# A Key to Uncle Tom's Cabin Part 2

By

### **Harriet Beecher Stowe**



#### **CHAPTER I.**

The New York Courier and Enquirer of November 5th contained an article which has been quite valuable to the author, as summing up, in a clear, concise and intelligible form, the principal objections which may be urged to Uncle Tom's Cabin. It is here quoted in full, as the foundation of the remarks in the following pages.

The author of "Uncle Tom's Cabin," that writer states, has committed false-witness against thousands and millions of her fellow-men.

She has done it [he says] by attaching to them as slaveholders, in the eyes of the world, the guilt of the abuses of an institution of which they are absolutely guiltless. Her story is so devised as to present slavery in three dark aspects: first, the cruel treatment of the slaves; second, the separation of families; and, third, their want of religious instruction.

To show the first, she causes a reward to be offered for the recovery of a runaway slave, "dead or alive," when no reward with such an alternative was ever heard of, or dreamed of, south of Mason and Dixon's line, and it has been decided over and over again in Southern courts that "a slave who is merely flying away cannot be killed." She puts such language as this into the mouth of one of her speakers:—"The master who goes furthest and does the worst only uses within limits the power that the law gives him;" when, in fact, the civil code of the very state where it is represented the language was uttered—Louisiana—declares that

"The slave is entirely subject to the will of his master, who may correct and chastise him, though not with unusual rigor, nor so as to maim or mutilate him, or to expose him to the danger of loss of life, or to cause his death."

And provides for a compulsory sale

"When the master shall be convicted of cruel treatment of his slaves, and the judge shall deem proper to pronounce, besides the penalty established for such cases, that the slave be sold at public auction, in order to place him out of the reach of the power which the master has abused."

"If any person whatsoever shall wilfully kill his slave, or the slave of another person, the said person, being convicted thereof, shall be tried and condemned agreeably to the laws."

In the General Court of Virginia, last year, in the case of Souther v. the Commonwealth, it was held that the killing of a slave by his master and owner, by wilful and excessive whipping, is murder in the first degree, though it may not have been the purpose of the master and owner to kill the slave! And it is not six months since Governor Johnston, of Virginia, pardoned a slave who killed his master, who was beating him with brutal severity.

And yet, in the face of such laws and decisions as these, Mrs. Stowe winds up a long series of cruelties upon her other black personages, by causing her faultless hero, Tom, to be literally whipped to death in Louisiana, by his master, Legree; and these acts, which the laws make criminal, and punish as such, she sets forth in the most repulsive colors, to illustrate the institution of slavery!

So, too, in reference to the separation of children from their parents. A considerable part of the plot is made to hinge upon the selling, in Louisiana, of the child Eliza, "eight or nine years old," away from her mother; when, had its inventor looked in the statute-book of Louisiana, she would have found the following language:

"Every person is expressly prohibited from selling separately from their mothers the children who shall not have attained the full age of ten years."

"Be it further enacted, That if any person or persons shall sell the mother of any slave child or children under the age of ten years, separate from said child or children, or shall, the mother living, sell any slave child or children of ten years of age, or under, separate from said mother, said person or persons shall be fined not less than one thousand nor more than two thousand dollars, and be imprisoned in the public jail for a period of not less than six months nor more than one year."

The privation of religious instruction, as represented by Mrs. Stowe, is utterly unfounded in fact. The largest churches in the Union consist entirely of slaves. The first African church in Louisville, which numbers fifteen hundred persons, and the first African church in Augusta, which numbers thirteen hundred, are specimens. On multitudes of the large plantations in the different parts of the South the ordinances of the gospel are as regularly maintained, by competent ministers, as in any other communities, north or south. A larger proportion of the slave population are in communion with some Christian church, than of the white population in any part of the country. A very considerable portion of every southern congregation, either in city or country, is sure to consist of blacks; whereas, of our northern churches, not a colored person is to be seen in one out of fifty.

The peculiar falsity of this whole book consists in making exceptional or impossible cases the representatives of the system. By the same process which she has used, it would not be difficult to frame a fatal argument against the relation of husband and wife, or parent and child, or of guardian and ward; for thousands of wives and children and wards have been maltreated, and even murdered. It is wrong, unpardonably wrong, to impute to any relation of life those enormities which spring only out of the worst depravity of human nature. A ridiculously extravagant spirit of generalization pervades this fiction from beginning to end. The Uncle Tom of the authoress is a perfect angel, and her blacks generally are half angels; her Simon Legree is a perfect demon, and her whites generally are half demons. She has quite a peculiar spite against the clergy; and, of the many she introduces at different times into the scenes, all, save an insignificant exception, are Pharisees or hypocrites. One who could know nothing of the United States and its people, except by what he might gather from this book, would judge that it was some region just on the confines of the infernal world. We do not say that Mrs. Stowe was actuated by wrong motives in the preparation of this work, but we do say that she has done a wrong which no ignorance can excuse and no penance can expiate.

A much-valued correspondent of the author, writing from Richmond, Virginia, also uses the following language:

I will venture this morning to make a few suggestions which have occurred to me in regard to future editions of your work, "Uncle Tom's Cabin," which I desire should have all the influence of which your genius renders it capable, not only abroad, but in the local sphere of slavery, where it has been hitherto repudiated. Possessing already the great requisites of artistic beauty and of sympathetic affection, it may yet be improved in regard to accuracy of statement without being at all enfeebled. For example, you do less than justice to the formalized laws of the Southern States, while you give more credit than is due to the virtue of public or private sentiment in restricting the evil which the laws permit.

I enclose the following extracts from a southern paper:

"'I'll manage that ar; they's young in the business, and must spect to work cheap,' said Marks, as he continued to read. 'Thar's three on 'em easy cases, 'cause all you've got to do is to shoot 'em, or swear they is shot; they couldn't, of course, charge much for that.'"

"The reader will observe that two charges against the South are involved in this precious discourse;—one that it is the habit of Southern masters to offer a reward, with the alternative of 'dead or alive,' for their fugitive slaves; and the other, that it is usual for pursuers to shoot them. Indeed, we are led to infer that, as the shooting is the easier mode of obtaining the reward, it is the more frequently employed in such cases. Now, when a Southern master offers a reward for his runaway slave, it is because he has lost a certain amount of property, represented by the negro which he wishes to recover. What man of Vermont, having an ox or an ass that had gone astray, would forthwith offer half the full value of the animal, not for the carcass, which might be turned to some useful purpose, but for the unavailing satisfaction of its head? Yet are the two cases exactly parallel? With regard to the assumption that men are permitted to go about, at the South, with double-barrelled guns, shooting down runaway negroes, in preference to apprehending them, we can only say that it is as wicked and wilful as it is ridiculous. Such Thugs there may have been as Marks and Loker, who have killed negroes in this unprovoked manner; but, if they have escaped the gallows, they are probably to be found within the walls of our state penitentiaries, where they are comfortably provided for at public expense. The laws of the Southern States, which are designed, as in all good governments, for the protection of persons and property, have not been so loosely framed as to fail of their object where person and property are one.

"The law with regard to the killing of runaways is laid down with so much clearness and precision by a South Carolina judge, that we cannot forbear quoting his dictum, as directly in point. In the case of Witsell v. Earnest and Parker, Colcock J. delivered the opinion of the court:

Jan. term, 1818 1 Nott & McCord's S. C. Rep. 182.

"By the statute of 1740, any white man may apprehend, and moderately correct, any slave who may be found out of the plantation at which he is employed; and if the slave assaults the white person, he may be killed; but a slave who is merely flying away cannot be killed. Nor can the defendants be justified by the common law, if we consider the negro as a person; for they were not clothed with the authority of the law to apprehend him as a felon, and without such authority he could not be killed.'

"It's commonly supposed that the property interest is a sufficient guard in these cases. If people choose to ruin their possessions, I don't know what's to be done. It seems the poor creature was a thief and a drunkard; and so there won't be much hope to get up sympathy for her.'

"'It is perfectly outrageous,—it is horrid, Augustine! It will certainly bring down vengeance upon you.'

"'My dear cousin, I didn't do it, and I can't help it; I would, if I could. If low-minded, brutal people will act like themselves, what am I to do? They have absolute control; they are irresponsible despots. There would be no use in interfering; there is no law, that amounts to anything practically, for such a case. The best we can do is to shut our eyes and ears, and let it alone. It's the only resource left us.'

"In a subsequent part of the same conversation, St. Clare says:

"For pity's sake, for shame's sake, because we are men born of women, and not savage beasts, many of us do not, and dare not,—we would scorn to use the full power which our savage laws put into our hands. And he who goes furthest and does the worst only uses within limits the power that the law gives him.'

"Mrs. Stowe tells us, through St. Clare, that 'there is no law that amounts to anything' in such cases, and that he who goes furthest in severity towards his slave,—that is, to the deprivation of an eye or a limb, or even the destruction of life,—'only uses within limits the power that the law gives him.' This is an awful and tremendous charge, which, lightly and unwarrantably made, must subject the maker to a fearful accountability. Let us see how the matter stands upon the statute-book of Louisiana. By referring to the civil code of that state, chapter 3d, article 173, the reader will find this general declaration:

"The slave is entirely subject to the will of his master, who may correct and chastise him, though not with unusual rigor, nor so as to maim or mutilate him, or to expose him to the danger of loss of life, or to cause his death.'

"On a subsequent page of the same volume and chapter, article 192, we find provision made for the slave's protection against his master's cruelty, in the statement that one of two cases, in which a master can be compelled to sell his slave, is

"When the master shall be convicted of cruel treatment of his slave, and the judge shall deem proper to pronounce, besides the penalty established for such cases, that the slave shall be sold at public auction, in order to place him out of the reach of the power which the master has abused."

"A code thus watchful of the negro's safety in life and limb confines not its guardianship to inhibitory clauses, but proscribes extreme penalties in case of their infraction. In the Code Noir (Black Code) of Louisiana, under head of Crimes and Offences, No. 55, § xvi., it is laid down, that

"If any person whatsoever shall wilfully kill his slave, or the slave of another person, the said person, being convicted thereof, shall be tried and condemned agreeably to the laws."

"And because negro testimony is inadmissible in the courts of the state, and therefore the evidence of such crimes might be with difficulty supplied, it is further provided that,

Code Noir. Crimes and Offences, 56, xvii.

"If any slave be mutilated, beaten or ill-treated, contrary to the true intent and meaning of this act, when no one shall be present, in such case the owner, or other person having the management of said slave thus mutilated, shall be deemed responsible and guilty of the said offence, and shall be prosecuted without further evidence, unless the said owner, or other person so as aforesaid, can prove the contrary by means of good and sufficient evidence, or can clear himself by his own oath, which said oath every court, under the cognizance of which such offence shall have been examined and tried, is by this act authorized to administer.'

"Enough has been quoted to establish the utter falsity of the statement, made by our authoress through St. Clare, that brutal masters are 'irresponsible despots,'—at least in Louisiana. It would extend our review to a most unreasonable length, should we undertake to give the law, with regard to the murder of slaves, as it stands in each of the Southern States. The crime is a rare one, and therefore the reporters have had few cases to record. We may refer, however, to two. In Fields v. the State of Tennessee, the plaintiff in error was indicted in the circuit court of Maury county for the murder of a negro slave. He pleaded not guilty; and at the trial was found guilty of wilful and felonious slaying of the slave. From this sentence he prosecuted his writ of error, which was disallowed, the court affirming the original judgment. The opinion of the court, as given by Peck J., overflows with the spirit of enlightened humanity. He concludes thus:

1 Yerger's Tenn. Rep. 156.

"'It is well said by one of the judges of North Carolina, that the master has a right to exact the labor of his slave; that far, the rights of the slave are suspended; but this gives the master no right over the life of his slave. I add to the saying of the judge, that law which says thou shalt not kill, protects the slave; and he is within its very letter. Law, reason, Christianity, and common humanity, all point but one way.'

7 Grattan's Rep. 673.

"In the General Court of Virginia, June term, 1851, in Souther v. the Commonwealth, it was held that 'the killing of a slave by his master and owner, by wilful and excessive whipping, is murder in the first degree; though it may not have been the purpose of the master and owner to kill the slave.' The writer shows, also, an ignorance of the law of contracts, as it affects slavery in the South, in making George's master take him from the factory against the proprietor's consent. George, by virtue of the contract of hiring, had become the property of the proprietor for the time being, and his master could no more have taken him away forcibly than the owner of a house in Massachusetts can dispossess his lessee, at any moment, from mere whim or caprice. There is no court in Kentucky where the hirer's rights, in this regard, would not be enforced.

"No. Father bought her once, in one of his trips to New Orleans, and brought her up as a present to mother. She was about eight or nine years old, then. Father would never tell mother what he gave for her; but, the other day, in looking over his old papers, we came across the bill of sale. He paid an extravagant sum for her, to be sure. I suppose, on account of her extraordinary beauty.'

"George sat with his back to Cassy, and did not see the absorbed expression of her countenance, as he was giving these details.

"At this point in the story, she touched his arm, and, with a face perfectly white with interest, said, 'Do you know the names of the people he bought her of?'

"A man of the name of Simmons, I think, was the principal in the transaction. At least, I think that was the name in the bill of sale."

"O, my God!' said Cassy, and fell insensible on the floor of the cabin."

"Of course Eliza turns out to be Cassy's child, and we are soon entertained with the family meeting in Montreal, where George Harris is living, five or six years after the opening of the story, in great comfort.

"Now, the reader will perhaps be surprised to know that such an incident as the sale of Cassy apart from Eliza, upon which the whole interest of the foregoing narrative hinges, never could have taken place in Louisiana, and that the bill of sale for Eliza would not have been worth the paper it was written on. Observe. George Shelby states that Eliza was eight or nine years old at the time his father purchased her in New Orleans. Let us again look at the statutebook of Louisiana.

"In the Code Noir we find it set down that

"Every person is expressly prohibited from selling separately from their mothers the children who shall not have attained the full age of ten years."

"And this humane provision is strengthened by a statute, one clause of which runs as follows:

"Be it further enacted, That if any person or persons shall sell the mother of any slave child or children under the age of ten years, separate from said child or children, or shall, the mother living, sell any slave child or children of ten years of age, or under, separate from said mother, such person or persons shall incur the penalty of the sixth section of this act.'

"This penalty is a fine of not less than one thousand nor more than two thousand dollars, and imprisonment in the public jail for a period of not less than six months nor more than one year.—Vide Acts of Louisiana, 1 Session, 9th Legislature, 1828, 1829, No. 24, Section 16."

The author makes here a remark. Scattered through all the Southern States are slaveholders who are such only in name. They have no pleasure in the system, they consider it one of wrong altogether, and they hold the legal relation still, only because not yet clear with regard to the best way of changing it, so as to better the condition of those held. Such are most earnest advocates for state emancipation, and are friends of anything, written in a right spirit, which tends in that direction. From such the author ever receives criticisms with pleasure.

She has endeavored to lay before the world, in the fullest manner, all that can be objected to her work, that both sides may have an opportunity of impartial hearing.

When writing "Uncle Tom's Cabin," though entirely unaware and unexpectant of the importance which would be attached to its statements and opinions, the author of that work was anxious, from love of consistency, to have some understanding of the laws of the slave system. She had on hand for reference, while writing, the Code Noir of Louisiana, and a sketch of the laws relating to slavery in the different states, by Judge Stroud, of Philadelphia. This work, professing to have been compiled with great care from the latest editions of the statute-books of the several states, the author supposed to be a sufficient guide for the writing of a work of fiction. As the accuracy of those statements which relate to the slave-laws has been particularly contested, a more especial inquiry has been made in this direction. Under the guidance and with the assistance of legal gentlemen of high standing, the writer has proceeded to examine the statements of Judge Stroud with regard to statutelaw, and to follow them up with some inquiry into the decisions of courts. The result has been an increasing conviction on her part that the impressions first derived from Judge Stroud's work were correct; and the author now can only give the words of St. Clare, as the best possible expression of the sentiments and opinion which this course of reading has awakened in her mind.

This cursed business, accursed of God and man,—what is it? Strip it of all its ornament, run it down to the root and nucleus of the whole, and what is it? Why, because my brother Quashy is ignorant and weak, and I am intelligent and strong,—because I know how, and can do it,—therefore I may steal all he has, keep it, and give him only such and so much as suits my fancy! Whatever is too hard, too dirty, too disagreeable for me, I may set Quashy to doing. Because I don't like work, Quashy shall work. Because the sun burns me, Quashy shall stay in the sun. Quashy shall earn the money, and I will spend it. Quashy shall lie down in every puddle, that I may walk over dry shod. Quashy shall do my will, and not his, all the days of his mortal life, and have such a chance of getting to heaven at last as I find convenient. This I take to be about what slavery is. I defy anybody on earth to read our slave-code, as it stands in our law-books, and make anything else of it. Talk of the abuses of slavery! Humbug! The thing itself is the essence of all abuse. And the only reason why the land don't sink under it, like Sodom and Gomorrah, is because it is used in a way infinitely better than it is. For pity's sake, for shame's sake, because we are men born of women, and not savage beasts, many of us do not, and dare not,—we would scorn to use the full power which our savage laws put into our hands. And he who goes the furthest, and does the worst, only uses within limits the power that the law gives him!

The author still holds to the opinion that slavery in itself, as legally defined in law-books and expressed in the records of courts, is the SUM AND ESSENCE OF ALL ABUSE; and she still clings to the hope that there are many men at the South infinitely better than their laws; and after the reader has read all the extracts which she has to make, for the sake of a common humanity they will hope the same. The author must state, with regard to some passages which she must quote, that the language of certain enactments was so incredible that she would not take it on the authority of any compilation whatever, but copied it with her own hand from the latest edition of the statute-book where it stood and still stands.

#### **CHAPTER II.**

#### WHAT IS SLAVERY?

The author will now enter into a consideration of slavery as it stands revealed in slave law.

Civil Code, Art. 35.2 Brev. Dig. 229. Prince's Digest, 446.

What is it, according to the definition of law-books and of legal interpreters? "A slave," says the law of Louisiana, "is one who is in the power of a master, to whom he belongs. The master may sell him, dispose of his person, his industry and his labor; he can do nothing, possess nothing, nor acquire anything, but what must belong to his master." South Carolina says "slaves shall be deemed, sold, taken, reputed and adjudged in law, to be chattels personal in the hands of their owners and possessors, and their executors, administrators, and assigns, TO ALL INTENTS. CONSTRUCTIONS AND PURPOSES WHATSOEVER." The law of Georgia is similar.

Wheeler's Law of Slavery, 246. State v. Mann.

Let the reader reflect on the extent of the meaning in this last clause. Judge Ruffin, pronouncing the opinion of the Supreme Court of North Carolina, says, a slave is "one doomed in his own person, and his posterity, to live without knowledge, and without the capacity to make anything his own, and to toil that another may reap the fruits."

This is what slavery is,—this is what it is to be a slave! The slave-code, then, of the Southern States, is designed to keep millions of human beings in the condition of chattels personal; to keep them in a condition in which the master may sell them, dispose of their time, person and labor; in which they can do nothing, possess nothing, and acquire nothing, except for the benefit of the master; in which they are doomed in themselves and in their posterity to live without knowledge, without the power to make anything their own,—to toil that another may reap. The laws of the slave-code are designed to work out this problem, consistently with the peace of the community, and the safety of that superior race which is constantly to perpetrate this outrage.

From this simple statement of what the laws of slavery are designed to do, —from a consideration that the class thus to be reduced, and oppressed, and made the subjects of a perpetual robbery, are men of like passions with our own, men originally made in the image of God as much as ourselves, men partakers of that same humanity of which Jesus Christ is the highest ideal and expression,—when we consider that the material thus to be acted upon is that fearfully explosive element, the soul of man; that soul elastic, upspringing, immortal, whose free will even the Omnipotence of God refuses to coerce, we may form some idea of the tremendous force which is necessary to keep this mightiest of elements in the state of repression which is contemplated in the definition of slavery.

Of course, the system necessary to consummate and perpetuate such a work, from age to age, must be a fearfully stringent one; and our readers will find that it is so. Men who make the laws, and men who interpret them, may be fully sensible of their terrible severity and inhumanity; but, if they are going to preserve the THING, they have no resource but to make the laws, and to execute them faithfully after they are made. They may say, with the honorable Judge Ruffin, of North Carolina, when solemnly from the bench announcing this great foundation principle of slavery, that "THE POWER OF THE MASTER MUST BE ABSOLUTE, TO RENDER THE SUBMISSION OF THE SLAVE PERFECT,"—they may say, with him, "I most freely confess my sense of the harshness of this proposition; I feel it as deeply as any man can; and, as a principle of moral right, every person in his retirement must repudiate it;"—but they will also be obliged to add, with him, "But, in the actual condition of things, it MUST BE SO. \* \* This discipline belongs to the state of slavery. \* \* \* It is INHERENT in the relation of master and slave."

And, like Judge Ruffin, men of honor, men of humanity, men of kindest and gentlest feelings, are obliged to interpret these severe laws with inflexible severity. In the perpetual reaction of that awful force of human passion and human will, which necessarily meets the compressive power of slavery,—in that seething, boiling tide, never wholly repressed, which rolls its volcanic stream underneath the whole frame-work of society so constituted, ready to find vent at the least rent or fissure or unguarded aperture,—there is a constant necessity which urges to severity of law and inflexibility of execution. So Judge Ruffin says, "We cannot allow the right of the matter to be brought into discussion in the courts of justice. The slave, to remain a slave, must be made sensible that there is NO APPEAL FROM HIS MASTER." Accordingly, we find in the more southern states, where the slave population is most accumulated, and slave property most necessary and valuable, and, of course, the determination to abide by the system the most decided, there the enactments are most severe, and the interpretation of courts the most inflexible. And, when legal decisions of a contrary character begin to be made, it would appear that it is a symptom of leaning towards emancipation. So abhorrent is the slave-code to every feeling of humanity, that just as soon as there is any hesitancy in the community about perpetuating the institution of slavery, judges begin to listen to the voice of their more honorable nature, and by favorable interpretations to soften its necessary severities.

Such decisions do not commend themselves to the professional admiration of legal gentlemen. But in the workings of the slave system, when the irresponsible power which it guarantees comes to be used by men of the most brutal nature, cases sometimes arise for trial where the consistent exposition of the law involves results so loathsome and frightful, that the judge prefers to be illogical, rather than inhuman. Like a spring outgushing in the desert, some noble man, now and then, from the fulness of his own better nature, throws out a legal decision, generously inconsistent with every principle and precedent of slave jurisprudence, and we bless God for it. All we wish is that there were more of them, for then should we hope that the day of redemption was drawing nigh.

The reader is now prepared to enter with us on the proof of this proposition: That the slave-code is designed only for the security of the master, and not with regard to the welfare of the slave.

This is implied in the whole current of law-making and law-administration, and is often asserted in distinct form, with a precision and clearness of legal accuracy which, in a literary point of view, are quite admirable. Thus, Judge Ruffin, after stating that considerations restricting the power of the master had often been drawn from a comparison of slavery with the relation of parent and child, master and apprentice, tutor and pupil, says distinctly:

The court does not recognize their application. There is no likeness between the cases. They are in opposition to each other, and there is an impassable gulf between them. \* \* \* \*

Wheeler's Law of Slavery, page 246.

In the one [case], the end in view is the happiness of the youth, born to equal rights with that governor, on whom the duty devolves of training the young to usefulness, in a station which he is afterwards to assume among freemen. \* \* \* \* With slavery it is far otherwise. The end is the profit of the master, his security and the public safety.

Wheeler's Law of Slavery, p. 239.

Not only is this principle distinctly asserted in so many words, but it is more distinctly implied in multitudes of the arguings and reasonings which are given as grounds of legal decisions. Even such provisions as seem to be for the benefit of the slave we often find carefully interpreted so as to show that it is only on account of his property value to his master that he is thus protected, and not from any consideration of humanity towards himself. Thus it has been decided that a master can bring no action for assault and battery on his slave, unless the injury be such as to produce a loss of service.

The spirit in which this question is discussed is worthy of remark. We give a brief statement of the case, as presented in Wheeler, p. 239.

Cornfute v. Dale, April Term, 1800. 1 Har. & Johns. Rep. 42 Lutw. 1481; 20 Viner's Abr. 454.

It was an action for assault and battery committed by Dale on one Cornfute's slave. It was contended by Cornfute's counsel that it was not necessary to prove loss of service, in order that the action should be sustained; that an action might be supported for beating plaintiff's horse; and that the lord might have an action for the battery of his villein, which is founded on this principle, that, as the villein could not support the action, the injury would be without redress, unless the lord could. On the other side it was said that Lord Chief Justice Raymond had decided that an assault on a horse was no cause of action, unless accompanied with a special damage of the animal, which would impair his value.

Chief Justice Chase decided that no redress could be obtained in the case, because the value of the slave had not been impaired, and without injury or wrong to the master no action could be sustained; and assigned this among other reasons for it, that there was no reciprocity in the case, as the master was not liable for assault and battery committed by his slave, neither could he gain redress for one committed upon his slave.

Let any reader now imagine what an amount of wanton cruelty and indignity may be heaped upon a slave man or woman or child without actually impairing their power to do service to the master, and he will have a full sense of the cruelty of this decision. Tate v. O'Neal, 1 Hawks, 418. U. S. Dig. Sup. 2, p. 797, § 121.

In the same spirit it has been held in North Carolina that patrols (night watchmen) are not liable to the master for inflicting punishment on the slave, unless their conduct clearly demonstrates malice against the master.

State v. Maner, 2 Hill's Rep. 453. Wheeler's Law of Slavery, page 243.

The cool-bloodedness of some of these legal discussions is forcibly shown by two decisions in Wheeler's Law of Slavery, p. 243. On the question whether the criminal offence of assault and battery can be committed on a slave, there are two decisions of the two States of South and North Carolina; and it is difficult to say which of these decisions has the preëminence for cool legal inhumanity. That of South Carolina reads thus.

Judge O'Neill says:

The criminal offence of assault and battery can not, at common law, be committed upon the person of a slave. For notwithstanding (for some purposes) a slave is regarded by law as a person, yet generally he is a mere chattel personal, and his right of personal protection belongs to his master, who can maintain an action of trespass for the battery of his slave. There can be therefore no offence against the state for a mere beating of a slave unaccompanied with any circumstances of cruelty (!!), or an attempt to kill and murder. The peace of the state is not thereby broken; for a slave is not generally regarded as legally capable of being within the peace of the state. He is not a citizen, and is not in that character entitled to her protection.

See State v. Hale. Wheeler, p. 239. 2 Hawk. N. C. Rep. 582.

What declaration of the utter indifference of the state to the sufferings of the slave could be more elegantly cool and clear? But in North Carolina it appears that the case is argued still more elaborately.

Chief Justice Taylor thus shows that, after all, there are reasons why an assault and battery upon the slave may, on the whole, have some such general connection with the comfort and security of the community, that it may be construed into a breach of the peace, and should be treated as an indictable offence.

1 Rev. Code 448.

The instinct of a slave may be, and generally is, tamed into subservience to his master's will, and from him he receives chastisement, whether it be merited or not, with perfect submission; for he knows the extent of the dominion assumed over him, and that the law ratifies the claim. But when the same authority is wantonly usurped by a stranger, nature is disposed to assert her rights, and to prompt the slave to a resistance, often momentarily successful, sometimes fatally so. The public peace is thus broken, as much as if a free man had been beaten; for the party of the aggressor is always the strongest, and such contests usually terminate by overpowering the slave, and inflicting on him a severe chastisement, without regard to the original cause of the conflict. There is, consequently, as much reason for making such offences indictable as if a white man had been the victim. A wanton injury committed on a slave is a great provocation to the owner, awakens his resentment, and has a direct tendency to a breach of the peace, by inciting him to seek immediate vengeance. If resented in the heat of blood, it would probably extenuate a homicide to manslaughter, upon the same principle with the case stated by Lord Hale, that if A riding on the road, B had whipped his horse out of the track, and then A had alighted and killed B. These offences are usually committed by men of dissolute habits, hanging loose upon society, who, being repelled from association with well-disposed citizens, take refuge in the company of colored persons and slaves, whom they deprave by their example, embolden by their familiarity, and then beat, under the expectation that a slave dare not resent a blow from a white man. If such offences may be committed with impunity, the public peace will not only be rendered extremely insecure, but the value of slave property must be much impaired, for the offenders can seldom make any reparation in damages. Nor is it necessary, in any case, that a person who has received an injury, real or imaginary, from a slave, should carve out his own justice; for the law has made ample and summary provision for the punishment of all trivial offences committed by slaves, by carrying them before a justice, who is authorized to pass sentence for their being publicly whipped. This provision, while it excludes the necessity of private vengeance, would seem to forbid its legality, since it effectually protects all persons from the insolence of slaves, even where their masters are unwilling to correct them upon complaint being made. The common law has often been called into efficient operation, for the punishment of public cruelty inflicted upon animals, for needless and wanton barbarity exercised even by masters upon their slaves, and for various violations of decency, morals, and comfort. Reason and analogy seem to require that a human being, although the subject of property, should be so far protected as the public might be injured through him.

For all purposes necessary to enforce the obedience of the slave, and to render him useful as property, the law secures to the master a complete authority over him, and it will not lightly interfere with the relation thus established. It is a more effectual guarantee of his right of property, when the slave is protected from wanton abuse from those who have no power over him; for it cannot be disputed that a slave is rendered less capable of performing his master's service when he finds himself exposed by the law to the capricious violence of every turbulent man in the community. If this is not a scrupulous disclaimer of all humane intention in the decision, as far as the slave is concerned, and an explicit declaration that he is protected only out of regard to the comfort of the community, and his property value to his master, it is difficult to see how such a declaration could be made. After all this cool-blooded course of remark, it is somewhat curious to come upon the following certainly most unexpected declaration, which occurs in the very next paragraph:

Mitigated as slavery is by the humanity of our laws, the refinement of manners, and by public opinion, which revolts at every instance of cruelty towards them, it would be an anomaly in the system of police which affects them, if the offence stated in the verdict were not indictable.

