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She...Refuses to Deliver Up Herself as the Slave of Your Petitioner': Émigrés, Enslavement, and the 1808 Louisiana Digest of the Civil Laws (Symposium on The Bicentennial of the Digest of 1808--Collected Papers)

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“She . . . Refuses To Deliver Up Herself
as the Slave of Your Petitioner”:
Émigrés, Enslavement, and the 1808 Louisiana
Digest of the Civil Laws

Rebecca J. Scott*

I.	INTRODUCTION	116
II.	LE CAP AND PORT DE PAIX, SAINT-DOMINGUE.....	122
III.	BARACOA, CUBA.....	125
IV.	NEW ORLEANS	126
V.	ADÉLAÏDE MÉTAYER AND THE EVERYDAY LIFE OF THE LAW	131
	APPENDIX: CASES INVOLVING ADÉLAÏDE MÉTAYER, NEW ORLEANS.....	136

Book I. Of Persons

Title I. Of the Distinction of Persons, and the Privation of Certain Civil Rights in Certain Cases

Chapter II. Of the Distinctions of Persons Which are Established by Law

Art. 13. A slave is one who is in the power of a master and who belongs to him in such a manner, that the master may sell him, dispose of his person, his industry and his labor, and who can do nothing, possess nothing, nor acquire any thing, but what must belong to his master.

Art. 14. Manumitted persons are those who having been once slaves, are legally made free.

* Charles Gibson Distinguished University Professor of History and Law, University of Michigan. This Essay has benefitted from conversations with Jean Allain, Kenneth Aslakson, Claire Bettag, Justice Aharon Barak, George Dargo, Sam Erman, Sylvia Frey, Malick Ghachem, Gwendolyn M. Hall, Jean M. Hébrard, Scott Hershovitz, Martin Hesselink, Martha S. Jones, Vernon V. Palmer, Agustín Parise, Peter A. Railton, Sally Reeves, Don Regan, Mathias Reimann, Thomas Scott-Railton, Symeon Symeonides, and Mark Tushnet. The research on which it is based was facilitated by the work of several librarians and archivists: Ann Chase, Jocelyn Kennedy and Sandy Zeff at the University of Michigan Law Library; Florence Jumonville in Special Collections at the Library of the University of New Orleans; and Greg Osborne and Irene Wainwright of the Louisiana Collection at the New Orleans Public Library. As always, I owe a special debt to the staff of the New Orleans Notarial Archives Research Center, including its former director Ann Wakefield, current director Yvonne Loiselle, and archivists Isabel Altamirano, Kara Brockman, Erin Heaton, Sybil Thomas, and Juliet Pazera.

Art. 15. Free men are those who have preserved their natural liberty, which consists in a right to do whatever one pleases, except in so far as one is restrained by law.

—*A Digest of the Civil Laws Now in Force in the Territory of Orleans* (1808)

I. INTRODUCTION

Philosophically and juridically, the construct of a slave—a “person with a price”—contains multiple ambiguities. Placing the category of slave among the distinctions of persons “established by law,” the 1808 *Digest of the Civil Laws Now in Force in the Territory of Orleans* recognized that “slave” is not a natural category, inhering in human beings. It is an agreement among *other* human beings to treat one of their fellows as property. But the Digest did not specify how such a property right came into existence in a given instance. The definition of a slave was simply ostensive, pointing toward rather than analyzing its object: “A slave is one who is in the power of a master and belongs to him in such a manner, that the master may sell him. . . .” In other words, the slave is the one who is held as a slave.¹

The Digest’s definition of free men was equally extra-legal: “those who have preserved their natural liberty.” Although under classical social contract theories men were thought to give up a measure of “natural liberty” in order to live in civil society under agreed-upon constraints, Louisiana’s definition emphasized the broad personal liberty that free men retained in civil society.² The Digest’s two definitions, taken together, pushed “slave” and “free” to far ends of a continuum, creating ideal types, without any hint of how either of these conditions, allegedly “established by law,” had in fact emerged from legitimate processes.

With its definition of slavery, the Digest postulated the existence of a population of rational adults incapable of consent in civil matters. A slave, moreover, could not be “a party in any civil action either as plaintiff or defendant, except when he has to claim or prove his freedom.” That last clause recognized indirectly that slavery created property rights in a human being who remained endowed with volition, a personal

1. See the recent re-edition of the facsimile of the de la Vergne Volume, *available at* <http://www.law.lsu.edu/index.cfm?geaux=digestof1808.default>, and in print as *A DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS* (1808) ([1808; 1968] Baton Rouge: Claitor’s Pub’g Div., 2007).

2. The readers of New Orleans did not lack for philosophical texts. They could pick up a copy of the writings of “J. Jacques Rousseau, in thirty nine bound volumes” at the offices of the local newspaper. (Or, if they preferred, the poetry of Sappho and four volumes of Rabelais.) See *MONITEUR DE LA LOUISIANE*, 30 May 1810.

history, and a capacity to refuse to submit to the exercise of those rights: He or she might claim not to be a slave at all. But the Digest gave no guidance on how such a claim might be adjudicated.³

The Digest did acknowledge that the property right in an individual human being was extinguishable by an action of the master—subject to constraints both in property law (no emancipation in fraud of creditors or heirs) and to regulations imposed by the state. The existence of manumission as a recognized procedure thus meant that there was in fact a third category of persons—not just those who had “preserved their natural liberty,” but those who had acquired or re-acquired it. It was, presumably, persons in this situation who might legitimately bring suit to claim their freedom if someone attempted to hold them as slaves.⁴

The Digest did not speak of the obverse, of circumstances under which an apparently free person might subsequently be judged at law to be a slave. Might a man or woman have enjoyed his or her “natural liberty” without contest for some time, and yet still be legitimately subject to seizure by someone who claimed him or her as a slave?⁵ These were not abstract questions in New Orleans in the first years of the nineteenth century, when the jurists Louis Moreau Lislet and James Brown were compiling the Digest of the Civil Laws.⁶

Moreau Lislet knew better than most of his fellow residents of Louisiana that property rights in human beings could in fact be legally

3. DIGEST bk. I, tit. VI, art. 18. Decades later, in Brazil, jurists attempting to draft a civil code faced the same apparent difficulty—creating a civil code that would accommodate slavery—and found the contradictions insurmountable. See Keila Grinberg, *Slavery, Liberalism, and Civil Law: Definitions of Status and Citizenship in the Elaboration of the Brazilian Civil Code (1855-1916)*, in HONOR, STATUS AND LAW IN MODERN LATIN AMERICA (Sueann Caulfield, Sarah Chambers & Lara Putnam eds., Durham, N.C.: Duke Univ. Press, 2005).

4. The provisions concerning manumission are in Book I, Title VI, Chapter III, Articles 25, 26, and 27 of the Digest. For a subtle discussion of the political and legal logics of manumission, see Malick Ghachem, *Sovereignty and Slavery in the Age of Revolution: Haitian Variations on a Metropolitan Theme* (Ph.D. dissertation, Stanford Univ., 2001).

