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$1,000: The Price of Life and Honor in the 1834 North Carolina Supreme Court Case, State v. Will

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Introduction

Looking back on her husband's life, the wife of an enslaved man named Will declared: "Will sho'ly had hard luck. He killed a white man in North Carolina and got off, and then was hung for killing a nigger in Mississippi."[1] Given his extraordinary circumstances, some would argue that Will had an abundant, albeit limited, amount of luck. While his individual story ended in tragedy, it is still worth telling. It is significant because the altercation in North Carolina, where he "killed a white man…and got off," culminated in a court case, *State v. Will*, that had an effect beyond the scope of the lives of those involved.[2] The incident had a positive effect in North Carolina slave law despite its violent origin.

The court records show that on January 22, 1834, Will, a slave of James S. Battle, killed his overseer, Richard Baxter. The series of events that led to his death began with a disagreement over a work tool. Early that morning, Allen, the slave foreman, instructed a slave to use a hoe that Will "claimed to use exclusively on the farm on account of his having helved it in his own time." Because Will had probably made and attached the handle on his own, he did not want another slave to use it. Allen and Will exchanged "some angry words," and Will damaged the handle before he left to work at the cotton screw. A likely aggravated Allen then reported what had happened to Baxter, the overseer. Perhaps upset by Will's disobedience, Baxter quickly entered his home and said something that made his wife comment, "I would not my dear." He proceeded to retrieve his shotgun and responded, "I will." Back outside, he told

[1] George Gordon Battle, "The State of North Carolina v. Negro Will, a Slave of James S. Battle: A Cause Celebre of
[2] Thomas P. Devereux and William H. Battle, *Reports of Cases at Law, Argued and Determined in the Supreme Court of North Carolina, From December Term, 1834, to June Term 1835, Both Inclusive, vol.1* (Philadelphia: P.H. Nicklin & T. Johnson, 1837), 121-172.

Allen that he "was going after the prisoner," and to follow with a whip as Baxter rode his horse to where Will was working.[3]

Baxter reached Will unobserved and his actions indicate that he might have wanted it that way. Upon reaching the work area, he quickly descended from his horse and crossed the fence, gun in hand. When Baxter approached him, Will was placing cotton into the screw. Will obediently followed Baxter's demand to come down from the cotton screw, and "took off his hat in an humble manner and came down," after which the two traded indiscernible words. In front of the three other slaves, Will began to run away. He did not get more than "fifteen steps" before Baxter shot him in the back, with the load from the shotgun "covering a space of twelve inches square."[4]

Despite the serious wound, Will miraculously continued to run as Baxter and the slaves, including Allen, pursued him. Baxter told the slaves that Will "could not go far" and instructed them to catch him. Baxter did not remain idle, either. By use of both horse and foot, he tried to capture Will. When Will saw Baxter, "he changed his course" to avoid him. Eventually, Will's injuries probably slowed him down because Baxter reached him and "collared him with his right hand." With his left thumb in Will's mouth, Baxter told the slaves to grab Will, who held a knife. Will struck at a slave who tried to aid Baxter but missed and instead slashed the overseer's leg. Baxter did not have any weapons with him at this point. However, as Will attempted to free himself in the tussle that followed, he injured Baxter's chest and delivered the ultimately fatal wound to his arm. These actions allowed Will to continue his escape into the woods while Baxter remained injured on the ground. At first Baxter ordered the slaves to chase

[3] Devereux and Battle, *Reports of Cases*, 122 (all).
[4] Devereux and Battle, *Reports of Cases*, 122 (all).

after Will but he then called them back. He asserted, "Will has killed me; if I had minded what my poor wife said, I should not have been in this fix." He died later that night from the blood loss. [5]

Will faced the legal consequences the next day. He did not have to be tracked down because Will had made his way back to the plantation and to his master, James Battle, on the same day of the altercation. In what could have been a mixture of physical exhaustion and shock, news of Baxter's death the next day left Will "so much affected that he came near falling." When he learned of Baxter's death, he exclaimed, "Is it possible!"[6]