The reader will please to notice that this remarkable declaration is made of the State of North Carolina. We shall have occasion again to refer to it by and by, when we extract from the statute-book of North Carolina some specimens of these humane laws.

Jourdain v. Patton, July term, 1818. 5 Martin's Louis Rep. 615.

In the same spirit it is decided, under the law of Louisiana, that if an individual injures another's slave so as to make him entirely useless, and the owner recovers from him the full value of the slave, the slave by that act becomes thenceforth the property of the person who injured him. A decision to this effect is given in Wheeler's Law of Slavery, p. 249. A woman sued for an injury done to her slave by the slave of the defendant. The injury was such as to render him entirely useless, his only eye being put out. The parish court decreed that she should recover twelve hundred dollars, that the defendant should pay a further sum of twenty-five dollars a month from the time of the injury; also the physician's bill, and two hundred dollars for the sustenance of the slave during his life, and that he should remain forever in the possession of his mistress.

The case was appealed. The judge reversed the decision, and delivered the slave into the possession of the man whose slave had committed the outrage. In the course of the decision, the judge remarks, with that calm legal explicitness for which many decisions of this kind are remarkable, that

The principle of humanity, which would lead us to suppose that the mistress, whom he had long served, would treat her miserable blind slave with more kindness than the defendant, to whom the judgment ought to transfer him, cannot be taken into consideration in deciding this case.

Jan. term, 1828. 9 Martin La. Rep. 350.

Another case, reported in Wheeler's Law, page 198, the author thus summarily abridges. It is Dorothee v. Coquillon et al. A young girl, by will of

her mistress, was to have her freedom at twenty-one; and it was required by the will that in the mean time she should be educated in such a manner as to enable her to earn her living when free, her services in the mean time being bequeathed to the daughter of the defendant. Her mother (a free woman) entered complaint that no care was taken of the child's education, and that she was cruelly treated. The prayer of the petition was that the child be declared free at twenty-one, and in the mean time hired out by the sheriff. The suit was decided against the mother, on this ground,—that she could not sue for her daughter in a case where the daughter could not sue for herself were she of age,—the object of the suit being relief from ill-treatment during the time of her slavery, which a slave cannot sue for.

Jan. term, 1827. 4 M'Cord's Rep. 161. Wheeler's Law of Slavery, p. 201.

Observe, now, the following case of Jennings v. Fundeberg. It seems Jennings brings an action of trespass against Fundeberg for killing his slave. The case was thus: Fundeberg with others, being out hunting runaway negroes, surprised them in their camp, and, as the report says, "fired his gun towards them as they were running away, to induce them to stop." One of them, being shot through the head, was thus induced to stop,—and the master of the boy brought action for trespass against the firer for killing his slave.

The decision of the inferior court was as follows:

The court "thought the killing accidental, and that the defendant ought not to be made answerable as a trespasser." \* \* \* \*

"When one is lawfully interfering with the property of another, and accidentally destroys it, he is no trespasser, and ought not to be answerable for the value of the property. In this case, the defendant was engaged in a lawful and meritorious service, and if he really fired his gun in the manner stated it was an allowable act."

The superior judge reversed the decision, on the ground that in dealing with another person's property one is responsible for any injury which he could have avoided by any degree of circumspection. "The firing ... was rash and incautious."

Does not the whole spirit of this discussion speak for itself?

Jan. T. 1827. 4 M'Cord's Rep. 156.

See also the very next case in Wheeler's Law. Richardson v. Dukes, p. 202.

Trespass for killing the plaintiff's slave. It appeared the slave was stealing potatoes from a bank near the defendant's house. The defendant fired upon him with a gun loaded with buckshot, and killed him. The jury found a verdict for plaintiff for one dollar. Motion for a new trial.

The Court. Nott J. held, there must be a new trial; that the jury ought to have given the plaintiff the value of the slave. That if the jury were of opinion the slave was of bad character, some deduction from the usual price ought to be made, but the plaintiff was certainly entitled to his actual damage for killing his slave. Where property is in question, the value of the article, as nearly as it can be ascertained, furnishes a rule from which they are not at liberty to depart.

Wheeler's Law of Slavery, 220.

It seems that the value of this unfortunate piece of property was somewhat reduced from the circumstance of his "stealing potatoes." Doubtless he had his own best reasons for this; so, at least, we should infer from the following remark, which occurs in one of the reasonings of Judge Taylor, of N. Carolina.

"The act of 1786 (Iredell's Revisal, p. 588) does, in the preamble, recognize the fact, that many persons, by cruel treatment to their slaves, cause them to commit crimes for which they are executed. \* \* The cruel treatment here alluded to must consist in withholding from them the necessaries of life; and the crimes thus resulting are such as are calculated to furnish them with food and raiment."

Perhaps "stealing potatoes" in this case was one of the class of crimes alluded to.

Witsell v. Earnest & Parker. Wheeler, p. 202.

Again we have the following case:

The defendants went to the plantation of Mrs. Witsell for the purpose of hunting for runaway negroes; there being many in the neighborhood, and the place in considerable alarm. As they approached the house with loaded guns, a negro ran from the house, or near the house, towards a swamp, when they fired and killed him.

The judge charged the jury, that such circumstances might exist, by the excitement and alarm of the neighborhood, as to authorize the killing of a negro without the sanction of a magistrate.

This decision was reversed in the Superior Court, in the following language:

By the statute of 1740, any white man may apprehend and moderately correct any slave who may be found out of the plantation at which he is employed, and if the slave assaults the white person, he may be killed; but a slave who is merely flying away cannot be killed. Nor can the defendants be justified by common law, IF we consider the negro as a person; for they were not clothed with the authority of the law to apprehend him as a felon, and without such authority he could not be killed.

Wheeler, p. 252. June T., 1820. Walker's Rep. 83.

If we consider the negro a person, says the judge; and, from his decision in the case, he evidently intimates that he has a strong leaning to this opinion, though it has been contested by so many eminent legal authorities that he puts forth his sentiment modestly, and in an hypothetical form. The reader, perhaps, will need to be informed that the question whether the slave is to be considered a person or a human being in any respect has been extensively and ably argued on both sides in legal courts, and it may be a comfort to know that the balance of legal opinion inclines in favor of the slave. Judge Clarke, of Mississippi, is quite clear on the point, and argues very ably and earnestly, though, as he confesses, against very respectable legal authorities, that the slave is a person,—that he is a reasonable creature. The reasoning occurs in the case State of Mississippi v. Jones, and is worthy of attention as a literary curiosity.

It seems that a case of murder of a slave had been clearly made out and proved in the lower court, and that judgment was arrested and the case appealed on the ground whether, in that state, murder could be committed on a slave. Judge Clarke thus ably and earnestly argues:

The question in this case is, whether murder can be committed on a slave. Because individuals may have been deprived of many of their rights by society, it does not follow, that they have been deprived of all their rights. In some respects, slaves may be considered as chattels; but in others, they are regarded as men. The law views them as capable of committing crimes. This can only be upon the principle, that they are men and rational beings. The Roman law has been much relied on by the counsel of the defendant. That law was confined to the Roman empire, giving the power of life and death over captives in war, as slaves; but it no more extended here, than the similar power given to parents over the lives of their children. Much stress has also been laid by the defendant's counsel on the case cited from Taylor's Reports, decided in North Carolina; yet, in that case, two judges against one were of opinion, that killing a slave was murder. Judge Hall, who delivered the dissenting opinion in the above case based his conclusions, as we conceive, upon erroneous principles, by considering the laws of Rome applicable here. His inference, also, that a person cannot be condemned capitally, because he may be liable in a civil action, is not sustained by reason or authority, but appears to us to be in direct opposition to both. At a very early period in Virginia, the power of life over slaves was given by statute; but Tucker observes, that as soon as these statutes were repealed, it was at once considered by their courts that the killing of a slave might be murder. Commonwealth v. Dolly Chapman: indictment for maliciously stabbing a slave, under a statute. It has been determined in Virginia that slaves are persons. In the constitution of the United States, slaves are expressly designated as "persons." In this state the legislature have considered slaves as reasonable and accountable beings; and it would be a stigma upon the character of the state, and a reproach to the administration of justice, if the life of a slave could be taken with impunity, or if he could be murdered in cold blood, without subjecting the offender to the highest penalty known to the criminal jurisprudence of the country. Has the slave no rights, because he is deprived of his freedom? He is still a human being, and possesses all those rights of which he is not deprived by the positive provisions of the law; but in vain shall we look for any law passed by the enlightened and philanthropic legislature of this state, giving even to the master, much less to a stranger, power over the life of a slave. Such a statute would be worthy the age of Draco or Caligula, and would be condemned by the unanimous voice of the people of this state, where even cruelty to slaves, much [more] the taking away of life, meets with universal reprobation. By the provisions of our law, a slave may commit murder, and be punished with death; why, then, is it not murder to kill a slave? Can a mere chattel commit murder, and be subject to punishment?

The right of the master exists not by force of the law of nature or nations, but by virtue only of the positive law of the state; and although that gives to the master the right to command the services of the slave, requiring the master to feed and clothe the slave from infancy till death, yet it gives the master no right to take the life of the slave; and, if the offence be not murder, it is not a crime, and subjects the offender to no punishment.

The taking away the life of a reasonable creature, under the king's peace, with malice aforethought, express or implied, is murder at common law. Is not a slave a reasonable creature?—is he not a human being? And the meaning of this phrase, reasonable creature, is, a human being. For the killing a lunatic, an idiot, or even a child unborn, is murder, as much as the killing a philosopher; and has not the slave as much reason as a lunatic, an idiot, or an unborn child?

Thus triumphantly, in this nineteenth century of the Christian era and in the State of Mississippi, has it been made to appear that the slave is a reasonable creature,—a human being!

What sort of system, what sort of a public sentiment, was that which made this argument necessary?

And let us look at some of the admissions of this argument with regard to the nature of slavery. According to the judge, it is depriving human beings of many of their rights. Thus he says: "Because individuals may have been deprived of many of their rights by society, it does not follow that they have been deprived of all their rights." Again, he says of the slave: "He is still a human being, and possesses all those rights of which he is not deprived by the positive provisions of the law." Here he admits that the provisions of law deprive the slave of natural rights. Again he says: "The right of the master exists not by force of the law of nature or of nations, but by virtue only of the positive law of the state." According to the decision of this judge, therefore, slavery exists by the same right that robbery or oppression of any kind does,— the right of ability. A gang of robbers associated into a society have rights over all the neighboring property that they can acquire, of precisely the same kind.

With the same unconscious serenity does the law apply that principle of force and robbery which is the essence of slavery, and show how far the master may proceed in appropriating another human being as his property.

Wheeler, p. 28. Banks, Adm'r, v. Marksbury. Spring T. 1823. 3 Little's Rep. 275.

The question arises, May a master give a woman to one person, and her unborn children to another one? Let us hear the case argued. The unfortunate mother selected as the test point of this interesting legal principle comes to our view in the will of one Samuel Marksbury, under the style and denomination of "my negro wench Pen." Said Samuel states in his will that, for the good will and love he bears to his own children, he gives said negro wench Pen to son Samuel, and all her future increase to daughter Rachael. When daughter Rachael, therefore, marries, her husband sets up a claim for this increase,—as it is stated, quite off-hand, that the "wench had several children." Here comes a beautifully interesting case, quite stimulating to legal acumen. Inferior court decides that Samuel Marksbury could not have given away unborn children on the strength of the legal maxim, "Nemo dat quod non habet,"—i. e., "Nobody can give what he has not got,"—which certainly one should think sensible and satisfactory enough. The case, however, is appealed, and reversed in the superior court; and now let us hear the reasoning.

The judge acknowledges the force of the maxim above quoted,—says, as one would think any man might say, that it is quite a correct maxim,—the only difficulty being that it does not at all apply to the present case. Let us hear him:

He who is the absolute owner of a thing owns all its faculties for profit or increase; and he may, no doubt, grant the profits or increase, as well as the thing itself. Thus, it is every day's practice to grant the future rents or profits of real estate; and it is held that a man may grant the wool of a flock of sheep for years.

See also p. 33, Fanny v. Bryant, 4 J. J. Marshall's Rep., 368. In this almost precisely the same language is used. If the reader will proceed, he will find also this principle applied with equal clearness to the hiring, selling,

mortgaging of unborn children; and the perfect legal nonchalance of these discussions is only comparable to running a dissecting-knife through the course of all the heart-strings of a living subject, for the purpose of demonstrating the laws of nervous contraction.

Judge Stroud, in his sketch of the slave-laws, page 99, lays down for proof the following assertion: That the penal codes of the slave states bear much more severely on slaves than on white persons. He introduces his consideration of this proposition by the following humane and sensible remarks:

A being, ignorant of letters, unenlightened by religion, and deriving but little instruction from good example, cannot be supposed to have right conceptions as to the nature and extent of moral or political obligations. This remark, with but a slight qualification, is applicable to the condition of the slave. It has been just shown that the benefits of education are not conferred upon him, while his chance of acquiring a knowledge of the precepts of the gospel is so remote as scarcely to be appreciated. He may be regarded, therefore as almost without the capacity to comprehend the force of laws; and, on this account, such as are designed for his government should be recommended by their simplicity and mildness.

His condition suggests another motive for tenderness on his behalf in these particulars. He is unable to read, and holding little or no communication with those who are better informed than himself; how is he to become acquainted with the fact that a law for his observance has been made? To exact obedience to a law which has not been promulgated,—which is unknown to the subject of it,—has ever been deemed most unjust and tyrannical. The reign of Caligula, were it obnoxious to no other reproach than this, would never cease to be remembered with abhorrence.

The lawgivers of the slaveholding states seem, in the formation of their penal codes, to have been uninfluenced by these claims of the slave upon their compassionate consideration. The hardened convict moves their sympathy, and is to be taught the laws before he is expected to obey them; yet the guiltless slave is subjected to an extensive system of cruel enactments, of no part of which, probably, has he ever heard.

Parts of this system apply to the slave exclusively, and for every infraction a large retribution is demanded; while, with respect to offences for which whites as well as slaves are amenable, punishments of much greater severity are inflicted upon the latter than upon the former.

This heavy charge of Judge Stroud is sustained by twenty pages of proof, showing the very great disproportion between the number of offences made capital for slaves, and those that are so for whites. Concerning this, we find the following cool remark in Wheeler's Law of Slavery, page 222, note.

Much has been said of the disparity of punishment between the white inhabitants and the slaves and negroes of the same state; that slaves are punished with much more severity, for the commission of similar crimes, by white persons, than the latter. The charge is undoubtedly true to a considerable extent. It must be remembered that the primary object of the enactment of penal laws, is the protection and security of those who make them. The slave has no agency in making them. He is indeed one cause of the apprehended evils to the other class, which those laws are expected to remedy. That he should be held amenable for a violation of those rules established for the security of the other, is the natural result of the state in which he is placed. And the severity of those rules will always bear a relation to that danger, real or ideal, of the other class.

It has been so among all nations, and will ever continue to be so, while the disparity between bond and free remains.

The State v. Mann. Dec. Term, 1829. 2 Devereaux's North Carolina Rep. 265.

A striking example of a legal decision to this purport is given in Wheeler's Law of Slavery, page 224. The case, apart from legal technicalities, may be thus briefly stated:

The defendant, Mann, had hired a slave-woman for a year. During this time the slave committed some slight offence, for which the defendant undertook to chastise her. While in the act of doing so the slave ran off, whereat he shot at and wounded her. The judge in the inferior court charged the jury that if they believed the punishment was cruel and unwarrantable, and disproportioned to the offence, in law the defendant was guilty, as he had only a special property in the slave. The jury finding evidence that the punishment had been cruel, unwarrantable and disproportioned to the offence, found verdict against the defendant. But on what ground?—Because, according to the law of North Carolina, cruel, unwarrantable, disproportionate punishment of a slave from a master, is an indictable offence? No. They decided against the defendant, not because the punishment was cruel and unwarrantable, but because he was not the person who had the right to inflict it, "as he had only a SPECIAL right of property in the slave."

The defendant appealed to a higher court, and the decision was reversed, on the ground that the hirer has for the time being all the rights of the master. The remarks of Judge Ruffin are so characteristic, and so strongly express the conflict between the feelings of the humane judge and the logical necessity of a strict interpreter of slave-law, that we shall quote largely from it. One cannot but admire the unflinching calmness with which a man, evidently possessed of honorable and humane feelings, walks through the most extreme and terrible results and conclusions, in obedience to the laws of legal truth. Thus he says:

A judge cannot but lament, when such cases as the present are brought into judgment. It is impossible that the reasons on which they go can be appreciated, but where institutions similar to our own exist, and are thoroughly understood. The struggle, too, in the judge's own breast, between the feelings of the man and the duty of the magistrate, is a severe one, presenting strong temptation to put aside such questions, if it be possible. It is useless, however, to complain of things inherent in our political state. And it is criminal in a court to avoid any responsibility which the laws impose. With whatever reluctance, therefore, it is done, the court is compelled to express an opinion upon the extent of the dominion of the master over the slave in North Carolina. The indictment charges a battery on Lydia, a slave of Elizabeth Jones.... The inquiry here is, whether a cruel and unreasonable battery on a slave by the hirer is indictable. The judge below instructed the jury that it is. He seems to have put it on the ground, that the defendant had but a special property. Our laws uniformly treat the master, or other person having the possession and command of the slave, as entitled to the same extent of authority. The object is the same, the service of the slave; and the same powers must be confided. In a criminal proceeding, and, indeed, in reference to all other persons but the general owner, the hirer and possessor of the slave, in relation to both rights and duties, is, for the time being, the owner.... But, upon the general question, whether the owner is answerable criminaliter, for a battery upon his own slave, or other exercise of authority of force, not forbidden by statute, the court entertains but little doubt. That he is so liable, has never been decided; nor, as far as is known, been hitherto contended. There has been no prosecution of the sort. The established habits and uniform practice of the country, in this respect, is the best evidence of the portion of power deemed by the whole community requisite to the preservation of the master's dominion. If we thought differently, we could not set our notions in array against the judgment of everybody else, and say that this or that authority may be safely lopped off. This has indeed been assimilated at the bar to the other domestic relations; and arguments drawn from the wellestablished principles, which confer and restrain the authority of the parent over the child, the tutor over the pupil, the master over the apprentice, have been pressed on us.

The court does not recognize their application. There is no likeness between the cases. They are in opposition to each other, and there is an impassable gulf between them. The difference is that which exists between freedom and slavery; and a greater cannot be imagined. In the one, the end in view is the happiness of the youth born to equal rights with that governor on whom the duty devolves of training the young to usefulness, in a station which he is afterwards to assume among freemen. To such an end, and with such a subject, moral and intellectual instruction seem the natural means; and, for the most part, they are found to suffice. Moderate force is superadded only to make the others effectual. If that fail, it is better to leave the party to his own headstrong passions, and the ultimate correction of the law, than to allow it to be immoderately inflicted by a private person. With slavery it is far otherwise. The end is the profit of the master, his security and the public safety; the subject, one doomed, in his own person and his posterity, to live without knowledge, and without the capacity to make anything his own, and to toil that another may reap the fruits. What moral considerations shall be addressed to such a being, to convince him what it is impossible but that the most stupid must feel and know can never be true,—that he is thus to labor upon a principle of natural duty, or for the sake of his own personal happiness? Such services can only be expected from one who has no will of his own; who surrenders his will in implicit obedience to that of another. Such obedience is the consequence only of uncontrolled authority over the body. There is nothing else which can operate to produce the effect. The power of the master must be absolute, to render the submission of the slave perfect. I most freely confess my sense of the harshness of this proposition. I feel it as deeply as any man can. And, as a principle of moral right, every person in his retirement must repudiate it. But, in the actual condition of things, it must be so. There is no remedy. This discipline belongs to the state of slavery. They cannot be disunited without abrogating at once the rights of the master, and absolving the slave from his subjection. It constitutes the curse of slavery to both the bond and the free portions of our population. But it is inherent in the relation of master and slave. That there may be particular instances of cruelty and deliberate barbarity, where in conscience the law might properly interfere, is most probable. The difficulty is to determine where a court may properly begin. Merely in the abstract, it may well be asked which power of the master accords with right. The answer will probably sweep away all of them. But we cannot look at the matter in that light. The truth is that we are forbidden to enter upon a train of general reasoning on the subject. We cannot allow the right of the master to be brought into discussion in the courts of justice. The slave, to remain a slave, must be made sensible that there is no appeal from his master; that his power is, in no instance, usurped, but is conferred by the laws of man, at least, if not by the law of God. The danger would be great, indeed, if the tribunals of justice should be called on to graduate the punishment appropriate to every temper and every dereliction of menial duty.

No man can anticipate the many and aggravated provocations of the master which the slave would be constantly stimulated by his own passions, or the instigation of others, to give; or the consequent wrath of the master, prompting him to bloody vengeance upon the turbulent traitor; a vengeance generally practised with impunity, by reason of its privacy. The court, therefore, disclaims the power of changing the relation in which these parts of our people stand to each other.

I repeat, that I would gladly have avoided this ungrateful question. But, being brought to it, the court is compelled to declare that while slavery exists amongst us in its present state, or until it shall seem fit to the legislature to interpose express enactments to the contrary, it will be the imperative duty of the judges to recognize the full dominion of the owner over the slave, except where the exercise of it is forbidden by statute.

And this we do upon the ground that this dominion is essential to the value of slaves as property, to the security of the master and the public tranquility, greatly dependent upon their subordination; and, in fine, as most effectually securing the general protection and comfort of the slaves themselves. Judgment below reversed; and judgment entered for the defendant.

No one can read this decision, so fine and clear in expression, so dignified and solemn in its earnestness, and so dreadful in its results, without feeling at once deep respect for the man and horror for the system. The man, judging him from this short specimen, which is all the author knows, has one of that high order of minds, which looks straight through all verbiage and sophistry to the heart of every subject which it encounters. He has, too, that noble scorn of dissimulation, that straight-forward determination not to call a bad thing by a good name, even when most popular and reputable and legal, which it is to be wished could be more frequently seen, both in our Northern and Southern States. There is but one sole regret; and that is that such a man, with such a mind, should have been merely an expositor, and not a reformer of law.

4. We except the State of Louisiana. Owing to the influence of the French code in that state, more really humane provisions prevail there. How much these provisions avail in point of fact, will be shown when we come to that part of the subject.

5. More recently the author has met with a passage in a North Carolina newspaper, containing some further particulars of the life of Judge Ruffin, which have proved interesting to her, and may also to the reader.

From the Raleigh (N. C.) Register.

Resignation of the Chief Justice of the State of North Carolina.

We publish below the letter of Chief Justice Ruffin, of the Supreme Court, resigning his seat on the bench.

This act takes us, and no less will it take the state, by surprise. The public are not prepared for it; and we doubt not there will scarcely be an exception to

the deep and general regret which will be felt throughout the state. Judge Ruffin's great and unsurpassed legal learning, his untiring industry, the ease with which he mastered the details and comprehended the whole of the most complicated cases, were the admiration of the bar; and it has been a common saying of the ablest lawyers of the state, for a long time past, that his place on the bench could be supplied by no other than himself.

He is now, as we learn, in the sixty-fifth year of his age, in full possession of his usual excellent health, unaffected, so far as we can discover, in his natural vigor and strength, and certainly without any symptom of mental decay. Forty-five years ago he commenced the practice of the law. He has been on the bench twenty-eight years, of which time he has been one of the Supreme Court twenty-three years. During this long public career he has, in a pecuniary point of view, sacrificed many thousands; for there has been no time of it in which he might not, with perfect ease, have doubled, by practice, the amount of his salary as judge.

"To the Honorable the General Assembly of North Carolina, now in session.

"Gentlemen: I desire to retire to the walks of private life, and therefore pray your honorable body to accept the resignation of my place on the bench of the Supreme Court. In surrendering this trust, I would wish to express my grateful sense of the confidence and honors so often and so long bestowed on me by the General Assembly. But I have no language to do it suitably. I am very sensible that they were far beyond my deserts, and that I have made an insufficient return of the service. Yet I can truly aver that, to the best of my ability, I have administered the law as I understood it, and to the ends of suppressing crime and wrong, and upholding virtue, truth and right; aiming to give confidence to honest men, and to confirm in all good citizens love for our country, and a pure trust in her law and magistrates.

"In my place I hope I have contributed to these ends; and I firmly believe that our laws will, as heretofore, be executed, and our people happy in the administration of justice, honest and contented, as long as they keep, and only so long as they keep, the independent and sound judiciary now established in the constitution; which, with all other blessings, I earnestly pray may be perpetuated to the people of North Carolina.

"I have the honor to be, gentlemen, your most obliged and obedient servant,

Thomas Ruffin.

"Raleigh, November 10, 1852."

#### **CHAPTER III.**

## SOUTHER v. THE COMMONWEALTH—THE NE PLUS ULTRA OF LEGAL HUMANITY.

"Yet in the face of such laws and decisions as these! Mrs. Stowe, &c."— Courier & Enquirer.

The case of Souther v. the Commonwealth has been cited by the Courier & Enquirer as a particularly favorable specimen of judicial proceedings under the slave-code, with the following remark:

And yet, in the face of such laws and decisions as these, Mrs. Stowe winds up a long series of cruelties upon her other black personages, by causing her faultless hero, Tom, to be literally whipped to death in Louisiana, by his master, Legree; and these acts, which the laws make criminal, and punish as such, she sets forth in the most repulsive colors, to illustrate the institution of slavery!

By the above language the author was led into the supposition that this case had been conducted in a manner so creditable to the feelings of our common humanity as to present a fairer side of criminal jurisprudence in this respect. She accordingly took the pains to procure a report of the case, designing to publish it as an offset to the many barbarities which research into this branch of the subject obliges one to unfold. A legal gentleman has copied the case from Grattan's Reports, and it is here given. If the reader is astounded at it, he cannot be more so than was the writer.

Souther v. The Commonwealth. 7 Grattan, 673, 1851.

The killing of a slave by his master and owner, by wilful and excessive whipping, is murder in the first degree: though it may not have been the purpose and intention of the master and owner to kill the slave.

Simeon Souther was indicted at the October Term, 1850, of the Circuit Court for the County of Hanover, for the murder of his own slave. The indictment contained fifteen counts, in which the various modes of punishment and torture by which the homicide was charged to have been committed were stated singly, and in various combinations. The fifteenth count unites them all: and, as the court certifies that the indictment was sustained by the evidence, the giving the facts stated in that count will show what was the charge against the prisoner, and what was the proof to sustain it.

The count charged that on the 1st day of September, 1849, the prisoner tied his negro slave, Sam, with ropes about his wrists, neck, body, legs and ankles,

to a tree. That whilst so tied, the prisoner first whipped the slave with switches. That he next beat and cobbed the slave with a shingle, and compelled two of his slaves, a man and a woman, also to cob the deceased with the shingle. That whilst the deceased was so tied to the tree, the prisoner did strike, knock, kick, stamp and beat him upon various parts of his head, face and body; that he applied fire to his body; \* \* \* \* that he then washed his body with warm water, in which pods of red pepper had been put and steeped; and he compelled his two slaves aforesaid also to wash him with this same preparation of warm water and red pepper. That after the tying, whipping, cobbing, striking, beating, knocking, kicking, stamping, wounding, bruising, lacerating, burning, washing and torturing, as aforesaid, the prisoner untied the deceased from the tree in such way as to throw him with violence to the ground; and he then and there did knock, kick, stamp and beat the deceased upon his head, temples, and various parts of his body. That the prisoner then had the deceased carried into a shed-room of his house, and there he compelled one of his slaves, in his presence, to confine the deceased's feet in stocks, by making his legs fast to a piece of timber, and to tie a rope about the neck of the deceased, and fasten it to a bed-post in the room, thereby strangling, choking and suffocating the deceased. And that whilst the deceased was thus made fast in stocks as aforesaid, the prisoner did kick, knock, stamp and beat him upon his head, face, breast, belly, sides, back and body; and he again compelled his two slaves to apply fire to the body of the deceased, whilst he was so made fast as aforesaid. And the count charged that from these various modes of punishment and torture the slave Sam then and there died. It appeared that the prisoner commenced the punishment of the deceased in the morning, and that it was continued throughout the day: and that the deceased died in the presence of the prisoner, and one of his slaves, and one of the witnesses, whilst the punishment was still progressing.

Field J. delivered the opinion of the court.

The prisoner was indicted and convicted of murder in the second degree, in the Circuit Court of Hanover, at its April term last past, and was sentenced to the penitentiary for five years, the period of time ascertained by the jury. The murder consisted in the killing of a negro man-slave by the name of Sam, the property of the prisoner, by cruel and excessive whipping and torture, inflicted by Souther, aided by two of his other slaves, on the 1st day of September, 1849. The prisoner moved for a new trial, upon the ground that the offence, if any, amounted only to manslaughter. The motion for a new trial was overruled, and a bill of exceptions taken to the opinion of the court, setting forth the facts proved, or as many of them as were deemed material for the consideration of the application for a new trial. The bill of exception states: That the slave Sam, in the indictment mentioned, was the slave and property of the prisoner. That for the purpose of chastising the slave for the offence of getting drunk, and dealing as the slave confessed and alleged with Henry and Stone, two of the witnesses for the Commonwealth, he caused him to be tied and punished in the presence of the said witnesses, with the exception of slight whipping with peach or apple-tree switches, before the said witnesses arrived at the scene after they were sent for by the prisoner (who were present by request from the defendant), and of several slaves of the prisoner, in the manner and by the means charged in the indictment; and the said slave died under and from the infliction of the said punishment, in the presence of the prisoner, one of his slaves, and of one of the witnesses for the Commonwealth. But it did not appear that it was the design of the prisoner to kill the said slave, unless such design be properly inferable from the manner, means and duration of the punishment. And, on the contrary, it did appear that the prisoner frequently declared, while the said slave was undergoing the punishment, that he believed the said slave was feigning, and pretending to be suffering and injured when he was not. The judge certifies that the slave was punished in the manner and by the means charged in the indictment. The indictment contains fifteen counts, and sets forth a case of the most cruel and excessive whipping and torture.