5. For a systematic discussion of re-enslavement cases in the City Court of New Orleans, see Kenneth Aslakson, *Making Race: The Role of Free Blacks in the Development of New Orleans' Three-Caste Society, 1791-1812* (Ph.D. dissertation, Univ. of Tex. at Austin, 2007). Several Brazilian historians have pioneered the study of re-enslavement. See Keila Grinberg, *Reescravização, Direitos e Justiça no Brasil do Século XIX*, and Beatriz Gallotti Mamigonian, *O Direito de Ser Africano Livro: Os Escravos e as Interpretações da Lei de 1831*, both in DIREITOS E JUSTIÇAS NO BRASIL: ENSAIOS DE HISTÓRIA SOCIAL 101-60 (Silvia Hunold Lara & Joseli Maria Nunes Mendonça, organizers, Campinas, S.P., Brazil: Editora UNICAMP, 2006); Sidney Chalhoub, *Illegal Enslavement and the Precariousness of Freedom in 19th-Century Brazil* (forthcoming in RACE AND IDENTITY IN THE NEW WORLD (John Garrigus & Christopher Morris eds., College Station: Tex. A & M Univ. Press, 2010)).

6. For a discussion of the process by which the drafters of the Digest incorporated law on slavery from various sources, see Vernon V. Palmer, *The Strange Science of Codifying Slavery—Moreau Lislet, the Digest and the Code*, in the present volume.

extinguished on a wide scale, for that was precisely what had happened in Saint-Domingue when Republican Civil Commissioners were sent from France to govern the colony in a time of war and revolution. Moreau Lislet had been assistant district attorney in Cap Français in 1790, had fled to Philadelphia after the burning of Cap Français in 1793, and had then returned to Saint-Domingue in 1794. He resumed legal responsibilities there at precisely the moment when slavery was being ended by law.⁷

The Civil Commissioners declared slavery abolished in Saint-Domingue in 1793, and the French National Assembly ratified their actions in 1794. Hundreds of thousands of men and women held as slaves thus gained their “natural liberty.”⁸ Most remained in the colony of Saint-Domingue, though some left either willingly or unwillingly with colonists who emigrated in the face of revolution.⁹ For the decade between 1794 and 1803, during which Moreau Lislet occupied a variety of legal posts, including that of judge, no claim to hold property in a human being was cognizable under French law in the colony of Saint-Domingue.

In 1801 Napoleon sent a military expedition to Saint-Domingue to attempt to wrest power from the black and brown generals who ruled the colony. In the face of the fighting that ensued, thousands of additional refugees fled across the Windward Passage to the Cuban ports of Santiago and Baracoa. Some, like Moreau, continued on to the United States, but many remained in Cuba. That refuge became untenable, however, when Napoleon’s forces invaded Spain in 1808, and the Spanish colonial government in Cuba expelled those perceived as “French.”

7. For a chronology of Moreau Lislet’s life, see ALAIN A. LEVASSEUR, LOUIS CASIMIR ELISABETH MOREAU LISLET: FOSTER FATHER OF LOUISIANA CIVIL LAW 79-113 (Baton Rouge: La. State Univ. Law Ctr. Publ’ns Inst., 1996).

8. In parts of the colony under British military occupation, the application of the decree was stalled. In 1798, the British withdrew, and the French decree of abolition became effective throughout the territory. See LAURENT DUBOIS, AVENGERS OF THE NEW WORLD: THE STORY OF THE HAITIAN REVOLUTION 163-70, 184-88 (Cambridge: Harvard Univ. Press, 2004).

9. For a penetrating analysis of the complex dynamics of one émigré household, headed by a widow who attempted to hold a large group of children and a few adults as slaves in New York and in Baltimore, see Martha S. Jones, “*I Was Born in . . . Croix-des-Bouquets*”: Slavery, Law, and ‘French Negroes’ in New York’s Era of Gradual Emancipation, manuscript cited with the permission of the author. Jones emphasizes the unwillingness of U.S. courts to treat abolition in Saint-Domingue as a *fait accompli*. In a recent article, Sue Peabody gives an overview of such suits: “*Free Upon Higher Ground*”: Saint-Domingue Slaves’ Suits for Freedom in U.S. Courts, 1792-1830, in THE WORLD OF THE HAITIAN REVOLUTION 261-83 (David Patrick Geggus & Norman Fiering eds., Bloomington: Ind. Univ. Press, 2008).

Once again, thousands of former residents of Saint-Domingue were tumbled onto boats. This time, most were headed for Louisiana.¹⁰

Just months after the promulgation of the 1808 Digest in Louisiana, therefore, more than nine thousand émigrés made their way across the Gulf of Mexico and up the Mississippi River, seeking refuge in New Orleans. We are usually told that when the émigrés disembarked in New Orleans in the summer of 1809, they numbered some 2,731 whites, 3,102 free people of color, and 3,226 slaves.¹¹ But how so? If slavery had been abolished in Saint-Domingue, how could there still be a property right in men, women, and children from Saint-Domingue disembarking from those ships?

The theoretical question left unanswered in the Digest was about to become a practical one. Did a man or woman who had once been a slave somehow remain a “person with a price” even after the end of slavery in Saint-Domingue—hence subject to ownership or sale as a slave years later in Louisiana? Conversely, did a person of color who had been made free in Saint-Domingue by an individual act of manumission have a durable claim to freedom in Louisiana?

Already in 1807 the first legislature of the Territory of Orleans, alarmed by the revolution underway in Saint-Domingue, had envisioned that “serious inconveniences might arise, if measures were not taken to prevent the introduction of people of color from Hispaniola, and from the French American islands.” The legislature therefore acted to ban the settlement in Louisiana of all newly arriving men of color, requiring that they post bond and leave the territory. (Free women of color and

10. For a detailed discussion of the flight to Santiago, and the subsequent expulsion, see OLGA PORTUONDO ZÚÑIGA, *ENTRE ESCLAVOS Y LIBRES DE CUBA COLONIAL* (Santiago de Cuba: Editorial Oriente, 2003); and Rebecca J. Scott, *Reinventing Slavery, Securing Freedom: From Saint-Domingue to Santiago to New Orleans, 1803-1809*, paper presented at the Annual Meetings of the Southern Historical Association, New Orleans, Oct. 2008, forthcoming in Spanish translation in the journal *Caminos* (Havana). For a list of the captains and destinations of the boats carrying émigrés leaving the port of Santiago in 1809, see Exp. 9, Leg. 210, Fondo Asuntos Políticos, Archivo Nacional de Cuba, Havana.

11. Additional migrants arrived in 1810, via Jamaica, bringing the total to more than 10,000. See Paul Lachance, *The 1809 Immigration of Saint-Domingue Refugees to New Orleans: Reception, Integration, and Impact*, in *LOUISIANA HISTORY* 29 (1988), reprinted in *THE ROAD TO LOUISIANA: THE SAINT-DOMINGUE REFUGEES 1792-1809*, at 109-41 (Carl A. Brasseaux & Glenn R. Conrad eds., Lafayette: The Ctr. for La. Studies, Univ. of Southwestern La., 1992) [hereinafter Lachance, *1809 Immigration*]; Paul Lachance, *Repercussions of the Haitian Revolution in Louisiana*, in *THE IMPACT OF THE HAITIAN REVOLUTION IN THE ATLANTIC WORLD* 209-30 (David P. Geggus ed., Columbia: Univ. of S.C. Press, 2001). The figures on the numbers and status of the refugees are generally drawn from the reports of the Mayor of New Orleans to Governor Claiborne. See OFFICIAL LETTER BOOKS OF W.C.C. CLAIBORNE vols.4-5, esp. vol. 4, at 381-82, 387-423 (Dunbar Rowland ed., Jackson, Ms.: State Dep't of Archives & History, 1917); *MONITEUR DE LA LOUISIANE*, 24 Mar. 1810.

children were exempted, on the grounds that they “shall be supposed to have left the island above named, to fly from the horrors committed during its insurrection.”) In the next session, the legislature extended the ban to all men of color of whatever origin, and provided explicitly for the enslavement of such individuals if they did not depart forthwith.¹²

When dozens of boats from Cuba began coming up the Mississippi River to New Orleans in the spring of 1809, carrying the “French” who had recently been obliged to leave Cuba, Territorial Governor W.C.C. Claiborne initially presumed that he should enforce the federal ban on the importation of slaves, and sent firm messages to officers along the route:

Captain Many.

