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Liberalization of Slave Law: Contracts for Freedom in Louisiana

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In antebellum Louisiana, a civil law state, slaves enjoyed a civil right unique in the southern American states: the right to make a civil contract enforceable at law with one's master for freedom. The Civil Code of 1825, which made that right explicit, contained two distinct provisions authorizing and sustaining the validity of master slave contracts concerning emancipation.[1] In Article 174, the Code stated:

> "The slave is incapable of making any kind of contract, except those which relate to his own emancipation."[2]

Similarly in Article 1783, the Code stated:

> "The only case, in which slaves can contract on their account, is for their emancipation. They may contract for their masters, when authorized by them."[3]

These two articles delineated a species of civil personality for a Louisiana slave that was unknown elsewhere in the south.

Moreover, these two articles involved a distinct liberalization of Louisiana slave law from previous codes and even

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[1] Thomas Gibbes Morgan ed., Civil Code of the State of Louisiana: with the Statutory Amendments, From 1825 To 1853, Inclusive; And References to the Decisions of the Supreme Court of Louisiana to the Sixth Volume of Annual Reports, (New Orleans, 1853).

[2] Civil Code [1825], Book I, Article 174.

[3] Civil Code [1825], Article 1783.

from its Roman origins. The Code of 1808 had contained no such specific statement of the right of a slave to contract with a master for freedom,[4] although, complementing the Black Code of 1806 and the slave legislation of 1807,[5] it did specify the slave's civil personality in other matters, and did allow emancipation. The Black Codes on which the Code of 1808 was based, including that from Louis XIV (1685) to that of the First Louisiana Legislature (1806) did not mention this right though they, too, permitted emancipation under various circumstances.[6] Even in the Roman law, the distant origin for Louisiana slave law, the right of slave contracts for freedom was not specifically stated, though certainly implied in several provisions.[7] Thus, the Louisiana Civil Code of

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[4] A Digest of the Civil Laws Now in Force in the Territory of Orleans, with Alterations and Amendments adapted to its Present System of Government, (New Orleans, 1808).

[5] "Black Code" (1806); Acts passed at the First Legislature of the Territory of Orleans, (1807); hereafter cited as Session Acts.

[6] "Le Code Noir Ou Edit Du Roy, Servant de Reglement pour le Gouvernement de l'Administration de Justice & la Police des Isles Francois de l'Amerique, & pour la Discipline & le Commerce des Negres & Esclaves dans ledit PAys," (1685); "Le code Noir, Ou Edit Du Roy, Servant de Reglement pour le Gouvernement & l'Administration de la Justice, Police, Discipline & le Commerce des Esclaves Negres, dans la Province & Colonie de la Louisianne," (1724); "Code Noir Ou Loi Municipale, Servant de Reglement pour Le Gouvernemt & l'administration de la Justice, Police, Discipline & le Commerce des Esclaves Negres, dans la Province de la Louisianna," (1777); :Le Code Noir ou Edit Du Roi, Nouvelle-Orleans," (1803); "Laws For the Government of the District of Louisiana, Passed by the Governor and Judges of the Indiana Territory, At their First Session, (Vincennes, 1804); Session Acts, X, (De Indicus), (1807).

[7] T. Mommsen and P. Krueger eds., The Digest of Justinian, 4 vols., (Philadelphia, 1985); D.40.1 (De Manumissionibus); 40.4 (De Manumissis Testamento); 40.7.1,2,3.4 (De Statuliberis); 40.12.1,24 (De Liberali Causa).

1825 moved toward extending as well as rationalizing the civil personality of the slave, a change that was certainly compatible with the basic attitude of civil law in favorem libertatis. Unlike the rest of southern slave-holding America therefore, Louisiana, in the early nineteenth century, was moving toward a regime of slave regulation that extended the rights of slaves in civil law.

Additionally, the extention of civil protection to slaves, while quite unusual in the south,[8] was certainly compatible with the drift of northern politics concerning slavery. Slavery in Massachusetts had not survived the Revolutionary era, but in other northern states it had. Nonetheless, in the first two decades of the new century, New York, Pennsylvania and even New Jersey had all moved either to abolish slavery or ameliorate it substantially.[9] Ironically, Louisiana, a deep south state, was more in tune legally with the mid-Atlantic region than with her sister slave states.

I.

The right to allow slaves to contract for their freedom was a direct result of the laws of Louisiana's imperial heritage. While the other American colonies were founded by the British or came soon under British control, the Territory of Orleans had been

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[8] Though not unknown. See Harry v. Decker & Hopkins, Walker 36 (1818).

[9] See Thomas D. Morris, Free Men All: The Personal Liberty Laws of the North 1780-1861, (Baltimore, 1974) part. Chapters 1-3.

governed by the Spanish and the French. Thus, the rest of America inherited Britain's common law, while Louisiana was governed by the French and Spanish Roman law tradition, or civil law. The ultimate origin of the civil law for Louisiana was the Digest of Justinian, which transmitted to Louisiana many of the principles of Roman slave law through the French Black Codes and the Spanish partidas.

