"Open and Notorious Concubinage": The Emancipation of Slave Mistresses by Will and the Supreme Court in Antebellum Louisiana

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The slave in antebellum Louisiana had severely circumscribed legal rights. He could appear in court as a plaintiff only to claim his freedom; he appeared as a defendant only if accused of a crime. It was possible for him to testify for or against a fellow slave but never against a white. However, these limitations did not prevent him from being involved in thousands of lawsuits at the parish or district level and approximately 1,200 appeals to the Louisiana Supreme Court. In the overwhelming majority of these actions the bondsman was neither the plaintiff nor the defendant, but the *object*, primary or incidental, of the lawsuit.

To understand the rulings of the Louisiana Supreme Court, it is necessary to know the French civil-law system of which the court was a part. At the time Louisiana entered the Union many inhabitants of the state feared the imposition of the American common-law system, a new law in a foreign language,[1] and a threat to the power and prestige of those notaries, attorneys, and judges practicing the civil law.

Those in control of the legal system were careful to insure that Louisiana would continue to function under its traditional Civil Code after American rule began. The first constitution of the state forbade the legislature from imposing any form of common law upon the state and bound the judicial

[1]George Dargo, *Jefferson's Louisiana: Politics and the Clash of Legal Traditions* (Cambridge, Mass., 1975), p. 118. See also, Edward F. Haas's introduction to Edward F. Haas, ed., *Louisiana's Legal Heritage* (Pensacola, Fla., 1983), pp. 1-6.

structure firmly to the Civil Code. The constitution also limited the state's highest court to questions of law alone, and required it to justify every decision by citing the specific act of the legislature or article in the Civil Code that prompted each decision. Implied law and principles of equity were thus placed outside of the Louisiana system. Equity, after all, was developed to enlarge and override a scheme of law considered too rigid in scope. Louisiana judges were forbidden to bend the law or to create it in this manner and were allowed only to interpret it. Subsequent Louisiana constitutions contained the same restrictions. In the event the court might be tempted to overstep its authority, the articles limiting the power of the court were immediately followed by one that outlined the process of impeachment for the court's justices.[2]

Throughout the antebellum period the Louisiana Supreme Court heard cases involving the emancipation of slaves, and despite ever-tightening restrictions on manumission, a few bondservants continued to be legally transformed from property into free persons. In the early decades of the nineteenth century, emancipation procedures seemed relatively simple. There were two qualifications for freedom stipulated in the *Code Noir* or Black Code of 1807: that the slave be of "honest conduct" for four years before the emancipation, specifically that he had not run away or committed a criminal act, and that he had reached the age of thirty years. Both stipulations could be waived if the bondservant to be freed had saved the life of his master or his master's family.[3] The age qualification was a formidable object. Slaves under thirty were without recourse. This restriction prevented a master from freeing a family with children. It also prevented a free black man who managed to purchase his underage slave wife from freeing her until she achieved the specified age, and the children born before her emancipation were destined to be slaves for at least thirty years.

In 1827 the Louisiana legislature modified the age requirement. Slaves

[2]*Constitutions of the State of Louisiana, 1812-1898* (Baton Rouge, 1913), p. 62; *West's Louisiana Statutes Annotated: Treasties and Organic Laws, Early Constitutions, U. S. Constitution* (St. Paul, Minn., 1977), III, 35, 49, 69; *Constitutions of Louisiana of 1812, '45 & '52* (New Orleans, 1861), pp. 30, 44; *West's Louisiana Statutes Annotated*, III, 76; Albert Voorhies, *A Treatise on the Criminal Jurisprudence of Louisiana* ... (New Orleans, 1860), p. 39.

[3]*Acts Passed at the Second Session of the First Legislature of the Territory of Orleans* ... (1807) (New Orleans, 1807), p. 82; *Civil Code of the State of Louisiana* (New Orleans, 1825), Articles 185-186. The Louisiana Supreme Court stated in 1857 that if slave children could be freed, masters would be allowed "to flood the community with a class of persons who are totally incapable of supporting and taking care of themselves." *Carmouche* v. *Carmouche*, 12 La. Ann. 721 #243 (1857).

under thirty years could be freed if given permission by the judge and police jury of the parish of the owner, providing the bondservant in question was a native of the state.[4] Younger non-native slaves were probably considered more of a potential insurrection risk. An act of 1830 required newly freed bondsmen to leave the state within thirty days of their emancipation and required that the owner post $1,000 bond to insure the ex-slave's departure.[5] An amendment passed the following year excepted any slave freed for "meritorious conduct."[6]

Ten years before the United States Supreme Court's famous Dred Scott decision, the Louisiana legislature passed a law that had the same effect as the Supreme Court ruling. This act stated that no slave could claim his or her freedom on the grounds that he had been in a country or state that prohibited slavery, whether with or without consent of his master.[7]

In 1852 the Louisiana legislature added another obstacle to the manumission procedure—freed slaves were to be sent to Liberia and their masters were required to pay their passage of $150. Bondsmen not departing within twelve months following their emancipation were to be re-enslaved.[8] The state legislature was flooded with individual petitions for exceptions, and the requirement of departure for Liberia was removed in 1855. The new requirements were no less strict; to free a slave one had to sue the state in a district court. A jury decided the fate of the bondsman, and if it freed him, decided whether he could remain in the state. If so, his former master had to post $1,000 bond against his becoming a public charge.[9]

These obstacles to emancipation seem to have been less than effective, at least in New Orleans. The First District Court in that city heard eight

[4]*Acts Passed at the First Session of the Eighth Legislature of the State of Louisiana* ... (1827) (New Orleans, 1827), pp. 12-14.