At trial, the jury decided that Will committed the act that caused Baxter's death, but could not decide if it was murder or manslaughter. As a result, they declared what is labeled a "special verdict." The jury told the judge, "the said jurors are altogether ignorant, and pray the advice of the Court thereupon." The distinction of charges – "felony and murder" versus "feloniously killing and slaying" – meant the difference between life and death for Will. With their special verdict, the jury left the critical decision in the judge's hands. Judge Donnell concluded that Will had committed murder, and sentenced him to death. Fortunately, North Carolina's laws entitled slaves to fair trials and legal processes, and because all death offenses were automatically appealed, Will's case went before the North Carolina Supreme Court.[7] In December of 1834, Justices William Gaston, Thomas Ruffin and Joseph John Daniel reviewed the case and unanimously came to the decision that Will did not act maliciously when he killed Baxter. He acted in self-defense, in response to the "passion" natural to human beings when so

[5] Devereux and Battle, *Reports of Cases*, 123 (all).
[6] Devereux and Battle, *Reports of Cases*, 124.
[7] Paul Finkelman, *The Law of Freedom and Bondage: A Casebook* (New York: Oceana Publications, New York University School of Law: Ingram Documents in American Legal History, 1986), 196.

provoked. This decision, with its acceptance of slaves' humanity, would affect criminal slave cases in North Carolina in the years to come.[8]

Slaves in the nineteenth-century American South inhabited a world that often struggled with their status as both "persons" and "property."[9] The tension between the two roles is readily apparent in many of the criminal cases involving slaves. Historian Ariela Gross states in *Double Character* that "cases forced lawyers and judges to confront slaves' moral agency."[10] In *State v. Will*, the acknowledgement of the slave's personhood and "passions" saved his life. The court made the decision after considering the dual roles Will occupied. The author of the court opinion, Justice William Gaston, wrote, "The prisoner is a human being, degraded indeed by slavery, but yet having 'organs, dimensions, senses, affections, passions,' like our own."[11] One of Will's lawyers, Bartholomew F. Moore, stated that "no man, either bond or free, could so soon have quelled his fury, and recalled his scattered senses," given the circumstances.[12] The recognition of Will's humanity did not excuse his behavior, however. He was still a slave and subject to a different set of rules than white individuals. Attorney General J.R.J. Daniel addressed the difference by commenting on Will's position as property. As a slave, Will "is regarded as property; may be the subject of traffic; [and] will pass under the description, goods and chattels."[13] Masters, the property owners, were endowed with extensive rights and privileges. Accordingly, Daniel asked a question crucial to the case: "What right and dominion… by the laws of North Carolina, does the master possess over the slave?"[14] The rights

[8] Devereux and Battle, *Reports of Cases*, 124.
[9] Ariela J. Gross, *Double Character* (Princeton: Princeton University Press, 2000), 3.
[10] Gross, *Double Character*, 73.
[11] Devereux and Battle, *Reports of Cases at Law*,172.
[12] Devereux and Battle, *Reports of Cases at Law*,140.
[13] Devereux and Battle, *Reports of Cases at Law*, 155.
[14] Devereux and Battle, *Reports of Cases at Law*, 153.

of the master were not absolute, and the restrictions were found in the very laws of North Carolina that Daniel mentioned.

An analysis of *State v. Will* allows for the exploration of the function and evolution of the law of slavery in North Carolina. The North Carolina legislature eventually protected the lives of slaves through statutes, however the decision made in Will's favor was not inevitable. It did, however, make sense given the development in North Carolina's legal history. Authors Joseph Kelly Turner and Jno L. Bridgers, Jr. stated that Will's attorney, Bartholomew "Moore did not… argue so much from the point of law – which if it had been interpreted literally would have been decidedly against him – as he did the irresistible force of public opinion."[15] Their interpretation discredits Moore, who certainly did consider both the law and public opinion in the South.

