

June 1993

## Details Are of a Most Revolting Character: Cruelty to Slaves as Seen in Appeals to the Supreme Court of Louisiana - Symposium on the Law of Slavery: Criminal and Civil Law of Slavery

Judith K. Schafer

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>



Part of the [Law Commons](#)

---

### Recommended Citation

Judith K. Schafer, *Details Are of a Most Revolting Character: Cruelty to Slaves as Seen in Appeals to the Supreme Court of Louisiana - Symposium on the Law of Slavery: Criminal and Civil Law of Slavery*, 68 Chi.-Kent L. Rev. 1283 (1992).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol68/iss3/11>

This Article is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact [jwenger@kentlaw.iit.edu](mailto:jwenger@kentlaw.iit.edu), [ebarney@kentlaw.iit.edu](mailto:ebarney@kentlaw.iit.edu).

**“DETAILS ARE OF A MOST REVOLTING CHARACTER”:  
CRUELTY TO SLAVES AS SEEN IN APPEALS TO  
THE SUPREME COURT OF LOUISIANA\***

**JUDITH K. SCHAFER\*\***

When Louisiana became an American possession in 1803, the territory's approximately 38,000 slaves had rights unknown in any state of the American South. Most important of these were the right of self-purchase and the right to petition to be sold away from a cruel master. American rule instituted an era of diminished protections for slaves as Louisiana planters found themselves for the first time in a position to make their own laws.<sup>1</sup> In 1806, the territorial legislature passed a new *Black Code* which greatly reduced the rights of slaves in American Louisiana.<sup>2</sup> They lost the right of self-purchase, unless their owner voluntarily permitted it. Furthermore, the new code mandated that juries had to criminally convict slaveholders of cruelty before they could be forced to

\* This Article is part of a larger manuscript, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, which will be published by Louisiana State University Press (forthcoming 1994). The author is grateful for permission granted by the press to publish this Article. Both this Piece and the book-length study are based on the manuscript records of the Supreme Court of Louisiana, which are housed in Account No. 106 in the Earl K. Long Library of the University of New Orleans. Although scholars have had access to the printed reports of the decisions of the court, the original handwritten decisions have only recently become available. This is the first book-length study of these incredibly rich and valuable records. The printed reports usually contain a brief and often sparse recitation of the facts of the case, the decision of the court, and the legal reasoning on which the court based the decision. The case files ordinarily include a handwritten copy of the lower court case, including attorneys' arguments, depositions, written interrogatories, and the clerk's summary of the testimony. Thus the handwritten case record ordinarily contained fifty to one hundred pages, and included a wealth of detail only suggested by the brief printed report of the case. Before these records became available, students of slave law had only legal indexes, such as the *LOUISIANA DIGEST: 1809 TO DATE* (1959) and *HELEN T. CATTERALL, JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO* (1926), to guide them to judicial decisions involving slavery. The index in the *Louisiana Digest* is based on the reports of cases and is far from complete, and Catterall was forced to base her work on the reported cases, as she did not have access to the original manuscripts of the court. Furthermore, there are a number of appeals involving slavery which were never reported, and are therefore only available in manuscript form. These unreported cases are invisible in Catterall's work and in all legal indexes. For the convenience of those readers who may wish to access the manuscript records previously mentioned, we have included the docket number where applicable in the case citations.

\*\* Associate Director, Murphy Institute of Political Economy and Visiting Associate Professor, Tulane Law School. The author wishes to thank the Director of the Murphy Institute, Richard F. Teichgraber III, for his support and encouragement.

1. Hans Baade, *The Law of Slavery in Spanish Louisiana, 1769-1803*, in *LOUISIANA'S LEGAL HERITAGE* 74-75 (Edward F. Haas, Jr. ed., 1983).

2. Act of June 7, 1806, *ORLEANS TERRITORY ACTS*, 1806, at 150-90 (act prescribing the rules and conduct to be observed with respect to negroes and other slaves of the territory) [hereinafter referred to as the *Black Code*, to distinguish it from the French *Code Noir*].

sell an allegedly abused slave. Slaves had not only lost the right to petition the courts for sale away from an abusive master, but the right to initiate any legal action, except for suing for their freedom.<sup>3</sup>

One of the primary purposes of the *Black Code* was to create a legal apparatus for the control and discipline of slaves. Slavery, by its very nature, required such regulation. Discipline was an essential element of the slave system if slaves were to earn a profit for their masters as well as pay for their own maintenance. Control of slave behavior also maintained the image of white superiority and the prescribed and delicate etiquette of relations between the races. In addition, whites believed that making slaves "stand in fear"<sup>4</sup> was a necessary precaution to prevent slave insurrections as well as to maintain discipline.

Breaches of discipline necessitated punishment which was most often physical in nature, and although all such punishments were inherently cruel, if the chastiser were a martinet, excessive—even barbarous—cruelty was always possible. The *Black Code* prohibited cruel treatment beyond that which was acceptable in American Louisiana, but recalcitrant slaves and hot-tempered masters were a combination that could convert control into extraordinary cruelty and violence. According to the *Black Code*, slaves were "passive" creatures, whose subordination to their master and "to all who represent him" was "not susceptible of any modification."<sup>5</sup> Hence, even minor insubordination might have been an occasion for excessive punishment. The *Digest of 1808*, a compilation of the civil law in territorial Louisiana, reinforced the *Black Code*: "The slave is entirely subject to the will of his master who may correct him and chastise him, though not with unusual rigor, nor so as to maim or mutilate him, or expose him to the danger of loss of life, or to cause his death."<sup>6</sup> The *Digest of 1808* also provided for the court-ordered sale of slaves whose owners had been convicted of cruel treatment if the presiding judge so ordered.<sup>7</sup> No other American state had such a provision.<sup>8</sup>

3. *Black Code, Crimes and Offenses* § 16, *supra* note 2, at 206-07. The Supreme Court of Louisiana refused to allow a free black woman to sue for cruelty on behalf of her slave daughter. *Dorothee v. Coquillon*, 7 Mart. (n.s.) 350 (La. 1829).

4. KENNETH M. STAMPP, *THE PECULIAR INSTITUTION: SLAVERY IN THE ANTEBELLUM SOUTH* 146 (1956).

5. *Black Code, Crimes and Offenses* § 16, *supra* note 2, at 206-07.

6. MOREAU LISLET, *A DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS*, 1808, tit. VI, art. 16, at 40 (reprint ed. 1971) (1808) [hereinafter *DIGEST OF 1808*]. Along with acts of the Louisiana legislature, the *Digest of 1808* served as law in Louisiana until replaced by the *CIVIL CODE OF 1825* (New Orleans, 1825) [hereinafter *CIVIL CODE*].

7. *DIGEST OF 1808*, tit. IV, art. 27, at 42.

8. WILLIAM GOODSELL, *THE AMERICAN SLAVE CODE IN THEORY AND PRACTICE* 149 (London, Clarke, Beeton & Co. 1853). Goodell points out that masters had only to repeat excessive punishments until they became "usual."

The *Black Code* also prohibited the maiming or killing of slaves by their owners or others. Persons who treated slaves with cruelty risked a fine of between \$200 and \$500.<sup>9</sup> The *Code* excepted certain types of physical chastisement from its definition of cruel punishment: "flogging, or striking with a whip, leather thong, switch or small stick."<sup>10</sup> Other exceptions included placing a slave in fetters and confinement of the slave.<sup>11</sup> It is indicative of legislative sentiment concerning cruelty to slaves that Louisiana lawmakers passed an act in 1821 that mandated a fine of \$200 or imprisonment for six months for a person convicted of "wantonly or maliciously kill[ing] any horse, mare, gelding, mule, or jack-ass."<sup>12</sup> Those convicted of this crime were also liable to the owner of the animal for its value.<sup>13</sup> Persons convicted of having "cruelly beat, maim[ed], or disable[d]" animals were subject to a \$100 fine and were liable for damages to the animal.<sup>14</sup>

Evidence that excessive violence and cruel treatment of slaves was not an uncommon event in Louisiana abounds in plantation diaries and other manuscript sources. The most famous case involved the notorious Madame Lalaurie. A New Orleans court found this sadistic woman guilty of abusing her slaves and ordered the sale of the slaves away from their mistress.<sup>15</sup> Lalaurie's relatives purchased the slaves and returned them to her. She chained them to the walls of her Royal Street home, where she reportedly alternated between torturing and striking them. On April 10, 1834, an elderly slave, fettered to a garret, somehow managed to set fire to Lalaurie's house. The New Orleans *Bee* described the events that followed:

The conflagration at the house occupied by the woman Lalaurie . . . has been the means of discovering one of those atrocities, the details of which seem to be too incredible for human belief. We would shrink from the task of detailing the painful circumstances connected therewith, were it not that a sense of duty . . . renders it indispensable to do so.

The flames having spread with alarming rapidity, and the horrible suspicion being entertained among the spectators, that some of the inmates of the premises . . . were incarcerated therein. Upon entering one of the apartments, the most appalling spectacle met their eyes. Seven slaves more or less horribly mutilated, were seen suspended by the neck, with their limbs apparently stretched and torn from one ex-

9. Black Code, Crimes and Offenses § 16, *supra* note 2, at 208.

10. *Id.*

11. *Id.*

12. Act of January 31, 1821, 1821 La. Acts 24 (concerning crimes and misdemeanors).

13. *Id.* § 1.

