removing them to some free state if that be lawful, or to Liberia if that shall become necessary It is my further wish that in case any of my said slaves shall of their own free will and accord prefer remaining in slavery rather than accepting freedom under the provisions of this clause, then it is my desire that they shall be permitted to choose masters amongst any of my legatees hereinafter mentioned, and thereafter to become their slaves for life."). See also BEVERLEY B. MUNFORD, VIRGINIA'S ATTITUDE TOWARD SLAVERY AND SECESSION 121 (1909).

¹⁵⁰ See, e.g., Carroll v. Brumby, 13 Ala. 102 (1848); Atwood's Heirs v. Beck, 21 Ala. 590 (1852). Cf. COBB, *supra* note 137, at 251-62 (discussing freedom suits); Ala. Code § 2052 (1852) (printing law governing freedom suits and bonds). See also Buford v. Gould, 35 Ala. 265 (1859); Rupert v. Elston, 35 Ala. 79 (1859); Union Bank of Tenn. v. Benham, 23 Ala. 143 (1853) (slaves may use habeas corpus to challenge levy on them by creditor of their "owner"). On the hurdles to slaves asserting claims of manumission in Alabama, see Thrasher v. Ingram, 32 Ala. 645 (1858); Harris v. Plant & Co., 31 Ala. 639 (1858); Becton v. Ferguson, 22 Ala. 599 (1853); Trotter v. Blocker, 6 Port. 269 (Ala. 1839). Alabama was something of a leader in this area; as Andrew Fede discusses, in FEDE, *supra* note 148, at 219-25, the refusal to allow slaves to choose slavery or freedom appears to begin with *Carroll v. Brumby*.

¹⁵¹ See Bloodgood v. Grasey, 31 Ala. 575 (1858) (construing deed of emancipation executed in Maryland in 1787 insufficient to grant freedom to petitioners' parent and thus maintaining them in slavery); Jack v. Doran's Ex'r, 265 (1861); Farrelly v. Maria Louisa, 34 Ala. 284 (1859).

was presumptively free,¹⁵² there was no parallel doctrine in Alabama. Instead, there was the presumption that people of African descent were slaves.¹⁵³ The jurisprudence of slavery was mostly concerned with such issues as protecting the rights of owners, making commercial transactions function, and limiting the liability of slave-owners for the torts of their slaves.¹⁵⁴ In short, the law of slavery was about making slavery function and the limited rights accorded slaves became even more limited over time.

B. Questioning the Boundaries of Southern Law: The Secondary Literature on the Rights of Free and Enslaved People

Then again, there were some instances when the court system was used by the humble to call the mighty to account. That there were any successful suits for freedom by anyone may be surprising. But sometimes those who were freed by will or *inter vivos* deeds made successful claims. Some whose owners had taken them to free jurisdictions successfully claimed freedom, and, in a few instances, so did kidnapping victims.¹⁵⁵ And it has been on these grounds—and some other rather surprising grounds, such as the civil suits filed by free people in the pre-Civil War years in many southern states, that one of the most dynamic

¹⁵² *Stringer v. Burcham*, 34 N.C. 41 (1851). *Stringer* is discussed in JOHN HOPE FRANKLIN, *THE FREE NEGRO IN NORTH CAROLINA, 1790-1860*, at 51 (1943).

¹⁵³ See GEORGE M. STROUD, *A SKETCH OF THE LAWS RELATING TO SLAVERY IN THE SEVERAL STATES OF THE UNITED STATES OF AMERICA* 77-78 (Philadelphia, Kimber and Sharpless 1827). See also LA ROY SUNDERLAND, *ANTI-SLAVERY MANUAL: CONTAINING A COLLECTION OF FACTS AND ARGUMENTS ON AMERICAN SLAVERY* 78 (New York, Piercy & Reed 1837).

¹⁵⁴ See, e.g., GROSS, *supra* note 120, at 3-4; JENNY BOURNE WAHL, *THE BONDSMAN'S BURDEN: AN ECONOMIC ANALYSIS OF THE COMMON LAW OF SOUTHERN SLAVERY* 142 (2002); Andrew Fede, *Legal Protection for Slave Buyers in the U.S. South: A Caveat Concerning Caveat Emptor*, 31 AM. J. LEGAL HIST. 322, 323 (1987).

¹⁵⁵ See, e.g., BERNIE D. JONES, *FATHERS OF CONSCIENCE: MIXED-RACE INHERITANCE IN THE ANTEBELLUM SOUTH* 43-68 (2009). Much more frequently than the instances where enslaved people were freed via will were the instances where they were devised via will. See generally Stephen Duane Davis II & Alfred L. Brophy, "The Most Solemn Act of My Life": Family, Property, Will, and Trust in the Antebellum South, 62 ALA. L. REV. 757 (2011).

debates in slavery studies in recent years is developing.¹⁵⁶ The first major piece of this re-interpretation appeared about a decade ago when Melvin Ely published an expansive volume, *Israel on the Appomattox*, about a community of freed people who had settled on land left them by their former owner who freed them in the late eighteenth century.¹⁵⁷ The community—surprisingly given the county’s infamous closing of the public schools rather than integrating them in the 1960s—was in Prince Edward County in central Virginia.¹⁵⁸ Ely mined the local court records extensively to show that the community of free people had been property-owners, had engaged in trade, and had successfully used the civil and criminal court systems.¹⁵⁹ This introduced the controversial but important idea that even in the depths of the proslavery world of the Old South there was another world of possibilities for free people. To be sure, this was something that had been talked about before when John Hope Franklin, destined to be one of the most distinguished historians of the twentieth century, published his first book, *The Free Negro in North Carolina*, in 1948.¹⁶⁰ But Franklin’s theme was the limitations of the legal system, even as he wrote about some of the ways that on rare occasions it limited the most extreme abuses of free people’s human rights.¹⁶¹

Recently Kirt von Daacke expanded Ely’s interpretation by focusing not on a single community of freed people on several hundred acres in one remote county in Virginia. von Daacke

¹⁵⁶ See Alfred L. Brophy, *Book Review*, 65 J. LEGAL EDUC. 255 (reviewing KIRT VON DAACKE, *FREEDOM HAS A FACE: RACE, IDENTITY AND COMMUNITY IN JEFFERSON’S VIRGINIA* (2012)).

¹⁵⁷ MELVIN ELY, *ISRAEL ON THE APPOMATTOX: A SOUTHERN EXPERIMENT IN BLACK FREEDOM FROM THE 1790S THROUGH THE CIVIL WAR* (2005).

¹⁵⁸ *Id.* at 8.

¹⁵⁹ *Id.*

¹⁶⁰ FRANKLIN, *supra* note 152. This was followed many years later by Franklin’s collaboration with LOREN SCHWENINGER, *IN SEARCH OF THE PROMISED LAND: A SLAVE FAMILY IN THE OLD SOUTH* (2006), and by Schwenger’s own work on free people as property owners. See generally LOREN SCHWENINGER, *BLACK PROPERTY OWNERS IN THE SOUTH, 1790-1915* (1990).

¹⁶¹ Other literature appeared around Franklin’s time. See, e.g., J. Merton England, *The Free Negro in Ante-Bellum Tennessee*, 9 J. S. HIST. 37, 37-58 (1943). A key point in this literature was the limitations the legal system put on free people. The high point of this literature is IRA BERLIN, *SLAVES WITHOUT MASTERS: THE FREE NEGRO IN THE ANTEBELLUM SOUTH* (1974). See also CHRISTOPHER PHILLIPS, *FREEDOM’S PORT: THE AFRICAN AMERICAN COMMUNITY OF BALTIMORE, 1790-1860*, at 244 (1997) (noting the literature on the rights of free people in the old South).

looked at all of the free people in Albemarle County, which is home to the University of Virginia. He found a similar engagement in the legal system. He also found a number of people who lived openly in defiance of Virginia's statutory requirement that newly freed people leave the state.¹⁶² That is, the legal system at the local level looked very different from what it might appear by reference to the Virginia code alone. These books pose a challenge in interpretation. Yet, one wonders about how much this tells us about the legal system. Often the story is of the failure of the ability to assert rights. Moreover, those who were never able to assert their rights because they could not even make it to court do not appear in the baseline measure. Finally, those free people who were able to do so successfully may have had the benefit of patronage of powerful white people. But without making any kind of claim to representativeness, the stories they tell invite speculation on what was happening.