It is believed that the records of criminal jurisprudence do not contain a case of more atrocious and wicked cruelty than was presented upon the trial of Souther; and yet it has been gravely and earnestly contended here by his counsel that his offence amounts to manslaughter only.

It has been contended by the counsel of the prisoner that a man cannot be indicted and prosecuted for the cruel and excessive whipping of his own slave. That it is lawful for the master to chastise his slave, and that if death ensues from such chastisement, unless it was intended to produce death, it is like the case of homicide which is committed by a man in the performance of a lawful act, which is manslaughter only. It has been decided by this court in Turner's case, 5 Rand, that the owner of a slave, for the malicious, cruel and excessive beating of his own slave, cannot be indicted; yet it by no means follows, when such malicious, cruel and excessive beating results in death, though not intended and premeditated, that the beating is to be regarded as lawful for the purpose of reducing the crime to manslaughter, when the whipping is inflicted for the sole purpose of chastisement. It is the policy of the law, in respect to the relation of master and slave, and for the sake of securing proper subordination and obedience on the part of the slave, to protect the master from prosecution in all such cases, even if the whipping and punishment be malicious, cruel and excessive. But in so inflicting punishment for the sake of punishment, the owner of the slave acts at his peril; and if death ensues in consequence of such punishment, the relation of master and slave affords no ground of excuse or palliation. The principles of the common law, in relation to homicide, apply to his case without gualification or exception; and according to those principles, the act of the prisoner, in the case under consideration, amounted to murder. \* \* \* The crime of the prisoner is not manslaughter, but murder in the first degree.

On the case now presented there are some remarks to be made.

This scene of torture, it seems, occupied about twelve hours. It occurred in the State of Virginia, in the County of Hanover. Two white men were witnesses to nearly the whole proceeding, and, so far as we can see, made no effort to arouse the neighborhood, and bring in help to stop the outrage. What sort of an education, what habits of thought, does this presuppose in these men?

The case was brought to trial. It requires no ordinary nerve to read over the counts of this indictment. Nobody, one would suppose, could willingly read them twice. One would think that it would have laid a cold hand of horror on every heart;—that the community would have risen, by an universal sentiment, to shake out the man, as Paul shook the viper from his hand. It seems, however, that they were quite self-possessed; that lawyers calmly sat, and examined, and cross-examined, on particulars known before only in the records of the Inquisition; that it was "ably and earnestly argued" by educated, intelligent, American men, that this catalogue of horrors did not amount to a murder! and, in the cool language of legal precision, that "the offence, IF ANY, amounted to manslaughter;" and that an American jury found that the offence was murder in the second degree. Any one who reads the indictment will certainly think that, if this be murder in the second degree, in Virginia, one might earnestly pray to be murdered in the first degree, to begin with. Had Souther walked up to the man, and shot him through the head with a pistol, before white witnesses, that would have been murder in the first degree. As he preferred to spend twelve hours in killing him by torture, under the name of "chastisement," that, says the verdict, is murder in the second degree; "because," says the bill of exceptions, with admirable coolness, "it did not appear that it was the design of the prisoner to kill the slave, UNLESS SUCH DESIGN BE PROPERLY INFERABLE FROM THE MANNER, MEANS AND DURATION, OF THE PUNISHMENT."

The bill evidently seems to have a leaning to the idea that twelve hours spent in beating, stamping, scalding, burning and mutilating a human being, might possibly be considered as presumption of something beyond the limits of lawful chastisement. So startling an opinion, however, is expressed cautiously, and with a becoming diffidence, and is balanced by the very striking fact, which is also quoted in this remarkable paper, that the prisoner frequently declared, while the slave was undergoing the punishment, that he believed the slave was feigning and pretending to be suffering, when he was not. This view appears to have struck the court as eminently probable,—as going a long way to prove the propriety of Souther's intentions, making it at least extremely probable that only correction was intended.

It seems, also, that Souther, so far from being crushed by the united opinion of the community, found those to back him who considered five years in the penitentiary an unjust severity for his crime, and hence the bill of exceptions from which we have quoted, and the appeal to the Superior Court; and hence the form in which the case stands in law-books, "Souther v. the Commonwealth." Souther evidently considers himself an ill-used man, and it is in this character that he appears before the Superior Court.

As yet there has been no particular overflow of humanity in the treatment of the case. The manner in which it has been discussed so far reminds one of nothing so much as of some discussions which the reader may have seen quoted from the records of the Inquisition, with regard to the propriety of roasting the feet of children who have not arrived at the age of thirteen years, with a view to eliciting evidence.

Let us now come to the decision of the Superior Court, which the editor of the Courier & Enquirer thinks so particularly enlightened and humane. Judge Field thinks that the case is a very atrocious one, and in this respect he seems to differ materially from judge, jury and lawyers, of the court below. Furthermore, he doubts whether the annals of jurisprudence furnish a case of equal atrocity, wherein certainly he appears to be not far wrong; and he also states unequivocally the principle that killing a slave by torture under the name of correction is murder in the first degree; and here too, certainly, everybody will think that he is also right: the only wonder being that any man could ever have been called to express such an opinion, judicially. But he states, quite as unequivocally as Judge Ruffin, that awful principle of slave-laws, that the law cannot interfere with the master for any amount of torture inflicted on his slave which does not result in death. The decision, if it establishes anything, establishes this principle quite as strongly as it does the other. Let us hear the words of the decision:

It has been decided by this court, in Turner's case, that the owner of a slave, for the malicious, cruel and excessive beating of his own slave, cannot be indicted. \* \* \* \* \* It is the policy of the law, in respect to the relation of master and slave, and for the sake of securing proper subordination and obedience on the part of the slave, to protect the master from prosecution in all such cases, even if the whipping and punishment be malicious, cruel and excessive.

What follows as a corollary from this remarkable declaration is this,—that if the victim of this twelve hours' torture had only possessed a little stronger constitution, and had not actually died under it, there is no law in Virginia by which Souther could even have been indicted for misdemeanor.

If this is not filling out the measure of the language of St. Clare, that "he who goes the furthest and does the worst only uses within limits the power which the law gives him," how could this language be verified? Which is "the worst," death outright, or torture indefinitely prolonged? This decision, in so many words, gives every master the power of indefinite torture, and takes from him only the power of terminating the agony by merciful death. And this is the judicial decision which the Courier & Enquirer cites as a perfectly convincing specimen of legal humanity. It must be hoped that the editor never read the decision, else he never would have cited it. Of all who knock at the charnel-house of legal precedents, with the hope of disinterring any evidence of humanity in the slave system, it may be said, in the awful words of the Hebrew poet:

"He knoweth not that the dead are there,

And that her guests are in the depths of hell."

The upshot of this case was, that Souther, instead of getting off from his five years' imprisonment, got simply a judicial opinion from the Superior Court that he ought to be hung; but he could not be tried over again, and, as we may infer from all the facts in the case that he was a man of tolerably resolute nerves and not very exquisite sensibility, it is not likely that the opinion gave him any very serious uneasiness. He has probably made up his mind to get over his five years with what grace he may. When he comes out, there is no law in Virginia to prevent his buying as many more negroes as he chooses, and going over the same scene with any one of them at a future time, if only he profit by the information which has been so explicitly conveyed to him in this decision, that he must take care and stop his tortures short of the point of death,—a matter about which, as the history of the Inquisition shows, men, by careful practice, can be able to judge with considerable precision. Probably, also, the next time, he will not be so foolish as to send out and request the attendance of two white witnesses, even though they may be so complacently interested in the proceedings as to spend the whole day in witnessing them without effort at prevention.

Slavery, as defined in American law, is no more capable of being regulated in its administration by principles of humanity, than the torture system of the Inquisition. Every act of humanity of every individual owner is an illogical result from the legal definition; and the reason why the slave-code of America is more atrocious than any ever before exhibited under the sun, is that the Anglo-Saxon race are a more coldly and strictly logical race, and have an unflinching courage to meet the consequences of every premise which they lay down, and to work out an accursed principle, with mathematical accuracy, to its most accursed results. The decisions in American law-books show nothing so much as this severe, unflinching accuracy of logic. It is often and evidently, not because judges are inhuman or partial, but because they are logical and truthful, that they announce from the bench, in the calmest manner, decisions which one would think might make the earth shudder, and the sun turn pale.

The French and the Spanish nations are, by constitution, more impulsive, passionate and poetic, than logical; hence it will be found that while there may be more instances of individual barbarity, as might be expected among impulsive and passionate people, there is in their slave-code more exhibition of humanity. The code of the State of Louisiana contains more really humane provisions, were there any means of enforcing them, than that of any other state in the Union.

It is believed that there is no code of laws in the world which contains such a perfect cabinet crystallization of every tear and every drop of blood which can be wrung from humanity, so accurately, elegantly and scientifically arranged, as the slave-code of America. It is a case of elegant surgical instruments for the work of dissecting the living human heart;—every instrument wrought with exactest temper and polish, and adapted with exquisite care, and labelled with the name of the nerve or artery or muscle which it is designed to sever. The instruments of the anatomist are instruments of earthly steel and wood, designed to operate at most on perishable and corruptible matter; but these are instruments of keener temper, and more ethereal workmanship, designed in the most precise and scientific manner to DESTROY THE IMMORTAL SOUL, and carefully and gradually to reduce man from the high position of a free agent, a social, religious, accountable being, down to the condition of the brute, or of inanimate matter.

#### CHAPTER IV.

#### **PROTECTIVE STATUTES.**

Apprentices protected.—Outlawry.—Melodrama of Prue in the Swamp.— Harry the Carpenter, a Romance of Real Life.

But the question now occurs, Are there not protective statutes, the avowed object of which is the protection of the life and limb of the slave? We answer, there are; and these protective statutes are some of the most remarkable pieces of legislation extant.

That they were dictated by a spirit of humanity, charity, which hopeth all things, would lead us to hope; but no newspaper stories of bloody murders and

shocking outrages convey to the mind so dreadful a picture of the numbness of public sentiment caused by slavery as these so-called protective statutes. The author copies the following from the statutes of North Carolina. Section 3d of the act passed in 1798 runs thus:

Whereas by another Act of the Assembly, passed in 1774, the killing of a slave, however wanton, cruel and deliberate, is only punishable in the first instance by imprisonment and paying the value thereof to the owner, which distinction of criminality between the murder of a white person and one who is equally a human creature, but merely of a different complexion, is disgraceful to humanity, and degrading in the highest degree to the laws and principles of a free, Christian and enlightened country, Be it enacted, &c., That if any person shall hereafter be guilty of wilfully and maliciously killing a slave, such offender shall, upon the first conviction thereof, be adjudged guilty of murder, and shall suffer the same punishment as if he had killed a free man: "Provided always, this act shall not extend to the person killing a slave outlawed by virtue of any Act of Assembly of this state, or to any slave in the act of resistance to his lawful owner or master, or to any slave dying under moderate correction."

A law with a like proviso, except the outlawry clause, exists in Tennessee. See Caruthers and Nicholson's Compilation, 1836, p. 676.

The language of the constitution of Georgia, art. iv., sec. 12, is as follows:

Any person who shall maliciously dismember or deprive a slave of life shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection by such slave, and unless such death should happen by accident in giving such slave moderate correction.—Cobb's Dig. 1851, p. 1125.

Let now any Englishman or New Englander imagine that such laws with regard to apprentices had ever been proposed in Parliament or State Legislature under the head of protective acts;—laws which in so many words permit the killing of the subject in three cases, and those comprising all the acts which would generally occur under the law; namely, if the slave resist, if he be outlawed, or if he die under moderate correction.

What rule in the world will ever prove correction immoderate, if the fact that the subject dies under it is not held as proof? How many such "accidents" would have to happen in Old England or New England, before Parliament or Legislature would hear from such a protective law.

"But," some one may ask, "what is the outlawry spoken of in this act?" The question is pertinent, and must be answered. The author has copied the following from the Revised Statutes of North Carolina, chap. cxi, sec. 22. It

may be remarked in passing that the preamble to this law presents rather a new view of slavery to those who have formed their ideas from certain pictures of blissful contentment and Arcadian repose, which have been much in vogue of late.

Whereas, MANY TIMES slaves run away and be out, hid and lurking in swamps, woods, and other obscure places, killing cattle and hogs, and committing other injuries to the inhabitants of this state; in all such cases, upon intelligence of any slave or slaves lying out as aforesaid, any two justices of the peace for the county wherein such slave or slaves is or are supposed to lurk or do mischief, shall, and they are hereby empowered and required to issue proclamation against such slave or slaves (reciting his or their names, and the name or names of the owner or owners, if known), thereby requiring him or them, and every of them, forthwith to surrender him or themselves; and also to empower and require the sheriff of the said county to take such power with him as he shall think fit and necessary for going in search and pursuit of, and effectually apprehending, such outlying slave or slaves; which proclamation shall be published at the door of the court-house, and at such other places as said justices shall direct. And if any slave or slaves against whom proclamation hath been thus issued stay out, and do not immediately return home, it shall be lawful for any person or persons whatsoever to kill and destroy such slave or slaves by such ways and means as he shall think fit, without accusation or impeachment of any crime for the same.

What ways and means have been thought fit, in actual experience, for the destruction of the slave? What was done with the negro McIntosh, in the streets of St. Louis in open daylight, and endorsed at the next sitting of the Supreme Court of the state, as transcending the sphere of law, because it was "an act of the majority of her most respectable citizens"? If these things are done in the green tree, what will be done in the dry? If these things have once been done in the open streets of St. Louis, by "a majority of her most respectable citizens," what will be done in the lonely swamps of North Carolina, by men of the stamp of Souther and Legree?

This passage of the Revised Statutes of North Carolina is more terribly suggestive to the imagination than any particulars into which the author of Uncle Tom's Cabin has thought fit to enter. Let us suppose a little melodrama quite possible to have occurred under this act of the legislature. Suppose some luckless Prue or Peg, as in the case we have just quoted, in State v. Mann, getting tired of the discipline of whipping, breaks from the overseer, clears the dogs, and gets into the swamp, and there "lies out," as the act above graphically says. The act which we are considering says that many slaves do this, and doubtless they have their own best reasons for it. We all know what fascinating places to "lie out" in these Southern swamps are. What with alligators and moccasin snakes, mud and water, and poisonous vines, one would be apt to think the situation not particularly eligible; but still, Prue "lies out" there. Perhaps in the night some husband or brother goes to see her, taking a hog, or some animal of the plantation stock, which he has ventured his life in killing, that she may not perish with hunger. Master overseer walks up to master proprietor, and reports the accident; master proprietor mounts his horse, and assembles to his aid two justices of the peace.

In the intervals between drinking brandy and smoking cigars a proclamation is duly drawn up, summoning the contumacious Prue to surrender, and requiring sheriff of said county to take such power as he shall think fit to go in search and pursuit of said slave; which proclamation, for Prue's further enlightenment, is solemnly published at the door of the courthouse, and "at such other places as said justices shall direct." Let us suppose, now, that Prue, given over to hardness of heart and blindness of mind, pays no attention to all these means of grace, put forth to draw her to the protective shadow of the patriarchal roof. Suppose, further, as a final effort of longsuffering, and to leave her utterly without excuse, the worthy magistrate rides forth in full force,—man, horse, dog and gun,—to the very verge of the swamp, and there proclaims aloud the merciful mandate. Suppose that, hearing the yelping of the dogs and the proclamation of the sheriff mingled together, and the shouts of Loker, Marks, Sambo and Quimbo, and other such posse, black and white, as a sheriff can generally summon on such a hunt, this very ignorant and contumacious Prue only runs deeper into the swamp, and continues obstinately "lying out," as aforesaid; ---now she is by act of the assembly outlawed, and, in the astounding words of the act, "it shall be lawful for any person or persons whatsoever to kill and destroy her, by such ways and means as he shall think fit, without accusation or impeachment of any crime for the same." What awful possibilities rise to the imagination under the fearfully suggestive clause "by such ways and means as he shall think fit!" Such ways and means as ANY man shall think fit, of any character, of any degree of fiendish barbarity!! Such a permission to kill even a dog, by "any ways and means which anybody should think fit," never ought to stand on the law-books of a Christian nation; and yet this stands against one bearing that same humanity which Jesus Christ bore,—against one, perhaps, who, though blinded, darkened and ignorant, he will not be ashamed to own, when he shall come in the glory of his Father, and all his holy angels with him!

That this law has not been a dead letter there is sufficient proof. In 1836 the following proclamation and advertisement appeared in the "Newbern (N. C.) Spectator:"

State of North Carolina, Lenoir County.—Whereas complaint hath been this day made to us, two of the justices of the peace for the said county, by William D. Cobb, of Jones County, that two negro-slaves belonging to him, named Ben (commonly known by the name of Ben Fox) and Rigdon, have absented themselves from their said master's service, and are lurking about in the Counties of Lenoir and Jones, committing acts of felony; these are, in the name of the state, to command the said slaves forthwith to surrender themselves, and turn home to their said master. And we do hereby also require the sheriff of said County of Lenoir to make diligent search and pursuit after the above-mentioned slaves.... And we do hereby, by virtue of an act of assembly of this state concerning servants and slaves, intimate and declare, if the said slaves do not surrender themselves and return home to their master immediately after the publication of these presents, that any person may kill or destroy said slaves by such means as he or they think fit, without accusation or impeachment of any crime or offence for so doing, or without incurring any penalty or forfeiture thereby.

Given under our hands and seals, this 12th of November, 1836.

B. Coleman, J. P. [Seal.]

Jas. Jones, J. P. [Seal.]

\$200 Reward.—Ran away from the subscriber, about three years ago, a certain negro-man, named Ben, commonly known by the name of Ben Fox; also one other negro, by the name of Rigdon, who ran away on the 8th of this month.

I will give the reward of \$100 for each of the above negroes, to be delivered to me, or confined in the jail of Lenoir or Jones County, or for the killing of them, so that I can see them.

Nov. 12, 1836.

W. D. Cobb.

That this act was not a dead letter, also, was plainly implied in the protective act first quoted. If slaves were not, as a matter of fact, ever outlawed, why does the act formally recognize such a class?—"provided that this act shall not extend to the killing of any slave outlawed by any act of the assembly." This language sufficiently indicates the existence of the custom.

Further than this, the statute-book of 1821 contained two acts: the first of which provides that all masters in certain counties, who have had slaves killed in consequence of outlawry, shall have a claim on the treasury of the state for their value, unless cruel treatment of the slave be proved on the part of the master: the second act extends the benefits of the latter provision to all the counties in the state.

Finally, there is evidence that this act of outlawry was executed so recently

as the year 1850,—the year in which "Uncle Tom's Cabin" was written. See the following from the Wilmington Journal of December 13, 1850:

State of North Carolina, New Hanover County.—Whereas complaint upon oath hath this day been made to us, two of the justices of the peace for the said state and county aforesaid, by Guilford Horn, of Edgecombe County, that a certain male slave belonging to him, named Harry, a carpenter by trade, about forty years old, five feet five inches high, or thereabouts; yellow complexion; stout built; with a scar on his left leg (from the cut of an axe); has very thick lips; eyes deep sunk in his head; forehead very square; tolerably loud voice; has lost one or two of his upper teeth; and has a very dark spot on his jaw, supposed to be a mark,—hath absented himself from his master's service, and is supposed to be lurking about in this county, committing acts of felony or other misdeeds; these are, therefore, in the name of the state aforesaid, to command the said slave forthwith to surrender himself and return home to his said master; and we do hereby, by virtue of the act of assembly in such cases made and provided, intimate and declare that if the said slave Harry doth not surrender himself and return home immediately after the publication of these presents, that any person or persons may KILL and DESTROY the said slave by such means as he or they may think fit, without accusation or impeachment of any crime or offence for so doing, and without incurring any penalty or forfeiture thereby.

Given under our hands and seals, this 29th day of June, 1850.

James T. Miller, J. P. [Seal.]

W. C. Bettencourt, J. P. [Seal.]

One Hundred and Twenty-five Dollars Reward will be paid for the delivery of the said Harry to me at Tosnott Depot, Edgecombe County, or for his confinement in any jail in the state, so that I can get him; or One Hundred and Fifty Dollars will be given for his head.

He was lately heard from in Newbern, where he called himself Henry Barnes (or Burns), and will be likely to continue the same name, or assume that of Copage or Farmer. He has a free mulatto woman for a wife, by the name of Sally Bozeman, who has lately removed to Wilmington, and lives in that part of the town called Texas, where he will likely be lurking.

Masters of vessels are particularly cautioned against harboring or concealing the said negro on board their vessels, as the full penalty of the law will be rigorously enforced.

June 29th, 1850.

Guilford Horn.

There is an inkling of history and romance about the description of this same Harry, who is thus publicly set up to be killed in any way that any of the negro-hunters of the swamps may think the most piquant and enlivening. It seems he is a carpenter,—a powerfully made man, whose thews and sinews might be a profitable acquisition to himself. It appears also that he has a wife, and the advertiser intimates that possibly he may be caught prowling about somewhere in her vicinity. This indicates sagacity in the writer, certainly. Married men generally have a way of liking the society of their wives; and it strikes us, from what we know of the nature of carpenters here in New England, that Harry was not peculiar in this respect. Let us further notice the portrait of Harry: "Eyes deep sunk in his head;—forehead very square." This picture reminds us of what a persecuting old ecclesiastic once said, in the days of the Port-Royalists, of a certain truculent abbess, who stood obstinately to a certain course, in the face of the whole power, temporal and spiritual, of the Romish church, in spite of fining, imprisoning, starving, whipping, beating, and other enlightening argumentative processes, not wholly peculiar, it seems, to that age. "You will never subdue that woman," said the ecclesiastic, who was a phrenologist before his age; "she's got a square head, and I have always noticed that people with square heads never can be turned out of their course." We think it very probable that Harry, with his "square head," is just one of this sort. He is probably one of those articles which would be extremely valuable, if the owner could only get the use of him. His head is well enough, but he will use it for himself. It is of no use to any one but the wearer; and the master seems to symbolize this state of things, by offering twenty-five dollars more for the head without the body, than he is willing to give for head, man and all. Poor Harry! We wonder whether they have caught him yet; or whether the impenetrable thickets, the poisonous miasma, the deadly snakes, and the unwieldy alligators of the swamps, more humane than the slave-hunter, have interposed their uncouth and loathsome forms to guard the only fastness in Carolina where a slave can live in freedom.

It is not, then, in mere poetic fiction that the humane and graceful pen of Longfellow has drawn the following picture:

"In the dark fens of the Dismal Swamp

The hunted negro lay;

He saw the fire of the midnight camp,

And heard at times the horse's tramp,

And a bloodhound's distant bay.

"Where will-o'the-wisps and glow-worms shine,

In bulrush and in brake;

Where waving mosses shroud the pine, And the cedar grows, and the poisonous vine Is spotted like the snake; "Where hardly a human foot could pass, Or a human heart would dare,— On the quaking turf of the green morass He crouched in the rank and tangled grass, Like a wild beast in his lair. "A poor old slave! infirm and lame, Great scars deformed his face: On his forehead he bore the brand of shame, And the rags that hid his mangled frame Were the livery of disgrace. "All things above were bright and fair, All things were glad and free; Lithe squirrels darted here and there, And wild birds filled the echoing air With songs of liberty! "On him alone was the doom of pain, From the morning of his birth; On him alone the curse of Cain Fell like the flail on the garnered grain, And struck him to the earth."

The civilized world may and will ask, in what state this law has been drawn, and passed, and revised, and allowed to appear at the present day on the revised statute-book, and to be executed in the year of our Lord 1850, as the above-cited extracts from its most respectable journals show. Is it some heathen, Kurdish tribe, some nest of pirates, some horde of barbarians, where destructive gods are worshipped, and libations to their honor poured from human skulls? The civilized world will not believe it,—but it is actually a fact, that this law has been made, and is still kept in force, by men in every other respect than what relates to their slave-code as high-minded, as enlightened, as humane, as any men in Christendom;—by citizens of a state which glories in the blood and hereditary Christian institutions of Scotland. Curiosity to know what sort of men the legislators of North Carolina might be, led the writer to examine with some attention the proceedings and debates of the convention of that state, called to amend its constitution, which assembled at Raleigh, June 4th, 1835. It is but justice to say that in these proceedings, in which all the different and perhaps conflicting interests of the various parts of the state were discussed, there was an exhibition of candor, fairness and moderation, of gentlemanly honor and courtesy in the treatment of opposing claims, and of an overruling sense of the obligations of law and religion, which certainly have not always been equally conspicuous in the proceedings of deliberative bodies in such cases. It simply goes to show that one can judge nothing of the religion or of the humanity of individuals from what seems to us objectionable practice, where they have been educated under a system entirely incompatible with both. Such is the very equivocal character of what we call virtue.

It could not be for a moment supposed that such men as Judge Ruffin, or many of the gentlemen who figure in the debates alluded to, would ever think of availing themselves of the savage permissions of such a law. But what then? It follows that the law is a direct permission, letting loose upon the defenceless slave that class of men who exist in every community, who have no conscience, no honor, no shame,—who are too far below public opinion to be restrained by that, and from whom accordingly this provision of the law takes away the only available restraint of their fiendish natures. Such men are not peculiar to the South. It is unhappily too notorious that they exist everywhere, —in England, in New England, and the world over; but they can only arrive at full maturity in wickedness under a system where the law clothes them with absolute and irresponsible power.

#### **CHAPTER V.**

# PROTECTIVE ACTS OF SOUTH CAROLINA AND LOUISIANA.— THE IRON COLLAR OF LOUISIANA AND NORTH CAROLINA.

Thus far by way of considering the protective acts of North Carolina, Georgia and Tennessee.

Certain miscellaneous protective acts of various other states will now be cited, merely as specimens of the spirit of legislation.

Stroud, p. 39. 2 Brevard's Digest, p. 241.

In South Carolina, the act of 1740 punished the wilful, deliberate murder

of a slave by disfranchisement, and by a fine of seven hundred pounds current money, or, in default of payment, imprisonment for seven years. But the wilful murder of a slave, in the sense contemplated in this law, is a crime which would not often occur. The kind of murder which was most frequent among masters or overseers was guarded against by another section of the same act, —how adequately the reader will judge for himself, from the following quotation:

Stroud's Sketch, p. 40. 2 Brevard's Digest, 241. James' Digest, 392.

If any person shall, on a sudden heat or passion, or by undue correction, kill his own slave, or the slave of any other person, he shall forfeit the sum of three hundred and fifty pounds current money.

In 1821 the act punishing the wilful murder of the slave only with fine or imprisonment was mainly repealed, and it was enacted that such crime should be punished by death; but the latter section, which relates to killing the slave in sudden heat or passion, or by undue correction, has been altered only by diminishing the pecuniary penalty to a fine of five hundred dollars, authorizing also imprisonment for six months.

The next protective statute to be noticed is the following from the act of 1740, South Carolina.

Stroud, p. 40. 2 Brevard's Digest, 241.

In case any person shall wilfully cut out the tongue, put out the eye, \* \* \* or cruelly scald, burn, or deprive any slave of any limb, or member, or shall inflict any other cruel punishment, other than by whipping or beating with a horse-whip, cowskin, switch or small stick, or by putting irons on, or confining or imprisoning such slave, every such person shall, for every such offence, forfeit the sum of one hundred pounds, current money.

The language of this law, like many other of these protective enactments, is exceedingly suggestive; the first suggestion that occurs is, What sort of an institution, and what sort of a state of society is it, that called out a law worded like this? Laws are generally not made against practices that do not exist, and exist with some degree of frequency.

The advocates of slavery are very fond of comparing it to the apprentice system of England and America. Let us suppose that in the British Parliament, or in a New England Legislature, the following law is proposed, under the title of An Act for the Protection of Apprentices, &c. &c.

In case any person shall wilfully cut out the tongue, put out the eye, or cruelly scald, burn, or deprive any apprentice of any limb or member, or shall inflict any other cruel punishment, other than by whipping or beating with a horse-whip, cowskin, switch or small stick, or by putting irons on or confining or imprisoning such apprentice, every such person shall, for every such offence, forfeit the sum of one hundred pounds, current money.

What a sensation such a proposed law would make in England may be best left for Englishmen to say; but in New England it would simply constitute the proposer a candidate for Bedlam. Yet that such a statute is necessary in South Carolina is evident enough, if we reflect that, because there is no such statute in Virginia, it has been decided that a wretch who perpetrates all these enormities on a slave cannot even be indicted for it, unless the slave dies.

But let us look further:—What is to be the penalty when any of these fiendish things are done?

Why, the man forfeits a hundred pounds, current money. Surely he ought to pay as much as that for doing so very unnecessary an act, when the Legislature bountifully allows him to inflict any torture which revengeful ingenuity could devise, by means of horse-whip, cowskin, switch or small stick, or putting irons on, or confining and imprisoning. One would surely think that here was sufficient scope and variety of legalized means of torture to satisfy any ordinary appetite for vengeance. It would appear decidedly that any more piquant varieties of agony ought to be an extra charge. The advocates of slavery are fond of comparing the situation of the slave with that of the English laborer. We are not aware that the English laborer has been so unfortunate as to be protected by any enactment like this, since the days of villeinage.

Stroud's Sketch, p. 41. 1 Mar. Digest, 654.

Judge Stroud says, that the same law, substantially, has been adopted in Louisiana. It is true that the civil code of Louisiana thus expresses its humane intentions.

The slave is entirely subject to the will of his master, who may correct and chastise him, though not with unusual rigor, nor so as to maim or mutilate him, or to expose him to the danger of loss of life, or to cause his death.—Civil Code of Louisiana, Article 173.