14. *Id.* § 2.

15. NEW ORLEANS BEE, April 11-12, 1834.

tremity to the other. The slaves were the property of the demon, in the shape of a woman. They had been confined by her for several months . . . and had been merely kept in existence to prolong their sufferings and make them taste all that the most refined cruelty could inflict.<sup>16</sup>

Those who came to fight the fire turned into an angry mob when they observed the pitiful condition of her slaves. Madame Lalaurie barely escaped the city just ahead of a furious band of onlookers. The angry crowd destroyed her furniture by dropping it from the balcony to the courtyard below, and then proceeded to demolish most of the house.<sup>17</sup>

Section 16 of the *Black Code* authorized criminal prosecution for mutilation, severe ill-treatment, or the killing of a slave.<sup>18</sup> Section 17 provided that if a slave were "mutilated, beaten or ill-treated" when no witnesses were present, the owner or person responsible for managing the slave would be prosecuted for cruelty, unless he or she could produce evidence to the contrary.<sup>19</sup> Since slaves could not testify in court against whites, this provision was intended to protect slaves in situations in which they were the only witnesses to the cruel treatment. However, the creators of the *Black Code* left a loophole in the article concerning cruel treatment: an owner prosecuted under such circumstances could also clear himself "by his own oath."<sup>20</sup> Although this provision weakened the law prohibiting cruelty to slaves, and although few slave owners were ever prosecuted for cruelty to their slaves, neither Louisiana law nor the state's courts ever ruled out this possibility as did North Carolina Judge Thomas Ruffin, writing for the court, in *State v. Mann*.<sup>21</sup> In this often quoted decision, the court held that slave owners could not be held criminally responsible for an assault and battery on one of their own slaves, because such a ruling contradicted the absolute power of the slaveholder which was necessary "to render the submission of the slave perfect."<sup>22</sup>

Plenty of evidence of ill-treatment exists in the records of appeals of civil cases to the court. At times the cases reveal unprovoked or senseless violence on the part of owners, overseers, or strangers. In many in-

16. *Id.*

17. STAMPP, *supra* note 4, at 182, 188; JOE G. TAYLOR, *NEGRO SLAVERY IN LOUISIANA* 225-27 (1963). Fred Darkis contends that Mme. Lalaurie was the victim of a "bad press." Fred R. Darkis, *Madame Lalaurie of New Orleans*, 23 LA. HIST. 383 (1982).

18. *Black Code, Crimes and Offenses* §§ 16, 17, *supra* note 2, at 206-08.

19. *Id.* § 17, *supra* note 2, at 208.

20. *Id.* South Carolina was the only other state with the provision that slaveholders could clear themselves from a charge of cruelty to their slaves by a personal oath. GOODELL, *supra* note 8, at 280.

21. 13 N.C. (2 Dev.) 263 (1829).

22. *Id.* at 266. See also, *State v. Raines*, 14 S.C.L. 314, 3 McCord 538 (1826). For an overview of prosecutions for cruelty to slaves in common law states see Andrew Fede, *Legitimized Violent Slave Abuse in the American South, 1619-1865: A Case Study of Law and Social Change in Six Southern States*, 29 AM. J. LEGAL HIST. 93-150 (1985).

stances, cruelty to a slave resulted from a white's overreaction to a slave's minor infraction.

Three factors prevented the Supreme Court of Louisiana from hearing many appeals from criminal trials for cruelty to a slave during the antebellum period. The most obvious is that there were few prosecutions of this nature. Since slaves were often the only witnesses to such incidents, and since Louisiana law prohibited them from testifying against whites, finding legally competent witnesses was difficult. Often white witnesses, many of whom felt that slave discipline was a private matter between slaveholders and their property, were reluctant to testify in prosecutions for cruelty. Furthermore, as we will see in one instance, white juries simply refused to convict, despite overwhelming evidence of brutality. In such cases, prosecutions of slave owners that ended in acquittal were not appealed, and therefore do not appear in the records of the Supreme Court of Louisiana. The third reason for the scarcity of criminal appeals is technical. The first constitution of the State of Louisiana (1812) limited the jurisdiction of the state supreme court to civil appeals.<sup>23</sup> Until the Constitution of 1845 gave the high court criminal jurisdiction,<sup>24</sup> the court heard no criminal appeals. Appeals of criminal prosecutions for cruelty to slaves were therefore limited to the sixteen-year period from 1846-1862, although the court heard appeals of civil suits that involved death or injury to slaves throughout the antebellum period.<sup>25</sup> The court was quite willing to sustain the property rights of slave owners in civil suits when their slaves were injured or killed by others, but the justices had little opportunity to affirm convictions of whites in criminal prosecutions. There were only six criminal appeals of cruelty convictions to the court from 1846-1862. Each involved a slave man who died from the abuse he received.

## I. CRIMINAL CONVICTIONS FOR CRUELTY

The first appeal of a criminal conviction for cruelty to a slave occurred in *State v. Morris*.<sup>26</sup> The defendant allegedly beat his slave to death "in a cruel and barbarous manner . . . causing sundry dangerous and severe bruises and wounds upon the thigh, loins, and other parts of the body. A hole in the abdomen, the size of a dollar which appeared to

23. CONSTITUTIONS OF THE STATE OF LOUISIANA art. IV, § 2, at 503 (Benjamin W. Dart ed., 1932).

24. *Id.* tit. IV, art. 63, at 514.

25. *Id.*

26. 4 La. Ann. 177 (1849).

have been gouged out," was the immediate cause of death.<sup>27</sup> No one witnessed this treatment of the slave. Morris presented his oath in an affidavit denying his responsibility for the alleged cruelty. The district judge instructed the jury that the oath was not conclusive evidence of the defendant's innocence, and the jury found him guilty. Morris appealed, claiming that under section 17 of the *Black Code* the owner's oath could not only repeal the presumption of guilt created by the section, but was intended to be conclusive proof of innocence.<sup>28</sup> Justice George King, writing for the court, denied this interpretation of section 17:

. . . Such does not appear to us to be a just interpretation of the act. The law creates a presumption of the master's guilt, which, in the absence of this express legislation, would not arise. It is founded upon the relation of master and slave, and the power of the former to maltreat the latter secretly and without the possibility, in many instances, of otherwise establishing his guilt.

He is consequently held answerable for the cruel treatment received by his slave while under his charge, and when no person is present, and is presumed to be guilty of the offence, "unless," in the words of the act, "he can prove the contrary."<sup>29</sup>

It has been correctly urged by the Attorney General, that the interpretation contended for by the defendant would enable the master to escape punishment by interposing his oath, when his guilt could be satisfactorily established by other testimony which could not have been contemplated by the legislature . . . . [I]n such cases the legislature could not have intended that the owner should escape punishment by interposing his own oath; or that the jury should acquit, notwithstanding their convictions, from the testimony, of the guilt of the accused.<sup>30</sup>

*State v. Morris* is one of only a handful of cases in the appellate court records of the American South in which a state supreme court upheld the conviction of a slaveholder for cruelty to his own slave. Overseers, poor whites, and free persons of color were more likely to be successfully prosecuted for abuse of slaves than slave owners.<sup>31</sup>

Seven years elapsed before the court heard the next appeal of a conviction for cruelty, *State v. Bass*.<sup>32</sup> The trial court convicted William Bass and his stepfather, Harry McNabb, both described as yeomen, of killing a slave named Joe, allegedly a runaway. According to the trial court record, Bass shot Joe out of a tree with a shotgun loaded with

27. *Id.*

28. *Id.*

29. *Black Code*, Crimes and Offenses § 17, *supra* note 2, at 208.

30. *Morris*, 4 La. Ann. at 177-78.

31. *Fede*, *supra* note 22, at 96, 133. For cases in other states involving convictions of masters see *State v. Hoover*, 20 N.C. 413, 4 Dev. & Bat. 365 (1839); *Souther v. Commonwealth*, 48 Va. (7 Gratt.) 673 (1851).

32. *State v. Bass*, 11 La. Ann. 478 (1856).

“divers leaden bullets.” The slave had climbed the tree in order to escape pursuing hounds. Bass’s primary defense was that “he was but a boy” and also an orphan. The prosecutor charged McNabb with aiding and abetting Bass in the shooting. The jury acquitted McNabb, but found Bass guilty with a recommendation of clemency, as Bass was an “orphan boy of tender age.” The Morehouse District Court judge sentenced Bass to only thirty days in jail and a fine of \$300. The State appealed to the supreme court on the basis that the district court judge had erred in giving Bass such a light sentence because the judge had allowed Bass’s counsel to inappropriately introduce damaging testimony about the character of the victim in an attempt to justify the shooting. However, Justice Henry Spofford, writing for the court, upheld the decision of the trial court.<sup>33</sup>

Two of the other four criminal prosecutions for killing a slave involved free blacks. In *State v. Taylor*,<sup>34</sup> the First District Court of New Orleans found the free black Joseph Jerry Taylor guilty of manslaughter in the death of Henry Cruize, a slave. Taylor had killed Cruize by throwing a brick at his head. The judge sentenced Taylor to seven years at hard labor. The primary witness at the trial had been a mulatto named Charles Robinson, who said he had been a slave, but his mistress had freed him upon her death. Attorneys for Taylor objected to his testimony, saying that Robinson had offered no proof that he was free, and if he were a slave, he could not testify. Justice Spofford rejected this argument, stating that the objection to Robinson’s testimony came only after the testimony, too late to sustain such an objection.<sup>35</sup> The court affirmed the judgment of the lower court.<sup>36</sup>

The other criminal appeal involving a free black, *State v. Populus, f.m.c.*,<sup>37</sup> occurred the following year. The Rapides Parish District Court convicted Joseph Populus of killing the slave David by stabbing him with a dirk knife. The convicting jury recommended him to the mercy of the court, and the judge sentenced him to twelve months at hard labor. His attorneys appealed on the grounds that the judge had not sequestered the jury after he had charged it. The jurors had gone home for the night and had returned the next morning to render their verdict. The supreme court found this irregularity sufficient grounds to grant the petition for a

33. *Id.*

34. 11 La. Ann. 430 (1856).