Running parallel to such works as Ely and von Daacke are a series of studies of the legal system that are also finding some ability to assert legal claims. Judith Kelleher Schafer's *Becoming Free, Remaining Free: Manumission and Enslavement in New Orleans, 1846-1862* looks deeply at the lawsuits filed by free people and by those claiming free status in New Orleans.¹⁶³ The several hundred lawsuits filed in St. Louis from the 1820s to the Civil War have had the most intense focus up to now. Lea VanderVelde's *Redemption Songs: Suing for Freedom Before Dred Scott* has taken up the story of those cases and the increasing difficulty of achieving freedom.¹⁶⁴ Those works deal with the

¹⁶² See VON DAACKE, *supra* note 156, at 77-79, 94 (discussing defiance of Virginia's 1806 removal state, *An Act to Amend the Several Laws Concerning Slaves*, in 3 THE STATUTES AT LARGE OF VIRGINIA, FROM OCTOBER SESSION 1792, TO DECEMBER SESSION 1806, at 251, 252 (Richmond, Samuel Shepherd 1836)). There is some question about the extent to which newly freed people were able to stay in Virginia. Some, apparently, were re-enslaved when they failed to leave. See TED MARIS-WOLF, FAMILY BONDS: FREE BLACKS AND RE-ENSLAVEMENT LAW IN ANTEBELLUM VIRGINIA 13-14 (2015). See also Ellen Eslinger, *Free Black Residency in Two Antebellum Virginia Counties: How the Laws Functioned*, 79 J. S. HIST. 261, 261-98 (2013).

¹⁶³ JUDITH KELLEHER SCHAFFER, BECOMING FREE, REMAINING FREE: MANUMISSION AND ENSLAVEMENT IN NEW ORLEANS, 1846-1862, at 59-70 (2003) (discussing freedom suits in New Orleans). See generally JUDITH KELLEHER SCHAFFER, SLAVERY, THE CIVIL LAW, AND THE SUPREME COURT OF LOUISIANA (1994).

¹⁶⁴ See generally LEA VANDERVELDE, REDEMPTION SONGS: SUING FOR FREEDOM BEFORE DRED SCOTT (2014); Kelly Marie Kennington, *Law, Geography, and Mobility:*

challenges of interpreting a law that was shifting towards even greater protection for the slave-owners against claims made that their “slaves” were actually free.

Martha Jones’ forthcoming legal history on free people and slavery in Maryland promises the most direct engagement with the meaning of limited legal rights of free people for our understanding of legal history. For Jones looks across a series of doctrinal areas and finds that the Maryland courts often upheld the rights of free people to make and enforce contracts, travel, and even carry weapons.¹⁶⁵ This demonstrates that the picture Chief Justice Roger Taney painted in *Dred Scott* that people of African descent were “so far inferior that they had no rights which the white man was bound to respect”¹⁶⁶ was wrong. It represented Taney’s wish and was the product of his attempt to silence enslaved people: to remove their rights. The picture that is emerging is a much finer detailed portrait than we have had before. Free people had some rights enforceable in the courts of the Old South, though few, and enforcing those rights was not always easy. In many cases it seems the enforcement of the rights was dependent in part on the assistance of white benefactors, as happened in Cornelius Sinclair’s case. And free people and enslaved people, too, have emerged from the shadows as legal historians demonstrate how they lived and negotiated around the brutality of slavery and the legal system that left them largely abandoned to the caprice and greed of their “owners” and creditors of their owners.

C. Sinclair’s Odyssey and the Meaning of the Rule of Law

A nation that had only recently been created by a rebellion and was struggling with the legality of its own existence had to

Suing for Freedom in Antebellum St. Louis, 80 J. S. HIST. 575, 575-604 (2014); ANNE TWITTY, *BEFORE DRED SCOTT: SLAVERY AND LEGAL CULTURE IN THE AMERICAN CONFLUENCE, 1787-1857* (2016); *See also* David Thomas Konig, *The Long Road to Dred Scott: Personhood and the Rule of Law in the Trial Court Records of St. Louis Slave Freedom Suits*, 75 UMKC L. Rev. 53, 54-79 (2006); Alfred L. Brophy, *Slaves as Plaintiffs*, MICH. L. REV. (forthcoming 2017) (reviewing VANDERVELDE, *supra* note 164).

¹⁶⁵ *See generally* Martha S. Jones, *Hughes v. Jackson: Race and Rights Beyond Dred Scott*, 91 N.C. L. REV. 1757 (2013).

¹⁶⁶ *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 407 (1857).

place a high value on the idea of law, its permanence, and its bedrock legitimacy.¹⁶⁷ Slavery was justified because it was legal, and because abolition would have entailed an unlawful deprivation of property, which would have resulted in fearful disruption of the economy and society.¹⁶⁸ Here was a point where even most Northerners agreed. Whatever was to be done about the kidnapped freeman, it had to be done according to law. And therefore there must be a law that provides a remedy for the illegally enslaved to seek his freedom through the courts. When invoked, the petition for freedom must be taken seriously, because the law is a double-edged sword, even if the blade is much sharper on one side than the other. But the sad fact appears to be that even temporarily and wrongfully enslaved people like Sinclair needed the assistance of powerful white people to successfully assert their freedom.¹⁶⁹

This introduces perhaps the most interesting question to the modern mind: how does a person care so much for justice and freedom that he is willing to put his time and money on the line for an African American child from Pennsylvania, and then go back to his plantation where dozens of people languish in bondage as his “property”? This invites a similar question to the one that Robert Cover posed in *Justice Accused* about how judges might entertain anti-slavery beliefs but still vote in pro-slavery ways.¹⁷⁰ And in some cases anti-slavery judges still participated in the institution of slavery and supported it.

Justice William Gaston of the North Carolina Supreme Court is one who was anti-slavery—or at least acted to help enslaved people—while still participating in the institution of slavery. For

¹⁶⁷ *Government a Divine Institution*, 3 VA. U. MAG. 326, 326-29 (1860).

¹⁶⁸ See, e.g., Willoughby Newton, Virginia and the Union, Address Before the Literary Societies of the Virginia Military Institute (1858).

¹⁶⁹ Although legal historians like Lea VanderVelde in *MRS. DRED SCOTT: A LIFE ON SLAVERY'S FRONTIER* (2009) and historians of slavery like Walter Johnson in *RIVER OF DARK DREAMS: SLAVERY AND EMPIRE IN THE COTTON KINGDOM* 216-17 (2013) caution us to pay attention to the agency of enslaved people in assertions of freedom, it may tragically be that in most cases enslaved claimants needed to have some white supporters or perhaps free people to fund the cases, post the bonds, hire the lawyers, and testify in court. See FEDE, *supra* note 148.

¹⁷⁰ See generally ROBERT M. COVER, *JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS* (1975); Jeffrey M. Schmitt, *The Antislavery Judge Reconsidered*, 29 L. & HIST. REV. 797 (2011).

he assisted his clients in drafting trusts to hold slaves in a state of quasi-slavery before he went on the bench.¹⁷¹ He spoke against slavery at the UNC graduation in May 1832.¹⁷² And after ascending the bench Gaston wrote an opinion that acknowledged the human sentiments of a slave who was being beaten almost to death by his overseer.¹⁷³ The slave responded with a deadly blow to the overseer and Gaston mitigated that to manslaughter from first degree murder—and this in the wake of the Nat Turner 1831 rebellion.¹⁷⁴ Gaston acted to discipline in limited ways the behavior of slave-owners. The spectrum of ideas and behavior for slave-owners in the south was not only free slaves or keep the shackles fastened as tightly as possible. There were shades of gray between the anti-slavery and the most pro-slavery positions, even as it was hard to maintain some ground between those two extremes.

In 1832 when a group of Whigs had asked him to come to Montgomery, Alabama, to speak William Gaston linked trade and law together with economic and intellectual progress in a letter to the Whigs:

Free as heart could wish, yet loyal to all constitutional and legal obligations, until even more by affection than by the forms of common government, and practically drawing more and more closely together by the wonder-working Steam Boat, the Canal, and the Railroad; subduing the forest to the dominion of Agriculture, and whitening ever sea with their; advancing daily in manufacturing and mechanical skills, in arts, science, and literature; growing with unexampled rapidity in making wealth and strength; enjoying the blessings of Providence ... how could you look upon these my

¹⁷¹ See Jessica Thompson, “Toward Freedom for All”: North Carolina Quaker Legal Theory on the Trusts for Manumissions (2014) (working paper), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2477963 [<https://perma.cc/3U8F-ZDVC>].