The expression "unusual rigor" is suggestive, again. It will afford large latitude for a jury, in states where slaves are in the habit of dying under moderate correction; where outlawed slaves may be killed by any means which any person thinks fit; and where laws have to be specifically made against scalding, burning, cutting out the tongue, putting out the eye, &c. What will be thought unusual rigor? This is a question, certainly, upon which persons in states not so constituted can have no means of forming an opinion.

In one of the newspaper extracts with which we prefaced our account, the

following protective act of Louisiana is alluded to, as being particularly satisfactory and efficient. We give it, as quoted by Judge Stroud in his Sketch, page 58, giving his reference.

No master shall be compelled to sell his slave, but in one of two cases, to wit: the first, when, being only co-proprietor of the slave, his co-proprietor demands the sale, in order to make partition of the property; second, when the master shall be CONVICTED of cruel treatment of his slave, AND THE JUDGE SHALL DEEM IT PROPER TO PRONOUNCE, besides the penalty established for such cases, that the slave shall be sold at public auction, in order to place him out of the reach of the power which his master has abused. —Civil Code, Art. 192.

The question for a jury to determine in this case is, What is cruel treatment of a slave? Now, if all these barbarities which have been sanctioned by the legislative acts which we have quoted are not held to be cruel treatment, the question is, What is cruel treatment of a slave?

Everything that fiendish barbarity could desire can be effected under the protection of the law of South Carolina, which, as we have just shown, exists also in Louisiana. It is true the law restrains from some particular forms of cruelty. If any person has a mind to scald or burn his slave,—and it seems, by the statute, that there have been such people,—these statutes merely provide that he shall do it in decent privacy; for, as the very keystone of Southern jurisprudence is the rejection of colored testimony, such an outrage, if perpetrated most deliberately in the presence of hundreds of slaves, could not be proved upon the master.

It is to be supposed that the fiendish people whom such statutes have in view will generally have enough of common sense not to perform it in the presence of white witnesses, since this simple act of prudence will render them entirely safe in doing whatever they have a mind to. We are told, it is true, as we have been reminded by our friend in the newspaper before quoted, that in Louisiana the deficiency caused by the rejection of negro testimony is supplied by the following most remarkable provision of the Code Noir:

If any slave be mutilated, beaten, or ill treated, contrary to the true intent and meaning of this section, when no one shall be present, in such case the owner, or other person having the charge or management of said slave thus mutilated, shall be deemed responsible and guilty of the said offence, and shall be prosecuted without further evidence, unless the said owner, or other person so as aforesaid, can prove the contrary by means of good and sufficient evidence, or can clear himself by his own oath, which said oath every court under the cognizance of which such offence shall have been examined and tried is by this act authorized to administer.—Code Noir. Crimes and Offences, 56. xvii. Rev. Stat. 1852, p. 550, § 141.

Would one have supposed that sensible people could ever publish as a law such a specimen of utter legislative nonsense—so ridiculous on the very face of it!

The object is to bring to justice those fiendish people who burn, scald, mutilate, &c. How is this done? Why, it is enacted that the fact of finding the slave in this condition shall be held presumption against the owner or overseer, unless—unless what? Why, unless he will prove to the contrary,—or swear to the contrary, it is no matter which—either will answer the purpose. The question is, If a man is bad enough to do these things, will he not be bad enough to swear falsely? As if men who are the incarnation of cruelty, as supposed by the deeds in question, would not have sufficient intrepidity of conscience to compass a false oath!

What was this law ever made for? Can any one imagine?

Upon this whole subject, we may quote the language of Judge Stroud, who thus sums up the whole amount of the protective laws for the slave, in the United States of America:

Upon a fair review of what has been written on the subject of this proposition, the result is found to be—that the master's power to inflict corporal punishment to any extent, short of life and limb, is fully sanctioned by law, in all the slave-holding states; that the master, in at least two states, is expressly protected in using the horse-whip and cowskin as instruments for beating his slave; that he may with entire impunity, in the same states, load his slave with irons, or subject him to perpetual imprisonment, whenever he may so choose; that, for cruelly scalding, wilfully cutting out the tongue, putting out an eye, and for any other dismemberment, if proved, a fine of one hundred pounds currency only is incurred in South Carolina; that, though in all the states the wilful, deliberate and malicious murder of the slave is now directed to be punished with death, yet, as in the case of a white offender none except whites can give evidence, a conviction can seldom, if ever, take place.—Stroud's Sketch, p. 43.

One very singular antithesis of two laws of Louisiana will still further show that deadness of public sentiment on cruelty to the slave which is an inseparable attendant on the system. It will be recollected that the remarkable protective law of South Carolina, with respect to scalding, burning, cutting out the tongue, and putting out the eye of the slave, has been substantially enacted in Louisiana; and that the penalty for a man's doing these things there, if he has not sense enough to do it privately, is not more than five hundred dollars.

Now, compare this other statute of Louisiana, (Rev. Stat. 1852, p. 552, §

151):

Stroud, p. 41.

If any person or persons, &c., shall cut or break any iron chain or collar, which any master of slaves should have used, in order to prevent the running away or escape of any such slave or slaves, such person or persons so offending shall, on conviction, &c., be fined not less than two hundred dollars, nor exceeding one thousand dollars; and suffer imprisonment for a term not exceeding two years, nor less than six months.—Act of Assembly of March 6, 1819. Pamphlet, page 64.

Some Englishmen may naturally ask, "What is this iron collar which the Legislature have thought worthy of being protected by a special act?" On this subject will be presented the testimony of an unimpeachable witness, Miss Sarah M. Grimké, a personal friend of the author. "Miss Grimké is a daughter of the late Judge Grimké, of the Supreme Court of South Carolina, and sister of the late Hon. Thomas S. Grimké." She is now a member of the Society of Friends, and resides in Bellville, New Jersey. The statement given is of a kind that its author did not mean to give, nor wish to give, and never would have given, had it not been made necessary to illustrate this passage in the slave-law. The account occurs in a statement which Miss Grimké furnished to her brother-in-law, Mr. Weld, and has been before the public ever since 1839, in his work entitled Slavery as It Is, p. 22.

A handsome mulatto woman, about eighteen or twenty years of age, whose independent spirit could not brook the degradation of slavery, was in the habit of running away: for this offence she had been repeatedly sent by her master and mistress to be whipped by the keeper of the Charleston workhouse. This had been done with such inhuman severity as to lacerate her back in a most shocking manner; a finger could not be laid between the cuts. But the love of liberty was too strong to be annihilated by torture; and, as a last resort, she was whipped at several different times, and kept a close prisoner. A heavy iron collar, with three long prongs projecting from it, was placed round her neck, and a strong and sound front tooth was extracted, to serve as a mark to describe her, in case of escape. Her sufferings at this time were agonizing; she could lie in no position but on her back, which was sore from scourgings, as I can testify from personal inspection; and her only place of rest was the floor, on a blanket. These outrages were committed in a family where the mistress daily read the Scriptures, and assembled her children for family worship. She was accounted, and was really, so far as almsgiving was concerned, a charitable woman, and tender-hearted to the poor; and yet this suffering slave, who was the seamstress of the family, was continually in her presence, sitting in her chamber to sew, or engaged in her other household work, with her lacerated and bleeding back, her mutilated mouth, and heavy iron collar,

without, so far as appeared, exciting any feelings of compassion.

This iron collar the author has often heard of from sources equally authentic. That one will meet with it every day in walking the streets, is not probable; but that it must have been used with some great degree of frequency, is evident from the fact of a law being thought necessary to protect it. But look at the penalty of the two protective laws! The fiendish cruelties described in the act of South Carolina cost the perpetrator not more than five hundred dollars, if he does them before white people. The act of humanity costs from two hundred to one thousand dollars, and imprisonment from six months to two years, according to discretion of court! What public sentiment was it which made these laws?

#### **CHAPTER VI.**

# PROTECTIVE ACTS WITH REGARD TO FOOD AND RAIMENT, LABOR, ETC.

Illustrative Drama of Tom v. Legree, under the Law of South Carolina.— Separation of Parent and Child.

Wheeler, p. 220. State v. Sue, Cameron & Norwood's C. Rep. 54.

Having finished the consideration of the laws which protect the life and limb of the slave, the reader may feel a curiosity to know something of the provisions by which he is protected in regard to food and clothing, and from the exactions of excessive labor. It is true, there are multitudes of men in the Northern States who would say, at once, that such enactments, on the very face of them, must be superfluous and absurd. "What!" they say, "are not the slaves property? and is it likely that any man will impair the market value of his own property by not giving them sufficient food or clothing, or by over-working them?" This process of reasoning appears to have been less convincing to the legislators of Southern States than to gentlemen generally at the North; since, as Judge Taylor says, "the act of 1786 (Iredell's Revisal, p. 588) does, in the preamble, recognize the fact, that many persons, by cruel treatment of their slaves, cause them to commit crimes for which they are executed;" and the judge further explains this language, by saying, "The cruel treatment here alluded to must consist in withholding from them the necessaries of life; and the crimes thus resulting are such as are necessary to furnish them with food and raiment."

The State of South Carolina, in the act of 1740 (see Stroud's Sketch, p. 28), had a section with the following language in its preamble:

Stroud, p. 29.

Whereas many owners of slaves, and others who have the care, management, and overseeing of slaves, do confine them so closely to hard labor that they have not sufficient time for natural rest;—

And the law goes on to enact that the slave shall not work more than fifteen hours a day in summer, and fourteen in winter. Judge Stroud makes it appear that in three of the slave states the time allotted for work to convicts in prison, whose punishment is to consist in hard labor, cannot exceed ten hours, even in the summer months.

This was the protective act of South Carolina, designed to reform the abusive practices of masters who confined their slaves so closely that they had not time for natural rest! What sort of habits of thought do these humane provisions show, in the makers of them? In order to protect the slave from what they consider undue exaction, they humanely provide that he shall be obliged to work only four or five hours longer than the convicts in the prison of the neighboring state! In the Island of Jamaica, besides many holidays which were accorded by law to the slave, ten hours a day was the extent to which he was compelled by law ordinarily to work.—See Stroud, p. 29.

With regard to protective acts concerning food and clothing, Judge Stroud gives the following example from the legislation of South Carolina. The author gives it as quoted by Stroud, p. 32.

In case any person, &c., who shall be the owner, or who shall have the care, government or charge, of any slave or slaves, shall deny, neglect or refuse to allow, such slave or slaves, &c., sufficient clothing, covering or food, it shall and may be lawful for any person or persons, on behalf of such slave or slaves, to make complaint to the next neighboring justice in the parish where such slave or slaves live, or are usually employed, \* \* \* and the said justice shall summons the party against whom such complaint shall be made, and shall inquire of, hear and determine, the same; and, if the said justice shall find the said complaint to be true, or that such person will not exculpate or clear himself from the charge, by his or her own oath, which such person shall be at liberty to do in all cases where positive proof is not given of the offence, such justice shall and may make such orders upon the same, for the relief of such slave or slaves, as he in his discretion shall think fit; and shall and may set and impose a fine or penalty on any person who shall offend in the premises, in any sum not exceeding twenty pounds current money, for each offence.—2 Brevard's, Dig. 241. Also Cobb's Dig. 827.

A similar law obtains in Louisiana.—Rev. Stat. 1852, p. 557, § 166.

Now, would not anybody think, from the virtuous solemnity and gravity of

this act, that it was intended in some way to amount to something? Let us give a little sketch, to show how much it does amount to. Angelina Grimké Weld, sister to Sarah Grimké, before quoted, gives the following account of the situation of slaves on plantations:

And here let me say, that the treatment of plantation slaves cannot be fully known, except by the poor sufferers themselves, and their drivers and overseers. In a multitude of instances, even the master can know very little of the actual condition of his own field-slaves, and his wife and daughters far less. A few facts concerning my own family will show this. Our permanent residence was in Charleston; our country-seat (Bellemont) was two hundred miles distant, in the north western part of the state, where, for some years, our family spent a few months annually. Our plantation was three miles from this family mansion. There all the field-slaves lived and worked. Occasionally,—once a month, perhaps,—some of the family would ride over to the plantation; but I never visited the fields where the slaves were at work, and knew almost nothing of their condition; but this I do know, that the overseers who had charge of them were generally unprincipled and intemperate men. But I rejoice to know that the general treatment of slaves in that region of country was far milder than on the plantations in the lower country.

Throughout all the eastern and middle portions of the state, the planters very rarely reside permanently on their plantations. They have almost invariably two residences, and spend less than half the year on their estates. Even while spending a few months on them, politics, field-sports, races, speculations, journeys, visits, company, literary pursuits, &c., absorb so much of their time, that they must, to a considerable extent, take the condition of their slaves on trust, from the reports of their overseers. I make this statement, because these slaveholders (the wealthier class) are, I believe, almost the only ones who visit the North with their families; and Northern opinions of slavery are based chiefly on their testimony.

With regard to overseers, Miss Grimké's testimony is further borne out by the universal acknowledgment of Southern owners. A description of this class of beings is furnished by Mr. Wirt, in his Life of Patrick Henry, page 34. "Last and lowest," he says, [of different classes in society] "a feculum of beings called overseers,—a most abject, degraded, unprincipled race." Now, suppose, while the master is in Charleston, enjoying literary leisure, the slaves on some Bellemont or other plantation, getting tired of being hungry and cold, form themselves into a committee of the whole, to see what is to be done. A broadshouldered, courageous fellow, whom we will call Tom, declares it is too bad, and he won't stand it any longer; and, having by some means become acquainted with this benevolent protective act, resolves to make an appeal to the horns of this legislative altar. Tom talks stoutly, having just been bought on to the place, and been used to better quarters elsewhere. The women and children perhaps admire, but the venerable elders of the plantation,—Sambo, Cudge, Pomp and old Aunt Dinah,—tell him he better mind himself, and keep clar o' dat ar. Tom, being young and progressive, does not regard these conservative maxims; he is determined that, if there is such a thing as justice to be got, he will have it. After considerable research, he finds some white man in the neighborhood verdant enough to enter the complaint for him. Master Legree finds himself, one sunshiny, pleasant morning, walked off to some Justice Dogberry's, to answer to the charge of not giving his niggers enough to eat and wear. We will call the infatuated white man who has undertaken this fool's errand Master Shallow. Let us imagine a scene:— Legree, standing carelessly with his hands in his pockets, rolling a quid of tobacco in his mouth; Justice Dogberry, seated in all the majesty of law, reinforced by a decanter of whiskey and some tumblers, intended to assist in illuminating the intellect in such obscure cases.

Justice Dogberry. Come, gentlemen, take a little something, to begin with. Mr. Legree, sit down; sit down, Mr.—a' what's-your-name?—Mr. Shallow.

Mr. Legree and Mr. Shallow each sit down, and take their tumbler of whiskey and water. After some little conversation, the justice introduces the business as follows:

"Now, about this nigger business. Gentlemen, you know the act of—um —um,—where the deuce is that act? [Fumbling an old law-book.] How plagued did you ever hear of that act, Shallow? I'm sure I'm forgot all about it;—O! here 'tis. Well, Mr. Shallow, the act says you must make proof, you observe."

Mr. Shallow. [Stuttering and hesitating.] Good land! why, don't everybody see that them ar niggers are most starved? Only see how ragged they are!

Justice. I can't say as I've observed it particular. Seem to be very well contented.

Shallow. [Eagerly.] But just ask Pomp, or Sambo, or Dinah, or Tom!

Justice Dogberry. [With dignity.] I'm astonished at you, Mr. Shallow! You think of producing negro testimony? I hope I know the law better than that! We must have direct proof, you know.

Shallow is posed; Legree significantly takes another tumbler of whiskey and water, and Justice Dogberry gives a long ahe-a-um. After a few moments the justice speaks:

"Well, after all, I suppose, Mr. Legree, you wouldn't have any objections to swarin' off; that settles it all, you know."

As swearing is what Mr. Legree is rather more accustomed to do than anything else that could be named, a more appropriate termination of the affair could not be suggested; and he swears, accordingly, to any extent, and with any fulness and variety of oath that could be desired; and thus the little affair terminates. But it does not terminate thus for Tom or Sambo, Dinah, or any others who have been alluded to for authority. What will happen to them, when Mr. Legree comes home, had better be left to conjecture.

It is claimed, by the author of certain paragraphs quoted at the commencement of Part II., that there exist in Louisiana ample protective acts to prevent the separation of young children from their mothers. This writer appears to be in the enjoyment of an amiable ignorance and unsophisticated innocence with regard to the workings of human society generally, which is, on the whole, rather refreshing. For, on a certain incident in "Uncle Tom's Cabin," which represented Cassy's little daughter as having been sold from her, he makes the following naïf remark:

Now, the reader will perhaps be surprised to know that such an incident as the sale of Cassy apart from Eliza, upon which the whole interest of the foregoing narrative hinges, never could have taken place in Louisiana, and that the bill of sale for Eliza would not have been worth the paper it was written on.—Observe. George Shelby states that Eliza was eight or nine years old at the time his father purchased her in New Orleans. Let us again look at the statute-book of Louisiana.

In the Code Noir we find it set down that

"Every person is expressly prohibited from selling separately from their mothers the children who shall not have attained the full age of ten years."

And this humane provision is strengthened by a statute, one clause of which runs as follows:

"Be it further enacted, that if any person or persons shall sell the mother of any slave child or children under the age of ten years, separate from said child or children, or shall, the mother living, sell any slave child or children of ten years of age or under, separate from said mother, such person or persons shall incur the penalty of the sixth section of this act."

This penalty is a fine of not less than one thousand nor more than two thousand dollars, and imprisonment in the public jail for a period of not less than six months nor more than one year.—Vide Acts of Louisiana, 1 Session, 9th Legislature, 1828–9, No. 24, Section 16. (Rev. Stat. 1852, p. 550, § 143.)

What a charming freshness of nature is suggested by this assertion! A thing could not have happened in a certain state, because there is a law against it!

Has there not been for two years a law forbidding to succor fugitives, or to hinder their arrest?—and has not this thing been done thousands of times in all the Northern States, and is not it more and more likely to be done every year? What is a law, against the whole public sentiment of society?—and will anybody venture to say that the public sentiment of Louisiana practically goes against separation of families?

But let us examine a case more minutely, remembering the bearing on it of two great foundation principles of slave jurisprudence: namely, that a slave cannot bring a suit in any case, except in a suit for personal freedom, and this in some states must be brought by a guardian; and that a slave cannot bear testimony in any case in which whites are implicated.

Suppose Butler wants to sell Cassy's child of nine years. There is a statute forbidding to sell under ten years;—what is Cassy to do? She cannot bring suit. Will the state prosecute? Suppose it does,—what then? Butler says the child is ten years old; if he pleases, he will say she is ten and a half, or eleven. What is Cassy to do? She cannot testify; besides, she is utterly in Butler's power. He may tell her that if she offers to stir in the affair, he will whip the child within an inch of its life; and she knows he can do it, and that there is no help for it;—he may lock her up in a dungeon, sell her on to a distant plantation, or do any other despotic thing he chooses, and there is nobody to say Nay.

How much does the protective statute amount to for Cassy? It may be very well as a piece of advice to the public, or as a decorous expression of opinion; but one might as well try to stop the current of the Mississippi with a bulrush as the tide of trade in human beings with such a regulation.

We think that, by this time, the reader will agree with us, that the less the defenders of slavery say about protective statutes, the better.

### CHAPTER VII.

#### THE EXECUTION OF JUSTICE.

State v. Eliza Rowand.—The "Ægis of Protection" to the Slave's Life.

"We cannot but regard the fact of this trial as a salutary occurrence."— Charleston Courier.

Having given some account of what sort of statutes are to be found on the law-books of slavery, the reader will hardly be satisfied without knowing what sort of trials are held under them. We will quote one specimen of a trial, reported in the Charleston Courier of May 6th, 1847. The Charleston Courier is one of the leading papers of South Carolina, and the case is reported with the utmost apparent innocence that there was anything about the trial that could reflect in the least on the character of the state for the utmost legal impartiality. In fact, the Charleston Courier ushers it into public view with the following flourish of trumpets, as something which is forever to confound those who say that South Carolina does not protect the life of the slave:

#### THE TRIAL FOR MURDER.

Our community was deeply interested and excited, yesterday, by a case of great importance, and also of entire novelty in our jurisprudence. It was the trial of a lady of respectable family, and the mother of a large family, charged with the murder of her own or her husband's slave. The court-house was thronged with spectators of the exciting drama, who remained, with unabated interest and undiminished numbers, until the verdict was rendered acquitting the prisoner. We cannot but regard the fact of this trial as a salutary, although in itself lamentable occurrence, as it will show to the world that, however panoplied in station and wealth, and although challenging those sympathies which are the right and inheritance of the female sex, no one will be suffered, in this community, to escape the most sifting scrutiny, at the risk of even an ignominious death, who stands charged with the suspicion of murdering a slave,—to whose life our law now extends the ægis of protection, in the same manner as it does to that of the white man, save only in the character of the evidence necessary for conviction or defence. While evil-disposed persons at home are thus taught that they may expect rigorous trial and condign punishment, when, actuated by malignant passions, they invade the life of the humble slave, the enemies of our domestic institution abroad will find, their calumnies to the contrary notwithstanding, that we are resolved, in this particular, to do the full measure of our duty to the laws of humanity. We subjoin a report of the case.

The proceedings of the trial are thus given:

TRIAL FOR THE MURDER OF A SLAVE.

State v. Eliza Rowand.—Spring Term, May 5, 1847.

Tried before his Honor Judge O'Neall.

The prisoner was brought to the bar and arraigned, attended by her husband and mother, and humanely supported, during the trying scene, by the sheriff, J. B. Irving, Esq. On her arraignment, she pleaded "Not Guilty," and for her trial, placed herself upon "God and her country." After challenging John M. Deas, James Bancroft, H. F. Harbers, C. J. Beckman, E. R. Cowperthwaite, Parker J. Holland, Moses D. Hyams, Thomas Glaze, John Lawrence, B. Archer, J. S. Addison, B. P. Colburn, B. M. Jenkins, Carl Houseman, Geo. Jackson, and Joseph Coppenberg, the prisoner accepted the subjoined panel, who were duly sworn, and charged with the case: 1. John L. Nowell, foreman. 2. Elias Whilden. 3. Jesse Coward. 4. Effington Wagner. 5. Wm. Whaley. 6. James Culbert. 7. R. L. Baker. 8. S. Wiley. 9. W. S. Chisolm. 10. T. M. Howard. 11. John Bickley. 12. John Y. Stock.

The following is the indictment on which the prisoner was arraigned for trial:

The State v. Eliza Rowand—Indictment for murder of a slave.

State of South Carolina, } to wit:

Charleston District, }

At a Court of General Sessions, begun and holden in and for the district of Charleston, in the State of South Carolina, at Charleston, in the district and state aforesaid, on Monday, the third day of May, in the year of our Lord one thousand eight hundred and forty-seven:

The jurors of and for the district of Charleston, aforesaid, in the State of South Carolina, aforesaid, upon their oaths present, that Eliza Rowand, the wife of Robert Rowand, Esq., not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, on the 6th day of January, in the year of our Lord one thousand eight hundred and forty-seven, with force and arms, at Charleston, in the district of Charleston, and state aforesaid, in and upon a certain female slave of the said Robert Rowand, named Maria, in the peace of God, and of the said state, then and there being, feloniously, maliciously, wilfully, deliberately, and of her malice aforethought, did make an assault; and that a certain other slave of the said Robert Rowand, named Richard, then and there, being then and there in the presence and by the command of the said Eliza Rowand, with a certain piece of wood, which he the said Richard in both his hands then and there had and held, the said Maria did beat and strike, in and upon the head of her the said Maria, then and there giving to her the said Maria, by such striking and beating, as aforesaid, with the piece of wood aforesaid, divers mortal bruises on the top, back, and sides of the head of her the said Maria, of which several mortal bruises she, the said Maria, then and there instantly died; and that the said Eliza Rowand was then and there present, and then and there feloniously, maliciously, wilfully, deliberately, and of her malice aforethought, did order, command, and require, the said slave named Richard the murder and felony aforesaid, in manner and form aforesaid, to do and commit. And as the jurors aforesaid, upon their oaths aforesaid, do say, that the said Eliza Rowand her the said slave named Maria, in the manner and by the means, aforesaid, feloniously, maliciously, wilfully, deliberately, and of her malice aforethought, did kill and murder, against the form of the act of the General Assembly of the said state in such case made and provided, and against the peace and dignity of the same state aforesaid.

And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said Eliza Rowand, not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, on the sixth day of January, in the year of our Lord one thousand eight hundred and forty-seven, with force and arms, at Charleston, in the district of Charleston, and state aforesaid, in and upon a certain other female slave of Robert Rowand, named Maria, in the peace of God, and of the said state, then and there being, feloniously, maliciously, wilfully, deliberately, and of her malice aforethought, did make an assault; and that the said Eliza Rowand, with a certain piece of wood, which she, the said Eliza Rowand, in both her hands then and there had and held, her the said last-mentioned slave named Maria did then and there strike, and beat, in and upon the head of her the said Maria, then and there giving to her the said Maria, by such striking and beating aforesaid, with the piece of wood aforesaid, divers mortal bruises, on the top, back, and side of the head, of her the said Maria, of which said several mortal bruises she the said Maria then and there instantly died. And so the jurors aforesaid, upon their oaths aforesaid, do say, that the said Eliza Rowand her the said last-mentioned slave named Maria, in the manner and by the means last mentioned, feloniously, maliciously, wilfully, deliberately, and of her malice aforethought, did kill and murder, against the form of the act of the General Assembly of the said state in such case made and provided, and against the peace and dignity of the same state aforesaid.

H. Bailey, Attorney-general.

As some of our readers may not have been in the habit of endeavoring to extract anything like common sense or information from documents so very concisely and luminously worded, the author will just state her own opinion that the above document is intended to charge Mrs. Eliza Rowand with having killed her slave Maria, in one of two ways: either with beating her on the head with her own hands, or having the same deed performed by proxy, by her slave-man Richard. The whole case is now presented. In order to make the reader clearly understand the arguments, it is necessary that he bear in mind that the law of 1740, as we have before shown, punished the murder of the slave only with fine and disfranchisement, while the law of 1821 punishes it with death.

On motion of Mr. Petigru, the prisoner was allowed to remove from the bar, and take her place by her counsel; the judge saying he granted the motion only because the prisoner was a woman, but that no such privilege would have been extended by him to any man.

The Attorney-general, Henry Bailey, Esq., then rose and opened the case for the state, in substance, as follows: He said that, after months of anxiety and expectation, the curtain had at length risen, and he and the jury were about to bear their part in the sad drama of real life, which had so long engrossed the public mind. He and they were called to the discharge of an important, painful, and solemn duty. They were to pass between the prisoner and the state-to take an inquisition of blood; on their decision hung the life or death, the honor or ignominy, of the prisoner; yet he trusted he and they would have strength and ability to perform their duty faithfully; and, whatever might be the result, their consciences would be consoled and quieted by that reflection. He bade the jury pause and reflect on the great sanctions and solemn responsibilities under which they were acting. The constitution of the state invested them with power over all that affected the life and was dear to the family of the unfortunate lady on trial before them. They were charged, too, with the sacred care of the law of the land; and to their solution was submitted one of the most solemn questions ever intrusted to the arbitrament of man. They should pursue a direct and straight-forward course, turning neither to the right hand nor to the left-influenced neither by prejudice against the prisoner, nor by a morbid sensibility in her behalf. Some of them might practically and personally be strangers to their present duty; but they were all familiar with the laws, and must be aware of the responsibilities of jurymen. It was scarcely necessary to tell them that, if evidence fixed guilt on this prisoner, they should not hesitate to record a verdict of guilty, although they should write that verdict in tears of blood. They should let no sickly sentimentality, or morbid feeling on the subject of capital punishments, deter them from the discharge of their plain and obvious duty. They were to administer, not to make, the law; they were called on to enforce the law, by sanctioning the highest duty to God and to their country. If any of them were disturbed with doubts or scruples on this point, he scarcely supposed they would have gone into the jury-box. The law had awarded capital punishment as the meet retribution for the crime under investigation, and they were sworn to administer that law. It had, too, the full sanction of Holy Writ; we were there told that "the land cannot be cleansed of the blood shed therein, except by the blood of him that shed it." He felt assured, then, that they would be swayed only by a firm resolve to act on this occasion in obedience to the dictates of sound judgments and enlightened consciences. The prisoner, however, had claims on them, as well as the community; she was entitled to a fair and impartial trial. By the wise and humane principles of our law, they were bound to hold the prisoner innocent, and she stood guiltless before them, until proved guilty, by legal, competent, and satisfactory evidence. Deaf alike to the voice of sickly humanity and heated prejudice, they should proceed to their task with minds perfectly equipoised and impartial; they should weigh the circumstances of the case with a nice and careful hand; and if, by legal evidence, circumstantial and satisfactory, although not positive, guilt be established, they should unhesitatingly, fearlessly and faithfully, record the result of their convictions. He would next call their attention to certain legal distinctions, but would not say a word of the facts; he would leave them to the lips of the witnesses, unaffected by any previous comments of his own. The prisoner stood indicted for the murder of a slave. This was supposed not to be murder at common law. At least, it was not murder by our former statute; but the act of 1821 had placed the killing of the white man and the black man on the same footing. He here read the act of 1821, declaring that "any person who shall wilfully, deliberately, and maliciously murder a slave, shall, on conviction thereof, suffer death without benefit of clergy." The rules applicable to murder at common law were generally applicable, however, to the present case. The inquiries to be made may be reduced to two: 1. Is the party charged guilty of the fact of killing? This must be clearly made out by proof. If she be not guilty of killing, there is an end of the case. 2. The character of that killing, or of the offence. Was it done with malice aforethought? Malice is the essential ingredient of the crime. Where killing takes place, malice is presumed, unless the contrary appear; and this must be gathered from the attending circumstances. Malice is a technical term, importing a different meaning from that conveyed by the same word in common parlance. According to the learned Michael Foster, it consists not in "malevolence to particulars," it does not mean hatred to any particular individual, but is general in its import and application. But even killing, with intention to kill, is not always murder; there may be justifiable and excusable homicide, and killing in sudden heat and passion is so modified to manslaughter. Yet there may be murder when there is no ill-feeling,—nay, perfect indifference to the slain,—as in the case of the robber who slays to conceal his crime. Malice aforethought is that depraved feeling of the heart, which makes one regardless of social duty, and fatally bent on mischief. It is fulfilled by that recklessness of law and human life which is indicated by shooting into a crowd, and thus doing murder on even an unknown object. Such a feeling the law regards as hateful, and visits, in its practical exhibition, with condign punishment, because opposed to the very existence of law and society. One may do fatal mischief without this recklessness; but when the act is done, regardless of consequences, and death ensues, it is murder in the eye of the law. If the facts to be proved in this case should not come up to these requisitions, he implored the jury to acquit the accused, as at once due to law and justice. They should note every fact with scrutinizing eye, and ascertain whether the fatal result proceeded from passing accident or from brooding revenge, which the law stamped with the odious name of malice. He would make no further preliminary remarks, but proceed at once to lay the facts before them, from the mouths of the witnesses.