35. *Id.* at 431.

36. *Id.*

37. 12 La. Ann. 710 (1857).



new trial.<sup>38</sup> No record of the subsequent proceeding exists.

In 1858, during its next term, the court heard an appeal from two defendants in the second criminal conviction for cruelty to a slave by the owner(s), *State v. White & Ward*.<sup>39</sup> The St. Martin Parish jury found George White and Clarence Ward guilty of "inflicting inhuman and cruel treatment" on a slave under sections 16 and 17 of the *Black Code*,<sup>40</sup> and the judge fined each \$400. The slave had died from his wounds. White appealed the conviction on a legal technicality, asserting that an 1855 legislative act relative to crimes repealed sections 16 and 17 of the *Black Code*. White also asserted that if not repealed, sections 16 and 17 did not require a criminal prosecution for cruelty. He claimed that he was entitled to a civil trial for damages rather than a criminal prosecution. The supreme court's opinion, written by Chief Justice Edwin Merrick, rejected these arguments and upheld the conviction. Finding that the act of 1855 did not repeal sections 16 and 17 of the *Black Code*, the court's opinion was strongly in favor of criminal prosecution:

We know no law which requires the prosecution under these sections of the Act of 1806 to be conducted as a civil suit. On the contrary, we think that the terms, conviction and offence, used in them, imply a prosecution by information or indictment. Moreover, the first offence specified in section 16, viz, the offence of killing the slave of another, could be prosecuted in no other manner.<sup>41</sup>

The last criminal prosecution for killing a slave, *State v. Davis*,<sup>42</sup> occurred in 1859. The record of the lower court no longer exists. The opinion of the Louisiana Supreme Court indicates that a grand jury indicted W. H. Davis, a white man, for felonious assault on a slave "by willfully shooting at him with a shotgun loaded with gunpowder and divers leaden shot."<sup>43</sup> Davis's attorneys filed a motion to quash the indictment on grounds that no law allegedly existed that forbade a free person from purposefully shooting at a slave with intent to kill. The Morehouse Parish District Court ordered Davis's indictment to be quashed, but the supreme court reversed this order, reinstated the indictment, and remanded the case to the lower court for prosecution. Associate Justice James Cole wrote for the court: "Slaves are treated in our law as property, and, also as persons; this section [of the Act of 1855 pertaining to crimes] then applies to an assault upon a slave or upon a free person."<sup>44</sup>

38. *Id.*

39. 13 La. Ann. 573 (1858).

40. *Black Code*, Crimes and Offenses §§ 16, 17, *supra* note 2, at 206-08.

41. *White*, 13 La. Ann. at 573.

42. 14 La. Ann. 678 (1859).

43. *Id.*

44. *Id.* See Act of March 14, 1855, § 9, 1855 La. Acts 131 (concerning crimes and offenses).

## II. CIVIL SUITS INVOLVING CRUELTY

Owners of slaves abused by others often chose to bring a civil action for the value of the slave if the slave had died as a result of the abuse, or for the amount the injury had diminished the slave's value. It is in these cases that evidence of cruel treatment most often appears, but clearly the property value of the slave took precedence to obtaining a just punishment for the perpetrator of the barbarous treatment. Even a purely civil matter would have brought the incident to the attention of the public prosecutor, who could have chosen to begin a criminal prosecution. The scarcity of criminal prosecutions was the result of solidarity among whites and especially among slave owners, which often prevented whites who witnessed the atrocities, or who had seen the physical evidence of excessive violence, from pressing charges or even reporting slave abuse to the authorities. Although slaves were often the sole witnesses to cruelty to their fellow bondsmen, the *Black Code* disqualified slaves from testifying in court against whites or free blacks.<sup>45</sup>

Appeals to the Supreme Court of Louisiana in civil cases involving cruel treatment or senseless, unprovoked violence against slaves can be divided into three categories: cruel treatment of slaves by strangers, by overseers, and by their masters. The last classification, that of abuse by masters, was the least frequent, no doubt because slaves, disqualified from testifying in court, were often the only witnesses to such incidents, and masters would be unlikely to report the event themselves. On the other hand, masters were much more likely to report acts of violence by others that injured or killed their valuable slave property.

Slaves who stole animals and produce often risked serious gunshot wounds and even death, though their infractions might have been minor. In *Allain v. Young*,<sup>46</sup> the Louisiana Supreme Court heard an appeal from a free black slave owner named François Allain, whose slave Régese had such a bad character, so witnesses testified, that no one would accept him as a gift. Régese regularly stole cattle and hogs from neighboring farms, slaughtered them, and sold the meat. From the record it is not clear whether Régese acted without his master's knowledge, or whether Allain profited from the sale of the stolen meat. When a man named Young

The judge in *State v. Hale*, a North Carolina case, ruled that assault on a slave by persons other than the slave owner was an indictable offense. *State v. Hale*, 9 N.C. (2 Hawks) 582 (1823).

45. *Black Code, Crimes and Offenses* § 16, *supra* note 2, at 206-08. Fede suggests that slave owners chose civil remedies if the offender had the financial means to compensate for the damages to or loss of the slave, but chose criminal prosecution to serve as a deterrent to poor whites who would have been unable to come up with a sufficient amount to justify a civil suit for the value of the slave. Fede, *supra* note 22, at 113.

46. 9 Mart. 221 (La. 1821).

caught Régese with some stolen animals, Régese attempted to seize Young's gun, and Young shot and killed him. Allain sued Young for Régese's value, which he estimated at \$2,000. The judge of the lower court held for the defendant, reasoning that Régese died while committing a felony. Allain appealed, but the supreme court, in a decision written by Chief Judge George Mathews, affirmed the lower court: "If a slave of a bad character is pursued on suspicion of felony, attempts to seize a gun, flies, and is killed in the pursuit, the supreme court will not disturb a verdict for the defendant, who killed him."<sup>47</sup>

Régese had been involved in an extensive scheme to steal from others. In most other cases involving animal stealing, thieves were committing petty larceny, usually pilfering chickens for their own use. The court did not condone excessive violence in these instances. *Déslonde, f.m.c. v. LeBréret*<sup>48</sup> involved a free man of color who sued Pierre LeBréret for shooting and killing his slave Isaac for attempting to steal one of LeBréret's chickens. LeBréret caught the slave in the act, bound him with a rope, and shot him, execution-style. LeBréret claimed the act was justified, saying that Isaac was "in the habit of stealing and carrying away the defendant's property in the night."<sup>49</sup> The supreme court remanded the case to the lower court to ascertain the value of Isaac, presumably to award damages to Déslonde.<sup>50</sup> There is no record of subsequent action by the lower court.

In the 1850s, the Supreme Court of Louisiana heard several appeals in which owners sued others for shooting their slaves for stealing animals or produce. Stealing sugarcane resulted in the death of a slave and the lawsuit, *Carmouche v. Bouis*.<sup>51</sup> Narcisse Carmouche brought a civil action against his neighbors, Francis P. Bouis and his son Louis, for the value of a slave named John. Testimony indicated that a gang of slaves had been making nightly raids on Bouis's sugar plantation to steal cane. Determined to put an end to the nocturnal depredations, Bouis ordered his son and his overseer to arm themselves and keep watch over his fields. Both were instructed not to fire upon trespassing slaves, but merely to fire warning shots to frighten them. When Bouis's son saw John climbing the sugarcane field's fence, he fired without taking aim, and by chance, mortally wounded the slave. The Pointe Coupée Parish Court awarded

47. *Id.* For a similar case see Hébert v. Esnard, 8 Mart. (n.s.) 498 (La. 1830). It was against the law for slaves to sell or barter produce without permission from their masters. Black Code § 14, *supra* note 2, at 156-58.

48. 5 La. 96 (1833).

49. *Id.*

50. *Id.* For a similar case, see Richardson v. Dukes, 15 S.C.L., 4 McCord 156 (1827).

51. 6 La. Ann. 95 (1851).

