SLAVERY AND CIVIL LAW IN THE ANTEBELLUM SOUTH—TWO CASE STUDIES

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Antebellum slave law addressed fugitive slaves and criminal offenses committed by masters against slaves and by slaves against masters. Moreover, slaves were both merchandise and personal property that fell under civil monetary statutes pertaining to sales fraud and personal damage to private property. Judgment in two civil cases heard in West Tennessee during the late 1850s turn on such statutes.

In 1859, two years before secession and the war that brought freedom to all black men and women, white citizens of the slaveholding South employed their local courts to sue one another on petty civil matters involving property rights in their slaves. Beyond their legal status as slave or free, citizen or non-citizen, African-Americans might also be classified as personal property, the same as a horse or a cow, or as real property that automatically went with their owners' land in legal conveyances.

As early as 1705, the Colonial Virginia Assembly had passed a statute pronouncing slaves to be real property rather than personal property.[1] By declaring slaves capital assets, the colonial government attached them to the land upon which they labored. Consequently, in the transfer and inheritance of the master's estate the same rules that applied to the plantation and farm also applied to slaves who worked in the fields or the master's house. By 1806, similar laws had been enacted in Kentucky and the Louisiana Territory.

While Virginia repealed the 1705 act in 1792, two years later it enacted a statute prohibiting the sale of slaves to satisfy the master's debts until all personal property had been exhausted. Insofar as the same rule had been previously applied to the master's land, vis à vis creditors' rights, the legal status of slaves settled between that of land and personalty.[2]

In his study on American legal history, Lawrence M. Friedman observed that the average slave "was bought and sold like a bale of cotton." Noting that the slave states were "full of wrangles about sales, gifts, mortgages, and bequests of slaves," he reported a Kentucky case where "one of the parties

took 'a Negro boy' to the races in New Orleans and bet him on the horse Lucy Dashwood." Further observing that the horse won its race, Friedman noted that the court in its 1846 ruling apparently found nothing objectionable in this use of slave property.[3]

CASE STUDY ONE

In the case of *William S. Smith v. Mary J. Cozart,* Cozart sued Smith for damages arising from alleged fraud in the sale of a female slave. The Tennessee Supreme Court noted as "peculiar in some of its features, and, by no means free from difficulty" the contract that the plaintiff Cozart had negotiated with the defendant Smith for the purchase of a female slave who had previously been raised and owned by Cozart. During these negotiations Cozart asked about the slave's health, and Smith said "she had a cough, and suppressed menstruation for some short time, which might possibly be caused by pregnancy; and spoke of it as not being a serious matter, and that it was temporary only."

On these assurances, a bargain was struck and a memorandum, or bill of sale, was executed by Smith to Cozart as follows:

> Received of Mrs. Mary Cozart one thousand dollars, in payment of a negro [*sic*], Maria, she being the negro [*sic*] I purchased of her in 1852, or 1853. I consider the negro [*sic*] unhealthy and sell her as unsound property, and do not warrant her sound. I convey to the said Mrs. Cozart such title as was visited in me by my purchase of the said girl from her.
>
> June 30, 1856
>
> William G. Smith[4]

Within a week of Maria's purchase, Cozart hired a physician, who examined Maria and diagnosed her with consumption and said she had suffered from it the past six to twelve months. In the doctor's opinion, "the girl could not be cured, and was worthless." She died in the summer of 1857. Shortly thereafter Cozart brought action against Smith for fraud and breach of warranty.

In September 1858 a Madison County Circuit Court jury rendered a verdict in favor of Cozart and ordered Smith to pay $1,112.50 in damages. Smith appealed, and in April 1859, the case went before the state supreme court in Jackson. After careful consideration, the justices declared,

> It might seem, at first view, that the jury acted rashly in finding a verdict for the plaintiff in the face of the foregoing bill of sale, but an attentive consideration of the whole case will lead to a different conclusion.

"The jury must have believed," the Court elaborated, "(and we cannot say that the belief was unwarranted) that Smith knew of the diseased and unsound condition of the slave at the time of the sale, and was therefore guilty, not only of suppression of the truth but also of intentional misrepresentation. The circumstances of the case," the Court reasoned, "must also have satisfied the jury that the sale of the slave to Mrs. Cozart was a mediated scheme of fraud."