[5]*Acts of the Second Session of the Ninth Legislature of the State of Louisiana* ... (1830) (Donaldsonville, La., 1830), pp. 90-94.

[6]*Acts of the First Session of the Tenth Legislature of the State of Louisiana* ... (1831) (New Orleans, 1831), pp. 98-100.

[7]*Acts Passed at the First Session of the First Legislature of the State of Louisiana* ... (1846) (New Orleans, 1846), p. 163.

[8]*Acts Passed by the Fourth Legislature of the State of Louisiana* ... (1852) (New Orleans, 1852), pp. 214-215.

[9]*Acts Passed by the Second Session of the Second Legislature* ... (1855) (New Orleans, 1855), pp. 377-391.

manumission suits in two days late in 1855. The juries granted emancipations in all eight suits, and all of the newly freed slaves were allowed to remain in the state.[10] The legislators must have been frustrated by continuing emancipations made possible by judges and juries who seemed unconcerned about increasing the free black population. In 1857 the Louisiana legislature eliminated all loopholes and totally prohibited emancipations in the state.[11]

Motives for emancipations were varied, and some are impossible to ascertain. Fear of free blacks as a class was much stronger than of individual people of color, a fear that could be overriden by bonds of love and blood relationship. A number of manumission cases heard by the antebellum Louisiana Supreme Court involved attempts by whites to free their mistresses and/or their offspring. One possible explanation for the willingness of police juries and lower courts to grant emancipaton in these circumstances was that they were only legalizing what was in some instances already in practice—some owners would no doubt treat their slave mistresses and children as though they were free.

Cases heard by the antebellum Louisiana Supreme Court that involved white masters emancipating their mulatto or black mistresses and their children usually arose from squabbles over inheritance and legacies left in the will of the master for his slave or ex-slave mistress and children. Freeing a slave mistress meant overcoming two additional legal obstacles firmly embedded in the Louisiana Civil Code. The first of these was forced heirship. It is significant that under Louisiana law freeing a slave was considered a monetary donation to that bondservant, and the state's forced heirship doctrine came into play. Forced heirship meant that legitimate children could not be disinherited unless they committed serious offenses against their parents, such as striking a parent, or failure to ransom a parent held on the high seas. If an adult died childless and was survived by one or both parents, the parent/parents must receive a portion of the estate. One's surviving parents and/or children were what the courts called "ascending and descending heirs," and Louisiana law stipulated that these were forced heirs

[10]Minute Book, 1855-1856, First District Court of New Orleans, November 22, 23, 1855. See *Murphy* v. *State* #10680 (slave Martha); *Cruzat* v. *State* #10723 (slave Victoire, alias Mamzelle); *Perret* v. *State* #10686 (Ellen); *Widow Clay* v. *State* (#10764 (Justine); *Elizabeth, f. w. c.* v. *State* #10737 (Annie alias Amelia)(; *Fortier* v. *State* #10736 (Menos alias Aimée); *Fortin* v. *State* #10734 (Adeline);*Widow Bourg* v. *State* #10735 (Gaston Delille).

[11]*Acts Passed at the Second Session of the Third Legislature of the State of Louisiana* (1857) (New Orleans, 1857), p. 55.

who must receive a portion of the deceased's estate. The exact portion varied according to how many forced heirs existed, but every possible circumstance was clearly spelled out in the law.[12] Even if a man attempting to emancipate a slave mistress had no forced heirs, he encountered the second obstacle. According to the Civil Code no one could donate more than one-tenth of one's estate to a concubine, whether male or female, black or white.[13] Therefore, if the value of the slave mistress exceeded ten percent of the estate, she could not be freed.

During the antebellum era the Louisiana Supreme Court made certain that the forced heirs received their entire inheritance, resulting in a series of decisions in which the court regarded the slaves as property rather than people. For example, William Adams, Jr., lived in what the courts called "open concubinage" with a slave named Nancy. Adams died in 1851 and left a will ordering his executor to free Nancy and give her his watch and furniture. There were also two legacies of $1,000 each for their children (it is not clear whether they were already free). Adams' legitimate white son sued to prevent the emancipation of Nancy and the legacies to her and the children on the grounds that since the entire estate was worth only $4,750, the donation to Nancy of her value and the additional legacies far exceeded the one-tenth disposable portion of the succession; Nancy alone was valued at $1,000. The Louisiana Supreme Court ruled that Nancy could not be freed and therefore could not receive a legacy, as slaves were unable to inherit anything.[14] The record is silent as to the legacies to the children, but

[12]*A Digest of the Civil Laws Now in Force in the Territory of Orleans (1808); Containing Manuscript References to Its Source and Other Civil Laws on the Same Subject. The De la Vergne Volume.* (Baton Rouge, 1971), pp. 146-158.