The concept of a slave's right to contract for his freedom can be traced back to the Digest of Justinian. The Digest granted "permission for slaves to go to law against their masters... for specific reasons,".[10]

> "Permission for slaves to go to law against their masters is granted with reluctance and only for specific reasons, that is, if any allege that the pages of a will in which, they claim, they were left their freedom have been suppressed.... Furthermore, they will claim their freedom from their masters if it has been left to them by fideicommissum, as will those who assert they have been bought with their own money and not manumitted, contrary to the spirit of their agreement.... Also if a slave has relied on someone's good faith to buy him with his own money and manumit him when this has been repaid,"[11]

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[10] D. 5.1.53.

[11] D.5.1.53., "id est si qui suppressas tabulas testamenti dicant, in quibus libertatem sibi relictam adseuerant. praeterea fideicommissam libertatem ab his petent: sed et si qui nummis redemptos se et non manumissos contra placiti fidem adseurent... sed et si quis fidem alcuius elegerit, ut nummis eius redimatur atque his solutis manumittatur, nec ille oblatam pecuniam suscipere velle dicat, contractus fidem detegendi seruo potestas detegendi seruo potestas tributa est."

A slave could sue his master for his freedom claiming that his freedom was left to him by his former master's will or paid for without him being manumitted. A slave could also sue a new master if that master had agreed to purchase the slave with the slave's funds in order to set him free, yet the new master had failed to manumit the slave. One such codal provision stated:

> "If anyone says that he was purchased with his own cash, he can institute proceedings against his master to whose good faith he had recourse and complain on the ground that he is not being manumitted by the master."[12]

The slave who was awaiting his freedom was defined as a statuliber, or one who would become free at some future time when he fulfilled all the necessary conditions. The Code asserted that:

> "The statuliber is one who has freedom arranged to take effect on completion of a period or fulfillment of a condition."[13]

The very existence of this definition implied that a slave's right to contract for his freedom did exist if the master agreed. Thus, the slave was legally recognized as a party under this status and

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[12] D.40.1.5., "Si quis dicat se suis nummis emptum, potest consistere cum domino suo, cuius in fidem confugit, et queri, quod ab eo non manumittatur,".

[13] D.40.7.1., "Statuliber est, qui statutam et destinatam in tempus uel condicionem libertatem habet.". Although the statuliber had special status under the law, they were still slaves just the same. The Code stated: "Statuliberi hardly differ at all from the rest of our slaves... statuliberi have the same status as the rest.", D.40.7.29, "Statuliberi a ceteris seruis nostris nihilo paene differunt... eiusdem condicionis sunt statuliberi cuius ceteri."

as a person awaiting his freedom, though not possessing an additional civil personality from the other slaves.

The Roman law also allowed other persons to sue on the slave's behalf for his freedom, regardless of circumstances. The law stated:

> "If ever a person who is in de facto slavery does not allow a suit concerning his status, certain persons should be authorized to bring the suit on his behalf,"[14]

Finally, slaves themselves could also sue for their freedom in a class of cases known as free or not, liber vel non. Once a slave had filed a suit for his freedom, he legally took the role of plaintiff. Roman law declared:

> "If a man in slavery proclaims freedom, he has the role of plaintiff;".[15]

As a plaintiff in a civil case, the slave was entitled to bring evidence to prove his freedom.

> "...the person whose status is the subject of proceedings is treated as free to the extent that actions of any kind he may wish to bring are not denied him even against the person who claims to be his owner;".[16]

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[14] D.40.12.1, "Si quando is, qui in possessione seruitutis constitutus est, litigare de condicione sua non patitur, quod forte sibi suoque generi uellet aliquam iniuriam inferre, in hoc casu aequum est quibusdam personis dari licentiam pro eo litigare: ut puta parenti, qui dicat filium in sua potestate esse: nam etiamsi nolit filius, pro eo litigabit. sed et si in potestate non sit, parenti dabitur hoc ius, quia semper parentis interest filium seruitutem non subire."

[15] D.40.12.7.5., "Si quis ex seruitute in libertatem proclamat, petitoris partes sustinet:".

[16] D.40.12.24., "Ordinata liberali causa liberi loco habetur is, qui de statu suo litigat, ita ut aduersus eum quoque, qui se dominum esse dicit, actiones ei non denegentur, quascumque intendere uelit:".

The French origins of Louisiana slave law began with the "Code Noir" of 1685, part of the general effort at legal codification undertaken by Jean Baptiste Colbert.[17] The Code Noir was designed not specifically for Louisiana, which did not yet exist, but rather for all French colonies within which there might be slavery. All of the Black Codes after 1685, restated generally what the 1685 Code had said. There was not much liberalization of the French Black Codes, even after the French Revolution occured, because the revolution did not apply to slaves. Louisiana also had a Spanish inheritance in the Siete Partidas.[18] Spanish law was very similar to the Roman law in its treatment of slave rights. The Partidas stated that:

> "...there are certain cases in which a slave may appear and sue in person; as where the testator by his last will, had ordered that one of his slaves should be enfranchised, and the person so ordered, fraudently conceal the writing, in which liberty was conferred on him; the slave may then appear and sue the person who witholds such writing."[19]

The law described other situations in which a slave could sue for freedom, such as when a person given money by the slave does not purchase him for his freedom as promised or if after purchasing him

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[17] "Le Code Noir Ou Edit Du Roy, Servant de Reglement pour le Gouvernement de l'Administration de Justice & la Police des Isles Francois de l'Amerique, & pour la Discipline & le Commerce des Negres & Esclaves dans ledit Pays," (1685).