You will permit the Schooner Collina (Captain Warnom) from St. Yago, with Passengers (& 14 slaves) to pass the Fort. You will be pleased however to enjoin it upon the Captain not to land a single slave, on penalty of having his Vessel forfeited.¹³

After some hesitation, however, Claiborne declared the circumstances extraordinary, and temporarily suspended the operation of the 1807 federal ban on the importation of enslaved persons from outside the United States, while requiring those who landed claiming ownership to post bond as a guarantee that they would surrender such “slaves” if the law required. Meanwhile, he forwarded a petition to Congress, asking for their approval of the admission of slaves. Claiborne hoped to be able to enforce the territorial law compelling free men of color over the age of 15 to leave the state. But nothing was said about the question of how to distinguish “slave” from free.¹⁴

The 1807 statute on migrants from “Hispaniola” had, however, provided some hints as to how the distinction might be made:

[E]very man and woman of color from Hispaniola . . . pretending to be free, shall prove his or her said freedom, before the mayor of the city, or any justice of the peace, by credible testimonies, and shall take a certificate of such justification, attested by the said mayor or justice of the peace, and

12. See ACTS PASSED AT THE FIRST SESSION OF THE FIRST LEGISLATURE OF THE TERRITORY OF ORLEANS 126-131; and ACTS PASSED AT THE SECOND SESSION OF THE FIRST LEGISLATURE OF THE TERRITORY OF ORLEANS (both New Orleans: Bradford & Anderson, 1807). For a systematic review of the law of slavery in Louisiana, see JUDITH KELLEHER SCHAFER, *SLAVERY, THE CIVIL LAW, AND THE SUPREME COURT OF LOUISIANA* (Baton Rouge: La. State Univ. Press, 1994). See also the essay by Vernon V. Palmer in the present volume, *supra* note 6.

13. OFFICIAL LETTER BOOKS OF W.C.C. CLAIBORNE, *supra* note 11, vol. 4, at 358-59.

14. *Id.* vol. 4, at 401-08. On the petition, see Lachance, *1809 Immigration*, *supra* note 11, at 251. Congress did approve a temporary exemption of the Saint-Domingue émigrés from the ban on the importation of slaves.

if such justification cannot be made, the said man or woman of color shall be considered as a fugitive slave, and employed at the public works, until they shall prove their freedom, or be claimed by their owner by virtue of good titles. . . .¹⁵

A “good title” had thus been required for a specific owner to claim a disputed person as a slave; but the absence of such title did not assure freedom. Freedom had to be established by “credible testimonies.” A person of African ancestry without immediate access to such testimonies was in a situation of great vulnerability. This was the predicament of a woman émigrée of color named Adélaïde Métayer, whose path would soon cross with that of Louis Moreau Lislet.¹⁶

At the time of the arrival en masse of Saint-Domingue refugees, Louis Moreau Lislet, co-compiler of the 1808 Digest, was presiding as judge over the City Court of the parish of Orleans. It was thus he who heard the complaint when in 1810 Adélaïde Métayer faced the seizure of herself and her children for sale in the slave market. The tailor Louis Noret claimed the right to sell the family in order to recoup an unpaid debt owed to him by Louis Métayer, brother of Charles Métayer, who had been his business partner. The court suspended the sale of Adélaïde and her two young daughters but allowed the sale of her son.¹⁷ Six years later, Noret obtained a power of attorney from the son of Adélaïde’s former owner, allowing him once again to pursue the alleged property rights in Adélaïde and her younger children. Again the children were seized, and again Adélaïde filed suit for damages. This time Moreau Lislet, who had by now left the bench, acted as attorney for Noret, and won the case upon appeal. Noret would not be required to pay damages, but the status of Adélaïde remained uncertain.¹⁸

Adélaïde Métayer and those who sought to enslave her left a long paper trail through which we can glimpse the web of social solidarities, reciprocities, and deceit within which this legality played out. This Essay will build up from those traces, following both the sequence of events unleashed by the Haitian revolution, and the sequence of revelations and

15. ACTS PASSED AT THE FIRST SESSION OF THE FIRST LEGISLATURE, *supra* note 12, ch. 30, at 128-30.

16. The spelling of proper names during this period was quite unstable. I will standardize the family name to Métayer and the given name to Adélaïde in the text, while retaining the other spellings in the notes and in direct quotations. See the Appendix for the various spellings.

17. The case in City Court was first styled *Adelaïde Metayer vs. B. Cenas Sheriff*, but Noret petitioned to step in as defendant, since it was his claim that was at stake. See Docket #2241, City Court, City Archives, New Orleans Public Library (hereafter CA, NOPL). For a discussion of the City Court, see Aslakson, *supra* note 5.

18. *Météyé v. Noret*, Docket #1035, Parish Court, CA, NOPL. The appeal to the Supreme Court was *Metayer v. Noret*, La. 5 Mart. (o.s.) 566 [1818].

claims made by two of its survivors—Adélaïde Métayer and Louis Noret—when they met again in New Orleans. In the end, this tangled case reveals the meaning and some of the implications of the lines of the Digest quoted at the outset: “A slave is one who is in the power of a master.”

II. LE CAP AND PORT DE PAIX, SAINT-DOMINGUE

Many of the basic facts of the early history of Adélaïde Métayer, born in Saint-Domingue around 1782, were not in dispute. She was the daughter of an enslaved African woman in the household of one Charles Métayer, a tailor, in the port of Cap Français, often called Le Cap, on the northern coast of Saint-Domingue. Nine years old when a widespread rebellion of rural slaves swept across the northern plain in August of 1791, she remained in Le Cap during the first years of what would become a decade of revolutionary war. Alliances in that war shifted as the emissaries of revolutionary France tried to maintain control over the colony while conceding significant portions of the demands of the rebels—which in turn enraged white planters. In early 1793 conflict between French Civil Commissioners and planters seeking to secure slavery devolved into open fighting, and the city of Le Cap was burned.¹⁹ Charles Métayer and his wife fled to New York, taking the young Adélaïde with them as a servant. When order was restored to that sector of the island under Toussaint Louverture, the Métayers returned. By this point, both the Civil Commissioners and the French National Assembly had declared slavery to be abolished throughout the colony.²⁰

Despite the formal freedom granted by the law, many former slaves effectively remained under the authority of their former masters. When fighting subsided and the Métayer household returned to Saint-Domingue, Adélaïde’s situation seems to have been ambiguous. She was by one report “fed, clothed, and taken care of by Metayer,” and a neighbor wondered whether she was perhaps his daughter—though when