[13]Article 1468 of the Civil Code stipulates that "those who have lived together in open concubinage" cannot donate to each other immovable property, and are only allowed to give them one-tenth of their movable property by gift when they are alive (donation *intervivos*) or by will (donation *mortis causa*). Civil Code, Article 1468. White heirs often contested legacies to ex-slave concubines and their children by their former masters. Maurice Prévost willed property to Clarrise, f.w.c., and her daughter, Florestine, f.w.c. Both had been born in bondage and freed by Prévost before his death in 1843. The testator left the remainder of his estate to his sister, who sued to have the donations to Clarrisse and Florestine annulled because Clarrisse was Prévost's concubine and Florestine his bastard. The legacy to the ex-slaves must have been less than ten percent of the estate (no figure appears in the record) because the Louisiana Supreme Court ruled that the donations were valid. *Prévost* v. *Martel*, 10 Rob. 512 (La. 1845); see also *Bush, f.w.c.* v. *Décuir*, 11 La. Ann. 503 #4339 (1856). The Louisiana Supreme Court was more likely to allow donations exceeding ten percent to white concubines. *Lowery* v. *Kline*, 6 La. 180 #2519 (1834); *Sucession of Bousquet*, 10 Rob. 143 #5632 (La. 1845); *Carmena* v. *Blaney, 16 La. Ann. 245 #116 (1861).*

[14]Civil Code, Article 1462.

the existence of a legitimate heir makes it doubtful that they received their inheritance.[15] In another ruling in an unsuccessful suit for freedom, the Louisiana Supreme Court stated that

> Emancipation is a donation of the value of a slave. When the donation is attacked as excessive, and evidence is given that the donor has insufficient property to justify it, it behooves the donee to show that he had.

In this case an elderly "always well-behaved" slave sued for her freedom under an 1828 will that stipulated she was to be freed upon the death of her owner. Apparently she had followed her master to New Orleans from Saint-Domingue, when she could have remained on that island and been free. Notwithstanding, the court ruled against her.[16]

Irate white heirs brought suits to the Louisiana Supreme Court on several occasions during the antebellum period to deny slave mistresses and their children their freedom and legacies left to them in the will of the master. A wealthy planter named John Anderson instructed the executors of his will to emancipate his slave Phoebe "for her long and faithful service to me" and left her 100 acres, four slaves, six cows and calves, four horses and mares, "one of my best beds and bedsteads," other assorted furniture, and "as many fowls as she may want." Anderson died possessed of upwards of 100 slaves, 2,000 arpents of land, $9,000 in debts owed him, and $4,500 cash. Despite the fact that the donations to Phoebe were less than one-tenth of the succession, Anderson's sisters and brother seized all of the estate including Pheobe, and the executors sued to have the terms of the will executed. The Louisiana Supreme Court ordered the executor to free Phoebe, and forced the

[15]*Adams* v. *Routh and Dorsey*, 8 La. Ann. 121 #3009 (1853). According to Article 226 of the Civil Code mulatto or Negro children were not allowed to sue to prove paternity unless the father was a man of color. In 1832 a free woman of color sued for a legacy left her by her white father. The Louisiana Supreme Court ruled against her because adulterous bastards were not allowed by law to inherit unless they were legally acknowledged by their fathers, and because people of color were prohibited from proving their "natural paternal descent." White children were not restricted in this manner. *Jung* v. *Doriocourt*, 4 La. 175 #2196 (1832). For other cases involving the inheritance of illegitimate children see: *Seennet* v. *Sennet's Legatees*, 3 Mart. (O.S.) 411 #13 (La. 1814); *Ripoll* v. *Morena*, 12 Rob. 552 #5376 (La. 1846). The acknowledgment of an illegitimate child in a will, if not a Negro or mulatto, entitled the child to inheritance. Civil Code, Articles, 221, 226, 227. *Jones* v. *Hunter and King*, 6 Rob. 235 #973 (La. 1843).

[16]*Prudence* v. *Bermodi*, 1 La. 234 #1888 (1830).

heirs to turn over the portion of the property that was stipulated in Anderson's will to her.[17]

Another slave woman and her child were not so fortunate. Jacob Philips, a carpenter, owned a mulatto woman, Maria, and her ten-year-old daughter, Angel. He left a will that ordered his executor to free the two bondservants and asked his white daughter to see to their emancipation "as a particular favor to her father." He also left Maria and Angel all of his movable property, stating in his will that "they have been purchased out of her own funds and by her labour. . . ." Philips' entire estate was inventoried at $1,497.25, which included the value of Maria and Angel, who were appraised at $850. After the carpenter died Maria and Angel sued Philips' executor for their freedom. The lower court ruled that since Philips had a legitimate daughter, and therefore a forced heir, she must receive her required portion of the inheritance. The Louisiana Supreme Court remanded the cases because of a procedural error, but it is unlikely they were ever freed because their value exceeded one-tenth of the estate. It is ironic that the more valuable slaves were in these circumstances, the less likely they were to be freed because of the objections of the legitimate heirs, who stood to lose the value of the slave.[18]

In some concubine-inheritance cases heard by the Louisiana Supreme Court, evidence of long-standing relationships between white men and women of color appears in the record. These liaisons were not unusual, especially in New Orleans, and were called *plaçage*. In 1809 Jean-Pierre Décuir emancipated his slave mistress, a mulatto named Josephine, who continued to live with him until his death in 1826. In 1818 Josephine purchased the bondswoman Betey and her children at a probate sale for $1,100. After Décuir's death his white heirs sued for possession of Betey and her children, claiming that Décuir had given Josephine the purchase price of the slaves as a "disguised donation"; the Louisiana Supreme Court upheld Josephine's title to the bondservants.[19]

[17]The inventory of the estate includes a slave carpenter (appraised at $900), blacksmith ($1,000), driver ($1,500), and a bricklayer and barber ($900). One of the executors, Abraham Vail, was the executor in two similar lawsuits heard by the Louisiana Supreme Court. *Anderson's Executors* v. *Anderson's Heirs*, 10 La. 29 #70 (1836). For a similar case see *Lopez's Heirs* v. *Bergel, f.w.c.*, 12 La. 197 #3031 (1838).