[18] Ed. and trans. L. Moreau and Henry Carleton, A translation of the titles on promises and obligations, sale and purchaese, and exchange, and exchange; from the Spanish of Las siete partidas, (New Orleans, 1818).

[19] Partida 3, tit.2, law 8.

does not manumit him as promised. Although the slave had a right to sue, he had have sufficient evidence to prove his freedom. The law stated that the plaintiff was:

> "...always bound to prove what he alleges, if denied by the defendant, either by witnesses, instruments of writing, or by any other evidence worthy of belief. And if he be not certain of the sufficiency of his proof before he begins, that which he thought would be to his advantage, will turn to his prejudice and confusion:"[20]

The Spanish law also favored a slave's liberty by placing the burden of proof on any one who claimed a negro who was enjoying freedom at the time. Spanish law stated:

> "...it will be incumbent on the plaintiff, to prove what he alleges, and not the defendant who is in possession of his freedom."[21]

Thus, free negros were protected to a substantial degree from false claims that they were in fact someone's slave. Slaves were also protected from cruel treatment by their masters under Spanish law. The law declared that:

> "...if a man be so cruel to his slaves, as to cause them to die of hunger, or strike or chastise them so severely with the whip, that they cannot bear it; they may then complain to the judge, who ought, in virtue of his office, to enquire into the truth of the facts,".[22]

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[20] Partida 3, tit.2, law 39.

[21] Partida 3, tit.14, law 5.

[22] Partida 4, tit.21, law 6.

Finally, the Louisiana codes in 1804 and 1806, both products of American administration, repeated the early legislation as well and there was not much difference between the French and the Spanish slave law. Louisiana, true to its civilian origins, moved immediately toward codification as the appropriate method of systematizing the law of the state. Indeed, uniquely in America, Louisiana legal codification preceded a state constitution. The Louisiana Constitution of 1812 thus provided a political framework for a state that already had a codified fundamental law.[23] By 1808, a well-established tradition of slave law existed and the Civil Code of 1808 reflected this. Thus, the Civil Code of 1825 which did explicitly allow for contracts of freedom, was a move in favor of liberty. So in the years before the Civil War, Louisiana continued to affirm her liberal slave law.

By contrast, although suits for freedom existed in common law southern states, they were rarely successful. In Alabama, for example, there were only a few such cases from 1820 to 1861, and the slave lost them all.[24] But, slaves in the civil law system, which had a bias in favorem libertatis, were regarded as at least potentially able to be free, and the law provided avenues for

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[23] Louisiana Constitution (1812); Louisiana's codification was omitted in the otherwise excellent book, Charles M. Cook, The American Codification Movement- A Study of Antebellum Legal Reform, (Westport, Conneticut, 1981); Civil Code [1808].

[24] For Alabama liber vel non Supreme Court litigation see Glover v. Millings, 2 Stewart and Porter 28 (1832); Fields v. Walker et al., 23 Alabama 155 (1853); Bllodgood v. Grasey, 31 Alabama, 575 (1858).

proving that freedom. This tendency became part of the Civil Code. In Louisiana, therefore, slaves had a more extensive civil standing than they had elsewhere in the south.[25] But in Louisiana there were also slaves for a period, called statuliberi, as well as slaves for life. Moreover, in Louisiana, slaves had the right to manage property, another Roman inheritance. Nonetheless, slavery was still slavery, and the slave was still subject to all the disabilities and exploitation of their system. But, again, nonetheless, the Civil Law version of slavery was at least partly responsible for the large number of free persons of color in Louisiana, more than any other state. According to the United States Census of 1820, there were 10,476 free persons of color in the state of Louisiana, while Georgia had only 1,763 free persons of color that same year.[26] The number of free persons of color increased in Louisiana to a population totalling 17,462 by the year 1850,[27] but the population was only increased slightly in the Census of 1860 to 18,647 free persons of color.[28] So, the tendency for Louisiana to favor freedom was laid in its founding influences.

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[25] Civil Code [1808], Book III, Article 18; Civil Code [1808], Article 21..

[26] Census For 1820. (Washington, Gales & Seaton, 1821).

[27] The Seventh Census of the United States: 1850. (Washington, Robert Armstrong, 1853).

[28] Population of the United States in 1860; (Washington, Government Printing Office, 1864).

II.