Carmouche \$800. In his appeal, Bouis contended that he had the right to defend his property. However, the supreme court justices ruled that he was liable for the slave's death and resulting property loss to Carmouche.<sup>52</sup> The difference between this case and the decision in *Allain v. Young*<sup>53</sup> lay in the nature of the slaves' acts: Régese's attempt to seize a firearm was a felony; in *Carmouche*, John's offense was petty theft. Justice Isaac Preston, writing for the court, held that homicide was not necessary to prevent a misdemeanor, and that the killing of John was unnecessary for the defense of Bouis's person, family, or property.<sup>54</sup>

Eight years later, the court heard an appeal from the District Court of Plaquemines Parish, *McCutcheon v. Angelo*,<sup>55</sup> which involved the shooting and blinding of a slave named John Hall, the property of S. D. McCutcheon. The plaintiff brought a civil action for \$3000, \$2000 of which was the alleged value of the slave and \$1000 for his future maintenance, as McCutcheon claimed the slave was worthless as a result of his injuries. Angelo claimed that he shot the slave because he had observed him lurking about his chicken house. When the slave realized that Angelo had seen him, he fled, ignoring Angelo's order to stop, whereupon Angelo shot him. The attending physician testified that Hall had been wounded eight times, including one shot in one eye and two in the other. The lower court judge awarded McCutcheon \$1,500, stating that Angelo had used excessive force for petty larceny. In his appeal, Angelo asserted that his actions were justified as the slave was in the act of committing a felony, and that he had refused to obey Angelo's order to halt. The supreme court ordered Angelo to pay the damages assessed by the lower court. Chief Justice Edwin Merrick wrote the opinion dismissing the defendant's assertion that chicken stealing was a felony and rejecting Angelo's contention that the shooting was justified by the slave's refusal to stop when commanded:

[I]t is true that it is provided by law that "if any slave shall be found absent from his usual place of working or residence, without some white person accompanying him, and shall refuse to submit himself to examination, any freeholder shall be permitted to seize and correct him; and if he should resist or attempt to escape, the freeholder is authorized to make use of arms, but to avoid killing the slave; but should the slave assault and strike him, he is authorized to kill him."<sup>56</sup>

52. *Id.*

53. 9 Mart. 221 (La. 1821).

54. *Carmouche*, 6 La. Ann. at 95. For an almost identical case involving a slave shot in the act of stealing a hog, see *Bibb v. Hebert*, 3 La. Ann. 132 (1848). See also *Jennings v. Fundeburg*, 15 S.C.L. 96, 4 McCord 161 (1827).

55. 14 La. Ann. 34 (1859).

56. *Id.* at 35 (citations omitted).

Justice Merrick's opinion made no mention of an 1818 case, *Jourdan v. Patton*,<sup>57</sup> in which the court ordered an owner fully compensated for the blinding of her slave to transfer title to the owner of the slave who caused the injury. That the supreme court considered the well-being of the slave, who had been owned by the same mistress for many years, but denied that the slave's future situation had relevance under the law. The difference was that in *Jourdan* the slave was injured by another slave, while in *McCutcheon* the slave was gravely wounded by the very person to whom title would have transferred. Although in *Jourdan* the court stated that "[c]ruelty and inhumanity ought not to be presumed against any person,"<sup>58</sup> Angelo's excessive punishment for chicken stealing went far beyond the presumption that further abuse of the slave might occur.<sup>59</sup>

During the same term that the court decided *McCutcheon*, it also heard the appeal of *Gardiner v. Thibodeau*,<sup>60</sup> a civil suit in which Edward C. Gardiner sought to recover the value of his slave Charles. The slave had been in the act of stealing chickens when Jean Thibodeau shot and killed him. A witness stated that after the shooting "[t]here were chicken feathers from the [chicken] yard to the place where the negro was lying."<sup>61</sup> Thibodeau admitted that he had shot Charles because he ordered the slave to halt, and the slave continued to flee. The District Court of St. Landry Parish found for the defendant. Citing an 1857 act, which provided that "[i]t shall be lawful to fire upon runaway negroes, who may be armed, when pursued, if they refused to surrender,"<sup>62</sup> Thibodeau contended that he was justified in shooting Charles because he was running away and was armed. Chief Justice Merrick, writing for the court, rejected this argument:

It is proved that a knife was found in the pocket of his coat after the body of the negro was removed to the residence of the plaintiff. The coat was lying at the feet of the boy, and the knife was a butcher knife, six or seven inches long. This does not bring the case within the statute. The defendant did not pretend (as we have seen), that he killed

57. 5 Mart. 615 (La. 1818).

58. *Id.* at 617.

59. Mark Tushnet discusses *Jourdan v. Patton* in his book *THE AMERICAN LAW OF SLAVERY: CONSIDERATIONS OF HUMANITY AND INTEREST* (1981). Tushnet states that in *Jourdan*, the Supreme Court recognized the "sentiment that slavery could generate between master and slave," but denied that those ties were relevant because there was no reason to presume that the owner of the slave who blinded the plaintiff's slave would be cruel. *Id.* at 66-71. But this analysis does not take into account the possibility that if the "sentiment" between the mistress and her slave was so strong, she could have accepted less than the full value of her slave, and title would not have transferred.

60. 14 La. Ann. 732 (1859).

61. *Id.* at 733.

62. Act of March 19, 1857, § 41, 1857 La. Acts 233.

the slave because he was a runaway and armed, but because he was stealing his chickens, and run [sic], and did not stop when commanded.

If it be assumed, that the negro had his coat on when he was stealing the chickens, and the knife was in the pocket, the defence still fails, because it is now shown that the slave was a runaway. So far from being a runaway, the proof makes it sufficiently certain that he was out for no other purpose than that of stealing chickens; two of which were found by his house. The proof shows, that he was addicted to theft; but there is none tending to show that he was a runaway. Our law does not justify the killing of any one for a theft, and the defendant is left without sufficient justification.<sup>63</sup>

The supreme court reversed the decision and awarded Gardiner \$1,150. Citing *McCutcheon v. Angelo*,<sup>64</sup> the court ordered Thibodeau to reimburse Gardiner for Charles's value.<sup>65</sup>

*Dupérier v. Dautrive*<sup>66</sup> was another case involving an owner unable to recover from those who shot his slave for ignoring an order to halt. Dupérier claimed that the defendants had "wantonly shot and mortally wounded"<sup>67</sup> his slave while they were riding patrol for the city of New Iberia. When the patrol spotted the slave, they ordered him to halt, but the slave galloped away on a horse, whereupon members of the patrol fired upon him. Testimony established that his master had sent the slave into town on horseback to run an errand. When the patrol ordered him to stop, his horse, who was newly broken, bolted; members of the patrol fired at him three times with shotguns. The slave returned home and died of his wounds the next day. The District Court of St. Martin Parish held for the defendants, who, the court reasoned, believed the slave was a fugitive and were only doing their duty. Unrest among the slaves in and around New Iberia and rumors of slave insurrection<sup>68</sup> had caused the patrols to take their responsibilities more seriously than usual. The supreme court affirmed the judgment, stating that recent disorders among the slaves in New Iberia called for the strict enforcement of laws for the police of slaves. The justices cited Section 65 of the Act of 1855, Act Relative to Slaves and Colored Persons, which provided that any white who found a slave away from his usual residence who resisted

63. *Gardiner*, 14 La. Ann. at 733.

64. 14 La. Ann. 34 (1859).

65. *Gardiner*, 14 La. Ann. at 733.

66. 12 La. Ann. 664 (1856).

67. *Id.*

68. St. Martin Parish and neighboring parishes were shaken by rumors of slave revolts in the Fall of 1856. In *Dupérier* the patrol shot the slave in August 1855. See Harvey Wish, *The Slave Insurrection Panic of 1856*, 5 J.S. HIST. 217-18 (1939).

arrest might "make use of arms" to seize and subdue him.<sup>69</sup> The use of weapons, the justices reasoned, implied the risk of killing, and therefore applied to this case.<sup>70</sup>

### III. CIVIL SUITS AGAINST OVERSEERS FOR CRUELTY

The Louisiana Supreme Court heard several appeals involving slaveholders who sued their overseers for brutality and injury to their slaves. Slaves' hatred toward overseers in the American South is legendary. Historian Kenneth Stampp and others have charged that overseers had a marked preference for using physical force in managing their charges.<sup>71</sup> Since slaves did not accord overseers the respect of owners, physical coercion was often necessary to induce obedience. Section 33 of the *Black Code* provided for criminal prosecution of persons who beat slaves belonging to others without sufficient provocation, as well as providing financial compensation for dead or injured slaves.<sup>72</sup> However, not one of these cases involved criminal prosecutions; all were civil suits to regain the value of the lost labor of the slaves if they were unable to work as a result of their injuries, or for the price of the slaves, if the overseer permanently disabled or killed them. Often the slaveholder demanded that the court reduce the overseer's salary as compensation for the loss. Overwhelmingly, the supreme court ruled in favor of the slave owner, regardless of the decision of the lower court. Details from the lower court cases often reveal that overseers deserved their reputation for harsh and often excessive measures to maintain discipline and maximize productivity. The lack of criminal prosecutions, despite overwhelming evidence of barbarous treatment, demonstrates the failure of slave law to provide protection for the basic right to be treated humanely and the resultant inadequacy of the courts in dealing with cruelty to slaves. There is no real evidence of a shift in jurisprudence in appeals concerning cruelty during the antebellum period. Despite changing times and personnel, the supreme court almost always supported the property interest of the masters against their overseers except in unusual circumstances.