19. See DUBOIS, *supra* note 8, at 154-59.

20. Much of her life history is recounted in the case file of *Metayer v. Noret*, Transcript of Record, Docket #288, Mss. 106, Louisiana Supreme Court Collection, Special Collections, Earl Long Library, Univ. of New Orleans (hereafter SCC, SC, UNO). Charles Métayer was said to live on the Rue des Fontaines in the neighborhood called Providence in Le Cap. For the texts of the Commissioners’ decrees, see Gabriel Debien, *Documents aux Origines de l’Abolition de l’Esclavage. Proclamations de Polverel et de Sonthonax 1793-1794*, 37 REVUE D’HISTOIRE DES COLONIES 24-55, 348-423 (1949). The initial decree, applicable in the north, declared all those in slavery to be free and entitled to all the rights of French citizenship, though subject to a special work regime. *Id.* at 351-52.

asked, Charles Métayer apparently responded “that she was his slave.”²¹ Another neighbor, Marie Magdeleine (Pouponne) Guerin, described the circumstances:

At that time Negroes tho’ not called slaves, at that time in S^{to} Domingo, were nevertheless obliged to live with the persons to whom they had formerly belonged, and during a period cards of safety (as they were then called) were required from them, that is to say certificates of their having complied with that order.²²

By 1801, Adélaïde had given birth to a child, and she sought to leave the Métayer household and to document her legal freedom and that of her son. Charles Métayer apparently consented to accept money from her in return for allowing her to exercise that freedom, but he wished to retain her little boy, preferring to free him later as an act of generosity (“[Q]u’il aimait mieux qu’il tint sa liberté de sa generosité, lors qu’il serait plus âgé.”)²³

Because slavery no longer existed in the colony, a notary could not draw up a formal manumission paper with the appropriate ratification by the government. One witness testified that “after the general emancipation no notary or other person would have dared to execute any public or private act of freedom . . . because it would have exposed them to great danger.”²⁴ There was nonetheless the possibility that Napoleon Bonaparte might invade and reimpose slavery, or that an individual might end up in a nearby territory where slavery remained in force. So Adélaïde sought and received a private receipt, which apparently read as follows:

I acknowledge receiving from Adelayde Metheyer *mulatresse* from Le Cap aged twenty years the quantity of three hundred and six *gourdes* for the purchase of her freedom, which sum she paid in three installments. And since she has always been faithful and well-behaved towards her master during her enslavement, there is nothing for which to reproach her that

21. See Testimony of M. Pomponneau at p. 9, Transcript of Record, Peter Métayé v. Adélaïde f.w.c., Docket #318, Mss. 106, SCC, SC, UNO.

22. Testimony of Mrs. Guerin at p. 7, Transcript of Record, Peter Métayé v. Adélaïde f.w.c., Docket #318, Mss. 106, SCC, SC, UNO. The law of 19 August 1793 was in fact rather more specific, prohibiting the departure of *domestiques* who cared for the elderly, for the infirm, or for children under the age of ten. See Debien, *supra* note 21, at 352. All of the freed people, however, were required to be employed somewhere.

23. See the petition drawn up by the attorney Henry Denis in *A. Métayer adv. Noret*, Docket #2093, City Court, CA, NOPL.

24. Testimony of Witness Pomponneau at p. 7, Peter Métayé v. Adélaïde f.w.c., Transcript of Record, Docket #318, Mss. 106, SCC, SC, UNO. In fact, some notaries did draw up improvised substitutes for manumission documents, as can be seen in the surviving notarial records from 1803 in the Jérémie Papers, Special Collections, University of Florida Libraries.

might pose an obstacle With the consent of my spouse I give her the present sale in order that it may serve to assert her rights without any reservations. . . .

At Le Cap 7 January 1801 C[harles] Métheyer²⁵

According to a neighbor, Adélaïde left the household of Charles Métayer and moved into the seafront neighborhood of Le Carénage, living with a man who worked as a lime-burner. She later worked for a time as a *marchande* (tradeswoman) in the city of Port de Paix, to the west of Le Cap. But when war raged between the expedition sent by Napoleon and forces loyal to Toussaint and later Dessalines, Adélaïde Métayer joined the general exodus, landing first in Kingston, Jamaica, and then proceeding to Baracoa, Cuba. Somewhere along the way she had also recovered custody of her son.²⁶

The fate of the tailor Charles Métayer and his wife was not definitively known, but several witnesses believed that they had died in the killings in Le Cap that followed the withdrawal of French troops in 1803. Their son Jean Pierre Métayer, however, made his way to Santiago, Cuba, in 1803, and then on to New York. As the sole heir of his parents, he could assert ownership of their property.²⁷

From the point of view of many white émigrés from Saint-Domingue, the declarations of emancipation made in the course of the Haitian Revolution had no validity—the decrees of Commissioners Sonthonax and Polverel, as well as their ratification by the National Convention in Paris, were part of a criminal plot against property and good order. If one disregarded revolutionary legality, then, Pierre Métayer might claim property rights over Adélaïde Métayer and her children, particularly her eldest child, who had not been included in the 1801 self-purchase. While in Santiago, Pierre Métayer sent word to Baracoa to inquire about Adélaïde Métayer's situation. He was told that she was living there as a free woman. Whatever he made of that news, for the next seven years, neither he nor the tailor Noret took any action on their respective claims.

25. This document, whose spelling and legibility are somewhat approximate, appears in the case file of *Metayé v. Noret*, Parish Court, Docket #1035, Parish Court, CA, NOPL. (Translation mine.) In the subsequent appeal, the authenticity of this copy of the document was disputed, but many witnesses attested to the existence of the sale and the receipt.

26. See Testimony of Mlle. Pouponne Guerin at p. 10, Transcript of Record, Peter Métayé v. Adélaïde f.w.c., Docket #318, Mss. 106, SCC, SC, UNO.

27. See Testimony in Peter Métayé v. Adélaïde f.w.c., Transcript of Record, Docket #318, Mss. 106, SCC, SC, UNO.

III. BARACOA, CUBA

Arrival as refugees in the Cuban town of Baracoa brought former residents of Saint-Domingue together in a tight community. When Marie Magdeleine (Poupponne) Guerin was later called to testify about Adélaïde Métayer, she had much to recount. Adélaïde had arrived in Baracoa about a year after the French evacuation of Saint-Domingue, and was pregnant at the time. Guerin, who would serve as godmother at the baby's baptism, reported that the priest asked for proof of freedom. The baby's father retrieved the freedom paper from Adélaïde's dwelling, and showed it to the priest. After baptizing the child as free, the priest urged the father to have the freedom paper registered, since it was only a private receipt. The parents had not quite gotten around to that task when the next baby was born, but the priest baptized that child as free as well. Adélaïde's daughters Belle and Bélise thus went through the ritual that would normally be considered one of the strongest forms of proof of freedom: baptism as freeborn children.²⁸

To reinforce these proofs of freedom, Adélaïde herself took the situation in hand. She had two former neighbors of her former master accompany her to a magistrate in Baracoa to certify the validity of her freedom papers and the authenticity of the signature of Charles Métayer. She thus brought into being a somewhat less "private" paper, one now countersigned by Sieur Jean Baptiste Larrey. Another helpful neighbor went even further, going aboard the privateer of one M^e Chevalier anchored in the harbor at Baracoa to get him to sign an attestation as well.²⁹

During her time in Baracoa, Adélaïde continued to guard her reputation as a free woman. At one point, during an argument, a fellow émigrée referred to Adélaïde as a slave. Adélaïde immediately carried a protest against these slanderous words to the Spanish Lieutenant Governor of Baracoa. He examined her freedom paper and sent the two women home, formally declaring Adélaïde to be free.³⁰

28. Testimony of Marie Magdeleine (Poupponne) Guerin, f.w.c., in Transcript of Record, Peter Métayé v. Adélaïde f.w.c., Docket #318, Mss. 106, SC, UNO.