Whether the decision made in *State v. Will* relied only on "the point of law" or on other considerations as well requires an examination of the statutes and cases before 1834 that shaped slave law. Statutes and the cases that enforced them both afforded slaves protection. In the 1823 case *State v. Hale,* Chief Justice John Louis Taylor of the Supreme Court of North Carolina stated, "Reason and analogy seem to require that a human being, although the subject of property, should be so far protected as the public might be injured through him."[16] The legislature of North Carolina likely followed a similar line of reasoning when it passed the statutes of 1774 (Chapter XXXI), 1791 (Chapter IV), and 1817 (Chapter XVIII).[17] Each of these statutes addressed the killing of slaves, and they show the progression of the law in North Carolina through increasingly strict penalties for doing so. The cases *State v. Tackett, State v.*

[15] Joseph Kelly Turner and Jno L. Bridgers, Jr., *History of Edgecombe County: North Carolina* (Raleigh: Edwards & Broughton Printing Co., 1920), 173.
[16] State v. Hale, 9 N.C. 582; 1823 N.C. LEXIS 65; 2 Hawks 582
[17] Finkelman, *Casebook*, 200-201.

Hale and *State v. Mann* all reached the Supreme Court of North Carolina before *State v. Will*, and can provide insight into the judicial system at the time.

An important backdrop to the actions of all the individuals – black and white – involved in *State v. Will* was the concept of honor in the antebellum South. Southern honor shaped the expectations of the white men on the juries, on the judicial benches, and in the legislature. However notions of honor extended beyond the elite.[18] Overseers and slaves, like Richard Baxter and Will, were part of the southern society and so they, too, operated within honor's framework.[19] The actions of all of those involved in *State v. Will* may be better understood with this context in mind. How, and if, honor dictated the actions of James Battle, Will's owner, is of particular interest. He paid attorneys Bartholomew Figures Moore and George Washington Mordecai $1,000 to represent Will. James Battle's grandson, George Gordon Battle, later commented in an article that, "In those frugal days such a fee was very unusual, and the fact of its payment shows Mr. Moore's eminence and Mr. Battle's desire to do his full duty toward the unfortunate defendant."[20] Financial considerations did not spur his 'desire,' because it did not make economic sense for James Battle to spend that much on Will's defense. In 1835, Battle could have purchased a male slave for $600, and yet he risked $1,000 on an uncertain outcome.[21] Evidently, there were other factors involved in his decision. In 1846, a report by a committee in the Alabama Agricultural Society commented that, "the master has a '*duty* to know how his slaves are treated, and to protect them against cruelty.'"[22] If Battle saw himself as a patriarch and honorable man, and one appealed to because of his justice, he might have believed he was

[18] Edward L. Ayers, *Vengeance and Justice* (New York: Oxford University Press, 1984), 13; Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982), xv.
[19] Gross, *Double Character*, 4.
[20] Battle, "The State of North Carolina v. Negro Will," 518.
[21] John S. Bassett, *The Southern Plantation Overseer* (Reprint, New York: Negro Universities Press, 1968), 47-48.
[22] William E. Wiethoff, *Crafting the Overseer's Image* (Columbia, South Carolina: University of South Carolina Press, 2006), 23. Emphasis in original.

obligated to act. If he thought he failed in his duty to protect his slave from a wicked overseer, his honor certainly may have prompted him to make amends by providing Will with a quality defense.

Historians have spent ample time studying white honor and slave agency in recent decades. While it does not mention *State v. Will,* Ariela Gross's *Double Character* does address both of these issues. Gross focuses on civil cases in the Deep South – particularly cases involving the slave market. She makes clear that slaves did have a degree of agency, especially in the legal system and court room. Moreover, in the legal system, slaves could implicitly challenge a white man's honor. Gross states that "despite the law's power to erase slaves' agency, to silence their words, and to dishonor them, courtroom disputes also gave slaves power to throw their masters' honor into question."[23] She contends that this potent mix of agency and honor challenged the entire system, because "both law and honor culture found the moral agency of slaves threatening, but it was in the legal arena that white men were forced to confront the contradictions such agency raised."[24] Gross's work serves an important function with her ideas about agency and honor, and these issues can be explored in *State v. Will*.