Evidence.

J. Porteous Deveaux sworn.—He is the coroner of Charleston district; held the inquest, on the seventh of January last, on the body of the deceased slave, Maria, the slave of Robert Rowand, at the residence of Mrs. T. C. Bee (the mother of the prisoner), in Logan-street. The body was found in an outbuilding —a kitchen; it was the body of an old and emaciated person, between fifty and sixty years of age; it was not examined in his presence by physicians; saw some few scratches about the face; adjourned to the City Hall. Mrs. Rowand was examined; her examination was in writing; it was here produced, and read, as follows:

"Mrs. Eliza Rowand sworn.—Says Maria is her nurse, and had misbehaved on yesterday morning; deponent sent Maria to Mr. Rowand's house, to be corrected by Simon; deponent sent Maria from the house about seven o'clock, A. M.; she returned to her about nine o'clock; came into her chamber; Simon did not come into the chamber at any time previous to the death of Maria; deponent says Maria fell down in the chamber; deponent had her seated up by Richard, who was then in the chamber, and deponent gave Maria some asafœtida; deponent then left the room; Richard came down and said Maria was dead; deponent says Richard did not strike Maria, nor did any one else strike her, in deponent's chamber. Richard left the chamber immediately with deponent; Maria was about fifty-two years of age; deponent sent Maria by Richard to Simon, to Mr Rowand's house, to be corrected; Mr. Rowand was absent from the city; Maria died about twelve o'clock; Richard and Maria were on good terms; deponent was in the chamber all the while that Richard and Maria were there together.

"Eliza Rowand.

"Sworn to before me this seventh January, 1847.

"J. P. Deveaux, Coroner, D. C."

Witness went to the chamber of prisoner, where the death occurred; saw nothing particular; some pieces of wood in a box, set in the chimney; his attention was called to one piece, in particular, eighteen inches long, three indies wide, and about one and a half inch thick; did not measure it; the jury of inquest did; it was not a light-wood knot; thinks it was of oak; there was some pine wood and some split oak. Dr. Peter Porcher was called to examine the body professionally, who did so out of witness' presence.

Before this witness left the stand, B. F. Hunt, Esq., one of the counsel for the prisoner, rose and opened the defence before the jury, in substance as follows:

He said that the scene before them was a very novel one; and whether for

good or evil, he would not pretend to prophesy. It was the first time, in the history of this state, that a lady of good character and respectable connections stood arraigned at the bar, and had been put on trial for her life, on facts arising out of her domestic relations to her own slave. It was a spectacle consoling, and cheering, perhaps, to those who owed no good will to the institutions of our country; but calculated only to excite pain and regret among ourselves. He would not state a proposition so revolting to humanity as that crime should go unpunished; but judicial interference between the slave and the owner was a matter at once of delicacy and danger. It was the first time he had ever stood between a slave-owner and the public prosecutor, and his sensations were anything but pleasant. This is an entirely different case from homicide between equals in society. Subordination is indispensable where slavery exists; and in this there is no new principle involved. The same principle prevails in every country; on shipboard and in the army a large discretion is always left to the superior. Charges by inferiors against their superiors were always to be viewed with great circumspection at least, and especially when the latter are charged with cruelty or crime against subordinates. In the relation of owner and slave there is an absence of the usual motives for murder, and strong inducements against it on the part of the former. Life is usually taken from avarice or passion. The master gains nothing, but loses much, by the death of his slave; and when he takes the life of the latter deliberately, there must be more than ordinary malice to instigate the deed. The policy of altering the old law of 1740, which punished the killing of a slave with fine and political disfranchisement, was more than doubtful. It was the law of our colonial ancestors; it conformed to their policy and was approved by their wisdom, and it continued undisturbed by their posterity until the year 1821. It was engrafted on our policy in counteraction of the schemes and machinations, or in deference to the clamors, of those who formed plans for our improvement, although not interested in nor understanding our institutions, and whose interference led to the tragedy of 1822. He here adverted to the views of Chancellor Harper on this subject, who, in his able and philosophical memoir on slavery, said: "It is a somewhat singular fact, that when there existed in our state no law for punishing the murder of a slave, other than a pecuniary fine, there were, I will venture to say, at least ten murders of freemen for one murder of a slave. Yet it is supposed that they are less protected than their masters." "The change was made in subserviency to the opinions and clamor of others, who were utterly incompetent to form an opinion on the subject; and a wise act is seldom the result of legislation in this spirit. From the fact I have stated, it is plain they need less protection. Juries are, therefore, less willing to convict, and it may sometimes happen that the guilty will escape all punishment. Security is one of the compensations of their humble position. We challenge the comparison,

that with us there have been fewer murders of slaves than of parents, children, apprentices, and other murders, cruel and unnatural, in society where slavery does not exist."

Such was the opinion of Chancellor Harper on this subject, who had profoundly studied it, and whose views had been extensively read on this continent and in Europe. Fortunately, the jury, he said, were of the country, acquainted with our policy and practice; composed of men too independent and honorable to be led astray by the noise and clamor out of doors. All was now as it should be;---at least, a court of justice had assembled, to which his client had fled for refuge and safety; its threshold was sacred; no profane clamors entered there; but legal investigation was had of facts, derived from the testimony of sworn witnesses; and this should teach the community to shut their bosoms against sickly humanity, and their ears to imaginary tales of blood and horror, the food of a depraved appetite. He warned the jury that they were to listen to no testimony but that of free white persons, given on oath in open court. They were to imagine none that came not from them. It was for this that they were selected,-their intelligence putting them beyond the influence of unfounded accusations, unsustained by legal proof; of legends of aggravated cruelty, founded on the evidence of negroes, and arising from weak and wicked falsehoods. Were slaves permitted to testify against their owner, it would cut the cord that unites them in peace and harmony, and enable them to sacrifice their masters to their ill will or revenge. Whole crews had been often leagued to charge captains of vessels with foulest murder, but judicial trial had exposed the falsehood. Truth has been distorted in this case, and murder manufactured out of what was nothing more than ordinary domestic discipline. Chastisement must be inflicted until subordination is produced; and the extent of the punishment is not to be judged of by one's neighbors, but by himself. The event in this case has been unfortunate and sad; but there was no motive for the taking of life. There is no pecuniary interest in the owner to destroy his slave; the murder of his slave can only happen from ferocious passions of the master, filling his own bosom with anguish and contrition. This case has no other basis but unfounded rumor, commonly believed, on evidence that will not venture here, the offspring of that passion and depravity which make up falsehood. The hope of freedom, of change of owners, revenge, are all motives with slave witnesses to malign their owners; and to credit such testimony would be to dissolve human society. Where deliberate, wilful, and malicious murder is done, whether by male or female, the retribution of the law is a debt to God and man; but the jury should beware lest it fall upon the innocent. The offence charged was not strictly murder at common law. The act of 1740 was founded on the practical good sense of our old planters, and its spirit still prevails. The act of 1821 is, by its terms, an act only to increase the punishment of persons convicted of murdering a slave,—and this is a refinement in humanity of doubtful policy. But, by the act of 1821, the murder must be wilful, deliberate and malicious; and, when punishment is due to the slave, the master must not be held to strict account for going an inch beyond the mark; whether for doing so he shall be a felon, is a question for the jury to solve. The master must conquer a refractory slave; and deliberation, so as to render clear the existence of malice, is necessary to bring the master within the provision of the act. He bade the jury remember the words of Him who spake as never man spake,—"Let him that has never sinned throw the first stone." They, as masters, might regret excesses to which they have themselves carried punishment. He was not at all surprised at the course of the attorney-general; it was his wont to treat every case with perfect fairness. He (Colonel H.) agreed that the inquiry should be—

- 1. Into the fact of the death.
- 2. The character or motive of the act.

The examination of the prisoner showed conclusively that the slave died a natural death, and not from personal violence. She was chastised with a lawful weapon,—was in weak health, nervous, made angry by her punishment, excited. The story was then a plain one; the community had been misled by the creations of imagination, or the statements of interested slaves. The negro came into her mistress' chamber; fell on the floor; medicine was given her; it was supposed she was asleep, but she slept the sleep of death. To show the wisdom and policy of the old act of 1740 (this indictment is under both acts, the punishment only altered by that of 1821), he urged that a case like this was not murder at common law; nor is the same evidence applicable at common law. There, murder was presumed from killing; not so in the case of a slave. The act of 1740 permits a master, when his slave is killed in his presence, there being no other white person present, to exculpate himself by his own oath; and this exculpation is complete, unless clearly contravened by the evidence of two white witnesses. This is exactly what the prisoner has done; she has, as the law permits, by calling on God, exculpated herself. And her oath is good, at least against the slander of her own slaves. Which, then, should prevail, the clamors of others, or the policy of the law established by our colonial ancestors? There would not be a tittle of positive evidence against the prisoner, nothing but circumstantial evidence; and ingenious combination might be made to lead to any conclusion. Justice was all that his client asked. She appealed to liberal and high-minded men,-and she rejoiced in the privilege of doing so,---to accord her that justice they would demand for themselves.

Mr. Deveaux was not cross-examined.

Evidence resumed.

Dr. E. W. North sworn.—(Cautioned by attorney-general to avoid hearsay evidence.) Was the family physician of Mrs. Rowand. Went on the 6th January, at Mrs. Rowand's request, to see her at her mother's, in Logan-street; found her down stairs, in sitting-room. She was in a nervous and excited state; had been so for a month before; he had attended her; she said nothing to witness of slave Maria; found Maria in a chamber, up stairs, about one o'clock, P. M.; she was dead; she appeared to have been dead about an hour and a half; his attention was attracted to a piece of pine wood on a trunk or table in the room; it had a large knot on one end; had it been used on Maria, it must have caused considerable contusion; other pieces of wood were in a box, and much smaller ones; the corpse was lying one side in the chamber; it was not laid out; presumed she died there; the marks on the body were, to witness' view, very slight; some scratches about the face; he purposely avoided making an examination; observed no injuries about the head; had no conversation with Mrs. Rowand about Maria; left the house; it was on the 6th January last,—the day before the inquest; knew the slave before, but had never attended her.

Cross-examined.—Mrs. Rowand was in feeble health, and nervous; the slave Maria was weak and emaciated in appearance; sudden death of such a person, in such a state, from apoplexy or action of nervous system, not unlikely; her sudden death would not imply violence; had prescribed asafœtida for Mrs. Rowand on a former visit; it is an appropriate remedy for nervous disorders. Mrs. Rowand was not of bodily strength to handle the pine knot so as to give a severe blow; Mrs. Rowand has five or six children, the elder of them large enough to have carried pieces of the wood about the room; there must have been a severe contusion, and much extravasation of blood, to infer death from violence in this case; apoplexy is frequently attended with extravasation of blood; there were two Marias in the family.

In reply.—Mrs. Rowand could have raised the pine knot, but could not have struck a blow with it; such a piece of wood could have produced death, but it would have left its mark; saw the fellow Richard; he was quite capable of giving such a blow.

Dr. Peter Porcher.—Was called in by the Coroner's jury to examine Maria's body; found it in the wash-kitchen; it was the corpse of one feeble and emaciated; partly prepared for burial; had the clothes removed; the body was lacerated with stripes; abrasions about face and knuckles; skin knocked off; passed his hand over the head; no bone broken; on request, opened her thorax, and examined the viscera; found them healthy; heart unusually so for one of her age; no particular odor; some undigested food; no inflammation; removed the scalp, and found considerable extravasation between scalp and skull; scalp bloodshot; just under the scalp, found the effects of a single blow, just over the right ear; after removing the scalp, lifted the bone; no rupture of any bloodvessel; some softening of the brain in the upper hemisphere; there was considerable extravasation under the scalp, the result of a succession of blows on the top of the head; this extravasation was general, but that over the ear was a single spot; the butt-end of a cowhide would have sufficed for this purpose; an ordinary stick, a heavy one, would have done it; a succession of blows on the head, in a feeble woman, would lead to death, when, in a stronger one, it would not; saw no other appearance about her person, to account for her death, except those blows.

Cross-examined.—To a patient in this woman's condition, the blows would probably cause death; they were not such as were calculated to kill an ordinary person; witness saw the body twenty-four hours after her death; it was winter, and bitter cold; no disorganization, and the examination was therefore to be relied on; the blow behind the ear might have resulted from a fall, but not the blow on the top of the head, unless she fell head foremost; came to the conclusion of a succession of blows, from the extent of the extravasation; a single blow would have shown a distinct spot, with a gradual spreading or diffusion; one large blow could not account for it, as the head was spherical; no blood on the brain; the softening of the brain did not amount to much; in an ordinary dissection would have passed it over; anger sometimes produces apoplexy, which results in death; blood between the scalp and the bone of the skull; it was evidently a fresh extravasation; twenty-four hours would scarcely have made any change; knew nothing of this negro before; even after examination, the cause of death is sometimes inscrutable,—not usual, however.

In reply.—Does not attribute the softening of the brain to the blows; it was slight, and might have been the result of age; it was some evidence of impairment of vital powers by advancing age.

Dr. A. P. Hayne.—At request of the coroner, acted with Dr. Porcher; was shown into an outhouse; saw on the back of the corpse evidences of contusion; arms swollen and enlarged; laceration of body; contusions on head and neck; between scalp and skull extravasation of blood, on the top of head, and behind the right ear; a burn on the hand; the brain presented healthy appearance; opened the body, and no evidences of disease in the chest or viscera; attributed the extravasation of blood to external injury from blows,—blows from a large and broad and blunt instrument; attributes the death to those blows; supposes they were adequate to cause death, as she was old, weak and emaciated.

Cross-examined.—Would not have caused death in a young and robust person.

The evidence for the prosecution here closed, and no witnesses were called for the defence.

The jury were then successively addressed, ably and eloquently, by J. L. Petigru and James S. Rhett, Esqrs., on behalf of the prisoner, and H. Bailey, Esq., on behalf of the state, and by B. F. Hunt, Esq., in reply. Of those speeches, and also of the judge's charge, we have taken full notes, but have neither time nor space to insert them here.

His Honor, Judge O'Neall, then charged the jury eloquently and ably on the facts, vindicating the existing law, making death the penalty for the murder of a slave; but, on the law, intimated to the jury that he held the act of 1740 so far still in force as to admit of the prisoner's exculpation by her own oath, unless clearly disproved by the oaths of two witnesses; and that they were, therefore, in his opinion, bound to acquit,—although he left it to them, wholly, to say whether the prisoner was guilty of murder, killing in sudden heat and passion, or not guilty.

The jury then retired, and, in about twenty or thirty minutes, returned with a verdict of "Not Guilty."

There are some points which appear in this statement of the trial, especially in the plea for the defence. Particular attention is called to the following passage:

"Fortunately," said the lawyer, "the jury were of the country;—acquainted with our policy and practice; composed of men too honorable to be led astray by the noise and clamor out of doors. All was now as it should be; at least, a court of justice had assembled to which his client had fled for refuge and safety; its threshold was sacred; no profane clamors entered there; but legal investigation was had of facts."

From this it plainly appears that the case was a notorious one; so notorious and atrocious as to break through all the apathy which slave-holding institutions tend to produce, and to surround the court-house with noise and clamor.

From another intimation in the same speech, it would appear that there was abundant testimony of slaves to the direct fact,—testimony which left no kind of doubt on the popular mind. Why else does he thus earnestly warn the jury?

He warned the jury that they were to listen to no evidence but that of free white persons, given on oath in open court; they were to imagine none that came not from them. It was for this that they were selected;—their intelligence putting them beyond the influence of unfounded accusations, unsustained by legal proof; of legends of aggravated cruelty, founded on the evidence of negroes, and arising from weak and wicked falsehoods.

See also this remarkable admission:—"Truth had been distorted in this case, and murder manufactured out of what was nothing more than

ORDINARY DOMESTIC DISCIPLINE." If the reader refers to the testimony, he will find it testified that the woman appeared to be about sixty years old; that she was much emaciated; that there had been a succession of blows on the top of her head, and one violent one over the ear; and that, in the opinion of a surgeon, these blows were sufficient to cause death. Yet the lawyer for the defence coolly remarks that "murder had been manufactured out of what was ordinary domestic discipline." Are we to understand that beating feeble old women on the head, in this manner, is a specimen of ordinary domestic discipline in Charleston? What would have been said if any anti-slavery newspaper at the North had made such an assertion as this? Yet the Charleston Courier reports this statement without comment or denial. But let us hear the lady's lawyer go still further in vindication of this ordinary domestic discipline: "Chastisement must be inflicted until subordination is produced; and the extent of the punishment is not to be judged by one's neighbors, but by himself. The event, IN THIS CASE, has been unfortunate and sad." The lawyer admits that the result of thumping a feeble old woman on the head has, in this case, been "unfortunate and sad." The old thing had not strength to bear it, and had no greater regard for the convenience of the family, and the reputation of "the institution," than to die, and so get the family and the community generally into trouble. It will appear from this that in most cases where old women are thumped on the head they have stronger constitutions or more consideration.

Again he says, "When punishment is due to the slave, the master must not be held to strict account for going an inch beyond the mark." And finally, and most astounding of all, comes this: "He bade the jury remember the words of him who spake as never man spake,—'Let him that hath never sinned throw the first stone.' They, as masters, might regret excesses to which they themselves might have carried punishment."

What sort of an insinuation is this? Did he mean to say that almost all the jurymen had probably done things of the same sort, and therefore could have nothing to say in this case? and did no member of the jury get up and resent such a charge? From all that appears, the jury acquiesced in it as quite a matter of course; and the Charleston Courier quotes it without comment, in the record of a trial which it says "will show to the world HOW the law extends the ægis of her protection alike over the white man and the humblest slave."

Lastly, notice the decision of the judge, which has become law in South Carolina. What point does it establish? That the simple oath of the master, in face of all circumstantial evidence to the contrary, may clear him, when the murder of a slave is the question. And this trial is paraded as a triumphant specimen of legal impartiality and equity! "If the light that is in thee be darkness, how great is that darkness!"

# CHAPTER VIII. THE GOOD OLD TIMES.

"A refinement in humanity of doubtful policy."

B. F. Hunt.

The author takes no pleasure in presenting to her readers the shocking details of the following case. But it seems necessary to exhibit what were the actual workings of the ancient law of South Carolina, which has been characterized as one "conformed to the policy, and approved by the wisdom," of the fathers of that state, and the reform of which has been called "a refinement in humanity of doubtful policy."

It is well, also, to add the charge of Judge Wilds, partly for its intrinsic literary merit, and the nobleness of its sentiments, but principally because it exhibits such a contrast as could scarcely be found elsewhere, between the judge's high and indignant sense of justice, and the shameful impotence and imbecility of the laws under which he acted.

The case was brought to the author's knowledge by a letter from a gentleman of Pennsylvania, from which the following is an extract:

Some time between the years 1807 and 1810, there was lying in the harbor of Charleston a ship commanded by a man named Slater. His crew were slaves: one of them committed some offence, not specified in the narrative. The captain ordered him to be bound and laid upon the deck; and there, in the harbor of Charleston, in the broad daylight, compelled another slave-sailor to chop off his head. The affair was public—notorious. A prosecution was commenced against him; the offence was proved beyond all doubt,—perhaps, indeed, it was not denied,—and the judge, in a most eloquent charge or rebuke of the defendant, expressed his sincere regret that he could inflict no punishment, under the laws of the state.

I was studying law when the case was published in "Hall's American Law Journal, vol. I." I have not seen the book for twenty-five or thirty years. I may be in error as to names, &c., but while I have life and my senses the facts of the case cannot be forgotten.

The following is the "charge" alluded to in the above letter. It was pronounced by the Honorable Judge Wilds, of South Carolina, and is copied from Hall's Law Journal, I. 67.

John Slater! You have been convicted by a jury of your country of the

wilful murder of your own slave; and I am sorry to say, the short, impressive, uncontradicted testimony, on which that conviction was founded, leaves but too little room to doubt its propriety.

The annals of human depravity might be safely challenged for a parallel to this unfeeling, bloody and diabolical transaction.

You caused your unoffending, unresisting slave to be bound hand and foot, and, by a refinement in cruelty, compelled his companion, perhaps the friend of his heart, to chop his head with an axe, and to cast his body, yet convulsing with the agonies of death, into the water! And this deed you dared to perpetrate in the very harbor of Charleston, within a few yards of the shore, unblushingly, in the face of open day. Had your murderous arm been raised against your equals, whom the laws of self-defence and the more efficacious law of the land unite to protect, your crimes would not have been without precedent, and would have seemed less horrid. Your personal risk would at least have proved, that though a murderer, you were not a coward. But you too well knew that this unfortunate man, whom chance had subjected to your caprice, had not, like yourself, chartered to him by the laws of the land the sacred rights of nature; and that a stern, but necessary policy, had disarmed him of the rights of self-defence. Too well you knew that to you alone he could look for protection; and that your arm alone could shield him from oppression, or avenge his wrongs; yet, that arm you cruelly stretched out for his destruction.

The counsel, who generously volunteered his services in your behalf, shocked at the enormity of your offence, endeavored to find a refuge, as well for his own feelings as for those of all who heard your trial, in a derangement of your intellect. Several witnesses were examined to establish this fact; but the result of their testimony, it is apprehended, was as little satisfactory to his mind, as to those of the jury to whom it was addressed. I sincerely wish this defence had proved successful, not from any desire to save you from the punishment which awaits you, and which you so richly merit, but from the desire of saving my country from the foul reproach of having in its bosom so great a monster.

From the peculiar situation of this country, our fathers felt themselves justified in subjecting to a very slight punishment him who murders a slave. Whether the present state of society require a continuation of this policy, so opposite to the apparent rights of humanity, it remains for a subsequent legislature to decide. Their attention would ere this have been directed to this subject, but, for the honor of human nature, such hardened sinners as yourself are rarely found, to disturb the repose of society. The grand jury of this district, deeply impressed with your daring outrage against the laws both of God and man, have made a very strong expression of their feelings on the subject to the legislature; and, from the wisdom and justice of that body, the friends of humanity may confidently hope soon to see this blackest in the catalogue of human crimes pursued by appropriate punishment.

In proceeding to pass the sentence which the law provides for your offence, I confess I never felt more forcibly the want of power to make respected the laws of my country, whose minister I am. You have already violated the majesty of those laws. You have profanely pleaded the law under which you stand convicted, as a justification of your crime. You have held that law in one hand, and brandished your bloody axe in the other, impiously contending that the one gave a license to the unrestrained use of the other.

But, though you will go off unhurt in person, by the present sentence, expect not to escape with impunity. Your bloody deed has set a mark upon you, which I fear the good actions of your future life will not efface. You will be held in abhorrence by an impartial world, and shunned as a monster by every honest man. Your unoffending posterity will be visited, for your iniquity, by the stigma of deriving their origin from an unfeeling murderer. Your days, which will be but few, will be spent in wretchedness; and, if your conscience be not steeled against every virtuous emotion, if you be not entirely abandoned to hardness of heart, the mangled, mutilated corpse of your murdered slave will ever be present in your imagination, obtrude itself into all your amusements, and haunt you in the hours of silence and repose.

But, should you disregard the reproaches of an offended world, should you hear with callous insensibility the gnawings of a guilty conscience, yet remember, I charge you, remember, that an awful period is fast approaching, and with you is close at hand, when you must appear before a tribunal whose want of power can afford you no prospect of impunity; when you must raise your bloody hands at the bar of an impartial omniscient Judge! Remember, I pray you, remember, whilst yet you have time, that God is just, and that his vengeance will not sleep forever!

The penalty that followed this solemn denunciation was a fine of seven hundred pounds, current money, or, in default of payment, imprisonment for seven years.

And yet it seems that there have not been wanting those who consider the reform of this law "a refinement in humanity of doubtful policy"! To this sentiment, so high an authority as that of Chancellor Harper is quoted, as the reader will see by referring to the speech of Mr. Hunt, in the last chapter. And, as is very common in such cases, the old law is vindicated, as being, on the whole, a surer protection to the life of the slave than the new one. From the results of the last two trials, there would seem to be a fair show of plausibility in the argument. For under the old law it seems that Slater had at least to pay

seven hundred pounds, while under the new Eliza Rowand comes off with only the penalty of "a most sifting scrutiny."

Thus, it appears, the penalty of the law goes with the murderer of the slave.

How is it executed in the cases which concern the life of the master? Look at this short notice of a recent trial of this kind, which is given in the Alexandria (Va.) Gazette, of Oct. 23, 1852, as an extract from the Charlestown (Va.) Free Press.

# TRIAL OF NEGRO HENRY.

The trial of this slave for an attack, with intent to kill, on the person of Mr. Harrison Anderson, was commenced on Monday and concluded on Tuesday evening. His Honor, Braxton Davenport, Esq., chief justice of the county, with four associate gentlemen justices, composed the court.

The commonwealth was represented by its attorney, Charles B. Harding, Esq., and the accused ably and eloquently defended by Wm. C. Worthington and John A. Thompson, Esqs. The evidence of the prisoner's guilt was conclusive. A majority of the court thought that he ought to suffer the extreme penalty of the law; but, as this required a unanimous agreement, he was sentenced to receive five hundred lashes, not more than thirty-nine at one time. The physician of the jail was instructed to see that they should not be administered too frequently, and only when, in his opinion, he could bear them.

In another paper we are told that the Free Press says:

A majority of the court thought that he ought to suffer the extreme penalty of the law; but, as this required a unanimous agreement, he was sentenced to receive five hundred lashes, not more than thirty-nine at any one time. The physician of the jail was instructed to see that they should not be administered too frequently, and only when, in his opinion, he could bear them. This may seem to be a harsh and inhuman punishment; but, when we take into consideration that it is in accordance with the law of the land, and the further fact that the insubordination among the slaves of that state has become truly alarming, we cannot question the righteousness of the judgment.

Will anybody say that the master's life is in more danger from the slave than the slave's from the master, that this disproportionate retribution is meted out? Those who countenance such legislation will do well to ponder the solemn words of an ancient book, inspired by One who is no respecter of persons:

"If I have refused justice to my man-servant or maid-servant,

When they had a cause with me,

What shall I do when God riseth up? And when he visiteth, what shall I answer him? Did not he that made me in the womb make him? Did not the same God fashion us in the womb?" Job 31:13–15.

#### CHAPTER IX.

# MODERATE CORRECTION AND ACCIDENTAL DEATH—STATE v. CASTLEMAN.

The author remarks that the record of the following trial was read by her a little time before writing the account of the death of Uncle Tom. The shocking particulars haunted her mind and were in her thoughts when the following sentence was written:

What man has nerve to do, man has not nerve to hear. What brother man and brother Christian must suffer, cannot be told us, even in our secret chamber, it so harrows up the soul. And yet, O my country, these things are done under the shadow of thy laws! O Christ, thy church sees them almost in silence!

It is given precisely as prepared by Dr. G. Bailey, the very liberal and fairminded editor of the National Era.

From the National Era, Washington, November 6, 1851.

HOMICIDE CASE IN CLARKE COUNTY, VIRGINIA.

Some time since, the newspapers of Virginia contained an account of a horrible tragedy, enacted in Clarke County, of that state. A slave of Colonel James Castleman, it was stated, had been chained by the neck, and whipped to death by his master, on the charge of stealing. The whole neighborhood in which the transaction occurred was incensed; the Virginia papers abounded in denunciations of the cruel act; and the people of the North were called upon to bear witness to the justice which would surely be meted out in a slave state to the master of a slave. We did not publish the account. The case was horrible; it was, we were confident, exceptional; it should not be taken as evidence of the general treatment of slaves; we chose to delay any notice of it till the courts should pronounce their judgment, and we could announce at once the crime and its punishment, so that the state might stand acquitted of the foul deed. Those who were so shocked at the transaction will be surprised and mortified to hear that the actors in it have been tried and acquitted; and when they read the following account of the trial and verdict, published at the instance of the friends of the accused, their mortification will deepen into bitter indignation:

From the "Spirit of Jefferson."

"Colonel James Castleman.—The following statement, understood to have been drawn up by counsel, since the trial, has been placed by the friends of this gentleman in our hands for publication:

"At the Circuit Superior Court of Clarke County, commencing on the 13th of October, Judge Samuels presiding, James Castleman and his son Stephen D. Castleman were indicted jointly for the murder of negro Lewis, property of the latter. By advice of their counsel, the parties elected to be tried separately, and the attorney for the commonwealth directed that James Castleman should be tried first.

"It was proved, on this trial, that for many months previous to the occurrence the money-drawer of the tavern kept by Stephen D. Castleman, and the liquors kept in large quantities in his cellar, had been pillaged from time to time, until the thefts had attained to a considerable amount. Suspicion had, from various causes, been directed to Lewis, and another negro, named Reuben (a blacksmith), the property of James Castleman; but by the aid of two of the house-servants they had eluded the most vigilant watch.