In Louisiana with its civilian background, there was no such thing as judge made law. Codes, which were passed by the legislature, Constitutions and legislation formed the body of Louisiana law. The initial Code of 1808 proved to be inadequate, so the Legislature authorized the Civil Code of 1825.[29] The Code, of course, dealt with slavery in all its aspects, including manumission, the legal right of all property owners.[30] The conditions under which a slaveowner could exercise this right were outlined in 1807:

> "That no person shall be compelled either directly or indirectly, to emancipate his or her slave or slaves, but in the case only where the said emancipation shall be made in the name and at the expence of the territory, by virtue of an act of the legislature of the same."[31]

The Act also outlined specific conditions for the manumission of slaves. The slave must be thirty years of age, have "honest conduct", and masters had an obligation to help slaves in need after they had been emancipated.

The initial Code (1808), reaffirmed the conditions set forth in

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[29] Charles M. Cook, The American Codification Movement, chapter1; Morgan ed., Civil Code, (1825) .

[30] Session Acts, (1807), Civil Code (1808).

[31] "Que personne ne sera force, directement ni indirectement, d'affranchir son esclave ou ses esclaves, excepte seulement lorsque ledit affranchissement devra etre fait au nom et aux frais du Territoire, en vertu d'un acte de la Legislature dudit Territoire." Session Acts, (1807), Chapter X, Section 1.

the 1807 Legislature under which a master could manumit his slave, and stated the way in which that master could set his slave free.

> "A master may manumit his slave in this territory, either by an act inter vivos or by a disposition made in prospect of death, provided such manumission be made with the forms and under the conditions prescribed by the special law enacted thereupon by the legislature. But an enfranchisement when made by a last will must be express and formal, and shall not be implied from any other circumstances of the testament, such as a legacy, an institution of heir, testamentery executorship or other like dispositions which in such case shall be considered as not written and void." [32]

Basically, the Code permitted a master to manumit his slave by an act inter vivos, during his lifetime, or by an act mortis causa, in his will, as long as the necessary legal formalities and conditions were met.

Emancipation existed within the larger context of the social institution of slavery which regarded the slave as property having no general civil personality. The legislature went on to describe at some length specific civil disabilities of a slave. The Civil Code [1808], stated:

> "The slave is incapable of exercising any public offices or private trusts, he cannot be tutor, curator, executor, nor attorney, he cannot be a witness in either civil or

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[32] "Un maitre peut affranchir son esclave dans ce Territoire, soit par acte entre vifs ou par acte de derniere voolonte, pourvu que ce soit dans les formes et sous les conditions prescrites par la loi speciale de la Legislature a cet egard, mais cet affranchissement, lorsqu'il est fait par acte de derniere volonte, doit etre expres et formel et ne s'induira plus d'aucune autre circonstance du testament, tel que serait un legs, une institution l'heritier, une execution testamentaire, ou autre disposition de ce genre, lesquelles en ce cas seront censees non ecrites et sans effet." Civil Code [1808], Book III, Article 25.

> criminal matters, except in cases provided for by the particular laws of this territory. He cannot be a party in any civil action either as plaintiff or defendant, except when he has to claim or prove his freedom."[33]

One notes not only that the law prohibited a slave from having a civil personality, but also the exceptions to that law. The exception stated that a slave "cannot be a party in any civil action either as plantiff or defendant, except to claim or prove his freedom".[34] Thus, a slave always had a standing in court to sue liber vel non, or concerning the condition of statu liberi, and the right to contract with his master for his freedom.[35]

The legal permission in the law to allow a slave to testify in a court of law as to his own freedom was very important; otherwise the slave's arrangement for freedom would have no legal binding. The slave also had a further protection; the arrangement made for his freedom was protected from later revocation. Thus, the legislature in Louisiana made an effort to protect the unique right of slave contracts. The laws reflected the Roman tradition by protecting a slave's freedom through the Civil Code which stated:

> "An emancipation once perfected, is

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[33] "L'esclave est incapable d'aucunes charges, ou fonctions publiques ou privees; il ne peut etre tuteur, curateur, executeur testamentaire ou fonde de procuration; il ne peut etre temoin, soit en matiere civile ou criminelle, sauf dans les cas d'exception qui sont ou pourront etre etablis par les lois particulieres de ce Territoire; il ne peut ester ou etre partie en jugement, soit en demandent, soit en defendant, en matiere civile, excepte lorsqu'il s'agit de reclamer ou prouver sa liberte." Civil Code [1808], Book III, Article 18.

[34] Civil Code [1808], Book III, Article 18.

[35] Civil Code [1825], Book I, Article 174; see also Beard v. Poydras, 4 Martin, 348 (1816), at 356, 361.

> irrevocable, on the part of the master or his heirs." [36]

The important legal statement is that a slave once free, was always free. If the freed slave were to be seized as a slave once again, he could testify as to his freedom in a court of law and, in Louisiana at least, could win. Furthermore, Article 21 of the Civil Code [1808] made it illegal for persons to go back on a contract stipulation which provided for the freedom of a slave.