Returning their attention to Smith, the justices continued, "He was fully aware or at least had sufficient reason to suppose that Mrs. Cozart, who had raised the slave, believed her to be sound, and that therefore would be careless in respect to anything that might be inserted in the bill of sale as to her soundness. And the conviction forces itself upon the mind," they went on, "that, in this view, the foregoing bill of sale was concocted and imposed upon the plaintiff as a fraudulent artifice to shield the defendant against the consequences of a deliberate and detestable fraud. In this aspect of the case," the court concluded, "the verdict is well warranted."[5]

Noting that parol, or verbal evidence, was not usually accepted to superadd a written warranty in a contract of sale, the court nevertheless found that this was a clear case of deliberate fraud on the part of Smith and that therefore any verbal misrepresentations that he might have made to Cozart could be introduced against him in trial. Consequently, the court reasoned that even though Smith had sold Maria as "unsound property," he nevertheless had done so while at the same time fraudulently and deliberately conveying the impression that Maria was in good health. To the court then, Smith was guilty of willful and intentional false representation and it therefore upheld the trial court's verdict in Cozart's favor.[6]

CASE STUDY TWO

During that same April term, the court also heard the case of *James M. Tomlinson v. William Darnall.* Tomlinson was being sued for damages for having injured a slave—in this case, the personal property of Darnall. In his defense, Tomlinson contended that the slave in question had been found away from home without a pass and that the slave was injured only after he

attempted to escape. Tomlinson therefore claimed he had acted lawfully as the head of a slave patrol in returning the slave to his master.

Noting that slaves caught off their plantations without a pass constituted a "special" problem usually demanding "special" procedures necessary for proper discipline, Friedman observed:

> In some states there were "slave patrols," which roamed the countryside, looking for erring blacks. If a stray black in Georgia could not show a pass (or "free papers") the patrol might "correct" him on the spot, "by whipping with a switch, whip, or cowskin, not exceeding twenty lashes."[7]

In its final decision, the trial court nevertheless found Tomlinson guilty of having used excessive force, and the court assessed the damages accordingly at fifteen dollars. Tomlinson appealed to the state supreme court, which in turn reversed the decision on a technicality in Tomlinson's favor. In its opinion, the Court declared:

> It is of great importance to society that these police regulations, connected with the institution of slavery, should be firmly maintained. The well being and safety of both master and slave demand it. The institution and support of the night-watch and patrol, or some plan are indispensable to good order, and the subordination of slaves, and the best interests of the owners. But the authority conferred for these important objects must not be abused by those upon whom it is conferred, as it sometimes is by reckless persons.[8]

Giving no opinion as to Tomlinson's conduct, the Court reasoned,

> If they exceeded the bounds of moderation in the injury inflicted and transcended the limits prescribed by law for the office of patrol, if it be found that they were entitled to that justification then they will be liable under a verdict to that effect, on the proper issue to be raised by an amendment to the pleadings.[9]

CONCLUSIONS

As was the case with the diseased slave Maria, the alleged (and unnamed) runaway slave of William Darnell was treated not as an injured party deserv-

ing of financial compensation for his personal injuries but as the damaged legal property of his master and deserving no more than medical attention for his gunshot wound. That Tomlinson was assessed a mere fifteen dollars for the extent of the slave's injuries merely accentuated that slave's status as his master's damaged property.[10]

Similarly, Maria's status as the center of a civil law suit alleging breach of warranty, in that illness rendered her physically unfit to perform the duties of a slave, further demonstrated the subhuman status that was callously assigned to African-Americans during this period. As Lawrence Friedman concluded in his analysis:

> Slave law, in short, had its own inner logic. Its object was repression and control. Everything tended toward that end. The South shut every door that could lead to black advancement or success—slave or free. The South deprived and degraded its blacks, then despised them for what they were; at the same time, the South was afraid of the monsters created in its midst. Slavery was a coiled spring. In the end, it was a trap for whites as well. The whites, of course, had the upper hand; but even they paid the price in the long run. Slavery was one of the irritants that brought on a great civil war. Hundreds of thousands died victims in a sense of the South's "peculiar institution."[11]

NOTES

1. Lawrence M. Friedman, *A History of American Law* (New York: Simon & Schuster, 1973, 1985), 224.
2. Ibid., 225.
3. Ibid., 224.
4. Head, *Tennessee Reporter* (1859): 527–29.
5. Ibid., 529–30.
6. Ibid., 530–33.
7. Friedman, *History of American Law,* 229.
8. Head, *Tennessee Reporter* (1859): 539–42.
9. Ibid., 542–43.
10. Ibid.
11. Friedman, *History of American Law,* 229.