[18]*Maria and Angel* v. *Destréhan*, 3 La. 434 #2228 (1831).

[19]*Sandoz* v. *Gary*, 11 Rob. 529 (La. 1845). Heirs of a white man who had lived with a free woman of color from 1796 until 1845 unsuccessfully sued her, claiming that she was illegally

In a similar case the existence of a direct legal descendant and forced heir was the basis of a Louisiana Supreme Court decision to deprive Ann Sinnet, f.w.c., of a house, a lot, and a slave woman. Sinnet had lived in "open concubinage" with Joseph Uzée, who had emancipated her. During their alliance he gave her the property at issue; he had purchased the bondswoman and transferred the title to Sinnet. Later, Uzée married a white woman and fathered children by her. The Louisiana Supreme Court ruled that the house, lot, and bondswoman were the property of Uzée's legitimate children.[20]

In one concubine-emancipation case the Louisiana Supreme Court recognized the particularly helpless position of a slave woman to her master. Henry Clay Vail freed his bondswoman-mistress Jane and left her two promissory notes of $100 each. Vail's heirs alleged that emancipating Jane was a disposition of immovable property prohibited by law and sued to annul the will. In an interesting defense Vail's executor argued that Jane was not a "concubine" because she was a slave, and slaves by law were without will, meaning concubinage implied consent. Furthermore, he argued, the heirs should not benefit from the "moral turpitude" of the deceased. The executor won in the lower court but the Louisiana Supreme Court, although recognizing that female slaves were particularly vulnerable to the power of the master, ruled that the donation of freedom deprived the heirs of their rightful inheritance. The estate was worth only $1,686, of which Jane and her child Louisa were worth $900, well over one-tenth of the total value. The court based its decision on the assumption that female slaves generally participated willingly in sexual relations with their masters:

> It is true, the female slave is particuliarly exposed . . . to the seductions of an unprincipled master. That is a misfortune; but it is so rare in the case of concubinage that the seduction and

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in possession of $155,000, which belonged to the succession of the deceased. The free woman of color was in the dry goods business, and was able to prove that the money was the result "of her industry and economy during half a century." When the Louisiana Supreme Court ruled in her favor it commented upon her relationship with the deceased: "The state in which she lived was the nearest approach to marriage which the law recognized, and in the days in which their union commenced it imposed serious moral obligations. It received the consent of her family, which was one of the most distinguished in Louisiana. . . ." *Macarty* v. *Mandeville*, 3 La. Ann. 239 #626 (1848). In a similar case a white man described his relationship with his mistress, a free woman of color, in these words, "Philonise Olivier a toujours en soin de moi, de ma maison, et de mes esclaves." (Philonise Olivier has always taken care of me, and my house, and my slaves.) *Olivier, f.w.c.* v. *Blancq*, 2 La. Ann. 517 #463 (1847).

[20]*Dupré, administrator of Sinnet* v. *Uzée*, 6 La. Ann. 280 #2101 (1851).

> temptation are not mutual that exceptions to a general rule cannot be founded upon it.[21]

While it is certainly true that some sexual liaisons between masters and slaves were voluntary on the part of the slave women, some undoubtedly were not. It may be that the court was writing for an abolitionist audience. Placing part of the blame on the slave woman helped to reinforce the pro-slavery notion that blacks had no morals and had to be kept in slavery for their own good.

Undaunted by the unfavorable decision, Vail's executor continued to work for Jane's freedom. He claimed that as Vail's heirs were not direct descendants, they had no right to a forced portion of his inheritance, and he sued for possesion of Jane and her daughter so as to free them. The irate heirs concealed the slaves and told the executor that before he "could get possession of said slaves he would be forced to find them ... or words to this effect." The heirs contended that Jane could not be legally emancipated until she was thirty (she was then twenty-five), and that they were entitled to her services until that time. The Louisiana Supreme Court again ruled for the heirs. Since the will made no mention of Jane's daughter, Louisa, she was declared the permanent property of the heirs and Jane was to serve them until she attained the age when she could be legally manumitted.[22]

Two other slave concubines were denied the freedom left to them in their masters' wills because the act of 1857 was passed between the time the will was executed and the date of the judgment by the Louisiana Supreme Court on their suit for freedom. Both lost their chance for freedom by a matter of days. In the first instance a white man named John Turnbull went before a notary and two witnesses on December 19, 1855, to formally acknowledge his five mulatto children, born of his twenty-three-year-old "griffe" slave Rachel. On the same day he made a will instructing his executor to free his

[21] *Vail* v. *Bird*, 6 La. Ann. 223 #2129 (1851).

[22] *Bird* v. *Vail, et al.*, 9 La. Ann. 176 #3454 (1854). It is not clear whether Louisa was Vail's daughter. She was born when her mother was thirteen. If so, Jane became Vail's mistress at the age of twelve.