> "A person may, in like manner, stipulate for the advantage of a third person, when such is the condition of stipulation that he makes for himself, or of a donation that he makes to another. He who has made such a stipulation, can no longer revoke it, if the third person has declared himself willing to avail himself of it."[37]

The earlier laws allowing slaves some civil standing were still acceptable to society in 1825 so, the legislature reaffirmed the provisions of the Code of 1808, as well as the previous appropriate statutes in the new Civil Code. But the new Code went further explicitly to define slaves who were to be set free at a certain time and the special privilege only slaves in the state of Louisiana enjoyed. This privilege was the right to contract for their freedom. The Civil Code [1825], Book I, Article 37 stated:

> "Slaves for a time or statu liberi, are those who have acquired the right of being free at a time to come, or on a condition which is not

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[36] "L'affranchissement, une fois accompli, est d'esormais irrevocable de la part du maitre ou de ses heritiers." Civil Code [1825], Book I, Article 189.

[37] Civil Code [1808], Book, Article 21.

> fulfilled, or in a certain event which has not happened, but who, in the mean time, remain in slavery."[38]

So, the Code formally defined the slave legally who had acquired the right of freedom at some future time, a statu liberi[39], thereby giving him a special status among the slave community and reaffirming his right to prove his freedom at a future date, a right unique to Louisiana. Moreover, the slave's rights with regard to manumission were expanded in the new code to include formal contracts for freedom. This right was explicitly asserted in the Civil Code:

> "The slave is incapable of making any kind of contract, except those which relate to his own emancipation." [40]

The slave's right to contract for his freedom was stated again positively in the same Code as follows:

> "The only case, in which slaves can contract on their account, is for their emancipation. They may contract for their masters, when authorized by them." [41]

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[38] "Les affranchis a terme, ou statulibres, sont ceux auquels est acquis le droit d'etre libres dans un tems a venir, ou a une condition qui n'est pas encore remplie, ou lors d'un evenement qui n'est pas encore arrive, mais qui, en attendant, demeurent dans l'etat d'esclavage." Civil Code [1825], Book I, Article 37; see also D.40.7.1.

[39] See Beard v. Poydras, 4 Martin, 348 (1816), at 356.

[40] "L'esclave est incapable de toute espece de contrats, sauf ceux qui ont pour objet son a affranchissement." Civil Code [1825], Book I, Article 174.

[41] "Le seul cas dans lequel l'esclave peut contracter pour son propre compte, est celui ou il s'agit de son affranchissement. Il peut contracter pour son maitre, s'il y a ete autorise par lui." Civil Code [1825], Article 1783.

This provision gave the slave who had made the contract a special status generically that of a statuliber, but with additional contractual protection. The law also reaffirmed the protection of slaves who were not an actual party in the contract, but who were a third party to a contract between the master and another. The Civil Code stated:

> "But a contract, in which any thing is stipulated for the benefit of a third person, who has signified his assent to accept it, cannotbe revoked as to the advantage stipulated in his favour, without his consent." [42]

The condition of statuliber was thus attached to the slave and could not be revoked by sale; it became part of the terms of the sale or inheritance. Louisiana's law tradition here reflected Roman usage; in favorem libertatis.

In 1846, the Legislature declared:

> "That from the passage of this act, no slave shall be entitled to his or her freedom, under the pretence that he or she has been, with or without the consent of his or her owner, in a country where slavery does not exist, or in any of the States where slavery is prohibited." [43]

After the passage of this act, a slave had to have an implied

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[42] "Mais un contrat dans lequel quelque chose a ete stipule au profit d'une tierce personne, qui a signifie qu'elle consentait a y donner son acceptation, ne peut etre revoque sans son consentement, quant a la chose qui y est stipulee en sa faveur." Civil Code [1825], Book I, Article 1896.

[43] "Qu'a dater de la passation de cet Acte aucun esclave n'aura droit a sa liberte sous le pretexte qu'il aura mis le pied, avec ou sans le consentement de son maitre, sur le sol d'un pays ou l'esclavage n'existe pas, ou de l'une des Etats de l'Union ou l'esclavage est prohibe." Session Acts (1846).

contract, or an expression of the master's will to claim his freedom through residence in a free place. Stricter emancipation laws were to follow as freed slaves began to be seen as a threat. Obviously, the possibility of a slave revolt and the frightening abundance of freed negroes was on the minds of the people of Louisiana. Legislation in 1855 stated:

> "That all suits for the emancipation of slaves shall be tried by a jury, and when their verdict is in favor of emancipating the slave, the jury shall also say whether he shall be permitted to remain in the State or not." [44]

So, the freed slave was not automatically forced to leave the state. Finally, in 1857, the Legislature put all discussion on emancipation to an end by forbidding it altogether.