29. See Letter of Etienne Vives to Adélaïde Durand, as well as the affidavit of J.B. Larrey, both in *Meteyé, Adélaïde v. Noret*, Docket #1035, Parish Court, CA, NOPL.

30. Testimony of Mimie Boulard, f.w.c., in Transcript of Record, Peter Métayé v. Adélaïde f.w.c., Docket #318, Mss. 106, SCC, SC, UNO. I have as yet been unable to locate in the Cuban archives a record of Adélaïde Métayer's interaction with the Lieutenant Governor of Baracoa. There was, however, a similar case in the city of Santiago, in which the question of a woman's status in Saint-Domingue was seen as determinative of her status in Cuba. See "Diligencias promovidas por la Negra María Juana contra D. Pedro Joubert sobre reclamo de su libertad;" Exp.

Pouponne Guerin later testified that during the six years that Adélaïde had been in Baracoa she had lived as a free woman. Indeed, Adélaïde not only lived the life of a free woman, and baptized her children as free, she even took the step that marked her as a woman of standing: She bought a slave of her own. Her neighbor Fillette Galbois, who had been godmother at the baptism of Adélaïde's younger daughter, was emphatic: "Adelaide a toujours joui de sa liberté a Baracoa, elle y était for[t] a son aise." ["Adelaide enjoyed her freedom in Baracoa; she was very much at ease there."]³¹

In 1808 Napoleon's forces invaded Spain, and in 1809 came the Spanish order to expel the French from Cuba. Along with thousands of others, Adélaïde Métayer joined the next great exodus, this time toward New Orleans.

IV. NEW ORLEANS

We have no way of knowing in which category the mayor counted Adélaïde Métayer when she disembarked in New Orleans with her son and her daughters Belle and Bélise. She was of mixed ancestry, she was accompanied by her three children, and no one seemed to claim her as a slave. It is likely that the captain of the ship, and by extension the mayor, saw her as a *femme de couleur libre* (free woman of color).

Her troubles began shortly after she took up residence on Ursulines Street in New Orleans and crossed paths with the tailor Louis Noret, the fifty-year-old white man who had been the business partner of her former owner back in Le Cap. Noret, like many other refugees, had landed in New Orleans, where he lived with a free woman of color named Daine, who was referred to in court papers as his *ménagère* (housekeeper). Noret seems to have made his way into the good graces of Adélaïde Métayer, and at some point he apparently persuaded her to give him her freedom paper for safe keeping.³²

17852, Leg. 777, Fondo Audiencia de Santiago, ANC. I thank María de los Angeles Meriño and Aisnara Perera for providing this reference from their forthcoming work on Santiago de Cuba.

31. Testimony of Guerin and of Fillette Galbois, f.w.c., in Transcript of Record, Peter Métayé v. Adélaïde f.w.c., Docket #318, Mss. 106, SCC, SC, UNO.

32. In an 1822 death record, Louis Noret is listed as a white man, sixty-one years old. See the index in New Orleans, Louisiana Death Records Index 1804-1949, *available at* ancestry.com (last visited Oct. 19, 2008). Some witnesses testified that Daine was the natural child of Adélaïde's former owner Charles Metayer and that she had been legally manumitted. See the testimony in Transcript of Record, Peter Métayé v. Adélaïde f.w.c., Docket #318, Mss. 106, SCC, SC, UNO. There was some dispute in the subsequent lawsuits about whether the freedom paper Adélaïde presented to the court was an original, a forgery, or a legitimate copy of an original sequestered by Noret.

We might pause here to say a word about freedom papers and the Saint-Domingue émigrés. Some free men and women of color sought to submit written evidence of their manumission in Saint-Domingue to a public notary in New Orleans, in order that it could be written into the permanent record. To leverage up the force of such documents, they often arrived at the notary's office accompanied by a white person, generally a property owner of one kind or another, and armed with affidavits attesting to the validity of the signatures or the circumstances of the manumission.³³ These preliminaries prepared them for the procedures called for in Louisiana statutes, by which free people of color were required to prove their status before the mayor or a justice of the peace.³⁴ In consigning her freedom paper to Noret, Adélaïde may have imagined that she was building up the network of people who could attest to her documents, if such should become necessary.³⁵

Louis Noret had another idea, however. On March 16, 1810, the Legislative Council and the Governor of the Territory of Orleans issued a formal act concerning those counted as slaves during the 1809 landings of Saint-Domingue refugees from Cuba. Given the uncertainty about the legality of importing slaves from overseas, and of retaining in Louisiana those who had come from the French islands, men and women who claimed ownership had initially been required to post bond, promising to yield up their slaves if the decision went against them or if they were obliged to sell them out of the state. Now, however, the Governor and Council lifted that bond and recognized full ownership rights on the part of the émigrés, formally exempting them from the confiscation that applied to others who violated the 1807-1808 ban on the international slave trade. These masters would have the right "to possess, sell, and dispose of" those they had claimed as slaves.³⁶

On that same day in March 1810, Louis Noret went to the City Court to claim that he was a creditor of another Saint-Domingue émigré named Louis Métayer (brother of Adélaïde Métayer's former owner

33. For one example, see "Dépôt de pièces par Sr J.B. Baqué," 31 Aug. 1812, in Acts of Notary Marc Lafitte, New Orleans Notarial Archives Research Center (NONARC). Several instances of the deposit of various proofs of freedom are recorded in Vol. 20A, Acts of Notary Narcisse Broutin (NONARC).

34. See An Act To Prevent the Introduction of Free People of Color from Hispaniola, and the other French Islands of America into the Territory of Orleans § 2, approved June 7, 1806, in ACTS PASSED AT THE FIRST SESSION OF THE FIRST LEGISLATURE, *supra* note 12, at 126-31.

35. The observant and garrulous Marie Madeleine (Pouponne) Guerin believed that the relationship between Noret and Adélaïde Métayer was an intimate one, but her evidence and that of her fellow witnesses on this point seems to have been largely speculative. See Testimony in Transcript of Record, Peter Métayé v. Adélaïde f.w.c., Docket #318, Mss. 106, SCC, UNO.