Historians Bertram Wyatt-Brown and Edward Ayers have written about southern honor and its manifestation in society, as well. In *Southern Honor,* Bertram Wyatt-Brown examined honor's origins, what honor meant in southern society, how it affected family and gender relations, and its impact on social structures. "Honor in the Old South applied to all white classes," he noted.[25] In his work *The Shaping of Southern Culture,* Wyatt-Brown stated that "slaves, like their masters, [also had] a sense of honor that applied to their sphere, constricted

[23] Gross, *Double Character,* 66.
[24] Gross, *Double Character*,73.
[25] Wyatt-Brown, *Southern Honor*, 88.

though their autonomy was."[26] The spheres overlapped when there was white and slave interaction. Slaves were expected to show respect to whites. "The ethic of honor required the unfeigned willingness of slaves to bestow honor on all whites. For instance, if slaves merely pretended to offer respect, the essence of honor would be dissolved… Hence it was important that blacks show obedience with apparent heartfelt sincerity."[27] In *Vengeance and Justice*, Edward Ayers comments that honor "led people to pay particular attention to manners, to ritualized evidence of respect."[28] He makes clear that "to men of all classes, public opinion dictated that they not tolerate affront," and so a slave's disrespect toward a white man would require reprisal.[29]

In addition to the scholarship on honor, the case of *State v. Will* must be understood within the historiography on the broader law of slavery in the South, especially the works of Eugene D. Genovese, Mark V. Tushnet, and Paul Finkelman. In Eugene Genovese's comprehensive work, *Roll, Jordan, Roll*, he stated that, "In southern slave society, as in other societies, the law, even narrowly defined as a system of institutionalized jurisprudence, constituted a principal vehicle for the hegemony of the ruling class."[30] Unsurprisingly then, Genovese said that "the slaveholders as a socio-economic class shaped the legal system to their interests."[31] Historian Adam Rothman notes how Genovese described the South as a pre-capitalist, paternalistic society. Rothman attributes *Roll, Jordan, Roll* as the central and starting cause for "the recent debate… of modern U.S. slavery historiography."[32] He writes, "To be sure,

[26] Bertram Wyatt-Brown, *The Shaping of Southern Culture: Honor, Grace, and War, 1760s-1880s* (Chapel Hill: The University of North Carolina Press, 2001), 3.
[27] Wyatt-Brown, *Southern Honor*, 363.
[28] Ayers, *Vengeance and Justice*, 19.
[29] Ayers, *Vengeance and Justice*, 13.
[30] Eugene D. Genovese, *Roll, Jordan, Roll* (New York: Random House, Inc., 1974), 26.
[31] Genovese, *Roll*, 27.
[32] Adam Rothman,"Slavery, the Civil War, and Reconstruction" (American History Association, 2012), 2.

historians have challenged Genovese's interpretation on a number of fronts."[33] Some of the areas of disagreement have been the degree of paternalism that existed and the hegemonic function of the law.[34]

Once a student of Genovese's, Mark V. Tushnet writes in *Slave Law in the American South* how "slavery was a social system, an economic system, and a legal system."[35] Because slavery's influence extended beyond the slaveholder, the law of slavery served a crucial function in southern society. Its importance did not mitigate its complexity. In *The American Law of Slavery, 1810-1860,* Tushnet discusses how concerns about slaves as property conflicted with those for slaves as humans, and how "the law thus reproduced the contradictions of southern slave society."[36] Judges had to consider statutes that their states' legislatures passed, as well as the absence of statutes concerning certain situations. Tushnet says the combination of statutes and judicial decisions, "in addition to defining norms and limits… with varying explicitness," created "the structures of sentiment and reason used to rationalize – to order and to explain – slave society."[37]

In his work, *The Law of Freedom and Bondage: A Casebook,* scholar Paul Finkelman presents an assortment of slave cases and statutes that demonstrate how judges handled certain legal problems. Some of these problems arose "when southern judges attempted to apply common law precedents and procedures to cases involving slaves," Finkelman writes.[38] In his focus on *State v. Will*, Finkelman posits questions that connect the case to an earlier one, *State v.*

[33] Rothman, "Slavery," 3.
[34] Rothman, "Slavery," 3.
[35] Mark V. Tushnet, *Slave Law in the American South* (Lawrence, Kansas: University Press of Kansas, 2003), 6.
[36] Mark V. Tushnet, *The American Law of Slavery, 1810-1860* (Princeton: Princeton University Press, 1981), 6.
[37] Tushnet. *American Law of Slavery,* 6.
[38] Finkelman, *Casebook*, 191.