"On the 20th of August last, in the afternoon, S. D. Castleman accidentally discovered a clue, by means of which, and through one of the house-servants implicated, he was enabled fully to detect the depredators, and to ascertain the manner in which the theft had been committed. He immediately sent for his father, living near him, and after communicating what he had discovered, it was determined that the offenders should be punished at once, and before they should know of the discovery that had been made.

"Lewis was punished first; and in a manner, as was fully shown, to preclude all risk of injury to his person, by stripes with a broad leathern strap. He was punished severely, but to an extent by no means disproportionate to his offence; nor was it pretended, in any quarter, that this punishment implicated either his life or health. He confessed the offence, and admitted that it had been effected by false keys, furnished by the blacksmith, Reuben.

"The latter servant was punished immediately afterwards. It was believed that he was the principal offender, and he was found to be more obdurate and contumacious than Lewis had been in reference to the offence. Thus it was proved, both by the prosecution and the defence, that he was punished with greater severity than his accomplice. It resulted in a like confession on his part, and he produced the false key, one fashioned by himself, by which the theft had been effected.

"It was further shown, on the trial, that Lewis was whipped in the upper room of a warehouse, connected with Stephen Castleman's store, and near the public road, where he was at work at the time; that after he had been flogged, to secure his person, whilst they went after Reuben, he was confined by a chain around his neck, which was attached to a joist above his head. The length of this chain, the breadth and thickness of the joist, its height from the floor, and the circlet of chain on the neck, were accurately measured; and it was thus shown that the chain unoccupied by the circlet and the joist was a foot and a half longer than the space between the shoulders of the man and the joist above, or to that extent the chain hung loose above him; that the circlet (which was fastened so as to prevent its contraction) rested on the shoulders and breast, the chain being sufficiently drawn only to prevent being slipped over his head, and that there was no other place in the room to which he could be fastened, except to one of the joists above. His hands were tied in front; a white man, who had been at work with Lewis during the day, was left with him by the Messrs. Castleman, the better to insure his detention, whilst they were absent after Reuben. It was proved by this man (who was a witness for the prosecution) that Lewis asked for a box to stand on, or for something that he could jump off from; that after the Castlemans had left him he expressed a fear that when they came back he would be whipped again; and said, if he had a knife, and could get one hand loose, he would cut his throat. The witness stated that the negro 'stood firm on his feet,' that he could turn freely in whatever direction he wished, and that he made no complaint of the mode of his confinement. This man stated that he remained with Lewis about half an hour, and then left there to go home.

"After punishing Reuben, the Castlemans returned to the warehouse, bringing him with them; their object being to confront the two men, in the hope that by further examination of them jointly all their accomplices might be detected.

"They were not absent more than half an hour. When they entered the room above, Lewis was found hanging by the neck, his feet thrown behind him, his knees a few inches from the floor, and his head thrown forward—the body warm and supple (or relaxed), but life was extinct.

"It was proved by the surgeons who made a post-mortem examination before the coroner's inquest that the death was caused by strangulation by hanging; and other eminent surgeons were examined to show, from the appearance of the brain and its blood-vessels after death (as exhibited at the post-mortem examination), that the subject could not have fainted before strangulation.

"After the evidence was finished on both sides, the jury from their box, and of their own motion, without a word from counsel on either side, informed the court that they had agreed upon their verdict. The counsel assented to its being thus received, and a verdict of "not guilty" was immediately rendered. The attorney for the commonwealth then informed the court that all the evidence for the prosecution had been laid before the jury; and as no new evidence could be offered on the trial of Stephen D. Castleman, he submitted to the court the propriety of entering a nolle prosequi. The judge replied that the case had been fully and fairly laid before the jury upon the evidence; that the court was not only satisfied with the verdict, but, if any other had been rendered, it must have been set aside; and that if no further evidence was to be adduced on the trial of Stephen, the attorney for the commonwealth would exercise a proper discretion in entering a nolle prosequi as to him, and the court would approve its being done. A nolle prosequi was entered accordingly, and both gentlemen discharged.

"It may be added that two days were consumed in exhibiting the evidence, and that the trial was by a jury of Clarke County. Both the parties had been on bail from the time of their arrest, and were continued on bail whilst the trial was depending."

Let us admit that the evidence does not prove the legal crime of homicide: what candid man can doubt, after reading this ex parte version of it, that the slave died in consequence of the punishment inflicted upon him?

In criminal prosecutions the federal constitution guarantees to the accused the right to a public trial by an impartial jury; the right to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor; and to have the assistance of counsel; guarantees necessary to secure innocence against hasty or vindictive judgment,—absolutely necessary to prevent injustice. Grant that they were not intended for slaves; every master of a slave must feel that they are still morally binding upon him. He is the sole judge; he alone determines the offence, the proof requisite to establish it, and the amount of the punishment. The slave then has a peculiar claim upon him for justice. When charged with a crime, common humanity requires that he should be informed of it, that he should be confronted with the witnesses against him, that he should be permitted to show evidence in favor of his innocence.

But how was poor Lewis treated? The son of Castleman said he had discovered who stole the money; and it was forthwith "determined that the offenders should be punished at once, and before they should know of the discovery that had been made." Punished without a hearing! Punished on the testimony of a house-servant, the nature of which does not appear to have been inquired into by the court! Not a word is said which authorizes the belief that any careful examination was made, as it respects their guilt. Lewis and Reuben were assumed, on loose evidence, without deliberate investigation, to be guilty; and then, without allowing them to attempt to show their evidence, they were whipped, until a confession of guilt was extorted by bodily pain.

## Is this Virginia justice?

Lewis was punished with "a broad leathern strap,"—he was "punished severely:" this we do not need to be told. A "broad leathern strap" is well adapted to severity of punishment. "Nor was it pretended," the account says, "in any quarter, that this punishment implicated either his life or his health." This is false; it was expressly stated in the newspaper accounts at the time, and such was the general impression in the neighborhood, that the punishment did very severely implicate his life. But more of this anon.

Lewis was left. A chain was fastened around his neck, so as not to choke him, and secured to the joist above, leaving a slack of about a foot and a half. Remaining in an upright position, he was secure against strangulation, but he could neither sit nor kneel; and should he faint, he would be choked to death. The account says that they fastened him thus for the purpose of securing him. If this had been the sole object, it could have been accomplished by safer and less cruel methods, as every reader must know. This mode of securing him was intended probably to intimidate him, and, at the same time, afforded some gratification to the vindictive feeling which controlled the actors in this foul transaction. The man whom they left to watch Lewis said that, after remaining there about half an hour, he went home; and Lewis was then alive. The Castlemans say that, after punishing Reuben, they returned, having been absent not more than half an hour, and they found him hanging by the neck, dead. We direct attention to this part of the testimony, to show how loose the statements were which went to make up the evidence.

Why was Lewis chained at all, and a man left to watch him? "To secure him," say the Castlemans. Is it customary to chain slaves in this manner, and set a watch over them, after severe punishment, to prevent their running away? If the punishment of Lewis had not been unusual, and if he had not been threatened with another infliction on their return, there would have been no necessity for chaining him.

The testimony of the man left to watch represents him as desperate, apparently, with pain and fright. "Lewis asked for a box to stand on:" why? Was he not suffering from pain and exhaustion, and did he not wish to rest himself, without danger of slow strangulation? Again: he asked for "something he could jump off from;" "after the Castlemans left, he expressed

a fear when they came back that he would be whipped again; and said, if he had a knife, and could get one hand loose, he would cut his throat."

The punishment that could drive him to such desperation must have been horrible.

How long they were absent we know not, for the testimony on this point is contradictory. They found him hanging by the neck, dead, "his feet thrown behind him, his knees a few inches from the floor, and his head thrown forward,"—just the position he would naturally fall into, had he sunk from exhaustion. They wish it to appear that he hung himself. Could this be proved (we need hardly say that it is not), it would relieve but slightly the dark picture of their guilt. The probability is that he sank, exhausted by suffering, fatigue and fear. As to the testimony of "surgeons," founded upon a post-mortem examination of the brain and blood-vessels, "that the subject could not have fainted before strangulation," it is not worthy of consideration. We know something of the fallacies and fooleries of such examinations.

From all we can learn, the only evidence relied on by the prosecution was that white man employed by the Castlemans. He was dependent upon them for work. Other evidence might have been obtained; why it was not is for the prosecuting attorney to explain. To prove what we say, and to show that justice has not been done in this horrible affair, we publish the following communication from an old and highly-respectable citizen of this place, and who is very far from being an Abolitionist. The slave-holders whom he mentions are well known here, and would have promptly appeared in the case, had the prosecution, which was aware of their readiness, summoned them.

"To the Editor of the Era:

"I see that Castleman, who lately had a trial for whipping a slave to death, in Virginia, was 'triumphantly acquitted,'—as many expected. There are three persons in this city, with whom I am acquainted, who staid at Castleman's the same night in which this awful tragedy was enacted. They heard the dreadful lashing and the heart-rending screams and entreaties of the sufferer. They implored the only white man they could find on the premises, not engaged in the bloody work, to interpose; but for a long time he refused, on the ground that he was a dependent, and was afraid to give offence; and that, moreover, they had been drinking, and he was in fear for his own life, should he say a word that would be displeasing to them. He did, however, venture, and returned and reported the cruel manner in which the slaves were chained, and lashed, and secured in a blacksmith's vice. In the morning, when they ascertained that one of the slaves was dead, they were so shocked and indignant that they refused to eat in the house, and reproached Castleman with his cruelty. He expressed his regret that the slave had died, and especially as he had ascertained that he was innocent of the accusation for which he had suffered. The idea was that he had fainted from exhaustion; and, the chain being round his neck, he was strangled. The persons I refer to are themselves slave-holders,—but their feelings were so harrowed and lacerated that they could not sleep (two of them are ladies); and for many nights afterwards their rest was disturbed, and their dreams made frightful, by the appalling recollection.

"These persons would have been material witnesses, and would have willingly attended on the part of the prosecution. The knowledge they had of the case was communicated to the proper authorities, yet their attendance was not required. The only witness was that dependent who considered his own life in danger.

"Yours, &c., J. F."

The account, as published by the friends of the accused parties, shows a case of extreme cruelty. The statements made by our correspondent prove that the truth has not been fully revealed, and that justice has been baffled. The result of the trial shows how irresponsible is the power of a master over his slave; and that whatever security the latter has is to be sought in the humanity of the former, not in the guarantees of law. Against the cruelty of an inhuman master he has really no safeguard.

Our conduct in relation to this case, deferring all notice of it in our columns till a legal investigation could be had, shows that we are not disposed to be captious towards our slave-holding countrymen. In no unkind spirit have we examined this lamentable case; but we must expose the utter repugnance of the slave system to the proper administration of justice. The newspapers of Virginia generally publish the account from the Spirit of Jefferson, without comment. They are evidently not satisfied that justice was done; they doubtless will deny that the accused were guilty of homicide, legally; but they will not deny that they were guilty of an atrocity which should brand them forever, in a Christian country.

## CHAPTER X.

# PRINCIPLES ESTABLISHED.—STATE v. LEGREE; A CASE NOT IN THE BOOKS.

From a review of all the legal cases which have hitherto been presented, and of the principles established in the judicial decisions upon them, the following facts must be apparent to the reader: First, That masters do, now and then, kill slaves by the torture.

Second, That the fact of so killing a slave is not of itself held presumption of murder, in slave jurisprudence.

Third, That the slave in the act of resistance to his master may always be killed.

From these things it will be seen to follow, that, if the facts of the death of Tom had been fully proved by two white witnesses, in open court, Legree could not have been held by any consistent interpreter of slave-law to be a murderer; for Tom was in the act of resistance to the will of his master. His master had laid a command on him, in the presence of other slaves. Tom had deliberately refused to obey the command. The master commenced chastisement, to reduce him to obedience. And it is evident, at the first glance, to every one, that, if the law does not sustain him in enforcing obedience in such a case, there is an end of the whole slave power. No Southern court would dare to decide that Legree did wrong to continue the punishment, as long as Tom continued the insubordination. Legree stood by him every moment of the time, pressing him to yield, and offering to let him go as soon as he did yield. Tom's resistance was insurrection. It was an example which could not be allowed, for a moment, on any Southern plantation. By the express words of the constitution of Georgia, and by the understanding and usage of all slave-law, the power of life and death is always left in the hands of the master, in exigences like this. This is not a case like that of Souther v. The Commonwealth. The victim of Souther was not in a state of resistance or insurrection. The punishment, in his case, was a simple vengeance for a past offence, and not an attempt to reduce him to subordination.

There is no principle of slave jurisprudence by which a man could be pronounced a murderer, for acting as Legree did, in his circumstances. Everybody must see that such an admission would strike at the foundations of the slave system. To be sure, Tom was in a state of insurrection for conscience' sake. But the law does not, and cannot, contemplate that the negro shall have a conscience independent of his master's. To allow that the negro may refuse to obey his master whenever he thinks that obedience would be wrong, would be to produce universal anarchy. If Tom had been allowed to disobey his master in this case, for conscience' sake, the next day Sambo would have had a case of conscience, and Quimbo the next. Several of them might very justly have thought that it was a sin to work as they did. The mulatto woman would have remembered that the command of God forbade her to take another husband. Mothers might have considered that it was more their duty to stay at home and take care of their children, when they were young and feeble, than to work for Mr. Legree in the cotton-field. There would be no end to the havoc made upon cotton-growing operations, were the negro allowed the right of maintaining his own conscience on moral subjects. If the slave system is a right system, and ought to be maintained, Mr. Legree ought not to be blamed for his conduct in this case; for he did only what was absolutely essential to maintain the system; and Tom died in fanatical and foolhardy resistance to "the powers that be, which are ordained of God." He followed a sentimental impulse of his desperately depraved heart, and neglected those "solid teachings of the written word," which, as recently elucidated, have proved so refreshing to eminent political men.

#### **CHAPTER XI.**

#### THE TRIUMPH OF JUSTICE OVER LAW.

Having been obliged to record so many trials in which justice has been turned away backward by the hand of law, and equity and common humanity have been kept out by the bolt and bar of logic, it is a relief to the mind to find one recent trial recorded, in North Carolina, in which the nobler feelings of the human heart have burst over formalized limits, and where the prosecution appears to have been conducted by men, who were not ashamed of possessing in their bosoms that very dangerous and most illogical agitator, a human heart. It is true that, in giving this trial, very sorrowful, but inevitable, inferences will force themselves upon the mind, as to that state of public feeling which allowed such outrages to be perpetrated in open daylight, in the capital of North Carolina, upon a hapless woman. It would seem that the public were too truly instructed in the awful doctrine pronounced by Judge Ruffin, that "THE POWER OF THE MASTER MUST BE ABSOLUTE," to think of interfering while the poor creature was dragged, barefoot and bleeding, at a horse's neck, at the rate of five miles an hour, through the streets of Raleigh. It seems, also, that the most horrible brutalities and enormities that could be conceived of were witnessed, without any efficient interference, by a number of the citizens, among whom we see the name of the Hon. W. H. Haywood, of Raleigh. It is a comfort to find the attorney-general, in this case, speaking as a man ought to speak. Certainly there can be no occasion to wish to pervert or overstate the dread workings of the slave system, or to leave out the few comforting and encouraging features, however small the encouragement of them may be.

The case is now presented, as narrated from the published reports, by Dr. Bailey, editor of the National Era; a man whose candor and fairness need no indorsing, as every line that he writes speaks for itself.

The reader may at first be surprised to find slave testimony in the court, till he recollects that it is a slave that is on trial, the testimony of slaves being only null when it concerns whites.

AN INTERESTING TRIAL.

We find in one of the Raleigh (North Carolina) papers, of June 5, 1851, a report of an interesting trial, at the spring term of the Superior Court. Mima, a slave, was indicted for the murder of her master, William Smith, of Johnston County, on the night of the 29th of November, 1850. The evidence for the prosecution was Sidney, a slave-boy, twelve years old, who testified that, in the night, he and a slave-girl, named Jane, were roused from sleep by the call of their master, Smith, who had returned home. They went out, and found Mima tied to his horse's neck, with two ropes, one round her neck, the other round her hands. Deceased carried her into the house, jerking the rope fastened to her neck, and tied her to a post. He called for something to eat, threw her a piece of bread, and, after he had done, beat her on her naked back with a large piece of light-wood, giving her many hard blows. In a short time, deceased went out of the house, for a special purpose, witness accompanying him with a torchlight, and hearing him say that he intended "to use the prisoner up." The light was extinguished, and he reëntered the house for the purpose of lighting it. Jane was there; but the prisoner had been untied, and was not there. While lighting his torch, he heard blows outside, and heard the deceased cry out, two or three times, "O, Leah! O, Leah!" Witness and Jane went out, saw the deceased bloody and struggling, were frightened, ran back, and shut themselves up. Leah, it seems, was mother of the prisoner, and had run off two years, on account of cruel treatment by the deceased.

Smith was speechless and unconscious till he died, the following morning, of the wounds inflicted on him.

It was proved on the trial that Carroll, a white man, living about a mile from the house of the deceased, and whose wife was said to be the illegitimate daughter of Smith, had in his possession, the morning of the murder, the receipt given the deceased by sheriff High, the day before, for jail fees, and a note for thirty-five dollars, due deceased from one Wiley Price, which Carroll collected a short time thereafter; also the chest-keys of the deceased; and no proof was offered to show how Carroll came into possession of these articles.

The following portion of the testimony discloses facts so horrible, and so disgraceful to the people who tolerated, in broad daylight, conduct which would have shamed the devil, that we copy it just as we find it in the Raleigh paper. The scene, remember, is the city of Raleigh.

"The defence was then opened. James Harris, C. W. D. Hutchings, and Hon. W. H. Haywood, of Raleigh; John Cooper, of Wake; Joseph Hane and others, of Johnston, were examined for the prisoner. The substance of their testimony was as follows: On the forenoon of Friday, 29th of November last, deceased took prisoner from Raleigh jail, tied her round the neck and wrist; ropes were then latched to the horse's neck; he cursed the prisoner several times, got on his horse, and started off; when he got opposite the Telegraph office, on Fayetteville-street, he pulled her shoes and stockings off, cursed her again, went off in a swift trot, the prisoner running after him, doing apparently all she could to keep up; passed round by Peck's store; prisoner seemed very humble and submissive; took down the street east of the capitol, going at the rate of five miles an hour; continued this gait until he passed O. Rork's corner, about half or three-quarters of a mile from the capitol; that he reached Cooper's (one of the witnesses), thirteen miles from Raleigh, about four o'clock, P. M.; that it was raining very hard; deceased got off his horse, turned it loose with prisoner tied to its neck; witness went to take deceased's horse to stable; heard great lamentations at the house; hurried back; saw his little daughter running through the rain from the house, much frightened; got there; deceased was gouging prisoner in the eyes, and she making outcries; made him stop; became vexed, and insisted upon leaving; did leave in a short time, in the rain, sun about an hour high; when he left, prisoner was tied as she was before; her arms and fingers were very much swollen; the rope around her wrist was small, and had sunk deep into the flesh, almost covered with it; that around the neck was large, and tied in a slipknot; deceased would jerk it every now and then; when jerked, it would choke prisoner; she was barefoot and bleeding; deceased was met some time after dark, in about six miles of home, being twenty-four or twenty-five from Raleigh."

Why did they not strike the monster to the earth, and punish him for his infernal brutality?

The attorney-general conducted the prosecution with evident loathing. The defence argued, first, that the evidence was insufficient to fasten the crime upon the prisoner; secondly, that, should the jury be satisfied beyond a rational doubt that the prisoner committed the act charged, it would yet be only manslaughter.

"A single blow between equals would mitigate a killing instanter from murder to manslaughter. It could not, in law, be anything more, if done under the furor brevis of passion. But the rule was different as between master and slave. It was necessary that this should be, to preserve the subordination of the slave. The prisoner's counsel then examined the authorities at length, and contended that the prisoner's case came within the rule laid down in The State v. Will (1 Dev. and Bat. 121). The rule there given by Judge Gaston is this: 'If a slave, in defence of his life, and under circumstances strongly calculated to excite his passions of terror and resentment, kill his overseer or master, the homicide is, by such circumstances, mitigated to manslaughter.' The cruelties of the deceased to the prisoner were grievous and long-continued. They would have shocked a barbarian. The savage loves and thirsts for blood; but the acts of civilized life have not afforded him such refinement of torture as was here exhibited."

The attorney-general, after discussing the law, appealed to the jury "not to suffer the prejudice which the counsel for the defence had attempted to create against the deceased (whose conduct, he admitted, was disgraceful to human nature) to influence their judgments in deciding whether the act of the prisoner was criminal or not, and what degree of criminality attached to it. He desired the prisoner to have a fair and impartial trial. He wished her to receive the benefit of every rational doubt. It was her right, however humble her condition; he hoped he had not that heart, as he certainly had not the right by virtue of his office, to ask in her case for anything more than he would ask from the highest and proudest of the land on trial, that the jury should decide according to the evidence, and vindicate the violated law."

These were honorable sentiments.

After an able charge by Judge Ellis, the jury retired, and, after having remained out several hours, returned with a verdict of Not Guilty. Of course, we see not how they could hesitate to come to this verdict at once.

The correspondent who furnishes the Register with a report of the case says:

"It excited an intense interest in the community in which it occurred, and, although it develops a series of cruelties shocking to human nature, the result of the trial, nevertheless, vindicates the benignity and justice of our laws towards that class of our population whose condition Northern fanaticism has so carefully and grossly misrepresented, for their own purposes of selfishness, agitation, and crime."

We have no disposition to misrepresent the condition of the slaves, or to disparage the laws of North Carolina; but we ask, with a sincere desire to know the truth, Do the laws of North Carolina allow a master to practise such horrible cruelties upon his slaves as Smith was guilty of, and would the public sentiment of the city of Raleigh permit a repetition of such enormities as were perpetrated in its streets, in the light of day, by that miscreant?

In conclusion, as the accounts of these various trials contain so many shocking incidents and particulars the author desires to enter a caution against certain mistaken uses which may be made of them, by well-intending persons. The crimes themselves, which form the foundation of the trials, are not to be considered and spoken of as specimens of the common working of the slave system. They are, it is true, the logical and legitimate fruits of a system which makes every individual owner an irresponsible despot. But the actual number of them, compared with the whole number of masters, we take pleasure in saying, is small. It is an injury to the cause of freedom to ground the argument against slavery upon the frequency with which such scenes as these occur. It misleads the popular mind as to the real issue of the subject. To hear many men talk, one would think that they supposed that unless negroes actually were whipped or burned alive at the rate of two or three dozen a week, there was no harm in slavery. They seem to see nothing in the system but its gross bodily abuses. If these are absent, they think there is no harm in it. They do not consider that the twelve hours' torture of some poor victim, bleeding away his life, drop by drop, under the hands of a Souther, is only a symbol of that more atrocious process by which the divine, immortal soul is mangled, burned, lacerated, thrown down, stamped upon, and suffocated, by the fiend-like force of the tyrant Slavery. And as, when the torturing work was done, and the poor soul flew up to the judgment-seat, to stand there in awful witness, there was not a vestige of humanity left in that dishonored body, nor anything by which it could be said, "See, this was a man!"-so, when Slavery has finished her legitimate work upon the soul, and trodden out every spark of manliness, and honor, and self-respect, and natural affection, and conscience, and religious sentiment, then there is nothing left in the soul, by which to say, "This was a man!" and it becomes necessary for judges to construct grave legal arguments to prove that the slave is a human being.

Such extreme cases of bodily abuse from the despotic power of slavery are comparatively rare. Perhaps they may be paralleled by cases brought to light in the criminal jurisprudence of other countries. They might, perhaps, have happened anywhere; at any rate, we will concede that they might. But where under the sun did such TRIALS, of such cases, ever take place, in any nation professing to be free and Christian? The reader of English history will perhaps recur to the trials under Judge Jeffries, as a parallel. A moment's reflection will convince him that there is no parallel between the cases. The decisions of Jeffries were the decisions of a monster, who violently wrested law from its legitimate course, to gratify his own fiendish nature. The decisions of American slave-law have been, for the most part, the decisions of honorable and humane men, who have wrested from their natural course the most humane feelings, to fulfil the mandates of a cruel law.

In the case of Jeffries, the sacred forms of the administration of justice were violated. In the case of the American decisions, every form has been maintained. Revolting to humanity as these decisions appear, they are strictly logical and legal.

Therefore, again, we say, Where, ever, in any nation professing to be civilized and Christian, did such TRIALS, of such cases, take place? When were ever such legal arguments made? When, ever, such legal principles judicially affirmed? Was ever such a trial held in England as that in Virginia, of Souther v. The Commonwealth? Was it ever necessary in England for a judge to declare on the bench, contrary to the opinion of a lower court, that the death of an apprentice, by twelve hours' torture from his master, did amount to murder in the first degree? Was such a decision, if given, accompanied by the affirmation of the principle, that any amount of torture inflicted by the master, short of the point of death, was not indictable? Not being read in English law, the writer cannot say; but there is strong impression from within that such a decision as this would have shaken the whole island of Great Britain; and that such a case as Souther v. The Commonwealth would never have been forgotten under the sun. Yet it is probable that very few persons in the United States ever heard of the case, or ever would have heard of it, had it not been quoted by the New York Courier and Enquirer as an overwhelming example of legal humanity.

The horror of the whole matter is, that more than one such case should ever need to happen in a country, in order to make the whole community feel, as one man, that such power ought not to be left in the hands of a master. How many such cases do people wish to have happen?—how many must happen, before they will learn that utter despotic power is not to be trusted in any hands? If one white man's son or brother had been treated in this way, under the law of apprenticeship, the whole country would have trembled, from Louisiana to Maine, till that law had been altered. They forget that the black man has also a father. It is "He that sitteth upon the circle of the heavens, who bringeth the princes to nothing, and maketh the judges of the earth as vanity." He hath said that "When he maketh inquisition for blood, he FORGETTETH NOT the cry of the humble." That blood which has fallen so despised to the earth,—that blood which lawyers have quibbled over, in the quiet of legal nonchalance, discussing in great ease whether it fell by murder in the first or second degree,—HE will one day reckon for as the blood of his own child. He "is not slack concerning his promises, as some men count slackness, but is long-suffering to usward;" but the day of vengeance is surely coming, and the year of his redeemed is in his heart.

Another court will sit upon these trials, when the Son of Man shall come in his glory. It will be not alone Souther, and such as he, that will be arraigned there; but all those in this nation, north and south, who have abetted the system, and made the laws which MADE Souther what he was. In that court negro testimony will be received, if never before; and the judges and the counsellors, and the chief men, and the mighty men, marshalled to that awful bar, will say to the mountains and the rocks, "Fall on us and hide us from the face of Him that sitteth on the throne, and from the wrath of the Lamb."

The wrath of the Lamb! Think of it! Think that Jesus Christ has been

present, a witness,—a silent witness through every such scene of torture and anguish,—a silent witness in every such court, calmly hearing the evidence given in, the lawyers pleading, the bills filed, and cases appealed! And think what a heart Jesus Christ has, and with what age-long patience he has suffered! What awful depths are there in that word, LONG-SUFFERING! and what must be that wrath, when, after ages of endurance, this dread accumulation of wrong and anguish comes up at last to judgment!

### CHAPTER XII.

# A COMPARISON OF THE ROMAN LAW OF SLAVERY WITH THE AMERICAN.

The writer has expressed the opinion that the American law of slavery, taken throughout, is a more severe one than that of any other civilized nation, ancient or modern, if we except, perhaps, that of the Spartans. She has not at hand the means of comparing French and Spanish slave-codes; but, as it is a common remark that Roman slavery was much more severe than any that has ever existed in America, it will be well to compare the Roman with the American law. We therefore present a description of the Roman slave-law, as quoted by William Jay, Esq., from Blair's "Inquiry into the State of Slavery among the Romans," giving such references to American authorities as will enable the reader to make his own comparison, and to draw his own inferences.

I. The slave had no protection against the avarice, rage, or lust of the master, whose authority was founded in absolute property; and the bondman was viewed less as a human being subject to arbitrary dominion, than as an inferior animal, dependent wholly on the will of his owner.

See law of South Carolina, in Stroud's "Sketch of the Laws of Slavery," p. 23.

2 Brev. Dig. 229. Prince's Dig. 446. Cobb's Dig. 971.

Slaves shall be deemed, sold, taken, reputed and adjudged in law to be chattels personal in the hands of their owners and possessors, and their executors, administrators and assigns, to all intents, constructions, and purposes whatever.

Lou. Civil Code, art. 35. Stroud's Sketch, p. 22.

A slave is one who is in the power of a master to whom he belongs.

Judge Ruffin's Decision in the case of The State v. Mann. Wheeler's Law

of Slavery, 246.

——Such obedience is the consequence only of uncontrolled authority over the body. There is nothing else which can operate to produce the effect. The power of the master must be absolute, to render the submission of the slave perfect.

II. At first, the master possessed the uncontrolled power of life and death.

Judge Clarke, in case of State of Miss. v. Jones. Wheeler, 252.

At a very early period in Virginia, the power of life over slaves was given by statute.

III. He might kill, mutilate or torture his slaves, for any or no offence; he might force them to become gladiators or prostitutes.

The privilege of killing is now somewhat abridged; as to mutilation and torture, see the case of Souther v. The Commonwealth, 7 Grattan, 673, quoted in Chapter III., above. Also State v. Mann, in the same chapter, from Wheeler, p. 244.

IV. The temporary unions of male with female slaves were formed and dissolved at his command; families and friends were separated when he pleased.

See the decision of Judge Mathews in the case of Girod v. Lewis, Wheeler, 199:

It is clear, that slaves have no legal capacity to assent to any contract. With the consent of their master, they may marry, and their moral power to agree to such a contract or connection as that of marriage cannot be doubted; but whilst in a state of slavery it cannot produce any civil effect, because slaves are deprived of all civil rights.

See also the chapter below on "the separation of families," and the files of any southern newspaper, passim.