The earliest case involving an overseer killing a slave is an exception to the court's more ordinary practice of maintaining an owner's financial

69. Act of March 15, 1855, § 65, 1855 La. Acts 386. See also *Witsell v. Earnest*, 10 S.C.L. 108, 1 Nott. & McC. 182 (1818).

70. *Dupérier*, 12 La. Ann. at 665.

71. STAMPP, *supra* note 4, at 183; Alton V. Moody, *Slavery on Louisiana Sugar Plantations*, 7 LA. HIST. Q. 210 (1924); WILLIAM K. SCARBOROUGH, *THE OVERSEER: PLANTATION MANAGEMENT IN THE OLD SOUTH* 78-79 (1984). See also *Black Code* § 33, *supra* note 2, at 176-78.

72. *Black Code* § 33, *supra* note 2, at 176-78.

interest in his slaves. In *Martineau v. Hooper*,<sup>73</sup> the plaintiff sued his overseer for killing one of his slaves. Initially the jury found the overseer blameless and ruled against Martineau. On appeal, the supreme court refused to rule because the clerk of the district court had failed to provide a transcript of one witness' testimony.<sup>74</sup> The district court retried the case in 1820, the jury again found for the defendant, and Martineau appealed.<sup>75</sup> Witnesses testified that Harry, the slave at issue, was so insubordinate that his master was afraid to return to his plantation, and he ordered the overseer to subdue him. Evidence indicated that the slave was so out of control that he had laid hands on his master. Believing that the slave would resist him, the overseer took the precaution of loading his gun, although he left it in the house before going outside to whip the recalcitrant slave. Harry resisted, as predicted, and a scuffle ensued during which the overseer threatened to kill the slave. Harry took flight, and Hooper ran to the house, got his gun, and fatally wounded the slave. The Louisiana Supreme Court, in an opinion written by Chief Judge Mathews, held Hooper blameless, as the slave was "in an actual state of rebellion."<sup>76</sup> It was imperative, the court ruled, that a slave who set such an example not go unpunished. The court reasoned that Hooper had acted as though the slave were his own and that two juries had excused him for refusing to allow "this rebel slave" to escape with impunity.<sup>77</sup>

*Martineau v. Hooper* was an exceptional decision based on the interest of the slaveholding community in maintaining slave discipline by not allowing an ungovernable slave to go unpunished. The court was willing to allow a slaveholder to suffer a loss of his property for the general safety of the community, although the justices ordinarily ruled in favor of slave owners.

In 1827, the court heard *Perrie v. Williams*,<sup>78</sup> another appeal involving an overseer. Lucy Perrie, an absentee owner, sued her overseer, James Williams, and her neighbor, Arthur Adams, for killing her slave Milo. In her petition, Perrie claimed that Williams was an incompetent overseer who cruelly treated and unnecessarily abused her slaves, drove them off the plantation, and made a poor crop. She alleged that Williams and Adams had severely whipped and shot at two other slaves on her plantation. Adams admitted the shooting, but said it was justified be-

73. 5 Mart. 668 (La. 1818).

74. *Id.*

75. *Martineau v. Hooper*, 8 Mart. 669 (La. 1820).

76. *Id.* at 701.

77. *Id.*

78. 5 Mart. (n.s.) 694 (La. 1827).



cause Perrie's slaves often stole his cattle for food because their rations were so meager. The jury found Williams and Adams liable, and the judge awarded Perrie \$900, \$450 each from Williams and Adams. Only Williams appealed. The Supreme Court of Louisiana affirmed the judgment of the lower trial court on the grounds that Perrie had a reasonable claim for damages because of the "unjustifiable violence and injury done directly to the property of the plaintiff."<sup>79</sup>

*Womack v. Nicholson*<sup>80</sup> was a civil suit brought by Abraham Womack, the owner of a slave named Nancy, against Peter Nicholson for the value of Nancy and other damages. Womack had rented Nancy to Nicholson, whose overseer, Churchman, had beaten the pregnant slave woman so severely that she delivered her baby prematurely, and she and the infant subsequently died. Nicholson denied the allegations against his overseer, and charged that Womack had represented Nancy as being "humble, tractable, and healthy," when in fact she was not only sickly, but "insolent, disobedient, and in the habit of running away."<sup>81</sup> The defendant claimed that Womack owed him \$500 for two months of lost labor, maintenance and medical care for the slave. The Caddo Parish jury found in favor of the plaintiff for the sum of \$558, and the defendant appealed. The testimony of witnesses established that Nancy was an intractable slave, and that she had run away several times from the defendant. One of the witnesses stated that Nancy "required more whipping than ordinary negroes," and that another planter who had hired her returned her to Womack because of "her vicious and unmanageable character."<sup>82</sup> When Nicholson found Nancy so insubordinate that she was useless, he ordered Mr. Churchman, his overseer, to return Nancy to her owner. A neighbor subsequently found her lying by the side of the road, her head gashed, bruised and swollen, with both old and fresh marks of the lash on her body. The neighbor who discovered her summoned a physician, who found symptoms of dropsy (congestive heart failure), as well as evidence of a severe beating. Womack brought Nancy to his plantation, where she continued to exhibit symptoms of dropsy. He never summoned a physician, and Nancy died two months later. The Caddo Parish jury believed that the beating Nicholson's overseer administered to Nancy had caused her death, but the supreme court reversed the decision, stating that although the beating most likely caused the death of her baby, Nancy had died of dropsy, a preexisting disease. The

79. *Id.* at 696.

80. 3 Rob. 248 (La. 1842).

81. *Id.*

82. *Id.*

court held that Womack's neglect in failing to call a physician cost him full recovery of Nancy's value. The court lowered the award to \$158.50, the cost of medical care for Nancy at the neighbor's house as a result of the overseer's beating. In modifying the trial court's judgment, Associate Judge Alonzo Morphy wrote that the decision of the jury was a "manifest error,"<sup>83</sup> contrary to the evidence as to the cause of Nancy's death. Although the Supreme Court of Louisiana could review both law and fact, it could not overturn or modify the verdict of a lower court on the basis of fact unless, as in this case, the decision was judged clearly wrong, i.e., a "manifest error."<sup>84</sup>

Occasionally, masters who believed that their overseer abused one of their slaves retaliated by withholding their salary. In *Hendricks v. Phillips*,<sup>85</sup> the overseer Hendricks sued Phillips, his employer, for back wages. Phillips admitted that Hendricks had been his overseer, but stated that Hendricks had treated his slaves with such cruelty that he made a reconventional demand (a civil law term for countersuit)<sup>86</sup> for the amount of the overseer's wages. Witnesses testified that Hendricks was a capable overseer who made a good crop, but admitted that he had treated one slave woman with great brutality. Condemning the conduct of the overseer, Justice Thomas Slidell observed "the details are of a most revolting character, and exhibit conduct on the part of the overseer utterly undefensible."<sup>87</sup> Since the lower court record has vanished, we do not know what the "revolting" details were, except that witnesses' testimony was "extremely unfavorable to him [the overseer] with regard to the cruel treatment of the negro." Citing Article 173 of the *Civil Code*,<sup>88</sup> which prohibits masters, and by implication, those to whom masters delegate power, from inflicting excessively rigorous punishment, as well as section 33<sup>89</sup> of the *Black Code*, which made anyone cruelly chastising the slave of another liable for the value of the slave, Justice Thomas Slidell's opinion modified the decision of the Catahoula Parish District Court, which had lowered the overseer's salary by the amount of the value of labor lost during the slave woman's convalescence. The supreme court ruled that testimony in the case established that the overseer had

83. *Id.* at 250.

84. See CONSTITUTIONS OF THE STATE OF LOUISIANA, *supra* note 23, tit. IV, art. 63, at 514 and art. 62, at 528.

85. 3 La. Ann. 618 (1848).

86. A "reconventional demand" is the civil law equivalent of a counterclaim in common law. The court heard an appeal in an almost identical case in which an overseer shot the slave Alfred. See *Taylor v. Patterson*, 9 La. Ann. 251 (1854).

87. *Hendricks*, 3 La. Ann. at 618.

88. CIVIL CODE, art. 173, *supra* note 6, at 27.

89. Black Code § 33, *supra* note 2, at 176-78.

permanently disabled the slave, and that Phillips was entitled to her value as well as medical expenses. The court awarded Phillips the entire amount of the overseer's back wages plus \$100.<sup>90</sup>

The following year the court heard another appeal involving an overseer, *Blanchard v. Dixon*.<sup>91</sup> In this civil suit, the plaintiff alleged that Dixon, who was the overseer of plaintiff's neighbor, shot one of his slaves without provocation. The overseer had seen the slave on the road in front of Blanchard's residence. When Dixon demanded a pass from the slave, the slave had answered in French, which the overseer did not understand. However, Dixon believed from the tone of the reply that the slave was insolent, whereupon, he demanded that the slave halt. In response to this order the slave took flight, and the overseer ran to his house for his gun, mounted a horse, and pursued the slave until he was sufficiently close to shoot him, fracturing his knee. Witnesses testified that the slave had been well-behaved and submissive before the incident. The overseer cited the *Black Code*, sections 30 and 32<sup>92</sup> to justify the use of force in arresting a slave absent from his master's premises without a pass. The district court found for the overseer, but the supreme court reversed the judgment.<sup>93</sup> The court's decision, written by Associate Justice George Rogers King, compared the case with *Allain v. Young*,<sup>94</sup> in which a white man had shot a slave who was out without a pass. The difference between the two cases, the court reasoned, was that in *Allain* the slave had attempted to seize a firearm, and was in the act of committing a felony, whereas in *Blanchard* the slave was guilty of no crime but failing to halt and be examined. As a physician had declared the injury to be permanent, the court awarded Blanchard \$700 in damages, two thirds of his slave's value, plus \$50 in medical expenses.<sup>95</sup>

The supreme court cited both *Allain* and *Blanchard* in the next appeal that involved an overseer shooting a slave without provocation. *Arnandez v. Lawes*<sup>96</sup> involved two slaves belonging to Jean Baptiste Arnandez who were catching driftwood at their master's behest when the overseer of a plantation across the river called them ashore and demanded their passes. Although both slaves produced written permits from their masters to be on the river, the overseer, Thomas B. Lawes, ordered two armed men standing nearby to restrain both slaves. One of

90. *Hendricks*, 3 La. Ann. at 619.