Mann, and whether *Will* contradicted it.[39] Most importantly, however, his work serves as great resource to examine North Carolina's law of slavery and show how "by 1860 slave defendants had many of the rights – such as right to counsel… – that were not guaranteed to all Americans until decisions by the Warren Court in the 1960s."[40]

The development of crime and punishment in relation to the law of slavery in North Carolina has been explored by several historians. Ernest James Clark, Jr., Bryce R. Holt, and John Harris Kellam have written Master's theses that have explored the law and cases brought to the Supreme Court of North Carolina. In *Slave cases before the North Carolina Supreme Court, 1818-1858,* Clark addresses the North Carolina statutes and cases that concerned death and assault committed by, or against, slaves. He argues that *State v. Will* is evidence of North Carolina's liberal approach toward slave law. The broad conclusion Clark comes to after examining all of these cases is that, "It is an incontrovertible fact that the Supreme Court of North Carolina displayed liberality toward slaves in all cases involving their personal security as human beings."[41] His conclusion is too generous and is hampered by his use of extreme language ("incontrovertible fact," "all cases"). While judges applied liberality in several North Carolina cases, including *State v. Will,* the 1829 case *State v. Mann* alone can disprove his conclusion. Holt's *The Supreme Court of North Carolina and Slavery* incorporated statutes and cases related to slave law, as well. Holt noted the importance of *State v. Will* in slightly less decisive terms. He wrote, "The case was a notable one, and it served as a notice to all that the

[39] Finkelman, *Casebook*, 227.
[40] Finkelman, *Casebook*, 192.
[41] Ernest James Clark, Jr., "Slave cases before the North Carolina Supreme Court, 1818-1858" (Master's thesis, University of North Carolina at Chapel Hill, 1959), 124.

life of the slave would be protected by the Court. The decision, then, must have raised the status of the slave in the eyes of all well-disposed citizens, at least."[42]

John Harris Kellam's Master's thesis, *The Evolution of Slave Law in North Carolina: Supreme Court decisions, 1800-1860,* is similar to the work of Clark and Holt. Kellam's thesis focuses on North Carolina Supreme Court cases that related to "property, personal rights of African Americans, manumission, and homicide and assault," and how they changed over time.[43] He concludes that "the texts of slave cases make it apparent that slave law in North Carolina was not established as a guide for the judicial branch. Instead, the judiciary actually guided the development of the categories of slave law."[44] He argues it was because "the justices were free from the influence of local sentiment [and] were free to pass down decisions without being influenced by the pressures of the local communities."[45] Kellam explains that this seeming freedom did not prevent their "concerted effort to maintain the status quo of the master-slave relationship and of North Carolina's social hierarchy," even if some of "their decisions reflected an effort to afford the slave a more equitable legal avenue."[46] As Tushnet notes in *Slave Law in the American South*, "statutes left open many questions, which the courts answered by interpreting the statutes or, sometimes, by reverting to the common law."[47]

Historian A.E. Keir Nash discusses the treatment slaves received in legal proceedings in his articles "Fairness and Formalism in the Trials of Blacks in the State Supreme Courts of the Old South" and "A More Equitable Past? Southern Supreme Courts and the Protection of the

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[42] Bryce R. Holt, *The Supreme Court of North Carolina and Slavery* (New York: AMS Press, Inc., 1970. Originally a Master's thesis, Duke University, 1924), 21.
[43] John Harris Kellam, "The Evolution of Slave Law in North Carolina: Supreme Court Decisions, 1800-1860" (Master's thesis, Wake Forest University, 1992), vi.
[44] Kellam, "Evolution of Slave Law," 145.
[45] Kellam, "Evolution of Slave Law," 121.
[46] Kellam, "Evolution of Slave Law," 121.
[47] Tushnet, *Slave Law*, 18.