V. The laws recognized no obligation upon the owners of slaves, to furnish them with food and clothing, or to take care of them in sickness.

The extent to which this deficiency in the Roman law has been supplied in the American, by "protective acts," has been exhibited above.

VI. Slaves could have no property but by the sufferance of their master, for whom they acquired everything, and with whom they could form no engagements which could be binding on him.

The following chapter will show how far American legislation is in advance of that of the Romans, in that it makes it a penal offence on the part of

the master to permit his slave to hold property, and a crime on the part of the slave to be so permitted. For the present purpose, we give an extract from the Civil code of Louisiana, as quoted by Judge Stroud:

Civil Code, Article 35. Stroud, p. 22.

A slave is one who is in the power of a master to whom he belongs. The master may sell him, dispose of his person, his industry, and his labor; he can do nothing, possess nothing, nor acquire anything but what must belong to his master.

Wh'ler's Law of Slavery, p. 246. State v. Mann.

According to Judge Ruffin, a slave is "one doomed in his own person, and his posterity, to live without knowledge, and without the capacity to make anything his own, and to toil that another may reap the fruits."

With reference to the binding power of engagements between master and slave, the following decisions from the United States Digest are in point (7, p. 449):

Gist v. Toohey, 2 Rich. 424.

All the acquisitions of the slave in possession are the property of his master, notwithstanding the promise of his master that the slave shall have certain of them.

Ibid.

A slave paid money which he had earned over and above his wages, for the purchase of his children into the hands of B, and B purchased such children with the money. Held that the master of such slave was entitled to recover the money of B.

VII. The master might transfer his rights by either sale or gift, or might bequeath them by will.

Law of S. Carolina. Cobb's Digest, 971.

Slaves shall be deemed, sold, taken, reputed and adjudged in law, to be chattels personal in the hands of their owners and possessors, and their executors, administrators, and assigns, to all intents, constructions, and purposes whatsoever.

VIII. A master selling, giving, or bequeathing a slave, sometimes made it a provision that he should never be carried abroad, or that he should be manumitted on a fixed day; or that, on the other hand, he should never be emancipated, or that he should be kept in chains for life.

Williams v. Ash, 1 How. U. S. Rep. 1. 5 U. S. Dig. 792, § 5.

We hardly think that a provision that a slave should never be emancipated, or that he should be kept in chains for life, would be sustained. A provision that the slave should not be carried out of the state, or sold, and that on the happening of either event he should be free, has been sustained.

The remainder of Blair's account of Roman slavery is devoted rather to the practices of masters than the state of the law itself. Surely, the writer is not called upon to exhibit in the society of enlightened, republican and Christian America, in the nineteenth century, a parallel to the atrocities committed in pagan Rome, under the sceptre of the persecuting Cæsars, when the amphitheatre was the favorite resort of the most refined of her citizens, as well as the great "school of morals" for the multitude. A few references only will show, as far as we desire to show, how much safer it is now to trust man with absolute power over his fellow, than it was then.

IX. While slaves turned the hand-mill they were generally chained, and had a broad wooden collar, to prevent them from eating the grain. The FURCA, which in later language means a gibbet, was, in older dialect, used to denote a wooden fork or collar, which was made to bear upon their shoulders, or around their necks, as a mark of disgrace, as much as an uneasy burden.

The reader has already seen, in Chapter V., that this instrument of degradation has been in use, in our own day, in certain of the slave states, under the express sanction and protection of statute laws; although the material is different, and the construction doubtless improved by modern ingenuity.

X. Fetters and chains were much used for punishment or restraint, and were, in some instances, worn by slaves during life, through the sole authority of the master. Porters at the gates of the rich were generally chained. Field laborers worked for the most part in irons posterior to the first ages of the republic.

The Legislature of South Carolina specially sanctions the same practices, by excepting them in the "protective enactment," which inflicts the penalty of one hundred pounds "in case any person shall wilfully cut out the tongue," &c., of a slave, "or shall inflict any other cruel punishment, other than by whipping or beating with a horse-whip, cowskin, switch, or small stick, or by putting irons on, or confining or imprisoning such slave."

XI. Some persons made it their business to catch runaway slaves.

That such a profession, constituted by the highest legislative authority in the nation, and rendered respectable by the commendation expressed or implied of statesmen and divines, and of newspapers political and religious, exists in our midst, especially in the free states, is a fact which is, day by day, making itself too apparent to need testimony. The matter seems, however, to be managed in a more perfectly open and business-like manner in the State of Alabama than elsewhere. Mr. Jay cites the following advertisement from the Sumpter County (Ala.) Whig:

NEGRO DOGS.

The undersigned having bought the entire pack of Negro Dogs (of the Hay and Allen stock), he now proposes to catch runaway negroes. His charges will be Three Dollars per day for hunting, and Fifteen Dollars for catching a runaway. He resides three and one half miles north of Livingston, near the lower Jones' Bluff road.

William Gambel.

Nov. 6, 1845.—6m.

The following is copied, verbatim et literatim, and with the pictorial embellishments, from The Dadeville (Ala.) Banner, of November 10th, 1852. The Dadeville Banner is "devoted to politics, literature, education, agriculture, &c."

NOTICE.

The undersigned having an excellent pack of Hounds, for trailing and catching runaway slaves, informs the public that his prices in future will be as follows for such services:

For each day employed in hunting or trailing, \$2.50

For catching each slave, 10.00

For going over ten miles and catching slaves, 20.00

If sent for, the above prices will be exacted in cash. The subscriber resides one mile and a half south of Dadeville, Ala.

B. Black.

Dadeville, Sept. 1, 1852. 1tf

XII. The runaway, when taken, was severely punished by authority of the master, or by the judge, at his desire; sometimes with crucifixion, amputation of a foot, or by being sent to fight as a gladiator with wild beasts; but most frequently by being branded on the brow with letters indicative of his crime.

That severe punishment would be the lot of the recaptured runaway, every one would suppose, from the "absolute power" of the master to inflict it. That it is inflicted in many cases, it is equally easy and needless to prove. The peculiar forms of punishment mentioned above are now very much out of vogue, but the following advertisement by Mr. Micajah Ricks, in the Raleigh (N. C.) Standard of July 18th, 1838, shows that something of classic taste in torture still lingers in our degenerate days.

Ran away, a negro woman and two children; a few days before she went off, I burnt her with a hot iron, on the left side of her face. I tried to make the letter M.

It is charming to notice the naïf betrayal of literary pride on the part of Mr. Ricks. He did not wish that letter M to be taken as a specimen of what he could do in the way of writing. The creature would not hold still, and he fears the M may be illegible.

The above is only one of a long list of advertisements of maimed, cropped and branded negroes, in the book of Mr. Weld, entitled American Slavery as It Is, p. 77.

XIII. Cruel masters sometimes hired torturers by profession, or had such persons in their establishments, to assist them in punishing their slaves. The noses and ears and teeth of slaves were often in danger from an enraged owner; and sometimes the eyes of a great offender were put out. Crucifixion was very frequently made the fate of a wretched slave for a trifling misconduct, or from mere caprice.

For justification of such practices as these, we refer again to that horrible list of maimed and mutilated men, advertised by slaveholders themselves, in Weld's American Slavery as It Is, p. 77. We recall the reader's attention to the evidence of the monster Kephart, given in Part I. As to crucifixion, we presume that there are wretches whose religious scruples would deter them from this particular form of torture, who would not hesitate to inflict equal cruelties by other means; as the Greek pirate, during a massacre in the season of Lent, was conscience-stricken at having tasted a drop of blood. We presume?—Let any one but read again, if he can, the sickening details of that twelve hours' torture of Souther's slave, and say how much more merciful is American slavery than Roman.

The last item in Blair's description of Roman slavery is the following:

By a decree passed by the Senate, if a master was murdered when his slaves might possibly have aided him, all his household within reach were held as implicated, and deserving of death; and Tacitus relates an instance in which a family of four hundred were all executed.

To this alone, of all the atrocities of the slavery of old heathen Rome, do we fail to find a parallel in the slavery of the United States of America.

There are other respects, in which American legislation has reached a refinement in tyranny of which the despots of those early days never

conceived. The following is the language of Gibbon:

Hope, the best comfort of our imperfect condition, was not denied to the Roman slave; and if he had any opportunity of rendering himself either useful or agreeable, he might very naturally expect that the diligence and fidelity of a few years would be rewarded with the inestimable gift of freedom. \* \* \* Without destroying the distinction of ranks, a distant prospect of freedom and honors was presented even to those whom pride and prejudice almost disdained to number among the human species.

The youths of promising genius were instructed in the arts and sciences, and their price was ascertained by the degree of their skill and talents. Almost every profession, either liberal or mechanical, might be found in the household of an opulent senator.

The following chapter will show how "the best comfort" which Gibbon knew for human adversity is taken away from the American slave; how he is denied the commonest privileges of education and mental improvement, and how the whole tendency of the unhappy system, under which he is in bondage, is to take from him the consolations of religion itself, and to degrade him from our common humanity, and common brotherhood with the Son of God.

### CHAPTER XIII.

### THE MEN BETTER THAN THEIR LAWS.

Judgment is turned away backward,

And Justice standeth afar off;

For Truth is fallen in the street,

And Equity cannot enter.

Yea, Truth faileth;

And HE THAT DEPARTETH FROM EVIL MAKETH HIMSELF A PREY.

Isaiah 59: 14, 15.

There is one very remarkable class of laws yet to be considered.

So full of cruelty and of unmerciful severity is the slave-code,—such an atrocity is the institution of which it is the legal definition,—that there are multitudes of individuals too generous and too just to be willing to go to the full extent of its restrictions and deprivations.

A generous man, instead of regarding the poor slave as a piece of property, dead, and void of rights, is tempted to regard him rather as a helpless younger brother, or as a defenceless child, and to extend to him, by his own good right arm, that protection and those rights which the law denies him. A religious man, who, by the theory of his belief, regards all men as brothers, and considers his Christian slave, with himself, as a member of Jesus Christ,—as of one body, one spirit, and called in one hope of his calling,—cannot willingly see him "doomed to live without knowledge," without the power of reading the written Word, and to raise up his children after him in the same darkness.

Hence, if left to itself, individual humanity would, in many cases, practically abrogate the slave-code. Individual humanity would teach the slave to read and write,—would build school-houses for his children, and would, in very, very many cases, enfranchise him.

The result of all this has been foreseen. It has been foreseen that the result of education would be general intelligence; that the result of intelligence would be a knowledge of personal rights; and that an inquiry into the doctrine of personal rights would be fatal to the system. It has been foreseen, also, that the example of disinterestedness and generosity, in emancipation, might carry with it a generous contagion, until it should become universal; that the example of educated and emancipated slaves would prove a dangerous excitement to those still in bondage.

For this reason, the American slave-code, which, as we have already seen, embraces, substantially, all the barbarities of that of ancient Rome, has had added to it a set of laws more cruel than any which ancient and heathen Rome ever knew,—laws designed to shut against the slave his last refuge,—the humanity of his master. The master, in ancient Rome, might give his slave whatever advantages of education he chose, or at any time emancipate him, and the state did not interfere to prevent.

But in America the laws, throughout all the slave states, most rigorously forbid, in the first place, the education of the slave. We do not profess to give all these laws, but a few striking specimens may be presented. Our authority is Judge Stroud's "Sketch of the Laws of Slavery."

Stroud's Sketch, p. 88.

The legislature of South Carolina, in 1740, enounced the following preamble:—"Whereas, the having of slaves taught to write, or suffering them to be employed in writing, may be attended with great inconveniences;" and enacted that the crime of teaching a slave to write, or of employing a slave as a scribe, should be punished by a fine of one hundred pounds, current money. If the reader will turn now to the infamous "protective" statute, enacted by the

same legislature, in the same year, he will find that the same penalty has been appointed for the cutting out of the tongue, putting out of the eye, cruel scalding, &c., of any slave, as for the offence of teaching him to write! That is to say, that to teach him to write, and to put out his eyes, are to be regarded as equally reprehensible.

Stroud's Sketch, p. 89. 2 Brevard's Digest, pp. 254–5.

That there might be no doubt of the "great and fundamental policy" of the state, and that there might be full security against the "great inconveniences" of "having of slaves taught to write," it was enacted, in 1800, "That assemblies of slaves, free negroes, &c., \* \* \* \* for the purpose of mental instruction, in a confined or secret place, &c. &c., is [are] declared to be an unlawful meeting;" and the officers are required to enter such confined places, and disperse the "unlawful assemblage," inflicting, at their discretion, "such corporal punishment, not exceeding twenty lashes, upon such slaves, free negroes, &c., as they may judge necessary for deterring them from the like unlawful assemblage in future."

Stroud, pp. 88, 89.

The statute-book of Virginia is adorned with a law similar to the one last quoted.

Stroud's Sketch, pp. 89, 90.

The offence of teaching a slave to write was early punished, in Georgia, as in South Carolina, by a pecuniary fine. But the city of Savannah seems to have found this penalty insufficient to protect it from "great inconveniences," and we learn, by a quotation in the work of Judge Stroud from a number of "The Portfolio," that "the city has passed an ordinance, by which any person that teaches any person of color, slave or free, to read or write, or causes such person to be so taught, is subjected to a fine of thirty dollars for each offence; and every person of color who shall keep a school, to teach reading or writing, is subject to a fine of thirty dollars, or to be imprisoned ten days, and whipped thirty-nine lashes."

Secondly. In regard to religious privileges:

The State of Georgia has enacted a law, "To protect religious societies in the exercise of their religious duties." This law, after appointing rigorous penalties for the offence of interrupting or disturbing a congregation of white persons, concludes in the following words:

Stroud, p. 92. Prince's Digest, p. 342.

No congregation, or company of negroes, shall, under pretence of divine worship, assemble themselves, contrary to the act regulating patrols.

Stroud, p. 93. Prince's Digest, p. 447.

"The act regulating patrols," as quoted by the editor of Prince's Digest, empowers every justice of the peace to disperse ANY assembly or meeting of slaves which may disturb the peace, &c., of his majesty's subjects, and permits that every slave found at such a meeting shall "immediately be corrected, WITHOUT TRIAL, by receiving on the bare back twenty-five stripes with a whip, switch, or cowskin."

The history of legislation in South Carolina is significant. An act was passed in 1800, containing the following section:

Stroud, p. 93. 2 Brevard's Dig. 254, 255.

It shall not be lawful for any number of slaves, free negroes, mulattoes or mestizoes, even in company with white persons, to meet together and assemble for the purpose of mental instruction or religious worship, either before the rising of the sun, or after the going down of the same. And all magistrates, sheriffs, militia officers, &c. &c., are hereby vested with power, &c., for dispersing such assemblies, &c.

The law just quoted seems somehow to have had a prejudicial effect upon the religious interests of the "slaves, free negroes," &c., specified in it; for, three years afterwards, on the petition of certain religious societies, a "protective act" was passed, which should secure them this great religious privilege; to wit, that it should be unlawful, before nine o'clock, "to break into a place of meeting, wherein shall be assembled the members of any religious society of this state, provided a majority of them shall be white persons, or otherwise to disturb their devotion, unless such person shall have first obtained \* \* \* \* a warrant, &c."

Thirdly. It appears that many masters, who are disposed to treat their slaves generously, have allowed them to accumulate property, to raise domestic animals for their own use, and, in the case of intelligent servants, to go at large, to hire their own time, and to trade upon their own account. Upon all these practices the law comes down, with unmerciful severity. A penalty is inflicted on the owner, but, with a rigor quite accordant with the tenor of slave-law the offence is considered, in law, as that of the slave, rather than that of the master; so that, if the master is generous enough not to regard the penalty which is imposed upon himself, he may be restrained by the fear of bringing a greater evil upon his dependent. These laws are, in some cases, so constructed as to make it for the interest of the lowest and most brutal part of society that they be enforced, by offering half the profits to the informer. We give the following, as specimens of slave legislation on this subject:

The law of South Carolina:

Stroud, pp. 46, 47. James' Digest, 385, 386. Act of 1740.

It shall not be lawful for any slave to buy, sell, trade, &c., for any goods, &c., without a license from the owner, &c.; nor shall any slave be permitted to keep any boat, periauger, or canoe, or raise and breed, for the benefit of such slave, any horses, mares, cattle, sheep, or hogs, under pain of forfeiting all the goods, &c., and all the boats, periaugers, or canoes, horses, mares, cattle, sheep or hogs. And it shall be lawful for any person whatsoever to seize and take away from any slave all such goods, &c., boats, &c. &c., and to deliver the same into the hands of any justice of the peace, nearest to the place where the seizure shall be made; and such justice shall take the oath of the person making such seizure, concerning the manner thereof; and if the said justice shall be satisfied that such seizure has been made according to law, he shall pronounce and declare the goods so seized to be forfeited, and order the same to be sold at public outcry, one half of the moneys arising from such sale to go to the state, and the other half to him or them that sue for the same.

2 Cobb's Dig. 284.

The laws in many other states are similar to the above; but the State of Georgia has an additional provision, against permitting the slave to hire himself to another for his own benefit; a penalty of thirty dollars is imposed for every weekly offence, on the part of the master, unless the labor be done on his own premises. Savannah, Augusta, and Sunbury, are places excepted.

Stroud, p. 47

In Virginia, "if the master shall permit his slave to hire himself out," the slave is to be apprehended, &c., and the master to be fined.

In an early act of the legislature of the orthodox and Presbyterian State of North Carolina, it is gratifying to see how the judicious course of public policy is made to subserve the interests of Christian charity,—how, in a single ingenious sentence, provision is made for punishing the offender against society, rewarding the patriotic informer, and feeding the poor and destitute:

Stroud's Sketch, p. 47.

All horses, cattle, hogs or sheep, that, one month after the passing of this act, shall belong to any slave, or be of any slave's mark, in this state, shall be seized and sold by the county wardens, and by them applied, the one-half to the support of the poor of the county, and the other half to the informer.

Stroud, p. 48.

In Mississippi a fine of fifty dollars is imposed upon the master who permits his slave to cultivate cotton for his own use; or who licenses his slave to go at large and trade as a freeman; or who is convicted of permitting his slave to keep "stock of any description."

To show how the above law has been interpreted by the highest judicial tribunal of the sovereign State of Mississippi, we repeat here a portion of a decision of Chief Justice Sharkey, which we have elsewhere given more in full.

Independent of the principles laid down in adjudicated cases, our statutelaw prohibits slaves from owning certain kinds of property; and it may be inferred that the legislature supposed they were extending the act as far as it could be necessary to exclude them from owning any property, as the prohibition includes that kind of property which they would most likely be permitted to own without interruption, to wit: hogs, horses, cattle, &c. They cannot be prohibited from holding such property in consequence of its being of a dangerous or offensive character, but because it was deemed impolitic for them to hold property of any description.

It was asserted, at the beginning of this head, that the permission of the master to a slave to hire his own time is, by law, considered the offence of the slave; the slave being subject to prosecution therefor, not the master. This is evident from the tenor of some of the laws quoted and alluded to above. It will be still further illustrated by the following decisions of the courts of North Carolina. They are copied from the Supplement to the U. S. Digest, vol. II. p. 798:

The State v. Clarissa. 5 Iredell, 221.

139. An indictment charging that a certain negro did hire her own time, contrary to the form of the statute, &c., is defective and must be quashed, because it was omitted to be charged that she was permitted by her master to go at large, which is one essential part of the offence.

140. Under the first clause of the thirty-first section of the 111th chapter of the Revised Statutes, prohibiting masters from hiring to slaves their own time, the master is not indictable; he is only subject to a penalty of forty dollars. Nor is the master indictable under the second clause of that section; the process being against the slave, not against the master.—Ib.

142. To constitute the offence under section 32 (Rev. Stat. c. cxi. § 32) it is not necessary that the slave should have hired his time; it is sufficient if the master permits him to go at large as a freeman.

This is maintaining the ground that "the master can do no wrong" with great consistency and thoroughness. But it is in perfect keeping, both in form and spirit, with the whole course of slave-law, which always upholds the supremacy of the master, and always depresses the slave. Fourthly. Stringent laws against emancipation exist in nearly all the slave states.

Stroud, 147. Prince's Dig. 456. James' Dig. 398. Toulmin's Dig. 632. Miss. Rev. Code, 386.

In four of the states,—South Carolina, Georgia, Alabama, and Mississippi, —emancipation cannot be effected, except by a special act of the legislature of the state.

In Georgia, the offence of setting free "any slave, or slaves, in any other manner and form than the one prescribed," was punishable, according to the law of 1801, by the forfeiture of two hundred dollars, to be recovered by action or indictment; the slaves in question still remaining, "to all intents and purposes, as much in a state of slavery as before they were manumitted."

Believers in human progress will be interested to know that since the law of 1801 there has been a reform introduced into this part of the legislation of the republic of Georgia. In 1818, a new law was passed, which, as will be seen, contains a grand remedy for the abuses of the old. In this it is provided, with endless variety of specifications and synonyms, as if to "let suspicion double-lock the door" against any possible evasion, that, "All and every will, testament and deed, whether by way of trust or otherwise, contract, or agreement, or stipulation, or other instrument in writing or by parol, made and executed for the purpose of effecting, or endeavoring to effect, the manumission of any slave or slaves, either directly ... or indirectly, or virtually, &c. &c., shall be, and the same are hereby, declared to be utterly null and void." And the guilty author of the outrage against the peace of the state, contemplated in such deed, &c. &c., "and all and every person or persons concerned in giving or attempting to give effect thereto, ... in any way or manner whatsoever, shall be severally liable to a penalty not exceeding one thousand dollars."

Stroud's Sketch, pp. 147–8. Prince's Dig. 466.

It would be quite anomalous in slave-law, and contrary to the "great and fundamental policy" of slave states, if the negroes who, not having the fear of God before their eyes, but being instigated by the devil, should be guilty of being thus manumitted, were suffered to go unpunished; accordingly, the law very properly and judiciously provides that "each and every slave or slaves in whose behalf such will or testament, &c. &c. &c., shall have been made, shall be liable to be arrested by warrant, &c.; and, being thereof convicted, &c., shall be liable to be sold as a slave or slaves by public outcry; and the proceeds of such slaves shall be appropriated, &c. &c."

Judge Stroud gives the following account of the law of Mississippi:

Stroud's Sketch, 149. Miss. Rev. Code, 385–6 (Act June 18, 1822).

The emancipation must be by an instrument in writing, a last will or deed &c., under seal, attested by at least two credible witnesses, or acknowledged in the court of the county or corporation where the emancipator resides; proof satisfactory to the General Assembly must be adduced that the slave has done some meritorious act for the benefit of his master, or rendered some distinguished service to the state; all which circumstances are but pre-requisites, and are of no efficacy until a special act of assembly sanctions the emancipation; to which may be added, as has been already stated, a saving of the rights of creditors, and the protection of the widow's thirds.

The same pre-requisite of "meritorious services, to be adjudged of and allowed by the county court," is exacted by an act of the General Assembly of North Carolina; and all slaves emancipated contrary to the provisions of this act are to be committed to the jail of the county, and at the next court held for that county are to be sold to the highest bidder.

But the law of North Carolina does not refuse opportunity for repentance, even after the crime has been proved: accordingly,

Stroud's Sketch, 148. Haywood's Manual, 525, 526, 529, 537.

The sheriff is directed, five days before the time for the sale of the emancipated negro, to give notice, in writing, to the person by whom the emancipation was made, to the end,

and with the hope that, smitten by remorse of conscience, and brought to a sense of his guilt before God and man,

such person may, if he thinks proper, renew his claim to the negro so emancipated by him; on failure to do which, the sale is to be made by the sheriff, and one-fifth part of the net proceeds is to become the property of the freeholder by whom the apprehension was made, and the remaining four-fifths are to be paid into the public treasury.

Stroud, pp. 148–154.

It is proper to add that we have given examples of the laws of states whose legislation on this subject has been most severe. The laws of Virginia, Maryland, Missouri, Kentucky and Louisiana, are much less stringent.

A striking case, which shows how inexorably the law contends with the kind designs of the master, is on record in the reports of legal decisions in the State of Mississippi. The circumstances of the case have been thus briefly stated in the New York Evening Post, edited by Mr. William Cullen Bryant. They are a romance of themselves.

A man of the name of Elisha Brazealle, a planter in Jefferson County,

Mississippi, was attacked with a loathsome disease. During his illness he was faithfully nursed by a mulatto slave, to whose assiduous attentions he felt that he owed his life. He was duly impressed by her devotion, and soon after his recovery took her to Ohio, and had her educated. She was very intelligent, and improved her advantages so rapidly that when he visited her again he determined to marry her. He executed a deed for her emancipation, and had it recorded both in the States of Ohio and Mississippi, and made her his wife.

Mr. Brazealle returned with her to Mississippi, and in process of time had a son. After a few years he sickened and died, leaving a will, in which, after reciting the deed of emancipation, he declared his intention to ratify it, and devised all his property to this lad, acknowledging him in the will to be such.

Some poor and distant relations in North Carolina, whom he did not know, and for whom he did not care, hearing of his death, came on to Mississippi, and claimed the property thus devised. They instituted a suit for its recovery, and the case (it is reported in Howard's Mississippi Reports, vol. II., p. 837) came before Judge Sharkey, our new consul at Havana. He decided it, and in that decision declared the act of emancipation an offence against morality, and pernicious and detestable as an example. He set aside the will, gave the property of Brazealle to his distant relations, condemned Brazealle's son, and his wife, that son's mother, again to bondage, and made them the slaves of these North Carolina kinsmen, as part of the assets of the estate.

Chief Justice Sharkey, after narrating the circumstances of the case, declares the validity of the deed of emancipation to be the main question in the controversy. He then argues that, although according to principles of national comity "contracts are to be construed according to the laws of the country or state where they are made," yet these principles are not to be followed when they lead to conclusions in conflict with "the great and fundamental policy of the state." What this "great and fundamental policy" is, in Mississippi, may be gathered from the remainder of the decision, which we give in full.

Let us apply these principles to the deed of emancipation. To give it validity would be, in the first place, a violation of the declared policy, and contrary to a positive law of the state.

The policy of a state is indicated by the general course of legislation on a given subject; and we find that free negroes are deemed offensive, because they are not permitted to emigrate to or remain in the state. They are allowed few privileges, and subject to heavy penalties for offences. They are required to leave the state within thirty days after notice, and in the mean time give security for good behavior; and those of them who can lawfully remain must register and carry with them their certificates, or they may be committed to jail. It would also violate a positive law, passed by the legislature, expressly to

maintain this settled policy, and to prevent emancipation. No owner can emancipate his slave, but by a deed or will properly attested, or acknowledged in court, and proof to the legislature that such slave has performed some meritorious act for the benefit of the master, or some distinguished service for the state; and the deed or will can have no validity until ratified by special act of legislature. It is believed that this law and policy are too essentially important to the interests of our citizens to permit them to be evaded.

The state of the case shows conclusively that the contract had its origin in an offence against morality, pernicious and detestable as an example. But, above all, it seems to have been planned and executed with a fixed design to evade the rigor of the laws of this state. The acts of the party in going to Ohio with the slaves, and there executing the deed, and his immediate return with them to this state, point with unerring certainty to his purpose and object. The laws of this state cannot be thus defrauded of their operation by one of our own citizens. If we could have any doubts about the principle, the case reported in 1 Randolph, 15, would remove them.

As we think the validity of the deed must depend upon the laws of this state, it becomes unnecessary to inquire whether it could have any force by the laws of Ohio. If it were even valid there, it can have no force here. The consequence is, that the negroes, John Monroe and his mother, are still slaves, and a part of the estate of Elisha Brazealle. They have not acquired a right to their freedom under the will; for, even if the clause in the will were sufficient for that purpose, their emancipation has not been consummated by an act of the legislature.

John Monroe, being a slave, cannot take the property as devisee; and I apprehend it is equally clear that it cannot be held in trust for him. 4 Desans. Rep. 266. Independent of the principles laid down in adjudicated cases, our statute law prohibits slaves from owning certain kinds of property; and it may be inferred that the legislature supposed they were extending the act as far as it could be necessary to exclude them from owning any property, as the prohibition includes that kind of property which they would most likely be permitted to own without interruption, to wit, hogs, horses, cattle, &c. They cannot be prohibited from holding such property in consequence of its being of a dangerous or offensive character, but because it was deemed impolitic for them to hold property of any description. It follows, therefore, that his heirs are entitled to the property.

As the deed was void, and the devisee could not take under the will, the heirs might, perhaps, have had a remedy at law; but, as an account must be taken for the rents and profits, and for the final settlement of the estate, I see no good reason why they should be sent back to law. The remedy is, doubtless, more full and complete than it could be at law. The decree of the chancellor overruling the demurrer must be affirmed, and the cause remanded for further proceedings.

The Chief Justice Sharkey who pronounced this decision is stated by the Evening Post to have been a principal agent in the passage of the severe law under which this horrible inhumanity was perpetrated.

Nothing more forcibly shows the absolute despotism of the slave-law over all the kindest feelings and intentions of the master, and the determination of courts to carry these severities to their full lengths, than this cruel deed, which precipitated a young man who had been educated to consider himself free, and his mother, an educated woman, back into the bottomless abyss of slavery. Had this case been chosen for the theme of a novel, or a tragedy, the world would have cried out upon it as a plot of monstrous improbability. As it stands in the law-book, it is only a specimen of that awful kind of truth, stranger than fiction, which is all the time evolving, in one form or another, from the workings of this anomalous system.

This view of the subject is a very important one, and ought to be earnestly and gravely pondered by those in foreign countries, who are too apt to fasten their condemnation and opprobrium rather on the person of the slave-holder than on the horrors of the legal system. In some slave states it seems as if there was very little that the benevolent owner could do which should permanently benefit his slave, unless he should seek to alter the laws. Here it is that the highest obligation of the Southern Christian lies. Nor will the world or God hold them guiltless who, with the elective franchise in their hands, and the full power to speak, write and discuss, suffer this monstrous system of legalized cruelty to go on from age to age.