¹⁷² Hon. William Gaston, Address Before the Philanthropic and Dialectic Societies at Chapel Hill, N.C. (June 20, 1832).

¹⁷³ *State v. Will*, 18 N.C. (1 Dev. & Bat.) 121 (1834).

¹⁷⁴ *Id.* at 123-24.

happy fellow citizens ... without a thrill of exultation that this was my own very native land?¹⁷⁵

Gaston thus placed law and constitutionalism in a matrix of values and of action that together created the United States. He illustrated how important the rule of law was to antebellum southerners, even if it might have some anti-slavery effects. Indeed, when Gaston spoke at Princeton University in 1835 he emphasized the importance of punishing mobs and rioters who attacked African Americans and Catholics.¹⁷⁶ Gaston argued—in common with other Whigs—that there needed to be an obedience to law.¹⁷⁷ This was in contrast to the Democrats like Andrew Jackson, whom the Whigs characterized as following the dictates of passion, will, and power rather than law.¹⁷⁸ This set up an important contrast between two visions of law in the antebellum judiciary. Where Ruffin said in *State v. Mann* that owners needed uncontrolled authority over the body of slaves¹⁷⁹ (a position even he retreated from in *State v. Hoover*¹⁸⁰ in 1839), others jurists, including Justice William Gaston of the North Carolina Supreme Court, thought law placed important limits on the behavior of slave-owners. In short, there was an important clash of visions of the meaning of the rule law. Where Democrats like Ruffin thought law placed few, if any, limits on slave owners, Whigs like Gaston emphasized the limits of slave-owners power over fellow human

¹⁷⁵ Letter from Gaston to Gentlemen (Oct. 3, 1832), in Gaston Papers (on file with the Wilson Library, University of North Carolina).

¹⁷⁶ WILLIAM GASTON, AN ADDRESS DELIVERED BEFORE THE AMERICAN WHIG AND CLIOSOPHIC SOCIETIES OF THE COLLEGE OF NEW JERSEY 19, 27 (Princeton, Bogart 1835). See also Alfred L. Brophy, *The Republics of Liberty and Letters: Progress, Union, and Constitutionalism in Graduation Addresses at the Antebellum University of North Carolina*, 89 N.C. L. REV. 1879, 1886-88 (2011).

¹⁷⁷ GASTON, *supra* note 175, at 27.

¹⁷⁸ See, e.g., LAWRENCE F. KOHL, THE POLITICS OF INDIVIDUALISM: PARTIES AND THE AMERICAN CHARACTER IN THE JACKSONIAN ERA 33-34, 39-43, 159-62 (1989) (characterizing Jackson as hero because he was a “breaker of bonds” and as anti-hero for others, because he was someone for whom the “strongest will” was law); DANIEL WALKER HOWE, WHAT HATH GOD WROUGHT: THE TRANSFORMATION OF AMERICA, 1815-1848, at 411-45 (2007) (discussing “Jacksonian Democracy and the rule of law”).

¹⁷⁹ *State v. Mann*, 13 N.C. (2 Dev.) 263, 266 (1830).

¹⁸⁰ See *State v. Hoover*, 20 N.C. (3 & 4 Dev. & Bat.) 500, 503 (1839); Brophy, *Thomas Ruffin*, *supra* note 121, at 814-15.

beings.¹⁸¹ While Sinclair's case freed a wrongfully enslaved person—a rare occurrence in the old South—one should put this in the context of criminal prosecutions of enslaved people. While those prosecutions were largely about restoring order, they instilled terror in enslaved people well beyond those on trial, and they also made judgments about who merited punishment and who did not. While no one thinks those trials approached fairness for the accused, the trials spared some enslaved people from punishment, even as they helped establish order in the community by harshly punishing those with even remote involvement in the rebellion.¹⁸²

What, then, to make of Judge Gayle's role in this? Gayle was apparently not as zealously proslavery as some—and maybe even moderately anti-slavery—and in this case he presided over an outcome that was pro-freedom. So there may be less to explain within him than with many, such as the anti-slavery judges whom Robert Cover studied who nevertheless participated in the legal system. But Gayle invites scrutiny as someone who worked effectively against slavery, at least at certain points in his life. Other southern politicians moved from moderate anti-slavery to proslavery positions from the 1820s and early 1830s to the late 1830s and 1840s. James McDowell of Lexington, Virginia, is another who like Gayle migrated to a proslavery position. McDowell has argued in favor of a gradual abolition plan in the Virginia legislature in 1832 in the wake of the Nat Turner rebellion, but by 1838 he was heavily criticizing abolitionists and telling Princeton students of the virtues of slavery.¹⁸³

¹⁸¹ See, e.g., *State v. Will*, 18 N.C. (1 Dev. & Bat.) 121 (1834). For extensive discussion of *Will*, see Alfred L. Brophy, *The Nat Turner Trials*, 91 N.C. L. REV. 1817, 1872-74 (2013).

¹⁸² See, e.g., Brophy, *The Nat Turner Trials*, *supra* note 181, at 1871-72.

¹⁸³ Compare SPEECH OF JAMES M'DOWELL, JR. IN THE HOUSE OF DELEGATES OF VIRGINIA, ON THE SLAVE QUESTION: DELIVERED JANUARY 21, 1832, at 15 (Richmond, Thomas White 1832) with JAMES M'DOWELL, ADDRESS DELIVERED BEFORE THE ALUMNI ASSOCIATION OF THE COLLEGE OF NEW JERSEY, SEPTEMBER 26, 1838, at 34-36 (Princeton, Bogart 1838) and *Speech of James McDowell, of Virginia, on the Wilmot Proviso, Delivered in the House of Representatives, Tuesday, September 3, 1850*, CONG. GLOBE, 31st Cong., 1st Sess. app. 1678, 1684. McDowell's shift from the 1832 Virginia legislative debates, where he opposed slavery because of its harmful effects, through to the debate on the Wilmot Proviso in the early 1850s, suggests something about how attitudes in the south in general shifted over that time. Though McDowell was more anti-slavery than many at the start of his career – and less proslavery at the end of it –

Gayle likely was following the Alabama code, which allowed freedom suits even if it made them difficult to win. And he also wanted to maintain a well-ordered society, which was a primary function of the legal system.¹⁸⁴ A number of key members of the southern legal system, including Mississippi's attorney general, testified to the need for punishment of kidnappers. "We need no stimulus to exertion in this cause; public opinion is with us," wrote Mississippi attorney general Duncan S. Walker,¹⁸⁵ assuring Mayor Joseph Watson of Philadelphia of "the hearty co-operation of our citizens in the pursuit and punishment of these audacious and infamous aggressors on all laws, human and divine."¹⁸⁶ Another Natchez lawyer, Richard Stockton, similarly wrote that "[p]ublic feeling is uniformly enlisted in favour of the petitioning slave, [and] the bar are ever ready to tender their professional services."¹⁸⁷ One Mississippi newspaper editorialized against the kidnappers. It used the kidnappings to argue for further restrictions on the introduction of slaves from other states into Mississippi, a controversial issue at the time.¹⁸⁸ But the editorial

we can see how within one person the shift towards proslavery took place. McDowell's moderate proslavery position of the Princeton address was an opposition to abolitionists and his thought that their radicalism was injuring the prospects of gradual termination. At the Wilmot Proviso debate in 1850, McDowell emphasized the ways that exclusion of slavery from the territories would subordinate the South and lead to disunion. Even there he acknowledged what seems to have been some questioning of slavery when he said that "whatever the opinions I . . . entertain upon the institution of slavery in the abstract, I have never doubted for a moment that as the white and the black races now live together in the southern States, it is an indispensable institution for them both." *Id.* at 1678.

¹⁸⁴ See generally WILLIAM J. NOVAK, *THE PEOPLE'S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA* (1996) (discussing pervasive ethic of regulation of property in pre-Civil War America); *Negroes and Mulattoes supra* note 80, at 628 (limiting rights of slave-owners to have gatherings of slaves at their homes), 629 (limiting rights of slave-owners to allow their slaves to roam), 632 (limiting emancipation of slaves), and 639 (mandating community patrol of slaves). Those were soon supplemented by acts circumscribing the rights to educate slaves in reading and writing. See *Slaves, And Free Persons of Color, A DIGEST OF THE LAWS OF THE STATE OF ALABAMA* § 31, at 397 (Philadelphia, Alexander Towar 1833).