Antebellum Negro." He addresses treatment of slaves in southern appellate courts in general, and in North Carolina's Supreme Court specifically. Nash finds that "virtually all [appellate] judges applied at least the benefits of strict procedural formalism so that indictments were quashed under the same or stricter rules of construction than were applied to whites."[48] He acknowledges that this stands in contrast to the common belief that in the antebellum South, African Americans, slave or not, had no or very little recourse.[49] It is, of course, true that African Americans and slaves were often treated horribly and many episodes never reached a courtroom.[50] Mark Tushnet quotes Eugene Genovese to say how "slave cases [have] 'positive value … not in the probability of scrupulous enforcement but'" to demonstrate that the courts placed real value on fair practices.[51] Still, Nash reiterates in "A More Equitable Past?" that, "Between the end of the eighteenth century and the Civil War, and particularly between 1830 and 1860, southern[52] state supreme courts sought almost without exception to expand protection of the Negro."[53] To help support his findings, he addresses North Carolina and certain justices on the North Carolina Supreme Court in both articles. He notes how Chief Justice John Louis Taylor and Associate Justice Leonard Henderson by 1823 "had [successfully] done as much to help the southern slave as any American up to that point,"[54] by ruling that an unjustified battery of a slave by a white man who was not his master was a crime in *State v. Hale*.[55]

[48] A.E. Keir Nash, "Fairness and Formalism in the Trials of Blacks in the State Supreme Courts of the Old South," *Virginia Law Review*, Vol. 56, No. 1 (Feb., 1970), 66.
[49] Nash, "Fairness and Formalism," 65.
[50] A.E. Keir Nash, "A More Equitable Past? Southern Supreme Courts and the Protection of the Antebellum Negro," *North Carolina Law Review*, Vol. 48 (Feb., 1970), 233.
[51] Tushnet, *American Law of Slavery*, 18.
[52] I have altered capitalizations to reflect modern practice and will do so throughout the thesis.
[53] Nash, "A More Equitable Past?" 200.
[54] Nash, "A More Equitable Past?" 211.
[55] State v. Hale

The outcome reached in *State v. Will* has been recognized by historians in how it helped slaves, as well. While many historians have commented on *State v. Will* and how it was an important case that favored slaves, they have not always been correct in reproducing the details. In his coverage of *State v. Will* in *Roll, Jordan, Roll*, Genovese had some errors. He stated that Baxter retrieved his gun after Will began to run away from him when Baxter had his gun the entire time. He also said that Will "entered a plea of innocent by reason of self-defense." In fact, his attorneys argued no such thing – they argued his crime was manslaughter, not justifiable homicide. Therefore the court did not "[overturn] Will's conviction and [sustain] the plea," as Genovese suggested. Another matter in contention is Genovese's statement that *State v. Will* "contradicted the philosophy" in Ruffin's decision in *State v. Mann*. As Justice Gaston stated in *State v. Will*, the issues at hand in the cases were two distinct legal matters. Finally, Genovese contended that James Battle sold Will down to Mississippi "on the assumption that Will's life would be unsafe from extralegal white retaliation." He did not present any evidence that suggests this is the case, and Battle's own grandson stated the reason Battle moved Will was only "to remove him from the scene of so much tragedy."[56]

This thesis on *State v. Will* differs in its focus on the influence of the honor system in southern society, as well as slaves' dual roles as persons and property. Essentially, *State v. Will* turned on how much of the slaves' humanity would be accepted in North Carolina's law-regulating society, which was based on slavery. The attorney general and attorneys for Will all recognized the implications the case could have for slavery in North Carolina. Despite fears of insubordination and eventual emancipation, the court acknowledged slaves' passions in potentially fatal interactions with their masters. The thesis will attempt to answer why the court

[56] Genovese, *Roll*, 36 (all); Battle, "The State of North Carolina v. Negro Will," 530.

ruled the way it did and how the outcome was significant. As the thesis will show, legal precedents and a sense of liberalism supported the court's decision. In turn, the decision supported the outcomes of later slave cases, to the benefit of the slaves.