> "That from and after the passage of this Act no slave shall be emancipated in this State."[45]

Manumission had gradually become more difficult and restrictive in Louisiana until it was eventually forbidden in 1857. The increasing sectional tension in the United States was reflected in Louisiana slave law. While the institution of slavery was still not an issue in national politics, slaves were granted certain liberties in Louisiana. Yet, once abolitionism became a powerful voice in northern politics, slave states began to fear for

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[44] "Que toutes les actions pour l'emancipation des esclaves, seront jugees par un juri, et lorsque le verdict sera en faveur de l'emancipation, le Juri declarera en meme temps s'il sera permis a l'esclave emancipe de rester dans l'Etat ou non." Session Acts (1855), Section 73.

[45] "Qu'a dater de la passation du present Acte, nul esclave ne pourra etre emancipe dans l'Etat." Session Acts (1857), Section 1, Act No. 69.

their way of life. The abundance of free persons of color coupled with rising northern aggression served to be a real and dangerous threat to the Louisiana's economic institution, not to mention their lives. Louisiana began to restrict the rules governing emancipation until the final decree of 1857. This last act effectively repealed Articles 174 and 1783 of the Civil Code [1825] which had allowed the slave the unique right to contract for his freedom. Thus, Louisiana had become more like the rest of the slave states in the south.

III.

In spite of the fact Louisiana was a civil law sate, Supreme Court decisions were definitive in the specific case and indicative of the direction of future holdings. The rulings of the Supreme Court were not judge-made law, but they did serve as precedent for future cases. In Louisiana, unlike other states, there existed from the beginning of statehood an authoritative series of reports from the Louisiana Supreme Court, edited by Justice Francois Xavier Martin.[46]

Before the legislation of 1857 repealed the slave's right to contract for his freedom, several cases came before the Supreme Court of Louisiana that served to clarify sections 174 and 1783 of the Civil Code [1825]. The cases that shaped and defined this law

[46] See Charles M. Cook, The American Codification Movement- A Study of Antebellum Legal Reform, (Westport, Conneticut, 1981), chapters 1-4.

became core cases and were used in later jurisprudence. Although not all of the cases resulted in the slave's freedom, neither the idea of freedom by contract nor the Code itself was compromised until 1857. The decisions in favor of the masters came because of some failure on the part of the slave to fulfill all conditions of the contract necessary to gain his freedom, rather than, before 1857, a sense that a slave contract for freedom was contrary to public policy.

The earliest core case came before the Supreme Court of Louisiana in May of 1818. In Cuffy v. Castillon, a negro woman sued for her own and her children's freedom based on a contract between her former master, Andrew Almonaster, and Cuffy, a freedman who was her father.[47] A copy of the contract was found and it appeared that the value of each slave who was to be manumitted was fixed in it. The contract showed clearly that the former master of the plaintiff bound himself to manumit the slaves mentioned therein only on the condition of receiving $3400. This was the price of their liberty agreed upon between Mr. Almonaster and Cuffy. It did not appear that the sum or any part of it was paid to him or his representatives, except $316 imputed on the price of one of the slaves named in the contract.

Plaintiff in this case relied much on the principles of Roman law, in which, it is declared that although the whole price of a slave's freedom is not paid by the slave, he still acquires it if

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[47] Cuffy v. Castillon, 5 Martin (OS), 494, (1818).

the rest of the sum be afterwards supplied by his labor or industry.[48] Defendant countered by asserting that even the sum of $316, were it to be considered as part of the general payment on the contract, could not by itself free the plaintiff then.[49]

Judgement in Cuffy v. Castillon was affirmed for the defendant because the statuliber did not fulfill the condition for her freedom.[50] Although the statuliber was a slave only for a term, until the fulfillment of the specified conditions, the slave's freedom was to be granted after acts performed, that is to say the freedom was retroactive rather than proactive. The slave's freedom was not granted, but the validity of the contract was accepted. Had the plaintiff fulfilled the terms of the contract, she would have become free because there was a legal contract.

Later cases accepted the validity of slave contracts as well, even despite the testimony of the present master. One such case was Prince Mathews v. Michael Boland and another.[51] In June of 1843, Prince Mathews came before the Supreme Court of Louisiana to sue for his freedom. The plaintiff's suit was based upon a receipt of his master which read, "Received, at sundry times, of Prince

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[48] D.40.7.3.8.

[49] 5 Martin (OS), 494, (1818), at p.495.

[50] 5 Martin (OS), 494, (1818). at p.498, and D.40.7.3.

[51] 5 Robinson 200, (1843).

Mathews, my slave man, six hundred and fifty dollars, in full for his purchase. Jan'y 19th, 1842. M. Boland.".[52] The sale of the plaintiff as a slave, by Boland to Smith, was passed before a Notary Public, and was given in evidence. It was purported to be dated March 23d, 1842, and certified that $400 was paid in the presence of a notary and witnesses as part of the price. However, the notary as a witness swore that the statement in the act was not true; and that, he was not even present when the act was signed by the vendor. A witness also testified that when Smith was told that the negro had bought his freedom, he replied, "that it mattered not, he would beat them at law.".[53] The same witness said, positively, that Smith knew of the plaintiff's freedom. The plaintiff argued that Boland, his former master, intending to defraud and deceive him, combined with Smith to pretend to have sold him. Smith then claimed under such pretended sale, to hold him as a slave.