¹⁸⁵ Letter from Walker to Watson (Feb. 25, 1827), in *Kidnapping*, *THE AFRICAN OBSERVER* 37, 47 (May 1827).

¹⁸⁶ *Id.*

¹⁸⁷ Letter from Stockton to Watson (May 26, 1826), in *Kidnapping*, *THE AFRICAN OBSERVER* 37, 42 (May 1827).

¹⁸⁸ *Natchez*, in *Kidnapping*, *THE AFRICAN OBSERVER* 37, 42-43 (May 1827).

also testified to the public outrage at the kidnappings.¹⁸⁹ Even into the 1850s, Solomon Northup recalled in *Twelve Years a Slave*, the local judge who freed him loathed kidnappers.¹⁹⁰

Many other episodes of southern legal history testify, likewise, to the desire for order in slave society that would call for the punishment of kidnappers, just as it called for the legal system to handle the criminal behavior of slaves and to channel the most extreme punishment of slaves into the legal system.¹⁹¹ University of Virginia law professor Henry St. George Tucker's 1844 lectures on natural law emphasized the dangers of mob rule.¹⁹² He pointed to the recent violence in Vicksburg, Mississippi, where a mob of local citizens ran gamblers out of town.¹⁹³ "Like the fanatics who burned the heretic at the stake for the love of God, they committed the crime of murder"¹⁹⁴ The maintenance of order was a constant struggle in the rural south and an important theme in the fictional literature as well. Nearly two decades earlier, University of Virginia professor George Tucker published a novel in 1825, *The Valley of Shenandoah*, which explained the central role of county courts in maintaining a stable and well-ordered community. "The county courts . . ." he wrote, "are our political sheet-anchor to keep the vessel of state steady, in all the storms of civil faction and sudden veerings of popular caprice."¹⁹⁵

¹⁸⁹ *Id.*

¹⁹⁰ NORTHUP, *supra* note 133, at 293.

¹⁹¹ Brophy, *The Nat Turner Trials*, *supra* note 181, at 1874-76. See generally JAMES CAMPBELL, *SLAVERY ON TRIAL: RACE, CLASS, AND CRIMINAL JUSTICE IN ANTEBELLUM RICHMOND, VIRGINIA* (2008).

¹⁹² HENRY ST. GEORGE TUCKER, *A FEW LECTURES ON NATURAL LAW* 44 (Charlottesville, James Alexander 1844).

¹⁹³ See, e.g., JOSHUA D. ROTHMAN, *FLUSH TIMES AND FEVER DREAMS: A STORY OF CAPITALISM AND SLAVERY IN THE AGE OF JACKSON 157-80* (2013) (discussing the Vicksburg riot). Abraham Lincoln also expressed concern over the riot in his first published address. See Abraham Lincoln, *The Perpetuation of Our Political Institutions: Address Before the Young Men's Lyceum of Springfield, Illinois* (Jan. 27, 1838), in *LINCOLN: SPEECHES AND WRITINGS 1832-1858*, at 28-29 (Don E. Fehrenbacher ed., 1989).

¹⁹⁴ TUCKER, *supra* note 192.

¹⁹⁵ 1 GEORGE TUCKER, *THE VALLEY OF SHENANDOAH* 289-90 (New York, Wiley 1825). See also *id.* at 291 ("We owe our tranquility, our love of order, our submission to the laws, to the circumstances that our yeomanry are people of property and commonly of education.") [hereinafter, TUCKER, SHENANDOAH].

The emphasis on law's role as a stabilizer, not an equalizer, was widespread in pre-Civil War America. New York lawyer Daniel Lord told the Yale Phi Beta Kappa Society in 1851 of the important role that lawyers served in promoting stability in society.¹⁹⁶ He spoke in the wake of the Fugitive Slave Law of 1850, which was causing many to have a lack of faith in law. Lord emphasized that the role of law was to bring stability to American culture.¹⁹⁷ Other Phi Beta Kappa orators at Harvard and Brown in the year following the Fugitive Slave Law, urged obedience to the law, because that was central to, they thought, civilization.¹⁹⁸ The law, and property rights in particular, Presbyterian Minister Thomas Verner Moore told the Jefferson College literary societies, was central to government and to the American character.¹⁹⁹ The rule of law meant, largely, obedience to property rights rather than some kind of equal treatment for people of African descent, of course. And therein may lie the key to understanding why the legal system so thoroughly abandoned African Americans, particularly the enslaved, while in this case affording relief—even though far too slowly and far too expensively—to Cornelius Sinclair. In fact, given that it cost perhaps 50% more to follow the legal procedure to rescue Sinclair than it would have to just purchase his freedom, one ought to ask whether this was in any

¹⁹⁶ See generally DANIEL LORD, ON THE EXTRA-PROFESSIONAL INFLUENCE OF LAWYERS AND MINISTERS: AN ORATION DELIVERED AT NEW HAVEN, BEFORE THE PHI BETA KAPPA SOCIETY OF YALE COLLEGE . . . July 30, 1851 (New York, S.S. Chatterton 1851).

¹⁹⁷ *Id.*

¹⁹⁸ See TIMOTHY WALKER, THE REFORM SPIRIT OF THE DAY: AN ORATION BEFORE THE PHI BETA KAPPA SOCIETY OF HARVARD UNIVERSITY, July 18, 1850, at 10 (Boston, Munroe and Co. 1850); WILLIAM GREENE, SOME OF THE DIFFICULTIES IN THE ADMINISTRATION OF A FREE GOVERNMENT: A DISCOURSE, PRONOUNCED BEFORE THE RHODE ISLAND ALPHA OF THE PHI BETA KAPPA SOCIETY, July 8, 1851, at 38-39 (Providence, Moore 1851). See generally Alfred L. Brophy, *The Rule of Law in Antebellum College Literary Addresses: The Case of William Greene*, 32 CUMB. L. REV. 231 (2001).

¹⁹⁹ T.V. MOORE, THE CONSERVATIVE ELEMENTS OF AMERICAN CIVILIZATION: AN ADDRESS BEFORE THE PHILO AND FRANKLIN SOCIETIES OF JEFFERSON COLLEGE, Aug. 3, 1853, at 19 (Pittsburgh, J.T. Shryock 1853) (arguing for importance of rights of property as part of preservation of government and national character). See also *id.* at 8 ("That which men talk of most, read of most, labor for most, for which they most freely lavish their time and treasure, is that which constitutes the real staple of their character, and the actual sentiments of their souls in regard to it, is the predominant philosophy of that people.").

way a vindication of the rule of law. Though Alabama provided by statute a way to regain freedom,²⁰⁰ it was costly. That cost may explain why New York passed a statute in the 1840, while the abolitionist William Seward was governor, which authorized the governor to spend public money to recover free people from New York who were kidnapped and sold into slavery.²⁰¹

But what about slave-owners, not jurists, who take action against slavery? This is yet a more difficult question from that posed by Cover, for it asks about a litigant who is anti-slavery but still engaged in the institution of slavery.²⁰² Possibly this was a case of holding people in quasi-slavery, where an “owner” allowed enslaved people to work on their accounts and to have substantial control over their lives.²⁰³ Courts routinely tried to stop quasi-slavery, for it threatened slavery by suggesting to enslaved people that they might have some, or even a lot, of freedom. There was at least one plantation in nearby Greensboro that was run on such a principle.²⁰⁴ A more likely possibility is that Dent saw his role as acting as “benevolent” owner (at least in his own mind, even if not in the view of the people he “owned”);²⁰⁵ possibly Dent saw a distinction between people who were “lawfully” enslaved and those who were free. Or maybe he did this because he was prevailed upon by his friends, even though he harbored no anti-slavery sentiments.

There were literary analogs to some of those positions. In Harriet Beecher Stowe’s 1856 novel *Dred: A Tale of the Great Dismal Swamp* one of the central characters, an heiress of a

²⁰⁰ See *Negroes and Mulattoes*, *supra* note 80, at 632 (detailing requirements of a freedom suit).

²⁰¹ *An Act More Effectually to Protect the Free Citizens of this State from Being Kidnapped, or Reduced to Slavery*, in 4 STATUTES AT LARGE OF THE STATE OF NEW YORK 522, 522-23 (Albany, Weare C. Little 1867). See also Paul Finkleman, *The Protection of Black Rights in Seward’s New York*, 34 CIVIL WAR HIST. 211, 232 (1988) (discussing the legacy of the statute).