36. See MONITEUR DE LA LOUISIANE, 21 Mar. 1810.

Charles) to the sum of 285 piastres and 66 and a half cents, for monies loaned and food provided. In the absence of Louis Métayer—alleged to be living in Pointe à Pitre, Guadeloupe—Noret obtained a court order authorizing the seizure of any of Métayer's property located in New Orleans. Presuming Louis Métayer to have inherited rights over those once held as slaves by the (allegedly deceased) Charles Métayer, the sheriff immediately seized Adélaïde Métayer and her three children.³⁷

Twice a week, beginning on April 28, 1810, the local newspaper ran the announcement that on May 28, 1810, the sheriff would offer for sale at the Café de la Bourse “a *mulâtresse* named *Adélaïde* with her three children, seized in the affair of Louis Noret versus Louis Meteyer.”³⁸ By the date announced for the sale, however, Adélaïde had managed to make contact with an attorney, Henry R. Denis, who contested the seizure and sought damages on her behalf against the sheriff. In the petition that the attorney filed in her name with the City Court, Adélaïde denied that she was a slave, arguing that she had purchased herself at Le Cap from her master Charles Métayer. She further alleged that Louis Métayer had in fact predeceased his brother Charles, and that she had never been the slave of Louis Métayer.³⁹

Her lawyer's strategy here bears close examination. He did *not* argue that Adélaïde Métayer was free as a result of the general emancipation in Saint-Domingue. For the court to accept that argument would have been to upset the entire appellation that the Legislature had just righted and would imply that some 3,000 persons in New Orleans alleged to be slaves from Saint-Domingue were perforce free. Instead, the attorney focused on the individual grant of freedom made by Charles Métayer to Adélaïde, which more closely resembled the kind of manumission that might be accepted under Louisiana law. (This, however, left Adélaïde's eldest child in limbo, for she conceded that her son had been born before the signing of her freedom paper and was not included in it.) There was clearly a tense backdrop to the entire case: One man testified that he had been told by a fellow Saint-Domingue émigré that publicly supporting Adélaïde Métayer's bid for freedom by attesting to the validity of the signature on the freedom papers would make him enemies in town.⁴⁰

37. See A. Metayer adv. Noret, Docket #2093, City Court, CA, NOPL.

38. The announcement first appears in the *MONITEUR DE LA LOUISIANE* on 28 April and runs through 23 May 1810.

39. A. Metayer adv. Noret, Docket #2093, City Court, CA, NOPL.

40. Noret vs. Meteye, Docket #2093, City Court, CA, NOPL. Jean Baptiste Larrey, a former resident of Saint-Domingue, testified that he had spoken with a M. Laveau, who had been familiar with Adélaïde's freedom papers, but who now observed that they should not get involved

On May 28, 1810, Judge Louis Moreau Lislet ruled that the sale of Adélaïde and the two youngest children should be suspended “until the determination of this suit.” The sale of the eldest child, however, went forward. The proceeds apparently paid off much or all of the \$285 debt to Noret, and the case was simply “discontinued” on June 5, 1810. The logic of this outcome was obscure: No proof had ever been offered that Adélaïde Métayer or any of her children were actually the property of the elusive (and possibly dead) Louis Métayer, but by volunteering that the boy was not encompassed in the freedom papers signed by Charles Métayer, the attorney had left the door open to a tacit compromise. This sale of the oldest child put money in Noret’s pocket and moved the case off the docket, but left Adélaïde’s status entirely unclear.⁴¹

Having found that money could be made by going to court to claim property rights in Adélaïde Métayer and her children, Louis Noret was tempted to try again. In 1816 he obtained a power of attorney from another Métayer—Jean Pierre, the son of Charles—now residing in New York. This enabled Noret to file a claim to Adélaïde and her children, even beyond the extent of the initial debt. According to later testimony, Noret came to Adélaïde’s house while she was out and seized her two daughters and her five-month-old son Louis. By the next day, Adélaïde had again filed suit for damages, invoking among other things the separation of a mother from a nursing infant. But Noret’s attorney—Louis Moreau Lislet—found a way to make her resistance costly: Alleging that she was a flight risk, he called on the clerk of the court to order “the said mulatto wench Adelaide together with her three children” sequestered and placed in the custody of the sheriff for the duration of the proceedings.⁴²

The “duration of those proceedings” must have been a living hell, as Adélaïde’s attorney (Mr. Young) and Noret’s attorney (Louis Moreau Lislet) went back and forth on whether she and the children should be kept in custody, and the sheriff alternately imprisoned and released them. In December of 1816, however, Adélaïde won the most important part of the case: A jury of eleven men gave a verdict “in favor of the Plaintiff

in this business “qu’ils se feraient a coup sur des ennemis” [they would certainly make enemies] and might be drawn into a lawsuit themselves. Testimony in Transcript of Record, *Metayer v. Noret*, Docket #288, Mss. 106, SCC, UNO.

41. *Noret vs. Meteye*, Docket #2093, City Court, CA, NOPL. Evidence of the outcome appears in *Adelaide Metayer v. B. Cenas* [1810], Docket #2241, City Court, CA, NOPL; and Transcript of Record, *Metayer v. Noret*, Docket #288, Mss. 106, SCC, SC, UNO.

42. See *Metayé v. Noret*, Docket #1035, Parish Court, CA, NOPL. This second strategy presumed a different chain of inheritance from Charles Métayer—to his son Jean Pierre rather than his brother Louis.

Adelaide Metayer for her freedom,” though “without damages” against those who had seized her. The tailor Noret, thwarted in his larger goal of selling her, immediately appealed.⁴³

When the case reached the Louisiana Supreme Court, Justice Pierre Derbigny—a French immigrant to New Orleans who had passed through Saint-Domingue along the way—drafted the decision. Derbigny judged Adélaïde Métayer’s freedom papers, and contending claims about their genuineness, to be a matter so trivial that enquiry into it would be “nugatory.” The voluminous dossier that she had assembled attesting to the fact of her self-purchase in Saint-Domingue in 1801 was thus rendered moot—despite the fact that under the 1808 Louisiana Digest, “[t]he form and force of acts and written instruments, depend upon the laws and usages of the places where they are passed or executed.”⁴⁴

Derbigny did take note of the Spanish rule (still in force in Louisiana, in his view) that a slave living “as free” for ten years in the presence of the master, or twenty years in the master’s absence, was to be judged legally free. He counted Adélaïde’s “living as free”, however, only since her arrival in Baracoa in 1803. Since her putative owner had attempted to recover her beginning in 1816, his “presence” began only then, so the ten-year rule did not apply, and an interval of thirteen years did not meet the twenty-year rule. Derbigny concluded that “the plaintiff has not succeeded to prove her freedom, and that she cannot recover any damages for what she calls her unjust imprisonment and detention.” The immediate implication was that her suit for damages for false imprisonment—the matter originally before the court—failed. Though she had not established her freedom, neither had anyone definitively established ownership of her as a slave.⁴⁵

Those who claimed Adélaïde Métayer as a slave immediately tried another gambit: Pierre Métayer, son of her former owner, filed his own petition in the Louisiana courts, seeking a decree that Adélaïde and her daughters Belle and Bélise were his slaves and complaining that Adélaïde “refuse[d] to deliver up herself as the slave of your Petitioner.”

43. *Id.*

44. The attorney Mazureau had written to associates of the elder Charles Métayer back in 1810 and received replies attesting to the validity of the freedom paper. See Letter from Etienne Vives in *Metayé v. Noret*, Docket #1035, Parish Court, CA, NOPL. On the validity of written instruments, see DIGEST OF THE CIVIL LAW preliminary tit., ch. III, art. 10 (1808).