The Supreme Court of Louisiana argued that the lower court erred in permitting the notary public to be sworn as a witness to falsify his own certificate. However, the court thought the lower court was right in concluding that Smith did not pay the price at another time, and that he knew of the contract between Boland and the plaintiff. Yet, the Supreme Court could not concur with the

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[52] 5 Robinson 200, (1843), at p. 200.

[53] 5 Robinson 200, (1843), at p. 201.

lower court in its conclusion, that the plaintiff was entitled to an absolute and unconditional decree for his freedom. The Court stated that "public policy forbids absolute emancipation by simple agreement of this kind, and requires certain formalities, which cannot be dispensed with. These formalities depended upon the age, condition, and conduct of the slave to be emancipated."[54] Thus, the defendant, Smith, was ordered to proceed to cause the plaintiff, Prince Mathews, to be emancipated and set free, in the form and manner pointed out by law.[55]

So, the validity of the contract between Prine Mathews and his master, Boland, was accepted, and since the receipt of the master proved his payment in full, Prince Mathews was entitled to be freed. Payment in full did not automatically entitle a slave to immediate freedom though, but did entitle the slave to freedom in the manner pointed out by law.[56]

Another important case as to the standing of a statuliber was Francois v. Jacinto Lobrano in 1845.[57] Francois, formerly a slave of Louis Pilie, was sold by his master to Joseph Sauvinet, on July

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[54] 5 Robinson 200, (1843), at p.201, see Nole v. Charles De St. Romes and wife, 3 Robinson, 484, (1843), Also Articles 184, 185 [Civil Code 1825].

[55] 5 Robinson 200, (1843), at p. 202.

[56] 5 Robinson 200, (1843), at p. 202.

[57] 10 Robinson 450, (1845).

23d, 1835, for $300. He was sold on the express condition that as soon as he should have reimbursed to the purchaser the said sum of $300, he should be entitled to his freedom, the formalities prescribed by law to be fulfilled at the petitioner's expense. On January 25th, 1839, Sauvinet sold the petitioner to Joseph Saliba for the same price, and on the same condition; and, on October 11th, 1838, Saliba sold him to the present defendant, for the same price and on the same condition. The petitioner alleged that he paid Pilie $500 before July, 1835, on account of his freedom, and that he has long since paid to his subsequent masters more than the $300 he was bound to reimburse them.[58]

The defendant, Lobrano, admitted that he had bought the slave Francois on the condition set forth in his petition, but stated that the slave had not even paid his monthly wages. He claimed that Francois had a bad habit of running away and of drinking. Thus, he had to lodge him in jail. The previous owners testified to the same effect and the judge in the lower court rendered a judgement in favor of the defendant. The petitioner's argument, on the other hand, was based on the idea that prior to July, 1835, he was worth $800. From the moment he paid $500 to Pilie, he became co-instanti, a co-proprietor of himself with his master, for five-eigths of his value. "The partnership thus formed continued between him and his subsequent owners, to whom Pilie could transfer only his interest in the subject matter of the partnership, to wit,

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[58] 10 Robinson 450, (1845).

which three-eighths of his value,".[59] Thus, he owed to his subsequent masters only three-eigths of his labor or wages, and was himself entitled to the other five-eighths. Therefore, the petitioner claimed, he had more than complied with the condition necessary to obtain his freedom.

The Supreme Court, however, argued that "a slave cannot become partially free, nor can he, until legally and absolutely emancipated, own any property, without the consent of his master. Notwithstanding the partial payment he had made with a view to purchase his freedom, Francois, to all intents and purposes, continued to be the slave of Pilie, who was entitled to all his services as such."[60] When he sold him, he did all he was bound to do, by securing to him the means of becoming free on paying to the purchaser $300, the supposed balance of his value.

The lower court's judgement was affirmed.[61] The Supreme Court asserted that until the $300 was paid, Francois must remain the absolute slave of the defendant. Thus, the statuliber's position was more clearly defined. Although they were to become free at some future time, they were never considered partially free beforehand.[62] Louisiana had no condition of part free and part

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[59] 10 Robinson 450, (1845), at p.452.

[60] 10 Robinson 450, (1845), at p.452.

[61] 10 Robinson 450, (1845), at p.452.

[62] see Articles 35-39 of the Distinction of Persons, [Civil Code 1825].

slave. They were slaves just the same, and therefore, had no special rights or privileges as statuliber beyond those set forth in Articles 174 and 1783 of the Civil Code [1825].[63] What was sufficient evidence to prove a contract existed had to be defined as well. In the decision of Gaudet v. Gourdain et al in 1848, the court faced the question of whether or not parol evidence was sufficient in proving that a contract existed and that its conditions were carried out.[64]

The plaintiff claimed that the defendant, Jean Gourdain, purchased her mother and her two children under an agreement that he would emancipate her and keep only her two children then as slaves as long as she paid one half of the purchase money. The petitioner claimed that her mother did fulfill that condition by paying $220 and that from January 5, 1830, the day of the purchase, until her death in 1845, the mother enjoyed her freedom. The plaintiff also alleged she was born in November 1831, after her mother's freedom was purchased, and she enjoyed her freedom ever since without any opposition on the part of the defendant, Jean Gourdain. During the trial in the lower court, parol evidence was offered to prove the alleged agreement and its execution by the plaintiff's mother. It was objected to by the defendant's counsel, on the ground that evidence to prove a contract of emancipation

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[63] D.40.7.29.