²⁰² See *supra* note 169 and accompanying text.

²⁰³ See Brophy, *Thomas Ruffin*, *supra* note 121, at 818-24 (discussing North Carolina Supreme Court’s response to trusts holding slaves in quasi-slavery); Thompson, *supra* note 171 (discussing William Gaston’s drafting and defense of trusts for quasi-slavery).

²⁰⁴ See G. WARD HUBBS, *GUARDING GREENSBORO: A CONFEDERATE COMPANY IN THE MAKING OF A SOUTHERN COMMUNITY* 65-66 (2003) (discussing John Hartwell Cocke’s plantation in Greensboro that was run by enslaved people).

²⁰⁵ See, e.g., THORNWELL, *supra* note 140, at 6.

plantation in North Carolina, Cora, held enslaved people in quasi-slavery until she decided she needed to free them.²⁰⁶ In George Tucker's novel *The Valley of the Shenandoah*, the scion of a family with declining fortunes spoke about the evils of slavery. Yet that man, Edward Grayson, continued as a slave-owner because he believed that there was no better alternative.²⁰⁷ Grayson, perhaps a stand-in for the author's views, seems to have honestly believed he was doing right by the enslaved humans he owned. Yet, later in the novel the Grayson family's slaves were sold to pay debts left by their father, which provided at least a mild critique of slavery.²⁰⁸ And the extensive sermons on duties of slave-owners to enslaved people may have made slavery more acceptable by making life somewhat less harsh, or at least appearing somewhat less harsh.²⁰⁹

There is one short story about a kidnapping of a free child, much like Cornelius Sinclair, that poses some tantalizing possibilities in terms of setting and also interpretation. The proslavery novelist Caroline Hentz,²¹⁰ who taught for some years at a female seminary in Tuscaloosa, published in the 1850s the short story "Wild Jack, or the Stolen Boy."²¹¹ It tells the story of a free boy, Jack, who is taken from his mother's custody. The mother, who is a free person works for the president of an unnamed college, fears that he will be sold as a slave.²¹² The mother appeals to her employer, the president, and he organizes a search party.²¹³ Then a neighbor, the father of the man who kidnapped the boy, puts up money to buy Jack back.²¹⁴

²⁰⁶ See Alfred L. Brophy, *Humanity, Utility, and Logic in Southern Legal Thought: Harriet Beecher Stowe's Vision in Dred: A Tale of the Great Dismal Swamp*, 78 B.U. L. REV. 1113, 1155 (1998).

²⁰⁷ TUCKER, *SHENANDOAH*, *supra* note 195, at 95.

²⁰⁸ 2 GEORGE TUCKER, *THE VALLEY OF SHENANDOAH* 196 (New York, Wiley 1825).

²⁰⁹ See, e.g., THORNWELL, *supra* note 140.

²¹⁰ See Brophy, *The Law of the Descent*, *supra* note 111, at 360-61 (discussing the story of the "Stolen Child").

²¹¹ CAROLINE HENTZ, *THE BANISHED SON AND OTHER STORIES OF THE HEART* 47, 64 (Philadelphia, T. B. Peterson, 1856) ("We have related [the story], as one of many instances of Southern kindness and humanity to a lowly race—whose feelings the Southron is too often accused of disregarding and trampling under foot.").

²¹² *Id.* at 54.

²¹³ *Id.* at 55.

²¹⁴ *Id.* at 64.

One wonders how much it is based on events in Tuscaloosa, which is home to the University of Alabama, founded in 1831 a few years after Sinclair was rescued from there. Perhaps this has nothing to do with Sinclair and is, instead, about the University's president, Basil Manly.²¹⁵ It may be more about the effort of the neighbor to protect his son; there are so many different trajectories shooting through the story that it invites a lot of different interpretations. But maybe what it also reflects is the desire for people, even within a system of brutality like slavery to have some kind of prohibition of kidnapping. Or maybe this story simply provides a subtle response to abolitionists who charged that there was no humanity in the slave south. And that itself might explain some of the co-operation between the southern legal system and Mayor Watson. Especially in the era before comity broke down completely there may have been a sense that southern courts needed to co-operate with the return of free people and the punishment of kidnappers.²¹⁶ There may have been the sense that the law prohibited kidnapping and that once the high burden of showing that someone had been kidnapped had been met, that a victim would be freed. The cost of exercising that right might be enormous; it might even be higher than the cost of purchasing freedom in the first place.

Though the handiwork of the native Southern anti-slavery movement can be found in many places, it has nonetheless been almost utterly deleted from modern memory. Theorists may point to a number of explanations for this: collective guilt over our ancestors' tolerance of the enslavement of our fellows, historiographical failure, or simply the difficulty required to access the records. Regardless, later events in America that loom far larger in our collective memory have worked to overshadow the nascent southern anti-slavery movement, as well as to seemingly diminish its ultimate significance.

There can be little doubt that by the time of the Civil War, few in the South still held equivocal views on the maintenance or

²¹⁵ See generally A. JAMES FULLER, CHAPLAIN TO THE CONFEDERACY: BASIL MANLY AND BAPTIST LIFE IN THE OLD SOUTH (2000).

²¹⁶ DON E. FEHRENBACHER, THE DRED SCOTT CASE: ITS SIGNIFICANCE IN AMERICAN LAW AND POLITICS 51-55 (1978) (discussing a period of accommodation in which southern courts accepted freedom for slaves who traveled in free states and territories).

abolition of slavery. Those those who did equivocate rarely spoke of it publicly. Many events transpired between Sinclair's petition for freedom and the Compromise of 1850 that caused the majority of the white population of the southern states to shift their personal views on slavery from an uncomfortable tolerance to a positive acceptance. Nat Turner's Rebellion in 1831 is considered a watershed moment in the history of American slavery, and not without reason.²¹⁷ The slave rebellion generated massive panic amongst the southern white population, and by almost all accounts, hardened slavery's proponents against any suggestion of abolitionism.²¹⁸ This came only four years after the judgment that granted Cornelius Sinclair his freedom.

In addition to the racial fears that the rebellion fueled in the slave states,²¹⁹ the rapid development in the South of a cotton plantation economy that was utterly dependent upon slave labor vested in the region's white population a very powerful economic interest in maintaining the institution. As should be expected from a populace whose very presence in the newly established states had largely been driven by the hope for new economic opportunity, whatever humanitarian anti-slavery sentiment that existed quickly became subjugated to the desire for wealth. That the majority of the white population were not slaveholders was irrelevant; the prospect of achieving the immense wealth of their planter neighbors was incentive sufficient to affirm in their minds the desirability of slavery.

This massive shift of Southern society to a polarized, proslavery position happened quickly. During the 1830s, the changes in attitudes manifested themselves in acts of the various southern state legislatures. Alabama's slave law imposed numerous and draconian restrictions on slaves and free blacks, including limits on manumission via will and other forms of emancipation and prohibition of slave possession of alcoholic beverages, firearms, dogs, and other useful goods.²²⁰ Beyond

²¹⁷ See Brophy, *Nat Turner Trials*, *supra* note 181, at 1824.

²¹⁸ *Id.* at 1850.

²¹⁹ See, e.g., Brophy, *Nat Turner Trials*, *supra* note 181, at 1836-42.

²²⁰ FORD, *DELIVER US FROM EVIL*, *supra* note 110, at 295 (summarizing changes in Alabama slave law); JAMES B. SELLERS, *SLAVERY IN ALABAMA* 233 (1950) (summarizing Alabama law regarding slavery); *Negroes and Mulattoes*, *supra* note 80, at 627-46 (printing Alabama code regarding slavery).

merely further deteriorating every slave's individual rights in the southern states, these statutes ultimately rendered nearly impossible the chance of any present slave ever becoming free. Thus was Cornelius Sinclair rather fortunate that he was kidnapped when he was, for had his trial taken place ten or fifteen years later, a very different result may have obtained. Justice Thomas Ruffin's vision of law as releasing owners from liability was winning out over Justice William Gaston's vision of law as subordinating everyone, including slave-owners, to control.²²¹ As the famous narrative of Solomon Northup demonstrated, by the 1840s it was exceedingly difficult for a free person to assert a claim to freedom. While it might be done, as Northup's eventual redemption after a dozen years showed, no one could count on being able to assert legal rights or to return from the heart of the slave-owning south.