45. The decision is *Metayer v. Noret*, 5 Martin 566, decided in the June term of 1818. The case file is in Transcript of Record, Docket #288, Mss. 106, SCC, UNO. The court did not make reference to what is usually taken to be the classic case establishing the (rebuttable) presumption of slave status for those deemed to be “negroes” and of free status for those deemed to be “persons of colour.” See *Adelle v. Beauregard*, 1 Mart. (OS) (La. 1810).

The courts ordered Adélaïde sequestered on the same day. Again her attorney succeeded in having her released. The case was scheduled to be heard on the 7th of August, 1818.⁴⁶

V. ADÉLAÏDE MÉTAYER AND THE EVERYDAY LIFE OF THE LAW

In the decades following the abolition of slavery in Saint-Domingue, Adélaïde Métayer had tried to create a record that would establish an individual identity as a fully free woman. Between 1801 and 1810, through the legal systems of revolutionary Saint-Domingue and colonial Cuba, her strategy had worked. With convincing paper, neighbors who knew her, and a quick retort to those who questioned her status, she “preserved her natural liberty.” But in the New Orleans of the 1808 Digest, and in the face of the territorial and state statutes governing slavery, Adélaïde Métayer ran up against a new set of obstacles. The tailor Louis Noret proved himself to be an implacable enemy, and judge Louis Moreau Lislet declined to see her documentation as definitive proof of freedom. In the first round, in 1810, she lost one son into the New Orleans slave market, but held on to her two daughters. In the second round, between 1816 and the early spring of 1818, she lost on her claim for damages for false imprisonment but won on the question of her own freedom in the lower courts, only to lose on both counts on appeal.⁴⁷

By the third round, she had marshaled additional evidence concerning the length of time that she had “lived as free” and her attorney explicitly invoked prescription, the civil law doctrine that was roughly parallel to a statute of limitations. The 1808 Louisiana Digest’s rules on prescription—by which rights of ownership could be “lost for want of exercising them”—applied to slave property, but did not confer freedom on the slave. A longer tradition, from the Spanish *Siete Partidas*, however, did hold that the slave could acquire ownership of himself or herself in this way. Justice James Pitot, placing the burden of proof on those who alleged her to be a slave, ruled in Adélaïde Métayer’s favor. He even ordered Pierre Métayer to pay the costs of the trial, “he having entirely failed in the opinion of the Court to prove the said defendants to be slaves.” Pierre Métayer immediately appealed.⁴⁸

46. Noret, again with power of attorney from Pierre Métayer, deposited Métayer’s petition on June 26, 1818. This case came to the Supreme Court as Docket #318, *Peter Métayer v. Adelaïde Metayer*, f.w.c, accompanied by the testimony from the trial court (*Pierre Metayé v. Adelaïde f.w.c. Docket #1589*, Parish Court). The file is in Mss. 106, SCC, UNO.

47. *Métayer v. Noret*, 5 Martin (o.s.) 566 [1818].

48. See DIGEST OF THE CIVIL LAW tit. XX, ch. III, § III, art. 74 (1808); *Pierre Meteyé vs. Adelaïde*, Parish Court, Docket #1589, La. Div., NOPL. Although Pitot did not cite *Adelle v.*

In 1819, when the case brought by Pierre Métayer reached the Supreme Court, Adélaïde Métayer achieved an important final victory. This time around, Justice Pierre Derbigny employed a new logic. To begin with, he finally acknowledged the ending of slavery in Saint-Domingue by decree in 1793-94. And while those among the émigrés who counted themselves as slave owners generally viewed that emancipation as an act of violence and thus illegitimate, Derbigny demurred: “[I]f the abolition of slavery by the commissioners of the French republic has been maintained by the successive governments of the island, no foreign court will presume to pronounce that unlawful which, through a course of political events, has been sanctioned by the supreme authority of the country.”⁴⁹

In logic alone, this was a potentially revolutionary ruling—if the emancipation of 1793-94 was legitimate, then none of the men and women characterized in the New Orleans slave market as “creoles of Saint-Domingue” or Africans from Saint-Domingue was lawfully held as a slave. But Derbigny shifted ground, and did not rest the verdict of freedom for Adélaïde Métayer directly on those decrees. Instead, he counted the years that she had lived *as* a free woman between that date and the initiation of Pierre Métayer’s efforts to re-enslave her. With this new calculus, the total came to twenty-three years, three more than the number specified in the Spanish *Siete Partidas* as adequate for a proof of freedom by prescription in the *absence* of a master (hence without evidence of his tacit consent). Adélaïde Métayer’s freedom thus built on the emancipation decrees of revolutionary Saint-Domingue, but above all, it rested on the practical fact of her having acted as free for twenty-three years, enabling her to claim the medieval Spanish doctrine of freedom by prescription.

As of 1819, then, Adélaïde Métayer was officially judged to be free, and her hegira through seven different court cases, including trials and appeals, was over. In 1820, the census-taker listed A. Météyé on Esplanade Street in Faubourg Marigny as head of a household. She seems finally to have succeeded in securing her place in the city, living in a multiracial neighborhood and identified unequivocally as a “free woman of color.”⁵⁰

Beauregard, he seems to have operated on the presumption of liberty for a woman described as a *mulâtresse*.

49. *Metayer v. Metayer*, 6 Martin (o.s.) 16 [1819].

50. Determining what became of her in subsequent years is not easy. After the suits had been resolved, she may have dropped the surname Métayer, with its link to her former owner. One letter written in 1810 already addressed her as Adelaïde Durand, and it is possible that the forty-year-old Adelaïde Durand listed on the New Orleans death records for August 1820 is the

In the end, we should return to the 1808 Digest's description of what constituted free persons: "those who have preserved their natural liberty." Adélaïde's success at law rested entirely on her prior success in practice, and on her repeated parrying of the constraints on her freedom attempted by Charles Métayer, Louis Noret, and Pierre Métayer. In effect, she had to use every possible means at her disposal to run out the clock on those who would claim property rights in her person. She had somehow to remain "self-possessed," in an unusually literal sense of the word, for more than twenty years before Louisiana law would take notice of the freedom that she had gained in Saint-Domingue.

Adélaïde Métayer's struggle was distinctive for its length and complexity. Some well-situated Saint-Domingue émigré men and women of color had managed to act preemptively to maintain their freedom, avoiding the courts and instead going before public notaries or the mayor to build a file of papers and testimony that could give a Louisiana reality to agreements negotiated in the shadow of war in Saint-Domingue.⁵¹ But émigrés who claimed others as slaves could also act preemptively to create their own new facts on the ground—holding men and women physically in bondage, registering them as collateral for a loan, or selling them into the slave market—making any appeal vastly more difficult.⁵² Pouponne Guerin, for example, who had so willingly testified to the personal life in freedom of Adélaïde Métayer, apparently registered several women as her slaves when she first arrived in New Orleans. She later went to a New Orleans notary and registered three women whom she claimed as slaves as collateral for a loan from a hat maker. In order to keep her own enterprise going (perhaps she was a

former Adélaïde Métayer. But it is also possible that she survived: The 1850 manuscript census of New Orleans enumerates a sixty-two-year old "mulatto" woman in the 7th Ward, 1st Municipality, named Amenaïde Durand, born in the West Indies, now the eldest member of a household consisting of a mulatto carpenter and his family. The age is fairly close; allowing for the idiosyncrasies of spelling and nomenclature in census reports, this could also be the former Adélaïde Métayer. See New Orleans Death Records, Aug. 1820; and Household 2751 on the Free Schedules of the 1850 Census, reproduced on roll 236, USNA Microfilm Publication M432; both accessed through ancestry.com (last visited Oct. 20, 2008).