91. 4 La. Ann. 57 (1849).

92. Black Code §§ 30, 32, *supra* note 2, at 172-76.

93. 4 La. Ann. 58 (1849).

94. 9 Mart. 221 (La. 1821). See *supra* note 46 and accompanying text.

95. *Blanchard*, 4 La. Ann. at 58.

96. 5 La. Ann. 127 (1850).

the slaves, William, became frightened and fled. When just a few feet away, he apparently realized that running might make the situation worse; he turned to submit to Lawes, just as the overseer fired several times, mortally wounding William. The lower court ruled in favor of the owner and awarded him \$1,000 in damages.<sup>97</sup> Lawes appealed on grounds that under section 32 of the *Black Code* it was not a crime to shoot a slave who refused to halt.<sup>98</sup> The supreme court rejected this argument, calling Lawes's actions "useless, barbarous, unjustified violence."<sup>99</sup> In a rare action, the court amended the judgment by raising the award to Armandez to \$1,200.<sup>100</sup>

The following year the court heard another appeal from an overseer who shot a slave for a minor offense. In *Benjamin v. Davis*,<sup>101</sup> Herman P. Benjamin sued his overseer in a civil action for the value of his slave Ned. The slave had misbehaved and had subsequently fled because Davis had planned to whip him. The following day, the overseer armed himself and a companion, mounted horses, and tracked Ned down with "negro dogs."<sup>102</sup> After bragging to witnesses that they were off to hunt run-aways, they returned with a mortally wounded Ned across Davis's saddle. Davis claimed the slave was a fugitive, and as such, could be shot with impunity according to the *Black Code*.<sup>103</sup> The West Feliciana District Court jury found for the defendant. The supreme court reversed the decision of the lower court, calling the shooting "totally unjustified."<sup>104</sup> Citing *Carmouche v. Bouis*,<sup>105</sup> the court's decision, written by Associate Justice Pierre Adolphe Rost, questioned what excuse two able-bodied armed and mounted men with dogs might have had in firing upon an old, unarmed slave. Calling the verdict of the lower court "clearly erroneous," the court awarded Benjamin \$350.<sup>106</sup>

Six months later, Justice Rost penned the opinion in *Dwyer v. Cane*,<sup>107</sup> another decision involving an overseer's cruel treatment of the slaves in his charge. Samuel E. Dwyer sued his employer, who had fired him and refused to pay Dwyer his back wages as overseer. Despite the fact that Dwyer had made a good crop, "he inflicted cruel and unusual

97. *Id.* at 129.

98. *Black Code* § 30, *supra* note 2, at 176.

99. *Armandez*, 5 La. Ann. at 128.

100. *Id.* at 131.

101. 6 La. Ann. 472 (1851).

102. *Id.*

103. *Black Code* § 35, *supra* note 2, at 180.

104. *Benjamin*, 6 La. Ann. at 474.

105. 6 La. Ann. 95 (1851). See *supra* note 51 and accompanying text.

106. *Benjamin*, 6 La. Ann. at 474.

107. 6 La. Ann. 707 (1851).

punishments upon the male slaves, and . . . his conduct with the women of the plantation was grossly and openly immoral."<sup>108</sup> The plaintiff Dwyer lost in the district court, and he appealed to the supreme court. The court acknowledged that Dwyer was not guilty of such mismanagement and that he should not have been dismissed because he "made a good crop of cotton."<sup>109</sup> Nevertheless, it rejected the overseer's demand for reinstatement and back wages: "Cruelty to slaves is a sufficient cause of dismissal, and *honeste vivere* (a Roman law term meaning to live virtuously) forms part of the duties of an overseer."<sup>110</sup>

In 1855, the supreme court heard two appeals from judgments in which owners claimed that overseers caused the loss of one of their slaves through excessive punishment. In *Kennedy v. Mason*,<sup>111</sup> the plaintiff claimed \$600 from the estate of the owner of the plantation as the final amount due for his wages. The agent of the owner filed a reconventional demand for \$1000, the value of a slave named Jim Crack who allegedly died at the hands of the overseer as a punishment for having run away. Witnesses stated that despite extremely cold weather, Kennedy stripped the slave, tied him "with his belly down to the cold ground," and beat him steadily for an hour and a half with a hand-saw and a whip. Following the beating, Kennedy rubbed the slave with a mixture called No. 6<sup>112</sup> and administered a dose of castor oil. Fellow slaves put Jim Crack in his bed, where he died within a few hours. The lower court found in favor of the unpaid overseer, but the supreme court reversed the decision. The physician who conducted the post mortem exam had concluded that the whipping alone did not cause Crack's death but that the combination of the whipping and exposure to the frigid weather was fatal:

[The physician testified] "I saw that he had been whipped and considerably bruised on his buttock, and each side of his shoulders. The buttock and sides of the shoulders did not appear much cut, but considerably bruised, from which the blood oozed and stuck to the shirt in a few places. That amount of whipping under ordinary circumstances, would not produce death. I thought it imprudent to whip the boy at that time and under the circumstances. From internal and

108. *Dwyer*, 6 La. Ann. at 707. Cruelty to slaves was not an uncommon cause of dismissal. See SCARBOROUGH, *supra* note 71, at 96.

109. *Id.*

110. *Id.*

111. 10 La. Ann. 519 (1855).

112. *Id.* at 520. No. 6 may refer to one of the six basic medicines of the "system," which was brandy or wine fortified with herbs, roots, bark and other natural ingredients, thought to strengthen "the internal system and the weakened patient." TODD L. SAVITT, *MEDICINE AND SLAVERY: THE DISEASES AND HEALTH CARE OF BLACKS IN ANTEBELLUM VIRGINIA* 170 n.37 (1978). Another court record states that a sick slave was rubbed down with brandy and cayenne pepper. Cayenne pepper was No. 2 of the system. *Buddy v. Vanleer*, 6 La. Ann. 34 (1851).

external indications, I think it more likely that death was caused by a congestive chill, than by the whipping; but more likely death in this case was caused by a combination of all the circumstances." Under this state of facts we do not think it is unreasonable to infer that the slave's death was caused by the severity of the punishment inflicted upon him, combined with his exposure to the weather. Had the plaintiff taken proper care of him after he retired to his cabin, he might have averted the unfortunate consequence: but he did not. This was gross negligence on his part.<sup>113</sup>

In overturning the decision of the Ouachita Parish District Court, the supreme court allowed the reconventional demand of the owner's agent for the full value of Jim Crack. The overseer requested a rehearing on the grounds that Jim Crack had been a frequent runaway and was therefore virtually of no value. A witness testified that she had known the slave since he was a child, and "with his character and habits he was entirely worthless."<sup>114</sup> Notwithstanding the testimony, the court refused to grant him a rehearing.<sup>115</sup>

During the same month, the supreme court heard a similar case, *Kemp v. Hutchinson*.<sup>116</sup> The overseer had whipped a slave named "Big Nancy" twice in one day for stealing, and was threatening a third flogging if she did not produce the allegedly stolen articles. She denied the theft, but said she would try to find the articles. Instead, she threw herself into a river and was drowned. What distinguished *Kemp* from *Kennedy v. Mason*, Associate Justice Alexander Buchanan reasoned in the court's opinion, was that there was no proof that the overseer caused Big Nancy's death, which was what Justice Buchanan termed a "voluntary act."<sup>117</sup> The court ruled that the overseer was not responsible for the slave woman's death:

The power of correction of a slave, vested in his master by our law, was held, in the case of *Kennedy v. Mason*, to be delegated to an overseer, from the nature of his employment. In the exercise of that power, the owner of the slave or his delegate, is only to be held responsible for the immediate and necessary consequences of his acts.<sup>118</sup>

The court ordered Hutchinson to pay the overseer the wages he had withheld.<sup>119</sup>

The following year the court heard what would be the case that most clearly demonstrated the inability of the legal system to deal with

113. *Kennedy*, 10 La. Ann. at 520-21.

114. *Id.* at 522.

115. *Id.*

116. 10 La. Ann. 494 (1855).

117. *Id.* at 495.