The post-Reconstruction supreme court demonstrated a complete change in attitude toward slave concubines. In an 1878 decision the court stated:

> That mother's concubinage, the illegitimacy of her son, were the almost inevitable results of their [slaves'] condition, and ... that condition was not of their choice ... [and the] concubinage ... can not be invoked as a crime against the emancipated mother. . . . *Neel* v. *Hibard*, 30 La. Ann. 808 #6737 (1878).

children and their mother upon his death. He stated that if emancipation was legally impossible, his executor should take them to a country or state of their choice where slavery did not exist; the costs of transportation were to be paid by the estate. Turnbull also left one-third of his estate to Rachel and the children, to be divided equally. Turnbull died in June 1856, and his executor refused to free the slave woman or her children. Her court-appointed curator sued the executor to force him to comply with the will. The executor stated that Turnbull's acknowledgment of the children as his own was "contrary to law and good morals." The lower court ruled that Rachel and her children should receive their legacies as soon as they could be emancipated. The lower court noted in its decision that it could not blame Rachel for "her yielding obedience to his wicked desires" because this would be to punish "the weak and helpless for the sins of the strong and powerful." This recognition of the helpless position of slave women is unusual among antebellum Louisiana court decisions of this sort. Blame, when placed at all, was usually assigned to the "seductiveness" of the bondswomen.

The Act of March 6, 1857, prohibiting emancipation was passed just before the Louisiana Supreme Court rendered a decision on the executor's appeal in this case. The high court ruled that Rachel and her children could not now be legally freed, and as slaves, could neither inherit nor own property. The justices reversed the ruling favorable to Rachel, and decreed she must not only lose the appeal, but pay court costs.[23] The law of 1857 prohibiting emancipation was too strictly worded to invite any other interpretation. A similar case involving what the court called a slave "concubine and the adulterous bastards of the testator" met with the same lack of success a few months later.[24] The court denied freedom to a third petitioner two years later, stating that until the 1857 act was repealed, "slaves ... cannot stand in court for any purpose."[25]

The Louisiana Supreme Court heard a few cases that show longstanding family-like relationships among masters, female slaves, and their children. Elisha Crocker left his property to his "housekeeper" Sofa, whom he had previously freed, and his legally acknowledged children by her: Henry Hicks Crocker, Mary Bosworth, and Susan Crocker. Specifically, he allotted

[23]*Turner* v. *Smith*, 12 La. Ann. 417 #5076 (1857). A *griffe* is the offspring of a Negro and a mulatto.

[24]*Oreline* v. *Heirs of Haggerty*, 12 La. Ann. 880 (1857).

[25]*Price* v. *Ray*, 14 La. Ann. 697 #697 (1859).

$25,000 to be sent to Mary, who was married and living in California at the time of his death, and $10,000 for thirteen-year-old Susan to be put at interest for her education. Susan was also to receive all of Crocker's rental property subject to her mother's use during her lifetime, and was to remain with her mother to care for her. Sofa was to receive all the furniture in the house "as she has done more toward collecting & preserving it than I have done." He also left Sofa a slave woman and her children. Crocker designated his mulatto son as his executor and universal legatee, meaning he was to receive the remainder of the estate after the specific donations were made. The deceased planter stated in his will that he had given his white sisters and brothers one-third of his property before his death, and therefore nothing would be left to them. Far from being content with their brother's generosity while he was alive, the sisters and brothers alleged that Crocker had no right to leave more than one-fourth of his estate to his concubine and children. The reason for the figure of one-fourth, and not one-tenth, is that he had legally acknowledged his illegitimate children, and by law could leave them one-fourth of his estate.[26] Following the law as usual, the Louisiana Supreme Court reduced Sofa and her children's legacies to one-fourth of the estate.[27]

Just after the Civil War, an East Baton Rouge planter named John Kleinpeter attempted to reimburse his ex-slave mistress, Nancy Trim, for her faithfulness to him by giving her fifty acres of land for her services. In the alleged act of sale, dated December 31, 1866, he stated:

> I gave her her freedom about ten years ago, yet she holds fast, and watches and cares for me in the most tender manner, and for her good conduct, I have this day sold her fifty acres of land in the rear of my plantation.

After Kleinpeter's death in 1868 his heirs took possession of the land and began cutting timber and erecting buildings on it. Kleinpeter's executor sued to establish Trim's title to the land. The Louisiana Supreme Court ruled that since no money had changed hands "the act ... is evidence of no contract known to our law." Nancy Trim lost claim to the land.[28]

[26]Civil Code, Articles 1474, 1473.

[27]*Reed* v. *Crocker*, 12 La. Ann. 436 #4708 (1857).

[28]*Kleinpeter* v. *Harrigan*, 21 La. Ann. 196 #2088 (1869). In another case of an alliance

One Iberville Parish planter, Joseph Thompson, managed to provide adequately for his "quarteroon" mistress, Sally McBride, and his legally acknowledged son. Thompson had freed Sally in 1829 and had lived "publicly and openly" with her for twelve years. He fathered two children, one of whom survived him. In his will Thompson left his son only enough to "insure him a tolerable education and a trade" and left a $200 annuity to Sally McBride. He left the remainder of his estate to his friend Charles Henry Dickinson of Grosse Tête Bayou. Thompson died without forced heirs, but his outraged sister sued to annul the will, claiming that her brother was insane, that he was a "weak man generally in Body and Mind and that his said concubine exercised over him a powerfull and irristable [*sic*] Influence and controlled him in all his acts. . . ." Thompson's sister further alleged that Dickinson had agreed to keep the rest of the money for Thompson's illegitimate son to evade the law. However, as she could not produce proof of this accusation, the Louisiana Supreme Court ruled that the will was valid. Whether or not McBride and her son ever received any additional legacy from Dickinson is unknown.[29]