Nonetheless, the fact remains that for a time, there existed in the South a genuine moral opposition to slavery. Cornelius Sinclair was liberated by twelve white men in Alabama, in 1827. Public opinion then really was on the side of the kidnapped child. Enslaved people were fewer, Cotton was not yet King, and Tara was a large wooden farmhouse. But something was changing, and for the worse. The later dominance of plantation society led to a wide array of efforts to justify and even to support the institution of slavery. Southern planters began a massive campaign to counter Northern abolitionists, which held sway for the time being. Slavery's days were numbered, but that was not so apparent.

Cornelius Sinclair's struggle to regain his freedom was costly; it is hard to view this as in any way a triumph of the rule of law. Yet, it is still surprising that even with assistance from local citizens and his home city that he achieved freedom. It is easily conceivable that even in 1827 he might not have achieved freedom—for Reverend Boucher mentioned in March 1827 to the Mayor of Philadelphia announcing Sinclair's successful suit that

²²¹ See, e.g., LAURA F. EDWARDS, *THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH* 238-44 (2009) (interpreting breaches of the peace as issues of public concern, though recognizing that slave-owners had substantial latitude over enslaved humans and nothing that slaves were increasingly cast outside of the borders of the peace).

there was another kidnapped Philadelphian in a neighboring county.²²² That we never hear of his freedom suggests that he, in fact, never regained it. And given James Paul's violence it is entirely possible that Cornelius might never have achieved freedom had Boucher and Kennon not acted to get him away from Paul.

One can also see how much more difficult it became to secure freedom by looking at Solomon Northup's experience along the Red River in Louisiana from 1841 to 1853. Thanks to Hollywood and the Academy of Motion Picture Artists,²²³ Northup's struggle is now well-known. Movie-goers know of Northup's kidnapping and his transportation to New Orleans and sale there, as well as the brutality of slavery and difficulty of finding anyone to assist him in getting word back to his family and supporters in New York state. The world was so dangerous that it took nearly a dozen years to get word out. It was not until a Yankee carpenter, Bass, arrived that Northup finally was able to have a letter sent home; then it took months for people in New York to take action and arrive in Louisiana to look for Northup.²²⁴ Even then if Northup's owner, Edwin Epps, had even a hour's notice of what would happen, he would likely have foiled plans laid to reclaim Northup and free him.²²⁵ The efforts they undertook to free Northup were extraordinary, from collecting affidavits regarding his free status, to contacting prominent Louisiana politicians to secure introductions to local officials, to finally sending a prominent white man from Albany to Louisiana to find Northup, plead his case, and bring him home.²²⁶ Even after learning from the local sheriff that Northup was a free person, Epps went to his lawyer to seek to exercise his legal rights and to challenge Northup's claim to freedom.²²⁷

²²² Letter from James Boucher to Watson (Mar. 23, 1827), *reprinted in* Smith, *supra* note 43, at 342.

²²³ Michael Cieply & Brooks Barnes, *A Landmark Oscar Win for '12 Years a Slave'*, N.Y. TIMES (March 2, 2014) http://www.nytimes.com/2014/03/03/movies/awardsseason/oscars-2014-winners-and-losers.html?_r=0. [<https://perma.cc/NJW2-YS3A>].

²²⁴ NORTHUP, *supra* note 133, at 270-72, 275 (letter home).

²²⁵ *Id.* at 306.

²²⁶ *Id.* at 291-92.

²²⁷ *Id.* at 308-09.

Northup's narrative shares much in common with the wildly popular novel *Uncle Tom's Cabin*. In fact, when Harriet Beecher Stowe published a non-fiction companion called *A Key to Uncle Tom's Cabin*, she cited newspaper accounts of Northup's saga.²²⁸ And then Northup dedicated his book to Stowe.²²⁹ Thus it may not be surprising that Northup's account has some close parallels to *Uncle Tom's Cabin*. Like the fictional Uncle Tom,²³⁰ Northup began with a kind owner who then, because of debt, was forced to sell him.²³¹ Through a series of transactions, Northup ended up—like Uncle Tom—with a ruthless owner who was motivated by economic considerations.²³² Both Northup and Tom ended up along the Red River in Louisiana. The parallels are striking in terms of the owners and lives. Once Northup referred to *Uncle Tom's Cabin* to gauge how he reacted to the threat of punishment. Northup confessed that he did not have the fortitude that Uncle Tom had to resist his owner's demand that he beat other slaves.²³³

Many of the critiques of slavery in *Uncle Tom's Cabin* have parallels in *Twelve Years a Slave*. Where Stowe criticizes the effects of slavery on children of slave-owners who treated slaves imperiously and thus were corrupted in their views of republicanism,²³⁴ so did Northup.²³⁵ Where Stowe emphasized the incapacity of slaves to testify in court and thus held owners accountable for abuse,²³⁶ so did Northup.²³⁷ Where Stowe explained that although some slave-owners might be humane in some instances, the law licensed all owners to be inhumane,²³⁸

²²⁸ STOWE, *A KEY TO UNCLE TOM'S CABIN*, *supra* note 125, at 420-23.

²²⁹ NORTHUP, *supra* note 133, at v.

²³⁰ STOWE, *A KEY TO UNCLE TOM'S CABIN*, *supra* note 125, at 19.

²³¹ NORTHUP, *supra* note 133, at 105.

²³² *Id.* at 46 (a slave-trader had counted the costs of killing a slave who threatened to expose him as a kidnapper). *See also id.* at 61, 91.

²³³ *Id.* at 226.

²³⁴ STOWE, *A KEY TO UNCLE TOM'S CABIN*, *supra* note 125, at 229-30 (discussing a slave-owner's son, a child, beating an adult slave and its implications for republican government).

²³⁵ NORTHUP, *supra* note 133, at 261.

²³⁶ STOWE, *A KEY TO UNCLE TOM'S CABIN*, *supra* note 125, at 239 (discussing abuse of Prue). *See also id.* at 247-49 (discussing inability to prosecute Legree for murder of Uncle Tom).

²³⁷ NORTHUP, *supra* note 133, at 123, 316-18.

²³⁸ STOWE, *A KEY TO UNCLE TOM'S CABIN*, *supra* note 125, at 23-24, 28 (discussing George Harris' owner). *See also id.* at 86-90 (discussing Simon Legree); *id.* at 265 ("the

that was a key theme for Northup, too.²³⁹ Just like Simon Legree, several of Northup's owners had counted the costs and decided that they would conquer him or kill him.²⁴⁰ In short, the events and arguments in those two works have important parallels. They both present a powerful critique of law, which raise suspicions of the value of the rule of law in the old South.²⁴¹ Sinclair's story is a similar parable to that of *Uncle Tom's Cabin*. Some well-meaning people intervened to help him, using a legal system that had a mechanism for freedom, even as its central tendency was the protection of the property rights of slave-owners.²⁴² Sinclair's case presented a question—as college students frequently debated at the time—of whether it was better to have good people or good laws.²⁴³ The former were absolutely necessary, for the latter were lacking. The law required a lot of effort to achieve freedom. The path to freedom was long and narrow, even if in this case successful.

That the road became even more difficult in the 1840s and 1850s suggests something else. That the central tendency of a legal system that was already supporting slavery tilted even more sharply in favor of the owners and even more against the

men better than their laws"). See also Brophy, *Over and Above There Broods a Portentous Shadow*, *supra* note 129, at 468-76.

²³⁹ NORTHUP, *supra* note 133, at 105 (discussing the humane owner, William Ford and Ford's need to sell Northup because of his financial problems).

²⁴⁰ NORTHUP, *supra* note 133, at 46, 61.

²⁴¹ So often it seems the content of the "rule of law" was positivist. Law was whatever those in power dictated as "law." This was a theme that abolitionists struggled with. See, e.g., Christopher R. Green, *Duly Convicted: The Thirteenth Amendment as Procedural Due Process*, GEO. J. L. & PUB. POL'Y (forthcoming 2016).

²⁴² One piece of Northup's narrative that did not quite fit into the movie version is the role of a New York statute that authorized the New York governor to use state funding for the rescue of kidnapped free people. See *An Act More Effectually to Protect the Free Citizens of the State from Being Kidnapped, Or Reduced to Slavery*, in 4 STATUTES AT LARGE OF THE STATE OF NEW YORK 522, 522-23 (Albany, Weare C. Little 1867). That statute is reprinted in the appendix to *Twelve Years a Slave*, NORTHUP, *supra* note 133, at 323-24, along with numerous affidavits that were collected and then used to prove to the Louisiana authorities that he was, indeed, free. *Id.* at 325-36.