#### CHAPTER XIV.

## THE HEBREW SLAVE-LAW COMPARED WITH THE AMERICAN SLAVE-LAW.

Having compared the American law with the Roman, we will now compare it with one other code of slave-laws, to wit, the Hebrew.

This comparison is the more important, because American slavery has been defended on the ground of God's permitting Hebrew slavery.

The inquiry now arises, What kind of slavery was it that was permitted among the Hebrews? for in different nations very different systems have been called by the general name of slavery. That the patriarchal state of servitude which existed in the time of Abraham was a very different thing from American slavery, a few graphic incidents in the scripture narrative show; for we read that when the angels came to visit Abraham, although he had three hundred servants born in his house, it is said that Abraham hasted, and took a calf, and killed it, and gave it to a young man to dress; and that he told Sarah to take three measures of meal and knead it into cakes; and that, when all was done, he himself set it before his guests.

From various other incidents which appear in the patriarchal narrative, it would seem that these servants bore more the relation of the members of a Scotch clan to their feudal lord than that of an American slave to his master;— thus it seems that if Abraham had died without children, his head servant would have been his heir.—Gen. 15:3.

Of what species, then, was the slavery which God permitted among the Hebrews? By what laws was it regulated?

In the New Testament the whole Hebrew system of administration is spoken of as a relatively imperfect one, and as superseded by the Christian dispensation.—Heb. 8:13.

We are taught thus to regard the Hebrew system as an educational system, by which a debased, half-civilized race, which had been degraded by slavery in its worst form among the Egyptians, was gradually elevated to refinement and humanity.

As they went from the land of Egypt, it would appear that the most disgusting personal habits, the most unheard-of and unnatural impurities, prevailed among them; so that it was necessary to make laws with relation to things of which Christianity has banished the very name from the earth.

Beside all this, polygamy, war and slavery, were the universal custom of nations.

It is represented in the New Testament that God, in educating this people, proceeded in the same gradual manner in which a wise father would proceed with a family of children.

He selected a few of the most vital points of evil practice, and forbade them by positive statute, under rigorous penalties.

The worship of any other god was, by the Jewish law, constituted high treason, and rigorously punished with death.

As the knowledge of the true God and religious instruction could not then, as now, be afforded by printing and books, one day in the week had to be set apart for preserving in the minds of the people a sense of His being, and their obligations to Him. The devoting of this day to any other purpose was also punished with death; and the reason is obvious, that its sacredness was the principal means relied on for preserving the allegiance of the nation to their king and God, and its desecration, of course, led directly to high treason against the head of the state.

With regard to many other practices which prevailed among the Jews, as among other heathen nations, we find the Divine Being taking the same course which wise human legislators have taken.

When Lycurgus wished to banish money and its attendant luxuries from Sparta, he did not forbid it by direct statute-law, but he instituted a currency so clumsy and uncomfortable that, as we are informed by Rollin, it took a cart and pair of oxen to carry home the price of a very moderate estate.

In the same manner the Divine Being surrounded the customs of polygamy, war, blood-revenge and slavery, with regulations which gradually and certainly tended to abolish them entirely.

No one would pretend that the laws which God established in relation to polygamy, cities of refuge, &c., have any application to Christian nations now.

The following summary of some of these laws of the Mosaic code is given by Dr. C. E. Stowe, Professor of Biblical Literature in Andover Theological Seminary:

1. It commanded a Hebrew, even though a married man, with wife and children living, to take the childless widow of a deceased brother, and beget children with her.—Deut. 25:5–10.

2. The Hebrews, under certain restrictions, were allowed to make concubines, or wives for a limited time, of women taken in war.—Deut. 21:10–19.

3. A Hebrew who already had a wife was allowed to take another also, provided he still continued his intercourse with the first as her husband, and treated her kindly and affectionately.—Exodus 21:9–11.

4. By the Mosaic law, the nearest relative of a murdered Hebrew could pursue and slay the murderer, unless he could escape to the city of refuge; and the same permission was given in case of accidental homicide.—Num. 35:9–39.

5. The Israelites were commanded to exterminate the Canaanites, men, women and children.—Deut. 9:12; 20:16–18.

Any one, or all, of the above practices, can be justified by the Mosaic law, as well as the practice of slave-holding.

Each of these laws, although in its time it was an ameliorating law, designed to take the place of some barbarous abuse, and to be a connecting link by which some higher state of society might be introduced, belongs confessedly to that system which St. Paul says made nothing perfect. They are a part of the commandment which he says was annulled for the weakness and unprofitableness thereof, and which, in the time which he wrote, was waxing old, and ready to vanish away. And Christ himself says, with regard to certain permissions of this system, that they were given on account of the "hardness of their hearts,"—because the attempt to enforce a more stringent system at that time, owing to human depravity, would have only produced greater abuses.

The following view of the Hebrew laws of slavery is compiled from Barnes' work on slavery, and from Professor Stowe's manuscript lectures.

The legislation commenced by making the great and common source of slavery—kidnapping—a capital crime.

The enactment is as follows: "He that stealeth a man and selleth him, or if he be found in his hand, he shall surely be put to death."—Exodus 21:16.

The sources from which slaves were to be obtained were thus reduced to two: first, the voluntary sale of an individual by himself, which certainly does not come under the designation of involuntary servitude; second, the appropriation of captives taken in war, and the buying from the heathen.

With regard to the servitude of the Hebrew by a voluntary sale of himself, such servitude, by the statute-law of the land, came to an end once in seven years; so that the worst that could be made of it was that it was a voluntary contract to labor for a certain time.

With regard to the servants bought of the heathen, or of foreigners in the land, there was a statute by which their servitude was annulled once in fifty years.

It has been supposed, from a disconnected view of one particular passage in the Mosaic code, that God directly countenanced the treating of a slave, who was a stranger and foreigner, with more rigor and severity than a Hebrew slave. That this was not the case will appear from the following enactments, which have express reference to strangers:

The stranger that dwelleth with you shall be unto you as one born among you, and thou shalt love him as thyself.—Lev. 19:34.

Thou shalt neither vex a stranger nor oppress him; for ye were strangers in the land of Egypt.—Exodus 22:21.

Thou shalt not oppress a stranger, for ye know the heart of a stranger.-

### Exodus 23:9.

The Lord your God regardeth not persons. He doth execute the judgment of the fatherless and the widow, and loveth the stranger in giving him food and raiment; love ye therefore the stranger.—Deut. 10:17–19.

Judge righteously between every man and his brother, and the stranger that is with him.—Deut. 1:16.

Cursed be he that perverteth the judgment of the stranger.—Deut. 27:19.

Instead of making slavery an oppressive institution with regard to the stranger, it was made by God a system within which heathen were adopted into the Jewish state, educated and instructed in the worship of the true God, and in due time emancipated.

In the first place, they were protected by law from personal violence. The loss of an eye or a tooth, through the violence of his master, took the slave out of that master's power entirely, and gave him his liberty. Then, further than this, if a master's conduct towards a slave was such as to induce him to run away, it was enjoined that nobody should assist in retaking him, and that he should dwell wherever he chose in the land, without molestation. Third, the law secured to the slave a very considerable portion of time, which was to be at his own disposal. Every seventh year was to be at his own disposal.—Lev. 25:4–6. Every seventh day was, of course, secured to him.—Ex. 20:10.

The servant had the privilege of attending the three great national festivals, when all the males of the nation were required to appear before God in Jerusalem.—Ex. 34:23.

Each of these festivals, it is computed, took up about three weeks.

The slave also was to be a guest in the family festivals. In Deut. 12:12, it is said, "Ye shall rejoice before the Lord your God, ye, and your sons, and your daughters, and your men-servants, and your maid-servants, and the Levite that is within your gates."

Dr. Barnes estimates that the whole amount of time which a servant could have to himself would amount to about twenty-three years out of fifty, or nearly one-half his time.

Again, the servant was placed on an exact equality with his master in all that concerned his religious relations.

Now, if we recollect that in the time of Moses the God and the king of the nation were one and the same person, and that the civil and religious relation were one and the same, it will appear that the slave and his master stood on an equality in their civil relation with regard to the state.

Thus, in Deuteronomy 29, is described a solemn national convocation, which took place before the death of Moses, when the whole nation were called upon, after a solemn review of their national history, to renew their constitutional oath of allegiance to their supreme Magistrate and Lord.

On this occasion, Moses addressed them thus:—"Ye stand this day, all of you, before the Lord your God; your captains of your tribes, your elders, and your officers, with all the men of Israel, your little ones, your wives, and thy stranger that is in thy camp, from the hewer of thy wood unto the drawer of thy water; that thou shouldest enter into covenant with the Lord thy God, and into his oath, which the Lord thy God maketh with thee this day."

Wheeler's Law of Slavery, p. 243.

How different is this from the cool and explicit declaration of South Carolina with regard to the position of the American slave:—"A slave is not generally regarded as legally capable of being within the peace of the state. He is not a citizen, and is not in that character entitled to her protection."

In all the religious services, which, as we have seen by the constitution of the nation, were civil services, the slave and the master mingled on terms of strict equality. There was none of the distinction which appertains to a distinct class or caste. "There was no special service appointed for them at unusual seasons. There were no particular seats assigned to them, to keep up the idea that they were a degraded class. There was no withholding from them the instruction which the word of God gave about the equal rights of mankind."

Fifthly. It was always contemplated that the slave would, as a matter of course, choose the Jewish religion, and the service of God, and enter willingly into all the obligations and services of the Jewish polity.

Mr. Barnes cites the words of Maimonides, to show how this was commonly understood by the Hebrews.—Inquiry into the Scriptural Views of Slavery. By Albert Barnes, p. 132.

Whether a servant be born in the power of an Israelite, or whether he be purchased from the heathen, the master is to bring them both into the covenant.

But he that is in the house is entered on the eighth day; and he that is bought with money, on the day on which his master receives him, unless the slave be unwilling. For, if the master receive a grown slave, and he be unwilling, his master is to bear with him, to seek to win him over by instruction, and by love and kindness, for one year. After which, should he refuse so long, it is forbidden to keep him longer than a year. And the master must send him back to the strangers from whence he came. For the God of Jacob will not accept any other than the worship of a willing heart.—Maimon. Hilcoth Miloth, chap. I., sec. 8.

A sixth fundamental arrangement with regard to the Hebrew slave was that he could never be sold. Concerning this Mr. Barnes remarks:

A man, in certain circumstances, might be bought by a Hebrew; but when once bought, that was an end of the matter. There is not the slightest evidence that any Hebrew ever sold a slave; and any provision contemplating that was unknown to the constitution of the Commonwealth. It is said of Abraham that he had "servants bought with money;" but there is no record of his having ever sold one, nor is there any account of its ever having been done by Isaac or Jacob. The only instance of a sale of this kind among the patriarchs is that act of the brothers of Joseph, which is held up to so strong reprobation, by which they sold him to the Ishmaelites. Permission is given in the law of Moses to buy a servant, but none is given to sell him again; and the fact that no such permission is given is full proof that it was not contemplated. When he entered into that relation, it became certain that there could be no change, unless it was voluntary on his part (comp. Ex. 21:5,6), or unless his master gave him his freedom, until the not distant period fixed by law when he could be free. There is no arrangement in the law of Moses by which servants were to be taken in payment of their master's debts, by which they were to be given as pledges, by which they were to be consigned to the keeping of others, or by which they were to be given away as presents. There are no instances occurring in the Jewish history in which any of these things were done. This law is positive in regard to the Hebrew servant, and the principle of the law would apply to all others. Lev. 25:42.—"They shall not be sold as bond men." In all these respects there was a marked difference, and there was doubtless intended to be, between the estimate affixed to servants and to property.—Inquiry, &c., p. 133-4.

As to the practical workings of this system, as they are developed in the incidents of sacred history, they are precisely what we should expect from such a system of laws. For instance, we find it mentioned incidentally in the ninth chapter of the first book of Samuel, that when Saul and his servant came to see Samuel, that Samuel, in anticipation of his being crowned king, made a great feast for him; and in verse twenty-second the history says: "And Samuel took Saul and his servant, and brought them into the parlor, and made them sit in the chiefest place."

We read, also, in 2 Samuel 9:10, of a servant of Saul who had large estates, and twenty servants of his own.

We find, in 1 Chron. 2:34, the following incident related: "Now, Sheshan had no sons, but daughters. And Sheshan had a servant, an Egyptian, whose name was Jarha. And Sheshan gave his daughter to Jarha, his servant, to

wife."

Does this resemble American slavery?

We find, moreover, that this connection was not considered at all disgraceful, for the son of this very daughter was enrolled among the valiant men of David's army.—1 Chron. 2:41.

In fine, we are not surprised to discover that the institutions of Moses in effect so obliterated all the characteristics of slavery, that it had ceased to exist among the Jews long before the time of Christ. Mr. Barnes asks:

On what evidence would a man rely to prove that slavery existed at all in the land in the time of the later prophets of the Maccabees, or when the Saviour appeared? There are abundant proofs, as we shall see, that it existed in Greece and Rome; but what is the evidence that it existed in Judea? So far as I have been able to ascertain, there are no declarations that it did to be found in the canonical books of the Old Testament, or in Josephus. There are no allusions to laws and customs which imply that it was prevalent. There are no coins or medals which suppose it. There are no facts which do not admit of an easy explanation on the supposition that slavery had ceased.—Inquiry, &c., p. 226.

Two objections have been urged to the interpretations which have been given of two of the enactments before quoted.

1. It is said that the enactment, "Thou shalt not return to his master the servant that has escaped," &c., relates only to servants escaping from heathen masters to the Jewish nation.

The following remarks on this passage are from Prof. Stowe's lectures:

Deuteronomy 23:15,16.—These words make a statute which, like every other statute, is to be strictly construed. There is nothing in the language to limit its meaning; there is nothing in the connection in which it stands to limit its meaning; nor is there anything in the history of the Mosaic legislation to limit the application of this statute to the case of servants escaping from foreign masters. The assumption that it is thus limited is wholly gratuitous, and, so far as the Bible is concerned, unsustained by any evidence whatever. It is said that it would be absurd for Moses to enact such a law while servitude existed among the Hebrews. It would indeed be absurd, were it the object of the Mosaic legislation to sustain and perpetuate slavery; but, if it were the object of Moses to limit and to restrain, and finally to extinguish slavery, this statute was admirably adapted to his purpose. That it was the object of Moses to extinguish, and not to perpetuate, slavery, is perfectly clear from the whole course of his legislation on the subject. Every slave was to have all the religious privileges and instruction to which his master's children were entitled. Every seventh year released the Hebrew slave, and every fiftieth year produced universal emancipation. If a master, by an accidental or an angry blow, deprived the slave of a tooth, the slave, by that act, was forever free. And so, by the statute in question, if the slave felt himself oppressed, he could make his escape, and, though the master was not forbidden to retake him if he could, every one was forbidden to aid his master in doing it. This statute, in fact, made the servitude voluntary, and that was what Moses intended.

Moses dealt with slavery precisely as he dealt with polygamy and with war: without directly prohibiting, he so restricted as to destroy it; instead of cutting down the poison-tree, he girdled it, and left it to die of itself. There is a statute in regard to military expeditions precisely analogous to this celebrated fugitive slave law. Had Moses designed to perpetuate a warlike spirit among the Hebrews, the statute would have been preëminently absurd; but, if it was his design to crush it, and to render foreign wars almost impossible, the statute was exactly adapted to his purpose. It rendered foreign military service, in effect, entirely voluntary, just as the fugitive law rendered domestic servitude, in effect, voluntary.

The law may be found at length in Deuteronomy 20:5–10; and let it be carefully read and compared with the fugitive slave law already adverted to. Just when the men are drawn up ready for the expedition,—just at the moment when even the hearts of brave men are apt to fail them,—the officers are commanded to address the soldiers thus:

"What man of you is there that hath built a new house, and hath not dedicated it? Let him go and return to his house, lest he die in the battle, and another man dedicate it.

"And what man is he that hath planted a vineyard and hath not yet eaten of it? Let him also go and return to his house, lest he die in the battle, and another man eat of it.

"And what man is there that hath betrothed a wife, and hath not taken her? Let him go and return unto his house, lest he die in the battle, and another man take her."

And the officers shall speak further unto the people, and they shall say, "What man is there that is fearful and faint-hearted? Let him go and return unto his house, lest his brethren's heart faint, as well as his heart."

Now, consider that the Hebrews were exclusively an agricultural people, that warlike parties necessarily consist mainly of young men, and that by this statute every man who had built a house which he had not yet lived in, and every man who had planted a vineyard from which he had not yet gathered fruit, and every man who had engaged a wife whom he had not yet married, and every one who felt timid and faint-hearted, was permitted and commanded to go home,—how many would there probably be left? Especially when the officers, instead of exciting their military ardor by visions of glory and of splendor, were commanded to repeat it over and over again that they would probably die in the battle and never get home, and hold this idea up before them as if it were the only idea suitable for their purpose, how excessively absurd is the whole statute considered as a military law,—just as absurd as the Mosaic fugitive law, understood in its widest application, is, considered as a slave law!

It is clearly the object of this military law to put an end to military expeditions; for, with this law in force, such expeditions must always be entirely volunteer expeditions. Just as clearly was it the object of the fugitive slave law to put an end to compulsory servitude; for, with that law in force, the servitude must, in effect, be, to a great extent, voluntary,—and that is just what the legislator intended. There is no possibility of limiting the law, on account of its absurdity, when understood in its widest sense, except by proving that the Mosaic legislation was designed to perpetuate and not to limit slavery; and this certainly cannot be proved, for it is directly contrary to the plain matter of fact.

I repeat it, then, again: there is nothing in the language of this statute, there is nothing in the connection in which it stands, there is nothing in the history of the Mosaic legislation on this subject, to limit the application of the law to the case of servants escaping from foreign masters; but every consideration, from every legitimate source, leads us to a conclusion directly the opposite. Such a limitation is the arbitrary, unsupported stet voluntas pro ratione assumption of the commentator, and nothing else. The only shadow of a philological argument that I can see, for limiting the statute, is found in the use of the words to thee, in the fifteenth verse. It may be said that the pronoun thee is used in a national and not individual sense, implying an escape from some other nation to the Hebrews. But, examine the statute immediately preceding this, and observe the use of the pronoun thee in the thirteenth verse. Most obviously, the pronouns in these statutes are used with reference to the individuals addressed, and not in a collective or national sense exclusively; very rarely, if ever, can this sense be given to them in the way claimed by the argument referred to.

2. It is said that the proclamation, "Thou shalt proclaim liberty through the land to all the inhabitants thereof," related only to Hebrew slaves. This assumption is based entirely on the supposition that the slave was not considered, in Hebrew law, as a person, as an inhabitant of the land, and a member of the state; but we have just proved that in the most solemn transaction of the state the hewer of wood and drawer of water is expressly

designated as being just as much an actor and participator as his master; and it would be absurd to suppose that, in a statute addressed to all the inhabitants of the land, he is not included as an inhabitant.

Barnes enforces this idea by some pages of quotations from Jewish writers, which will fully satisfy any one who reads his work.

From a review, then, of all that relates to the Hebrew slave-law, it will appear that it was a very well-considered and wisely-adapted system of education and gradual emancipation. No rational man can doubt that if the same laws were enacted and the same practices prevailed with regard to slavery in the United States, that the system of American slavery might be considered, to all intents and purposes, practically at an end. If there is any doubt of this fact, and it is still thought that the permission of slavery among the Hebrews justifies American slavery, in all fairness the experiment of making the two systems alike ought to be tried, and we should then see what would be the result.

### CHAPTER XV.

### **SLAVERY IS DESPOTISM.**

It is always important, in discussing a thing, to keep before our minds exactly what it is.

The only means of understanding precisely what a civil institution is are an examination of the laws which regulate it. In different ages and nations, very different things have been called by the name of slavery. Patriarchal servitude was one thing, Hebrew servitude was another, Greek and Roman servitude still a third; and these institutions differed very much from each other. What, then, is American slavery, as we have seen it exhibited by law, and by the decisions of courts?

Let us begin by stating what it is not.

1. It is not apprenticeship.

2. It is not guardianship.

3. It is in no sense a system for the education of a weaker race by a stronger.

4. The happiness of the governed is in no sense its object.

5. The temporal improvement or the eternal well-being of the governed is in no sense its object.

The object of it has been distinctly stated in one sentence, by Judge Ruffin, —"The end is the profit of the master, his security, and the public safety."

Slavery, then, is absolute despotism, of the most unmitigated form.

It would, however, be doing injustice to the absolutism of any civilized country to liken American slavery to it. The absolute governments of Europe none of them pretend to be founded on a property right of the governor to the persons and entire capabilities of the governed.

This is a form of despotism which exists only in some of the most savage countries of the world; as, for example, in Dahomey.

The European absolutism or despotism, now, does, to some extent, recognize the happiness and welfare of the governed as the foundation of government; and the ruler is considered as invested with power for the benefit of the people; and his right to rule is supposed to be somewhat predicated upon the idea that he better understands how to promote the good of the people than they themselves do. No government in the civilized world now presents the pure despotic idea, as it existed in the old days of the Persian and Assyrian rule.

The arguments which defend slavery must be substantially the same as those which defend despotism of any other kind; and the objections which are to be urged against it are precisely those which can be urged against despotism of any other kind. The customs and practices to which it gives rise are precisely those to which despotisms in all ages have given rise.

Is the slave suspected of a crime? His master has the power to examine him by torture (see State v. Castleman). His master has, in fact, in most cases, the power of life and death, owing to the exclusion of the slave's evidence. He has the power of banishing the slave, at any time, and without giving an account to anybody, to an exile as dreadful as that of Siberia, and to labors as severe as those of the galleys. He has also unlimited power over the character of his slave. He can accuse him of any crime, yet withhold from him all right of trial or investigation, and sell him into captivity, with his name blackened by an unexamined imputation.

These are all abuses for which despotic governments are blamed. They are powers which good men who are despotic rulers are beginning to disuse; but, under the flag of every slave-holding state, and under the flag of the whole United States in the District of Columbia, they are committed indiscriminately to men of any character.

But the worst kind of despotism has been said to be that which extends alike over the body and over the soul; which can bind the liberty of the conscience, and deprive a man of all right of choice in respect to the manner in which he shall learn the will of God, and worship Him. In other days, kings on their thrones, and cottagers by their firesides, alike trembled before a despotism which declared itself able to bind and to loose, to open and to shut the kingdom of heaven.

Yet this power to control the conscience, to control the religious privileges, and all the opportunities which man has of acquaintanceship with his Maker, and of learning to do his will, is, under the flag of every slave state, and under the flag of the United States, placed in the hands of any men, of any character, who can afford to pay for it.

It is a most awful and most solemn truth that the greatest republic in the world does sustain under her national flag the worst system of despotism which can possibly exist.

With regard to one point to which we have adverted,—the power of the master to deprive the slave of a legal trial while accusing him of crime,—a very striking instance has occurred in the District of Columbia, within a year or two. The particulars of the case, as stated, at the time, in several papers, were briefly these: A gentleman in Washington, our national capital,—an elder in the Presbyterian church,—held a female slave, who had, for some years, supported a good character in a Baptist church of that city. He accused her of an attempt to poison his family, and immediately placed her in the hands of a slave-dealer, who took her over and imprisoned her in the slave-pen at Alexandria, to await the departure of a coffle. The poor girl had a mother, who felt as any mother would naturally feel.

When apprized of the situation of her daughter, she flew to the pen, and, with tears, besought an interview with her only child; but she was cruelly repulsed, and told to be gone! She then tried to see the elder, but failed. She had the promise of money sufficient to purchase her daughter, but the owner would listen to no terms of compromise.

In her distress, the mother repaired to a lawyer in the city, and begged him to give form to her petition in writing. She stated to him what she wished to have said, and he arranged it for her in such a form as she herself might have presented it in, had not the benefits of education been denied her. The following is the letter:

Washington, July 25, 1851.

Mr. ——.

Sir: I address you as a rich Christian freeman and father, while I am myself but a poor slave-mother! I come to plead with you for an only child whom I love, who is a professor of the Christian religion with yourself, and a member of a Christian church; and who, by your act of ownership, now pines in her imprisonment in a loathsome man-warehouse, where she is held for sale! I come to plead with you for the exercise of that blessed law, "Whatsoever ye would that men should do unto you, do ye even so to them."

With great labor, I have found friends who are willing to aid me in the purchase of my child, to save us from a cruel separation. You, as a father, can judge of my feelings when I was told that you had decreed her banishment to distant as well as to hopeless bondage!

For nearly six years my child has done for you the hard labor of a slave; from the age of sixteen to twenty-two, she has done the hard work of your chamber, kitchen, cellar, and stables. By night and by day, your will and your commands have been her highest law; and all this has been unrequited toil. If in all this time her scanty allowance of tea and coffee has been sweetened, it has been at the cost of her slave-mother, and not at yours.

You are an office-bearer in the church, and a man of prayer. As such, and as the absolute owner of my child, I ask candidly whether she has enjoyed such mild and gentle treatment, and amiable example, as she ought to have had, to encourage her in her monotonous bondage? Has she received at your hands, in faithful religious instruction in the Word of God, a full and fair compensation for all her toil? It is not to me alone that you must answer these questions. You acknowledge the high authority of His laws who preached a deliverance to the captive, and who commands you to give to your servant "that which is just and equal." O! I entreat you, withhold not, at this trying hour, from my child that which will cut off her last hope, and which may endanger your own soul!

It has been said that you charge my daughter with crime. Can this be really so? Can it be that you would set aside the obligations of honor and good citizenship,—that you would dare to sell the guilty one away for money, rather than bring her to trial, which you know she is ready to meet? What would you say, if you were accused of guilt, and refused a trial? Is not her fair name as precious to her, in the church to which she belongs, as yours can be to you?

Suppose, now, for a moment, that your daughter, whom you love, instead of mine, was in these hot days incarcerated in a negro-pen, subject to my control, fed on the coarsest food, committed to the entire will of a brute, denied the privilege commonly allowed even to the murderer—that of seeing the face of his friends? O! then, you would FEEL! Feel soon, then, for a poor slave-mother and her child, and do for us as you shall wish you had done when we shall meet before the Great Judge, and when it shall be your greatest joy to say, "I did let the oppressed free."

Ellen Brown.

The girl, however, was sent off to the Southern market.

The writer has received these incidents from the gentleman who wrote the letter. Whether the course pursued by the master was strictly legal is a point upon which we are not entirely certain; that it was a course in which the law did not in fact interfere is quite plain, and it is also very apparent that it was a course against which public sentiment did not remonstrate. The man who exercised this power was a professedly religious man, enjoying a position of importance in a Christian church; and it does not appear, from any movements in the Christian community about him, that they did not consider his course a justifiable one.

Yet is not this kind of power the very one at which we are so shocked when we see it exercised by foreign despots?

Do we not read with shuddering that in Russia, or in Austria, a man accused of crime is seized upon, separated from his friends, allowed no opportunities of trial or of self-defence, but hurried off to Siberia, or some other dreaded exile?

Why is despotism any worse in the governor of a state than in a private individual?

There is a great controversy now going on in the world between the despotic and the republican principle. All the common arguments used in support of slavery are arguments that apply with equal strength to despotic government, and there are some arguments in favor of despotic governments that do not apply to individual slavery.

There are arguments, and quite plausible ones, in favor of despotic government. Nobody can deny that it possesses a certain kind of efficiency, compactness, and promptness of movement, which cannot, from the nature of things, belong to a republic. Despotism has established and sustained much more efficient systems of police than ever a republic did. The late King of Prussia, by the possession of absolute despotic power was enabled to carry out a much more efficient system of popular education than we ever have succeeded in carrying out in America. He districted his kingdom in the most thorough manner, and obliged every parent, whether he would or not, to have his children thoroughly educated.

If we reply to all this, as we do, that the possession of absolute power in a man qualified to use it right is undoubtedly calculated for the good of the state, but that there are so few men that know how to use it, that this form of government is not, on the whole, a safe one, then we have stated an argument that goes to overthrow slavery as much as it does a despotic government; for certainly the chances are much greater of finding one man, in the course of fifty years, who is capable of wisely using this power, than of finding thousands of men every day in our streets, who can be trusted with such power. It is a painful and most serious fact, that America trusts to the hands of the most brutal men of her country, equally with the best, that despotic power which she thinks an unsafe thing even in the hands of the enlightened, educated and cultivated Emperor of the Russias.

With all our republican prejudices, we cannot deny that Nicholas is a man of talent, with a mind liberalized by education; we have been informed, also, that he is a man of serious and religious character;—he certainly, acting as he does in the eye of all the world, must have great restraint upon him from public opinion, and a high sense of character. But who is the man to whom American laws intrust powers more absolute than those of Nicholas of Russia, or Ferdinand of Naples? He may have been a pirate on the high seas; he may be a drunkard; he may, like Souther, have been convicted of a brutality at which humanity turns pale; but, for all that, American slave-law will none the less trust him with this irresponsible power,—power over the body, and power over the soul.

On which side, then, stands the American nation, in the great controversy which is now going on between self-government and despotism? On which side does America stand, in the great controversy for liberty of conscience?

Do foreign governments exclude their population from the reading of the Bible?—The slave of America is excluded by the most effectual means possible. Do we say, "Ah! but we read the Bible to our slaves, and present the gospel orally?"—This is precisely what religious despotism in Italy says. Do we say that we have no objection to our slaves reading the Bible, if they will stop there; but that with this there will come in a flood of general intelligence, which will upset the existing state of things?—This is precisely what is said in Italy.

Do we say we should be willing that the slave should read his Bible, but that he, in his ignorance, will draw false and erroneous conclusions from it, and for that reason we prefer to impart its truths to him orally?—This, also, is precisely what the religious despotism of Europe says.

Do we say, in our vain-glory, that despotic government dreads the coming in of anything calculated to elevate and educate the people?—And is there not the same dread through all the despotic slave governments of America?

On which side, then, does the American nation stand, in the great, last QUESTION of the age?



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