To make these arguments, the first chapter of the thesis provides a history of North Carolina's legal and judicial history that will show how *State v. Will* fits in with the gradual progress characteristic in its society. At the same time, it may become clear that its outcome was not predetermined. Chapter 2 will then examine the individuals involved in the case, and how their actions relate to the southern honor system. In Chapter 3, the court record and arguments therein will be discussed and analyzed. Finally, in the conclusion, the significance of *State v. Will* through *State v. Hoover, Martha Copeland v. John F. Parker, State v. Caesar,* and *State v. Christopher Robbins* will be explained to show that *State v. Will* had a positive effect in the law of slavery in North Carolina.

Chapter 1. Life and Law in Early Nineteenth-Century North Carolina

The context in which the North Carolina State Supreme Court decided *State v. Will* is important to fully understand the significance of the ruling. It is necessary to examine the criminal statutes that concerned slaves, previous slave cases, and North Carolina's politics and culture at the time of the decision. In the legal arena, the nature of the members of the legislature as well as that of the justices had an impact on the outcomes in slave law. Historian G.G. Johnson wrote about the two distinct approaches in the legislature. The first approach encompassed "the liberal group… motivated by the Revolutionary doctrine of 'the natural rights of man,' [who] sought constantly to liberalize the slave code."[57] The other group was comprised of those who believed that slaves' submission rested on the existence of strict laws.[58] Over time, the law did increase its protection of slaves. At that point, the nature of the justices who would interpret and enforce those laws took precedence. Often, when there existed a "conflict between the law's logic and the heart's morality," it became the deciding factor.[59]

Laws regarding slavery in North Carolina underwent gradual changes between the mid-eighteenth and nineteenth centuries which slowly allowed for the consideration that slaves were not vastly different than the white men around them. In the June term of 1823, Judge Henderson in *State v. Reed* represented the hesitancy in acknowledging such a fact. He said, "That a slave is a reasonable, or more properly a human being, is not, I suppose, denied."[60] Eleven years later, Attorney General J.R.J. Daniel in *State v. Will* recognized that slaves were human but were still

[57] G.G. Johnson, *Ante-bellum North Carolina: A Social History* (Chapel Hill: The University of North Carolina Press, 1937), 499.
[58] Johnson, *Ante-bellum North Carolina*, 499.
[59] Mark V. Tushnet, *Slave Law in the American South* (Lawrence, Kansas: University Press of Kansas, 2003), 102.
[60] State v. Reed, 9 N.C. 454; 1823 N.C. LEXIS 37; 2 Hawks 454.

"regarded as property."[61] In December 1823, Chief Justice Taylor seemed to offer a compromise in *State v. Hale* with the thought that, "Reason and analogy seems to require that a human being, although the subject of property, should be so far protected as the public might be injured through him."[62] How to protect, punish and judge slaves' acts in the statutes and courts of North Carolina partially depended on how much of their humanity the court accepted. The right to their mere existence had not always been granted to them. After the North Carolina legislature enacted laws to protect slaves' basic right to life, courts had to decide the impact it would have on transgressions between slaves and white men. In cases where the slave was either a victim or a perpetrator, courts considered the manner of communication and behavior in their associations with the whites in question. A jury's decision also depended on laws that extended or limited slaves' rights while in the courtroom.

While it still recognized slaves as property, North Carolina law progressed over time in its consideration of slaves' worth as human beings. In *State v. Will*, one of Will's attorneys, George W. Mordecai, stated that in the years prior to 1741, slaves were "regarded in [North Carolina] as mere chattels, and not only the master or owner, but any person might kill them, however maliciously, without subjecting himself in the case of the master or owner to any [criminal] penalty whatever."[63] In 1741, North Carolina passed a statute that allowed for an owner to present the worth of his slave and receive compensation if authorities killed his slave while breaking up illegal activities.[64] In the midst of the Revolutionary struggle the legislature passed a new act in 1774, however it continued to consider the killing of slaves chiefly "as a loss

[61] Thomas P. Devereux and William H. Battle, *Reports of Cases at Law, Argued and Determined in the Supreme Court of North Carolina, From December Term, 1834, to June Term 1835, Both Inclusive*. (Philadelphia: P.H. Nicklin & T. Johnson, 1837) ,155.
[62] State v. Hale, 9 N.C. 582; 1823 N.C. LEXIS 65; 2 Hawks 582.
[63] Devereux and Battle, *Reports of Cases at Law*, 146.
[64] Finkelman, *Casebook*, 199.