²⁴³ See, e.g., Wake Forest Euzelian Literary Society Debate Minutes, Z. Smith Reynolds Library Special Collections, Wake Forest University (Sept. 12, 1838) ("Which is the worse condition of a nation, where it has bad laws or when it has bad rulers?"). See also *id.* (Oct. 25, 1837) ("Can liberty exist without laws?"); cf. Washington Literary Society Minutes, Washington and Lee Library Special Collections, Washington and Lee University (Mar. 1, 1845) ("Which exercises the greater influence over mankind—the moral or the civil law?").

enslaved. Lea VanderVelde, who studied freedom suits in St. Louis noted that shift—in part due to changes in the freedom statute itself—against freedom in the 1840s and 1850s.²⁴⁴ Sinclair's suit was successful, perhaps in part because the participants in the legal system cared what their fellow citizens in Philadelphia thought about them. There was a sense, perhaps, of a unified national legal community and a shared sense of values – against kidnapping, against stealing of people, and in favor of order. Yet, in the few years after *Dred Scott* and before the Civil War, as courts worked through the implications of *Dred Scott*, they revealed a further breakdown of that sense of national community. One case from Mississippi in 1859, *Mitchell v. Wells*, reveals the breakdown of the sense of Union that was more prevalent during Sinclair's trial. The court ruled that a white man who took his daughter (whom he also owned) to Ohio and emancipated her could not leave property to her.²⁴⁵ For Justice William L. Harris it was a question of “the security of our institutions and the safety of the people.”²⁴⁶ It was no longer a question, as we hypothesized about Sinclair's suit, of maintaining good relations with those in Philadelphia. It was providing a rule that promoted slavery, no matter what people in Ohio thought. And Harris thought very little of the people in Ohio. He wondered what would happen if they recognized “ourang-outang[s]” as citizens²⁴⁷—which may give a good sense of what Harris thought about people of African descent, as well as the Ohio legislature. His conclusion was that Ohio's law was entitled to no respect in Mississippi.²⁴⁸ *Mitchell v. Wells* suggests that as the Civil War approached, southern states became even more parsimonious in assaying the rights of free people of color—and of slaves. This reveals that the data point of Cornelius Sinclair's suit lies not just along a line on the story of the rule of law; it is also a data point

²⁴⁴ VANDERVELDE, *supra* note 164.

²⁴⁵ *Mitchell v. Wells*, 37 Miss. (8 George) 235, 259 (1859).

²⁴⁶ *Id.* at 238. See also Brophy, *Antislavery Women*, *supra* note 147, at 142 (discussing *Mitchell v. Wells*); PAUL FINKELMAN, AN IMPERFECT UNION: SLAVERY, FEDERALISM, AND COMITY 287-95 (1981) (discussing the “judicial civil war” signaled by *Mitchell v. Wells*).

²⁴⁷ *Wells*, 37 Miss. at 264.

²⁴⁸ *Id.*

about the evolution of a legal system, which over time reflected the declining sense of Union and community.

IV. THE RETURN

Just a few years after Sinclair's suit the legal system was laughably biased against the enslaved—or those claiming to be wrongfully enslaved. Sometimes an enslaved person might be heard in court, though by the time of the *Dred Scott* decision in 1857 Chief Justice Taney moved to place pliable plaster over the mouths of enslaved people and deny them even the opportunity to be heard in federal court sitting in diversity.

It is often said that the victors write the histories, and in the early Republic's ideological struggle between the moral acceptance of slavery and the nation's avowed commitment to individual freedom, men such as Joshua Boucher and Robert Kennon were not the victors in their era. The successful liberation of their wrongfully enslaved fellow human was a laudable accomplishment, but the fact remains that Cornelius Sinclair's petition for freedom was a single victorious skirmish in a war against slavery that looked like it was being lost. In fact, it was being lost, up until shortly before it was magnificently successful. Whatever ethical discomfort at the injustice of slavery was felt in the hearts of the few became utterly overwhelmed by the universal desire for personal financial gain.

This moral situation was unacceptable for Joshua Boucher, who had taken a firm moral stance against the evils of slavery, even in the face of his more equivocally opinionated congregation.²⁴⁹ So great was the strain on his conscience that only months after his success in Sinclair's case, he requested to be transferred to the Ohio Conference, where he hoped to tend a more sympathetic flock.²⁵⁰ The leadership of the Alabama Conference refused, as the state's expanding population was in great need of preachers, whereas Ohio already had sufficient ministry, but Boucher departed Tuscaloosa regardless, and was welcomed in Ohio, where he served for the next sixteen years.²⁵¹ He later cited as his motivation for the relocation was "to get out

²⁴⁹ SELLERS & FOSTER, *supra* note 66, at 39.

²⁵⁰ MINUTES OF THE CINCINNATI ANNUAL CONFERENCE, *supra* note 67, at 64.

²⁵¹ *Id.*

of the hell of slavery.”²⁵² He continued his abolitionist work in the North for the rest of his life, and died in November of 1873.²⁵³ There is no record of him ever returning to Alabama.

Boucher’s presiding elder and ministerial comrade, Robert L. Kennon, however, did remain in Tuscaloosa for the rest of his life. He continued to preach in Methodist churches throughout Alabama until his death in January of 1838.²⁵⁴ He remained popular and highly regarded throughout his life, and is commemorated with a large marble slab that still hangs today on the wall of Tuscaloosa First United Methodist Church.

Less happy were the later fortunes of Dennis Dent. At the time of Sinclair’s Petition, Dent must have been one of the wealthiest men in the community. And indeed he continued to be so for some time afterward. In addition to later raising a volunteer company to fight in Florida, Dent was elected to the state Senate in 1838, in which he served until 1850, when he retired from public life after having become President of the Senate.²⁵⁵ Entering the private sector, he eventually lost most of his fortune in a disastrous business venture in Mobile called Fontaine & Dent. Financially ruined, he died in 1860.²⁵⁶ His son, John Hubbard Dent, graduated from the University of Alabama in 1840, and was Captain of the Confederate Army’s 4th Alabama Regiment during the Civil War.²⁵⁷

After winning his freedom at trial, Cornelius Sinclair returned to Philadelphia. Though neither his manner of travel nor itinerary back to the North is recorded, the young man finally returned home after twenty-two months and he returned to testify against the man responsible for the hardships he had suffered.²⁵⁸ Like Odysseus returning to Ithaca, Sinclair’s return was greeted with the efforts to purge the land of the traitors. Sinclair was part of a prosecution of those who had kidnapped and beaten him and

²⁵² *Id.*

²⁵³ *Id.* at 66.

²⁵⁴ WEST, *supra* note 66, at 456-57.

²⁵⁵ GARRETT, *supra* note 76, at 159-60.

²⁵⁶ *Id.*

²⁵⁷ A REGISTER OF THE OFFICERS AND STUDENTS OF THE UNIVERSITY OF ALABAMA, 1831-1901, at 62 (Thomas Waverly Palmer ed., 1901).

²⁵⁸ Smith, *supra* note 43, at 328.

then sold him into slavery.²⁵⁹ “Joe Johnson” actually turned out to be one of several aliases of John Purnell, who by the time of his trial had become a notorious criminal.²⁶⁰ With the help of the testimony of Sinclair and other similar victims, Purnell was convicted for two counts of kidnapping and sentenced to a four thousand dollar fine and forty-two years in prison.²⁶¹ He died five years later, still incarcerated in the Walnut Street Prison.²⁶²

While Sinclair and others were safely back in Philadelphia testifying against their kidnapers, other victims were still in slavery. In addition to the group that was sent south with Sinclair, there were perhaps another sixteen—four of who may have already been slaves—caught in a manner similar to Sinclair and shipped south, then marched across the land to be sold at the first opportunity.²⁶³ On another trip they sold some people in Rockingham County, North Carolina—and some of them were eventually re-sold in Mississippi.²⁶⁴ Shortly after the criminal origins of their presence in Mississippi came to light, several members of the Mississippi Bar took it upon themselves to instigate court actions to secure the freedom of the stolen children. One of these men, Duncan S. Walker, wrote to Mayor Watson to request witnesses to identify the victims, and in so doing, flatly refused any offer of monetary compensation for the prosecution of what he deemed to be a service to the public good.²⁶⁵

Philadelphia Mayor Joseph Watson had been actively fighting the slavers since reports of earlier kidnappings had surfaced the year before.²⁶⁶ The illegality of slavery in the North naturally required interstate transport of the victims, and because

²⁵⁹ *Id.*

²⁶⁰ *Id.* at 322-23.