Another attempt by a wealthy man to provide for an ex-slave mistress of many years and her children failed. Leonard Compton of Alexandria died in 1841 without forced heirs. In 1825 he had freed the slave woman Fanchon and continued to live with her until his death. He fathered two illegitimate children, Scipio and Loretta, whom he legally acknowledged. A witness testified that he always showed his children "the affection of a father." In his will he left his offspring a 545-acre plantation, all of the slaves thereon, and $10,000 each in cash. To Fanchon he left the kitchen equipment, furniture, two gold watches, a horse and carriage, and other assorted livestock. He appointed V. Aaron Prescott as his executor and guardian of his children, provided funds for their support and education, and left Prescott the remainder of the estate. Compton had already sent one child to Ohio to be educated before his death. The total estate was appraised at $184,640. Compton's sister, brother, and the heirs of two deceased brothers sued to have Fanchon's legacies voided, alleging that she was a slave and as such could not inherit, and to reduce the children's share to one-fourth of the total estate. They also alleged Prescott was under secret instruction to give

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between a white man and an ex-slave woman, an irate white woman sued her husband who had abandoned her "without cause" after six years of marriage for a woman who had once been his mother's slave. *Dorwin* v. *Wiltz*, 11 La. Ann. 514 (1856).

[29]*Hart* v. *Thompson's Executor and Legatees*, 15 La. 88 #4019 (1840).

Fanchon $20,000. Their heirs claimed that several sales to Fanchon before Compton's death were fraudulently disguised donations. The lower court found the will valid, but the Louisiana Supreme Court reversed the decision, ruling that Fanchon had to return the property sold to her by Compton because it was actually a fraudulently disguised donation, and the children's portion was lowered to one-fourth of the estate, the amount allowed to acknowledge illegitimate children. Following this decision Fanchon unsuccessfully sued in another action on a $5,000 note given to her by Compton before his death.[30]

A few cases heard by the antebellum Louisiana Supreme Court are evidence not only of long-standing alliances between white men and their slaves or former bondswomen, but also careful attempts to provide for their children. The slave Venus was born in 1787 of the slave Nancy, owned by B. Farrar of Pointe Coupée Parish. Her father, Christopher Beard, a white planter, stipulated in his will that Venus was to receive 750 arpents of land on False River at his death, instructed in the Christian religion, and "put to" a mantua maker to learn the business at the expense of the estate. Beard died in 1789. Twelve years later Farrar died, leaving a will emancipating Venus and several other slaves. Apparently, he was a humane master, as he stated in his will that he wanted his bondservants to "be used with the greatest humanity consistent with the state they are in and be made as happy as possible in their situation." After Farrar's death the land left to Venus by Beard was sold to Julien Poydras, and she sued to recover it. Since she was freed after Farrar's death and after she was left the property by Beard, the Louisiana Supreme Court ruled that as a slave at the time of Beard's death she could not inherit; Poydras's ownership was confirmed. This decision reversed that of the lower court,[31] which had awarded Venus the land and $720 in damages.

A wealthy Opelousas man, Douglas Wilkins, died possessed of an estate of $62,725.28. Wilkins emancipated his slave mistress, Leonora, and his acknowledged sons, Joseph Douglas and Charles Douglas in his will. He also left his sons $3,000 and $2,000 respectively, and stipulated that they were to be sent to a free state, educated in the three "R's," and taught a trade. He provided Leonora with an $150 annuity. Since his donations to his slave mistress and her sons did not exceed the amount legally stipulated as

[30]*Compton* v. *Prescott*, 12 Rob. 56 (La. 1845); *Morris* v. *Compton*, 12 Rob. 76 (La. 1845).

[31]*Beard* v. *Poydras*, 4 Mart. (O.S.) 348 #72 (La. 1816).

the disposable portion, the will was declared valid and the three slaves were emancipated.[32]

The Civil War interrupted several cases involving emancipation and legacies to slave or ex-slave concubines and their children and often worked to the benefit of the Negroes or mulattoes involved. Bernard Chappel freed his mistress Ida Hannah before his death, but could not free his daughter Clementine, because she was not yet thirty years old. He died in 1854; his will provided for Clementine's manumission as soon as legally possible. The will also made both mother and daughter his only heirs. Clementine was still a slave, although a *statu liber*, a legal term meaning a slave for a limited number of years. Hannah sued, claiming the whole estate, as her daughter was still a slave and could not inherit. She won in the lower court, and a court-appointed curator for Clementine, who was a minor, appealed. The war interrupted the appeal, and the case was one of the first to be decided when the Louisiana Supreme Court was re-activated in June 1865. It reversed the decision of the lower court, ruling that *statu libers* could legally inherit, and anyway the issue was moot, as Clementine was now free following the general emancipation at the end of the war.[33]

Another emancipated slave who was the child of a white man and bondswoman benefited from a post-Civil War Louisiana Supreme Court decision. In 1846 a Mr. Porter died leaving a will which instructed his executors to purchase from a Mr. Metoyer a child, the son of the slave woman Meme, and to emancipate him. He also left $1,000 to be invested for the boy for his education and support; the remainder was to be given to him when he attained the age of eighteen. Before he had reached that age, the child received his legacy in Confederate notes. After the war was over and his eighteenth birthday had passed, he sued for his inheritance, claiming that Confederate money was now worthless. The Louisiana Supreme Court ruled that since he was a minor when he first received his legacy, he could not have legally consented to the payment, and furthermore, that currency was "illicit." The court ordered the executor to pay him in legal tender.[34]

[32]*Lenora, f.w.c.* v. *Scott*, 10 La. Ann. 651 (1855). In a similar case William Weeks left $16,000 to his white son to pay boarding, clothing, and tuition for his four illegitimate children by a slave woman. The Louisiana Supreme Court ruled the donation invalid. *O'Hara* v. *Conrad*, 10 La. Ann. 638 (1855).