[64] 3 La Ann 136, (1848).

should be in writing. The lower court had sustained the objection to the testimony ruling it to be insufficient to prove the contract existed.[65]

The Supreme Court of Louisiana was held that the evidence was admissible to prove the agreement and its execution. They argued that the rule found in article 1783 of the Civil Code of 1825, which authorized slaves to contract for their emancipation, did not subject those contracts to any particular formality.[66] The act of emancipation had to be in writing, but this regulation had nothing to do with the contract for emancipation.[67] Since the payment was made by the plaintiff's mother before the plaintiff was born, the Supreme Court argued she acquired by that payment a legal right to her emancipation. Article 196 [Civil Code 1825] stated that the child born of a woman after she had acquired the right of being free at a future day, followed the condition of its mother, and became free at the time fixed for her enfranchisement, even if the mother should die before that time. Consequently, the lower court's judgement was reversed in favor of the plaintiff, who ever after was to be free,[68] and parol evidence[69] was accepted as

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[65] 3 La Ann 136, (1848).

[66] Partida 3, tit.2, law 8. and D.(5.1) 1.53, de Judiciis.

[67] see Mathews v. Boland et al, 5 Robinson 200, (1843).

[68] 3 La Ann 136, (1848), at p.138.

[69] see Partida 1, tit.22, part.4, Also Beard v. Poydras, 4 Martin (OS), 348, (1816), at p.369.

sufficient to proving a contract's existence and its execution.

In that same year, another core case was tried involving the purchase of a slave for her liberty, Angelina v. Whitehead.[70] A negro woman, Angelina, came before the Supreme Court of Louisiana in 1848 to sue for her and her three children's liberty. She belonged to the late John R. Holliday of Mississippi who sold her to Philander Campbell, then residing in the parish of Lafayette. Angelina and her three children were held as slaves during his lifetime, and after his death, by the defendants, his heirs. The plaintiff's claim for freedom was based on a letter by John R. Holliday dated 1820, which stated that Philander Campbell "would manumit and set free from bondage, a certain mulatto girl named Angelina, and the further consideration of one hundred and fifty dollars to me in hand paid, ...and [I] by these presents do bargain, sell, and deliver, unto the said Philander Campbell, with full power and authority to manumit, set free, and forever release from bondage the said mulatto girl Angelina, ".[71] Philander Campbell read this bill of sale and retained it until his death, when it passed to the possession of the defendants. There appeared to be no question as to the verity of the document.

The plaintiff argued that her emancipation was an essential condition of the contract, without which it would not have been made. By the plaintiff having attained the age of thirty years,

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[70] 3 La Ann 557, (1848).

[71] 3 La Ann 557, (1848), at p.556.

she did not become a free person, but her right to become emancipated then became complete.[72] Although the letter proceeded the Code of 1825, there were no provisions under the Code of 1808 which would have prevented the plaintiff from obtaining her freedom. The Court found "that in the translation of those laws of the Partidas which were still held to be in force in Louisiana, made under the authority of the legislature in 1820, this class of contracts for the freedom of slaves is expressly recognized,"[73] It was also asserted that it was a common mode of securing the freedom of the slave for a friend to purchase that slave for his liberty.[74]

The judgement of the lower court was reversed[75] and declared that the plaintiff, Angelina, and her three children, Melinda, Felix, and Maria, were to be "slaves for years or statu-liber, and not slaves for life. And it is further decreed that the defendants proceed without delay to emancipate the plaintiff, under the laws of this State; and that they and each other, do, perform such acts as may be lawfully required to effect said emancipation; and that they pay the costs in both courts."[76]

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[72] see Article 185 [Civil Code 1825].

[73] Partida 3, tit.2, law 8.

[74] see Cuffy v. Castillon, 5 Martin (OS), 494, (1818).

[75] 3 La Ann 557, (1848), at p.558.

[76] 3 La Ann 557, (1848), at p.558.

IV.

Although the Civil law in Louisiana retained its ancient inclination *in favorem libertatis*, that fact alone was not enough to produce an alternative slave regime in Louisiana. The Civil Code of 1825, and numerous Supreme Court decisions gave slaves a greater legal chance for freedom in Louisiana than they had elsewhere, but by the late 1850's, as the sectional conflicts became acute, Louisiana stood by her sister slave states. Manumission of any kind was prohibited, and the large population of free people of color came to be seen as a serious social problem. Political pressures and social fears proved greater than legal traditions. And this was not surprising. After all, the general movement of Louisiana history and culture from the Purchase to the late unpleasantness was Americanization.