²⁶¹ *Kidnapping*, FREEDOM'S JOURNAL, June 22, 1827, at 3 (detailing the kidnapping and subsequent punishment); *see also Kidnapping*, THE AFRICAN OBSERVER 139, 139 (Aug. 1827) (detailing convictions of kidnapers); *Purnell*, POULSON'S AMERICAN DAILY ADVERTISER, June 19, 1827, at 2 (mentioning conviction and punishment).

²⁶² Smith, *supra* note 43, at 328.

²⁶³ *See Scomp*, *supra* note 3, at 40-41.

²⁶⁴ Letter from David Holmes to Joseph Watson, Mayor (Natchez, Dec. 23, 1826) in *Kidnapping*, THE AFRICAN OBSERVER 37, 43 (May 1827).

²⁶⁵ Letter from D.S. Walker to Joseph Watson, Mayor (Natchez, Feb. 25, 1827) in *Kidnapping*, THE AFRICAN OBSERVER 47, 47 (May 1827).

²⁶⁶ *See, e.g.*, Letter from Joseph Watson, Mayor, to J.W. Hamilton & John Henderson (Mar. 10, 1826), *reprinted in* Smith, *supra* note 43, at 334-36.

federal law enforcement power was severely limited at the time, investigation into the kidnappings and prosecution of their perpetrators necessitated a high level of communication and cooperation between the various states involved. While many contemporary commentators assume that Southern cooperation with Northern executive authorities in illegal enslavement cases must have been minimal, the case of Sinclair and his comrades proves otherwise. Mayor Watson's requests for Southern aid were met not merely with complicity, but with active cooperation in restoring the freedom of the victims.²⁶⁷ The most crucial support for these liberation efforts often came from the most influential men in slave owning societies—preachers, lawyers, physicians—even the governor of Mississippi, David Holmes, corresponded with the northern abolitionists to hunt down the kidnapper of several free blacks who had been transported to Mississippi.²⁶⁸ Holmes' assistant in this case was Natchez legislator Joseph E. Davis, whose more famous brother would later become president of the Confederacy.²⁶⁹

Paul's violence and greed undid him. Sometime in the 1830s or early 1840s he moved to a plantation near the city of Columbus, Mississippi.²⁷⁰ In 1843 when his slave Aaron ran away and then was caught, Paul bound Aaron with iron shackles, then beat him and left him.²⁷¹ Some time later Paul and his brother returned and found Aaron dead.²⁷² The prosecutor in Lowndes County, Mississippi, believed the brothers had burned Aaron's body. As was recalled some decades later, Aaron disappeared mysteriously and his "supposed remains were found amidst the ashes of a burned brush-heap."²⁷³ This led to an indictment in Lowndes County, Mississippi, for murder.²⁷⁴ Paul then spent his fortune running from those who would try him for the murder. It is rumored that he fled to Texas to escape justice, although he was

²⁶⁷ *See id.*

²⁶⁸ WILSON, *supra* note 104, at 27, 34-37 (citing *Kidnapping*, THE AFRICAN OBSERVER 27, 27 (May 1827)).

²⁶⁹ *Id.* at 27.

²⁷⁰ SMITH, REMINISCENCES, *supra* note 69, at 196.

²⁷¹ THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1819-1860, at 181 (1996).

²⁷² *Id.*

²⁷³ SMITH, REMINISCENCES, *supra* note 69, at 196.

²⁷⁴ MORRIS, *supra* note 271 (discussing prosecution of James Paul). We are grateful to Andrew Fede who pointed out that Morris discussed this prosecution.

eventually brought back to Columbus.²⁷⁵ Some time later Paul died “at last, ruined in fortune, broken in heart and body, with a cloud of suspicion resting upon him higher and mightier than any monumental stone that money could purchase or friendship dedicate.”²⁷⁶

It is difficult to follow what happened to the kidnapping victims. The trail goes cold on them, as it does for Cornelius Sinclair after his appearance in the Philadelphia County Court to face his kidnapper. Just as he emerged from the shadows to teach us about the limits and possibilities of law and slavery, he receded back into them.

CONCLUSION

Cornelius Sinclair’s odyssey brought him from Philadelphia, where he was kidnapped, to Tuscaloosa, Alabama, where he was sold into slavery, then freed, and then back to Philadelphia to freedom and to face a kidnapper in court. That odyssey reveals that on very rare occasions it was possible to successfully challenge slavery. The challenge cost about as much as it would have cost to purchase Sinclair’s freedom, which suggests that the opportunities to challenge slavery through the legal system were extraordinarily limited. Sinclair’s suit is one data point in the forty years leading into Civil War. One explanation for the success of Sinclair’s suit is the opposition to kidnapping. Yet—though successful—the suit makes us question yet again the opportunities to challenge slavery. And in the years after Sinclair’s suit, it became even more difficult for people held in slavery to successfully use the legal system. This reveals that the legal system moved further away from concerns of order and more towards protection of slavery. Cornelius Sinclair lets us see the world in a grain of sand; it was a world closing from the limited opportunity to assert freedom and towards ever more protection of slavery against challenge.

²⁷⁵ SMITH, REMINISCENCES, *supra* note 69, at 196.

²⁷⁶ *Id.* at 201.

Table 1. Timeline of Cornelius Sinclair's Odyssey

June-August 1825

Perhaps twenty young African Americans disappear from Philadelphia.

August 5, 1825

Cornelius Sinclair kidnapped in Philadelphia.

August-October, 1825

Sinclair and five other kidnapped people transported by water, wagon, water again, and foot from Philadelphia and Delaware to Alabama.

October 1825

Sinclair sold in Tuscaloosa.

December 1825

Remaining kidnapped people travel, often by foot, to Rocky Springs, Mississippi.

Joe Johnson, a chimney sweep, beaten to death by Ebenezer Johnson.

Mississippi residents became suspicious and investigate Ebenezer Johnson and take possession of the remaining kidnapped people.

January 2, 1826

Letter posted to Mayor Watson in Philadelphia about the kidnapped children in Mississippi mentions Sinclair's sale in Tuscaloosa.

March 6, 1826

Grand jury indictment in Philadelphia.

March 10, 1826

Documents sent to Mississippi.

April 17, 1826

Joshua Boucher takes custody of Sinclair from his “owner” in Tuscaloosa.

April 24, 1826

Sinclair freedom suit filed.

May 1826

Most of the kidnapped people sent on their way to New Orleans and then home to Philadelphia.

June 1826

Deposition by Samuel Scomp against kidnappers. *New York Spectator*, July 7, 1826, which is reprinted from *Philadelphia National Gazette*, June 30, 1826.

October 1826

Lawsuit filed by James Paul against Joshua Boucher for taking away his slave.

Lawsuits filed by Joshua Boucher and Robert Kennon against James Paul for defamation, saying that they had stolen his two slaves.

January 17, 1827

Joshua Boucher writes Mayor James Watson pleading for Watson to send a white witness and documents about Sinclair’s freedom before the March court sitting.

March 23, 1827

Kennon and Boucher wrote to Mayor Watson that Sinclair has been freed alerting him that another person kidnapped in Philadelphia is in a neighboring county.

May 1827

African Observer prints documentation about the kidnapping and reports that Sinclair is now free.

June 16, 1827

Sinclair testifies in Quarter Sessions Court in Philadelphia against one of his kidnappers.

John Purnell (also known variously as Isaac Purnell, Joe Johnson, and John Smith). Purnell is sentenced to forty-two years in prison and \$4000 fine.

1843

James Paul indicted for killing Aaron, a slave, in Lowndes County, Mississippi, and flees to Texas.

Table 2. Dramatis Personae

Joshua Boucher – Methodist minister, who filed suit for Sinclair’s freedom

Patty Cannon – leader of gang who kidnapped Sinclair

Dennis Dent – member of Methodist church and slave-owner, who filed bond for Sinclair’s suit

John Gayle – judge who presided over Sinclair’s trial and later as governor of Alabama sought to prosecute abolitionists

Robert L. Kennon – Methodist minister and supporter of Sinclair’s suit

James Paul – purchased Sinclair and refused to free him

Samuel Scomp – another child kidnapped and transported with Sinclair, who provided testimony about the kidnapping

Cornelius Sinclair – the kidnapped child

Joseph Watson – Mayor of Philadelphia who supported Sinclair’s suit