[33]*Hannah, f.w.c.* v. *Eggleston*, 17 La. Ann. 174 #198 (1865).

[34]*Porter* v. *Brown*, 21 La. Ann. 532 #137 (1869).

Even emancipation following the Civil War did not help two ex-slave children fathered by a white planter gain their inheritance. Abram Bird died in 1860, leaving a large estate and three legal, white heirs. After providing for them according to law, Bird provided for the emancipation of two of his slaves as soon as state law permitted (the act of 1857 had prohibited all emancipation), and left them each a legacy of $8,000. After Bird's death the legal heirs ceased to hold the two in slavery but left the bequests unpaid. After the war the ex-slaves sued for their inheritance. The legal heirs alleged that as "adulterous bastards" (Bird had a white wife as well as a slave mistress) they could not inherit. The Louisiana Supreme Court affirmed the judgment of the lower court that at the time of Bird's death they were slaves who could not have been legally emancipated, and as such, could not inherit.[35]

In one slave-concubinage case the daughters of a white man and one of his bondswomen, Adelaide, were well cared for, but not legally freed, possibly because of the enmity of a white wife. After one of the children was born, Jean-Baptiste Lagarde, an overseer, purchased Adelaide and her daughter Amelia in 1829 from his employer and treated them as free. The second daughter, Cydalize, was born after the sale; Adelaide died shortly thereafter of cholera. Lagarde paid a free woman of color, Marie Louise Audat, to raise his daughters and treat them as her own. Witnesses testified that Lagarde often stated the girls were his, and that when they were older he planned to send them to his sister in France. Lagarde subsequently married a white woman and died in 1843. The two girls were included in the inventory of his estate and auctioned off at a probate sale. Audat managed to purchase them, and immediately brought suit for their freedom. The First District Court of New Orleans declared Amelia and Cydalize free by prescription since they had lived free for more than ten years. Perhaps the reason that Lagarde did not take the legal steps to emancipate them was the resentment of his new wife, as it was obvious he intended them to be free. This may be one instance in which the court's decision ratified what was in fact reality. Obviously Audat was not going to treat the girls as her slaves.[36]

One case heard by the Louisiana Supreme Court involving an emancipated slave who was the daughter of a white master seems to have been a flagrant

[35]*Barrow* v. *Bird*, 22 La. Ann. 407 #2706 (1870).

[36]*Audat* v. *Gilly*, 12 Rob. 323 #5337 (La. 1845). For other cases that involve white fathers providing by will for their illegitimate children by slave or ex-slave woman, see *Brosnaham* v. *Turner*, 16 La. 433 (1839); *Nimmo* v. *Bonney*, 4 Rob. 179 #5138 (La. 1843).

miscarriage of justice in an instance where a father attempted to revoke the emancipation of his slave daughter. John Bazzi signed an act of emancipation in 1805 in St. Jago, Cuba, that freed the "Congo negro woman" Gertrude and her sixteen-year-old daughter Rose, who was acknowledged to be Bazzi's mulatto child. In the act Bazzi promised to comply with the legal formalities of emancipation as soon as possible. He subsequently arrived in New Orleans with Gertrude and Rose. Gertrude was stolen from him in 1819, and Bazzi never freed Rose. On the contrary, witneses testified that he beat her; one witness stated that she often complained of "assault and battery" by Bazzi who imprisoned her because he wanted to "chastize" her. In 1820 Rose sued for freedom and that of her young child.

Although no evidence can be found in the record, she must have had financial assistance from either whites or free blacks to hire an attorney and pay court costs. The record does state that Père Antonio de Sedella, the famous Père Antoine of St. Louis Cathedral in New Orleans,[37] espoused Rose's cause and had baptized her as a free person. Bazzi stated that he only executed the emancipation document to "protect" Rose and her mother on the voyage to New Orleans, because Spain and England were at war, and privateers and pirates roamed the Gulf of Mexico. Presumably Rose and her mother could be taken by pirates as cargo if it were discovered they were slaves. Bazzi claimed that he never felt bound by the act of emancipation. In his petition he expressed indignation that a lower court had freed Rose and her child from prison on a writ of *habeas corpus* and he was infuriated that Rose had since refused to serve him. Even though Rose was able to produce a certified copy of the document saying she was free, the Louisiana Supreme Court ruled that as she had arrived in Louisiana a slave, and had never been legally manumitted in the state, she and her child were slaves.[38]

[37]Antonio de Sedella (1748-1829) was a Capuchin monk sent to New Orleans during the Spanish colonial period (1779) as a representative of the Inquisition. He was deported by Governor Estevan Miró, but returned to Louisiana the next year and became the rector of St. Louis Cathedral, and one of the most beloved prelates in the history of New Orleans. The first American governor of Louisiana, William C. C. Claiborne, stated that Père Antoine "has great influence with the people of color." One author stated that he was sought out by "rich and poor, master and slave." John Smith Kendall, *History of New Orleans*, 3 vols. (Chicago and New York, 1922), I, 79-80; Albert E. Fossier, *New Orleans: The Glamour Period, 1800-1840* (New Orleans, 1957), pp. 326-335; G. William Nott, "How Louisiana Escaped the Inquisition," *Item Magazine* (May 11, 1924), 3.