51. See "Dépôt de pièces par M.J.B. Baqué," and Vol. 20A of the Acts of Narcisse Broutin, *supra* note 33, as well as the documents from the Mayor's office in 1809 in the Heartman Collection, Xavier University Library (available on microfilm at the NOPL).

52. In the same year that *Meteyer v. Meteyer* was heard before the Louisiana Supreme Court, another immigrant to the city made a claim to freedom, alleging that he had been "born free and raised a free man" in his home country of Brazil and charging that he was being held illegally as a slave in Louisiana. But in the case of *Gomez v. Bonneval* there was no written act of freedom "nor does the parole evidence shew, that he has in any other manner acquired his freedom." The court affirmed that Gomez could properly be held as a slave. See Gomez m.c. v. Bonneval, Transcript of Record, Docket #364, Mss. 106, SCC, UNO.

modiste?), Guerin was inscribing these women as property, thus making it all the more unlikely that they would ever be able to claim freedom.⁵³

The 1808 Digest described the status of slave as one of the “distinctions of persons which are established by law.” Though said to be “established by law,” the distinction between slave and free rested almost entirely on existing relations of force. The Digest did not define as a slave the person who was *rightfully* in the power of a master; it simply pointed to the one who *was* in the power of a master.⁵⁴

Louisiana law under the Digest, in effect, generally declined to inquire into the circumstances of enslavement. And when the population of the city of New Orleans was nearly doubled by the arrival of the Saint-Domingue refugees, the stark results of that refusal became clear. Thousands of men and women who had lived as free were declared to be slaves, simply on the strength of the declaration of those who claimed ownership of them. True, a fortunate man or woman with a credible manumission document or a powerful patron might be able to hasten to a notary, the mayor, or a justice of the peace and be recognized as an *affranchi* (freedperson), but those without such papers could be deemed to be slaves—even if no putative master was on hand, much less someone who could show “good title.” And when Justice Derbigny of the Louisiana Supreme Court formally acknowledged the emancipation of all slaves in Saint-Domingue in 1793-94, he gave that act no capacity by itself to free those émigrés held in slavery in New Orleans. Like the 1807 ban on the importation of slaves into the United States, effective January 1, 1808, the French emancipation decree did not, in the view of the Louisiana court, actually confer a durable freedom on those whose continued enslavement rested on its violation.

In some ways, the case of *Métayer vs. Métayer* involved certain classic choice of law/ conflict of laws questions. Which should prevail, the law of republican Saint-Domingue, of colonial Cuba, or of territorial and later statehood Louisiana? But in the end, the question was fundamentally between two kinds of claims of right, both from Saint-Domingue: a property right in another human being, dating to the ancien régime, or a subsequent set of rights in oneself, dating to the revolution

53. See OFFICIAL LETTER BOOKS OF W.C.C. CLAIBORNE, *supra* note 11, vol. 4, at 412. For the mortgage, see “Mortgage, Marie Madeleine alias Poupponne,” Act #448, 1810, Notary Michel de Armas, NONARC.

54. Vernon Palmer points out that the language of these definitions is taken directly from the seventeenth-century French author Domat, who in turn had taken them from Justinian’s Digest. On the question of origins, however, “Domat listed two causes of slavery, but none of those causes accounted for African bondage in Louisiana, so Moreau simply deleted Domat’s explanation.” Palmer, *supra* note 6.

and the republic. Once Adélaïde Métayer and others reached slaveholding Louisiana, the core “propertyness” in them that was claimed by others could be judged to have a persistence that continued through the period of their legal “freeness” in Saint-Domingue and Cuba. It was as if they had occupied but not truly possessed themselves across the intervening years.

In 1690, John Locke had written that slavery was “nothing else, but *the state of war continued, between a lawful conqueror and a captive.*”⁵⁵ Locke’s construct was not an apt description of slavery in the Americas, particularly given the inheritance of slave status by those who were not by any stretch of the imagination lawful “captives.” But even this notoriously weak link in Locke’s political philosophy had at least reached for some normative gloss through the insertion of the word “lawful” before the word “conqueror.” The 1808 Digest eschewed that gesture, and its normative language rested on essentially circular logic. The state of “belonging” to another person was defined not by the source of the ownership but by its result: the slave was one who belonged to a master “in such a manner, that the master may sell him, dispose of his person, his industry and his labor.”

To lay the groundwork for what would become the slaveholding metropolis of New Orleans, home to the largest slave market in the U.S. South, Louisiana’s Digest had to forego even the pretense that enslavements needed to have been lawfully accomplished in order for slavery to be legitimate. The Louisiana Digest in effect anticipated a later Brazilian law, which held quite simply “no one may be required to present the title under which he possesses a slave.”⁵⁶ Louisiana’s law of slavery, in this respect, was no law at all. Or, perhaps more precisely, it was dramatically asymmetrical, requiring very little to assert ownership of another person, and a great deal to establish ownership of oneself.

55. JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* 17 (Indianapolis: Hackett Publ’g Co., 1980) (C.B. Macpherson ed., 1690).

56. Chalhoub, in “Reenslavement,” writes that in Brazil “[a] decree of 1842, about slave registration and taxes, went so far as to include an article stipulating that ‘nobody may be required to present the title under which he possesses a slave.’” This was particularly relevant in Brazil, where an 1831 law had declared the Atlantic slave trade illegal. Imports of captives continued nearly unabated, with substantial complicity by both planters and the state.

APPENDIX
 CASES INVOLVING ADÉLAÏDE MÉTAYER, NEW ORLEANS

**Louis Noret's First Attempt at Seizure and Sale of
 Adélaïde Métayer and Her Children**

Case Name & Date Filed	Court & Docket #	Judgment
L. Noret v. L. Meteyer (16 March 1810)	City Court # 2093	For Noret—Louis Métayer recognized as his debtor
A. Metayer adv. Noret (28 May 1810)	City Court #2093	Discontinued (5 June 1810)
A. Metayer v. B. Cenas (5 June 1810)	City Court #2241	Not resolved

**Louis Noret's Second Attempt To Seize
 Adélaïde Métayer and Her Children**

Case Name & Date Filed	Court & Docket #	Judgment
Metayé v. Noret (ca. 1816)	Parish Court #1035	For Adélaïde M.— declared free but no damages due; appealed by Noret
Metayer v. Noret (13 April 1818)	La. Supreme Court #288 [5 Mar. (o.s.) 566 (La. 1819)]	For Noret—Adélaïde M. failed to establish her freedom, hence no damages due from Noret

**Louis Noret and Pierre Métayer's Final Attempt To Seize
 Adélaïde Métayer and Her Children**

Case Name & Date Filed	Court & Docket #	Judgment
Pierre Meteyé v. Adelaide (26 June 1818)	Parish Court # 1589	For Adélaïde M.— appealed by Pierre M.
Peter Métayer v. Adelaide f.w.c. (8 December 1818)	La. Supreme Court #318 [6 Mart. (o.s.) 16 (La. 1819)]	For Adélaïde M.— declared free woman of color