118. *Id.*

119. *Id.*

excessive cruelty to slaves, *Humphreys v. Utz*.<sup>120</sup> Unlike the vague reference in *Hendricks* to "details . . . of a most revolting character,"<sup>121</sup> this unreported case is revoltingly specific as to details of barbarous treatment. *Humphreys* was a suit for civil damages of \$5,000 brought by J.C. and G.W. Humphreys, absentee owners of the Burkland plantation in Madison Parish, against Henry Utz, their overseer, for damages he caused "by inflicting unusual unnecessary and cruel punishment."<sup>122</sup> In the petition, the Humphreys brothers alleged that Utz inflicted "cruel treatment of an unusual inhuman and outrageous nature . . . upon two of the negroes placed under his care,"<sup>123</sup> and that one of the slaves, named "Ginger Pop" died from Utz's cruelty. Specifically, the Humphreys charged that Utz had killed Ginger Pop by "nailing the privates of said negro to the bedstead and then inflicting blows upon him until said negro pulled loose from the post to which he had been pinned by driving an iron tack or nail through his penis."<sup>124</sup> The Humphreys further alleged that Utz had "inflicted a similar outrage upon a certain negro boy named Dave,"<sup>125</sup> who also belonged to them.

In his answer, Utz denied the allegations of cruelty. He claimed that the Humphreys had hired him to manage the plantation for the year 1853 for a yearly salary of \$800. He said he had served as overseer until he was "wrongfully discharged"<sup>126</sup> on August 19, 1853, and he made a reconventional demand for his salary. He stated that he "was at all times attentive to his business, kind to the sick and humain [sic] to all,"<sup>127</sup> and that the plaintiffs were bent on ruining his reputation as "a careful manager of negroes, and a good cultivator of the soil."<sup>128</sup> He alleged that the slaves of Burkland plantation "had the reputation of being difficult to manage, and several of them were habitual runaways."<sup>129</sup> Utz asked for \$6,000 in damages from the Humphreys for the damage done to his reputation.

120. *Humphreys v. Utz*, No. 3910 (La. 1856) (unreported decision of Louisiana Supreme Court, case records on file at Earl K. Long Library, Univ. of New Orleans).

121. *Hendricks v. Phillips*, 3 La. Ann. 618 (1848); see *supra* text accompanying note 92.

122. *Humphreys v. Utz*, No. 3910 (La. 1856) (unreported decision of Louisiana Supreme Court, case records on file at Earl K. Long Library, Univ. of New Orleans).

123. *Id.*

124. *Id.* It is unclear whether Utz actually nailed the slave's penis to the bedpost, or whether he nailed only the foreskin. One witness said that Utz "had drove a tack through the skin of his penis to the Bed Rail and hit him two or three licks until he pulled loose." *Id.* Either way, Utz's actions were barbarous.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

A witness to the incident testified that Ginger Pop was a habitual runaway, and apparently Utz had tried to discipline him in other ways, once attempting to nail his ear to the gallery of the plantation house and once "took the butt end of his cowhide and whipped—on the head as long as he could stand over him."<sup>130</sup> Gabriel Utz, brother to the defendant and himself an overseer on a neighboring plantation, testified that Ginger Pop was always running away, and that Henry Utz had told him that he only tacked Ginger Pop's penis to the bedpost to scare him, "that it had done more good than all the whippings, that it had calmed him."<sup>131</sup> Gabriel Utz also testified that Ginger Pop would have been worth from \$800 to \$1,000 if he were not a habitual runaway, but with his character, he was "worth little or nothing."<sup>132</sup>

On the night Ginger Pop died, Utz told a witness "that he was *damd* [sic] glad of it and wished he could get clear of Shed and Maria [other slaves on the plantation] the same way, *deft* [sic] told witness next morning that he had slept the happiest nights [sic] sleep he had since he had been on the place."<sup>133</sup> Ginger Pop died on June 10; the Humphreys called a physician to conduct a post mortem examination on August 20, but the decomposition of the body prevented him from coming to any conclusion regarding the cause of death. Utz claimed Ginger Pop had died of a "congestive chill," although he admitted that "he had worn him out."<sup>134</sup> The Humphreys fired Utz the same day.

The trial court jury found for Utz in the amount of \$388.86. They arrived at this amount by calculating Utz's wages from January 1 to August 20—\$508.83—and then deducted damages to Ginger Pop of \$120.<sup>135</sup> Why did the Madison Parish jury find for Utz despite overwhelming evidence against him? Why was Utz never convicted of cruelty in a criminal trial? The answer to both questions lies in the appellant's brief to the supreme court. The Humphreys' attorney, Andrew R. Hynes, made this argument to the court:

It will be remembered that the Mssrs. Humphreys reside in the State of Mississippi and seldom visit the Burkland plantation, and were not present at the trial of this suit in the District Court. The Grand Jury acting in and for the Parish of Madison, indicted the defendant for cruel treatment of the slaves of the plaintiff, and the Jury impanelled to try the case brought in a verdict of "Not Guilty," although the proof

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*



was direct and overwhelming. It will be remembered that in a sparsely peopled country, where the owners of property are non-residents, the Jurors of the country are almost entirely made up of Overseers, and that perhaps no class is so clannish or so disposed to protect each other in their difficulties. Whenever a planter shall in a contest with an overseer resort to a jury, there can be no doubt as to what the verdict will be, and the only hope left to the country is that the purity of the Bench will correct the evil.<sup>136</sup>

Justice Alexander Buchanan wrote the decision of the court. He acknowledged that Ginger Pop was "an incorrigible runaway . . . a vicious and worthless subject,"<sup>137</sup> although he stated that there was no proof that the death of the slave had been caused by Utz's cruel treatment. However, Buchanan did not allow Utz to avoid the consequences of his actions:

Yet acts of revolting brutality have been proved, which entirely exceed the limits of that repressive and correctional discipline which is necessary to the management of the agricultural laborers of the South . . . [which] should be strict . . . but . . . tempered with mercy. The evil passions of men become infuriated to reckless ferocity by unbridled indulgence: and the very helplessness of the slave . . . is sometimes found to encourage . . . cold blooded refinements of torture. He who cannot protect himself has a double claim to protection.<sup>138</sup>

The supreme court reversed the decision of the trial court, and ruled that Humphreys' discharge of Utz was justified. Ordering Utz to pay his wages to the date of his discharge to the plaintiffs—\$508.83—the supreme court also ruled that Utz pay costs in both courts.<sup>139</sup>

The following year, in *Miller v. Stewart*,<sup>140</sup> another overseer sued his employer for his wages of \$800 for two years' service, and the owner filed a reconventional demand for \$1,250 because he claimed the overseer was liable for the death of one of his slaves. In the appeal, the overseer claimed that the slave had attacked him and was incorrigible, and that the slave Tom resisted when he had attempted to whip him. During the scuffle Tom bit off the tip of Miller's finger and scratched his face. Fi-

136. *Id.* Hynes's assessment of the cause of Utz's acquittal from criminal charges may well be accurate. The Census of 1850 for Madison Parish lists only 404 persons qualified to vote, meaning white males of twenty-one years or older. The census also indicates that there were sixty-six overseers. Although we cannot know how many overseers were in the jury pool at any given time, the census would indicate that the possibility of getting several overseers on any given jury was high. The total population of Madison Parish in 1850 was 8,773, of whom 1,416 were white and 7,353 were slaves. Only four free persons of color resided in Madison Parish in 1850. SUPERINTENDENT OF THE UNITED STATES CENSUS, THE SEVENTH CENSUS OF THE UNITED STATES: 1850.

137. *Humphreys v. Utz*, No. 3910 (La. 1856) (unreported decision of Louisiana Supreme Court, case records on file at Earl K. Long Library, Univ. of New Orleans).

138. *Id.*

139. *Id.*

140. 12 La. Ann. 170 (1857).

nally, Miller subdued the slave, loaded him with chains, staked him to the ground, and gave him a severe lashing. An eyewitness claimed that Miller had whipped Tom from his neck to his heels, and that the stripes were so close together that a person could not put a finger between them.<sup>141</sup> This witness testified that he had never seen a slave whipped with such brutality.<sup>142</sup> The two physicians who conducted the post-mortem exam agreed that either the flogging itself or exhaustion and over exertion from the scourging caused Tom's death. The Carroll Parish jury awarded Miller \$344.15, the wages he had earned from the time of his employment to the time of his discharge, and Stewart appealed. Citing *Kennedy v. Mason*,<sup>143</sup> and describing the overseer's actions as "gross negligence," the supreme court awarded Stewart his reconventional demand of \$1,200, the assessed value of the slave, deducting \$344, wages Stewart owed the overseer.<sup>144</sup> Justice Voorhies, writing for the court, quoted section 16 of the "Crimes and Offenses" section of the *Black Code*,<sup>145</sup> and questioned the overseer's allegations that Tom was a troublemaker:

[T]here is not a scintilla of evidence showing that the slave *Tom* was vicious or that his character was bad; nor was there any attempt to show the nature of the offence which brought upon him such severe punishment. . . . The overseer may correct and chastise the slaves of the planter who employs him, but he cannot do so "with unusual rigor, nor so to maim or mutilate them, or to expose them to the danger of loss of life, or to cause their death."<sup>146</sup>

The supreme court heard the last case involving improper conduct by an overseer to a slave in *Kessee v. Mayfield & Cage*.<sup>147</sup> Kessee sued the defendants for his wages of \$800 for one year as overseer of their plantation. The owners had employed him on April 10, 1856 and discharged him, Kessee alleged, for no reason on June 22, 1856. Kessee's attorneys cited *Civil Code* article 2720, which required an employer who fired an employee without cause to honor the terms of the contract of hiring, paying him wages for the entire time provided for in the agreement.<sup>148</sup> The defendants asserted that they fired Kessee for good cause: incompetence, disregarding defendant's instructions, and cruelty to the

141. *Id.* at 171.