[38]*Bazzi* v. *Rose and her child*, 8 Mart. (O.S.), 149 #466 (La. 1820.

In a few lawsuits heard by the Louisiana Supreme Court, irate and greedy heirs attempted to revoke legal emancipations of slave women who were mistresses of their white owners either to block donations to them by their ex-masters, or to claim the freed bondswomen as their property. Laurent Grangé legally emancipated his slave mistress, Marie Fanchonette, and their two children in 1836. After Grangé's death in 1842 the ex-bondservants were seized by the white heirs as slaves belonging to the succession. The Louisiana Supreme Court affirmed the lower court decision and declared Fanchonette and her children to be free. In the decision the justices stated: "... there is no justification or excuse for him, in aiding to reduce the plaintiff to a state of slavery, after she had been declared free by competent tribunal." Fanchonette received $100 in damages, plus a judgment of ten percent interest for frivolous appeal against the heirs.[39] In a similar lawsuit the heirs of John P. Cole attempted to claim Sarah Lee, f.w.c., as a slave belonging to his succession. Cole had freed his slave mistress ten years before his death. The Louisiana Supreme Court affirmed her emancipation, although it denied her a legacy of $3,000 left her by her former master, because it exceeded ten percent of the value of the estate.[40]

One white man attempted unsuccessfully to arrange for the freedom of the slave Marie and his son by her, both of whom belonged to another person. In his will Erasmus R. Avart ordered his executor to buy Marie and her child Gaston, and free them. Marie's master was willing to sell her and the child for a reasonable price, but Avart's heirs objected to the will, and no sale occurred. Marie sued the executor and heirs to have the terms of the will obeyed. Avart had died by his own hand; the testament had been executed between the infliction of his fatal wound and his demise. His heirs claimed that he was insane when he wrote the will and mentally incapable of making sound judgments. To prove this assertion they stated that since he was "consumed with passion" for Marie, he must have been of unsound mind! Several witnesses, including Père Antoine, testified that Avart was in full possession of his faculties. The lower court ordered Avart's executor to purchase Marie and Gaston and emancipate them. The Louisiana Supreme Court reversed the judgment and ruled that as a slave Marie could not bring suit to have the will executed as written, because slaves could only institute a legal action to prove their freedom. This case was reheard twice by the

[39]*Fanchonette* v. *Grangé*, 9 Rob. 86 (La. 1844).

[40]*Cole's Heirs* v. *Cole's Executor*, 7 Mart. (N.S.) 414 #2-1702 (La. 1829).

high court after the initial appeal. Its ruling remained unchanged.[41]

In its decisions pertaining to inheritance cases that involved slave women who had become the mistresses of their white masters, the antebellum Louisiana Supreme Court acted quite predictably, given the restrictions placed on the justices by the Civil Code and the Louisiana constitution. The law frowned upon "open and notorious concubinage," restricting *both* partners in such alliances to receiving only one-tenth of each other's estate. It is important to note here that the law was identical for all involved in these liaisons, male and female, Negro, mulatto and white. In this instance Louisiana law was oblivious to gender and color.

In cases involving slave concubines the Louisiana Supreme Court adhered to the law. Ex-slave concubines of white masters were allowed to receive one-tenth of their ex-master's estate in movable property; their illegitimate children, if formally acknowledged, were allowed their legal one-fourth. If the women and children were still slaves, they could not be freed unless their value did not exceed one-tenth or one-fourth respectively of the total estate. In ruling in this manner, the fact that slaves were valuable property overshadowed their qualities as persons under the law. White concubines were also restricted to inheriting ten percent, but at least their freedom was assured.

Louisiana's legal heritage is evident in these rulings. Obviously illicit and illegal liaisons were a threat to the institution of the family. Laws protected the legitimate family of both partners in the illegal relationship to insure that they would not be deprived of their inheritance. Of course, slaves had no legitimate families under the law, could own no property, and were in fact property themselves. These factors operated to make these laws more burdensome on them than on whites.

Concubinage and illegitimacy were not the only causes of avaricious relatives seeking to void wills freeing bondsmen and leaving them an inheritance. A number of emancipation-by-will cases that were heard by the Louisiana Supreme Court during the antebellum period did not involve concubinage or illegitimacy. Resentment over the testamentary generosity of a deceased slaveowner and simple greed inspired a series of lawsuits designed to thwart such eleemosynary donations. The Louisiana Supreme Court was more likely to agree to an emancipation of slaves that was not opposed to accepted public morality, providing all legal qualificaitons for emancipation were strictly met.

[41]*Marie* v. *Avart*, 6 Mart. (O.S.) 731 #352 (La. 1819); 8 Mart. (O.S.) 512 #488 (La. 1820); 10 Mart. (O.S.) 731 #488 (La. 1821).