142. *Id.*

143. 10 La. Ann. 519 (1855).

144. *Miller*, 12 La. Ann. at 171.

145. *Black Code*, Crimes and Offenses § 16, *supra* note 2, at 206-08.

146. *Miller*, 12 La. Ann. at 171 (citation omitted).

147. 14 La. Ann. 90 (1859).

148. CIVIL CODE, art. 2720, *supra* note 6, at 418.

slaves.<sup>149</sup> Mayfield and Cage were willing to pay Kesseee for the two months he worked for them, but Kesseee claimed wages for the whole year. Although the owners introduced no evidence to prove their allegations that the overseer was cruel or incompetent, evidence supported their claim that he disregarded their instructions. The defendants had strictly ordered Kesseee not to discipline the slaves with his own hand.<sup>150</sup> Drivers were to flog the slaves if they should need chastisement.<sup>151</sup> Witnesses stated that Kesseee ignored these instructions and lashed the slaves himself. The District Court of Terrebonne Parish found that the owners had discharged Kesseee for good cause and denied him any wages whatsoever. As the defendants had been willing, despite Kesseee's actions, to pay the overseer wages for the actual time worked, this award was more favorable than the defendants had demanded. The supreme court reversed this ruling, and granted Kesseee wages for the period he had actually worked. In its ruling, the court stated that although Article 2720 applied only to persons fired with no cause, it seemed unfair not to grant Kesseee wages to the time of his discharge.<sup>152</sup>

#### IV. CIVIL SUITS AGAINST OWNERS FOR CRUELTY

Appeals of civil lawsuits involving Louisiana masters abusing their own slaves occurred infrequently during the antebellum period. The supreme court heard only a total of three such appeals during that period. In the first, *Markham v. Close*,<sup>153</sup> the plaintiff presented a petition to the District Court of Opelousas in which he alleged that his neighbor, Close, had cruelly beaten his own slave, Augustin. Markham requested that the court take the slave away from Close and sell him. Close did not deny the beating, but claimed that the slave had been a fugitive for some time, and that he deserved the punishment. Witnesses testified that the flogging was so severe that Augustin was incapable of sitting or lying on his back, and that Close had lashed him on three separate occasions. His back was "very much cut and skinned . . . the weather being warm, the wounds smelled badly."<sup>154</sup> The district court judge placed the case on its docket as a civil action, and although Close protested that the proceedings were unknown to the law, and that Markham had no standing to institute such a suit, the lower court ordered Close to sell the slave. He

149. *Kesseee*, 14 La. Ann. at 90.

150. *Id.*

151. *Id.* Disobeying orders not to whip slaves was another common cause of dismissal for overseers. SCARBOROUGH, *supra* note 71, at 93-94.

152. *Kesseee*, 14 La. Ann. at 90.

153. 2 La. 581 (1831).

154. *Id.* at 582.

appealed to the Louisiana Supreme Court.<sup>155</sup>

The supreme court, in a decision written by Associate Judge Alexander Porter, found that Markham's petition was "an anomalous action, instituted in *civil* form to punish a *criminal* offense."<sup>156</sup> The court stated that Markham had no interest in the slave, but had presented himself to the court as a public prosecutor. It acknowledged that evidence supported Markham's claim that Close had been excessively cruel to the slave. "It is greatly to be deplored, that owners of slaves should abuse their authority,"<sup>157</sup> the court stated. However, while admitting the cruelty to the slave, the court denied that Markham had any right to institute such a suit. Excessive cruelty, the court reasoned, was a public offense that had to be prosecuted criminally, according to section 16 of the *Black Code*.<sup>158</sup> The court also cited article 192 of the *Civil Code*,<sup>159</sup> which stated that a master could not be compelled to sell his slave unless he was actually convicted of cruel treatment. In such cases the judge could order the sale of a slave at public auction "in order to place him out of the reach of the power which his master has abused."<sup>160</sup> Without a criminal conviction, no court could order the sale of the slave. Markham could not take the law into his own hands in this manner, the court ruled. Reversing the lower court's decision, the supreme court found that while Markham's motives might have been admirable, in another instance, a person bringing a similar suit might be motivated by "envy, malice, and all uncharitableness."<sup>161</sup> There is no record of any subsequent criminal prosecution against Close.

In 1857, the court heard *Barrow v. McDonald*,<sup>162</sup> a lawsuit for damages for the "malicious killing" of a slave by one of his owners. The plaintiff, Robert Ruffin Barrow, owned a three-fourths interest in the slave while the defendant, who managed one of Barrow's four sugar plantations, owned a one-fourth interest. Barrow estimated his losses at \$1,500. Barrow and McDonald were business partners, and owned the sugar plantation where the killing occurred in the same proportions in which they owned the slave. The judge in the Terrebonne District Court ruled that the damages should properly be a part of the action to dissolve

155. *Id.*

156. *Id.* at 581.

157. *Id.* at 584.

158. Black Code, Crimes and Offenses § 16, *supra* note 2, at 206-08.

159. CIVIL CODE, art. 192, *supra* note 6, at 29-30.

160. *Id.*

161. *Markham*, 2 La. at 587.

162. 12 La. Ann. 110 (1857). Barrow was a wealthy Terrebonne Parish slave owner who owned four sugar plantations: "Residence," Myrtle Grove, "Caillou Grove," and "Point Farm." SCARBOROUGH, *supra* note 71, at 187.

the partnership between the two men (which was in progress), and not a separate action. The supreme court agreed with this assessment and affirmed the judgment.<sup>163</sup>

The high court heard the last appeal involving cruelty to a slave by a master in *Ney v. Richard*.<sup>164</sup> This case was a civil action which arose because of the improper handling of a criminal case. The sheriff of St. Landry Parish arrested Adele Roy Ney for cruel treatment of her slave Frozine. The parish court judge released Ney after she posted bail. At the same time, he ordered Frozine to be incarcerated in parish prison pending the outcome of the trial. His purpose was to furnish the slave protection from Ney. Ney's husband filed an action against the parish judge and the sheriff. The district court judge ruled that sequestering the slave to remove her from Ney's power was the proper action under the circumstances. The supreme court ruled that the district court had erred in its ruling because no law existed to remove a slave from the power of his or her master without a criminal conviction for cruelty. The court ordered the release of the slave to the Neys.<sup>165</sup> No record exists of an appeal of the criminal prosecution.

## V. CONCLUSION

Louisiana law provided slaves few protections against cruel treatment, although the legal machinery was in place had witnesses, prosecutors, judges, and juries chosen to use it. Evidence in appeals to the Supreme Court of Louisiana shows that strangers, neighbors, overseers and owners abused slaves at times and ignored laws designed to protect slaves from excessively cruel treatment. Most of these cases involve irate owners bringing civil actions to recover damages for slaves injured or killed by others. Although the court heard no criminal appeals until after 1846 because it lacked jurisdiction, after 1846 the court heard few criminal appeals of this nature. Masters were apparently more interested in financial compensation than justice. Since lower court records of criminal prosecutions are not accessible or have not survived, these appeals are the only solid evidence of prosecutions for cruelty to slaves in Louisiana. Slave owners created the legal system that prohibited cruel treatment, and the judiciary as a whole seems to have been very reluctant to interfere with slaveholders and their slaves through criminal prosecutions. Additionally, we have no way of knowing how many persons ac-

163. *Barrow*, 12 La. Ann. at 111.

164. 15 La. Ann. 603 (1860).

165. *Id.* at 604.

cused of excessive cruelty were acquitted despite overwhelming evidence to the contrary, because juries simply refused to convict. *Humphreys v. Utz*<sup>166</sup> demonstrated the failure of the law to provide even the most basic protection for slaves. When the limited right of slaves to life conflicted with the property interests of slaveholders, the outcome was seldom in doubt. However, the courts were quite willing to support the slave owners' financial interest in injured or dead slaves, which they approached as a simple issue of awarding property damages.

When the slaveholder was the abuser, the legal system was even less willing to interfere with what many judges and juries perceived as a matter between slave owners and their property. Only the most atrocious crimes occasionally resulted in criminal prosecutions. In cases involving criminal prosecutions of a slave owner, the cruel treatment was sufficiently rigorous to cause the death of the slave. Although the legal status of slaves in Louisiana was insignificant compared to their powerful owners, the law protected the slaveholders *from* their slaves. The paradox of the slave as at once person and property often disappeared when the slave committed a crime. In that instance they were often persons in the eyes of the law. But when the slave was victimized by his owner's excessive cruelty, Louisiana law was far more cognizant of the slave as property. As a result, the legal system was rendered inadequate in protecting slaves' personal rights.

166. *Humphreys v. Utz*, No. 3910 (La. 1856) (unreported decision of the Louisiana Supreme Court, on file at the Earl K. Long Library, Univ. of New Orleans).