of property."[65] In the 1774 law's Chapter 31, it stated: "If any person shall be guilty of willfully and maliciously killing a slave, so that, if he had in the same manner killed a freeman, he would [be]… deemed guilty of murder."[66] On the first conviction, a punishment of a year in jail would be pronounced and the convicted individual had to pay the owner what the slave was worth. After a second conviction, perpetrators were said to be murderers and faced the death penalty. While the 1774 statute was an improvement, the North Carolina legislature "eloquently criticized" it in its preamble to the 1791 revision of the law because it treated the murder of a white man and a slave, "one who is equally an human creature," differently.[67]

The later statutes of 1791 and 1817 illustrated North Carolina's attempts to increase the punishment for killing slaves. The statute of 1791 made the "[willful] and [malicious] killing [of] a slave" a murder offense on the first conviction, and those guilty of it would "suffer the same punishment as if he had killed a free man."[68] The 1791 statute failed to have the intended effect, though, for the court deemed it to be "too uncertain to warrant the court in passing sentence of death upon prisoner[s] convicted under it" in the 1802 case, *State v. Boon.*[69] For this reason, it "was never carried into execution."[70] It was not until the statute of 1817 that the law technically deemed killing a slave to be homicide.[71] Three years later in *State v. Tackett*, attorney Seawell claimed that the 1817 statute "had no other effect than to… create the offence of manslaughter, as applied to the homicide of slaves," because "before that act, the killing [of] a

[65] Devereux and Battle, *Reports of Cases at Law*, 147.
[66] Finkelman, *Casebook*, 200.
[67] Don Higginbotham and William S. Price, Jr. "Was it Murder for A White Man to Kill a Slave? Chief Justice Martin Howard Condemns the Peculiar Institution in North Carolina," *William and Mary Quarterly*, Third Series, Vol. 37, No. 4 (Oct., 1979), 596.
[68] Finkelman, *Casebook*, 200-201.
[69] State v. Boon, 1 N.C. 191; 1802 N.C. LEXIS 2; Tay. 246.
[70] Devereux and Battle, *Reports of Cases at Law*, 147.
[71] Finkelman, *Casebook*, 201.

slave was either murder or nothing."[72] The statute, Judge Henderson wrote, "places [the slave] within the peace of the State, so far as regards his life."[73] Legally, the protection of slaves' lives increased because of the broader categorization, as did the penalty for violating that boundary.

Although North Carolina law protected slaves' lives, there were many factors that the court considered in determining the guilt of a perpetrator, whether white or slave. One of the factors was the manner and method of communication between the slave and freeman. White southerners believed submission from slaves to be very important. In *State v. Hale*, Chief Justice Taylor insisted that a slave's tendency was usually to be submissive and acquiesce "to his master's will."[74] Historian Bertram Wyatt-Brown wrote, "The eyes witnessed honor and looked down in deference or shame. Thus a steady gaze from a slave signaled impudence."[75] If a gaze could cause offense, an apparently disrespectful word or action certainly warranted a response in the eyes of white southern men. Free white men reportedly "early learn that tamely to submit to words of reproach from a slave is degrading to the last degree, and that a blow, even the slightest, is the greatest dishonor," argued Seawell in *State v. Tackett*.[76] In the 1820 case, the court granted defendant Tackett a new trial, in part, to be able to present to the jury "evidence that the deceased," a slave, "was turbulent; that he was insolent and impudent to white persons."[77] Tackett's lawyer contended that free white men such as his client were brought up "to look for humility and obedience in a slave."[78] Courts acknowledged qualities of submission and good behavior. In *State v. Will*, the court record notes that when Richard Baxter ordered

[72] State v. Tackett, 8 N.C. 210; 1820 N.C. LEXIS 37; 1 Hawks 210.
[73] Ernest James Clark, Jr., "Slave cases before the North Carolina Supreme Court, 1818-1858" (Master's thesis, University of North Carolina at Chapel Hill, 1959), 29.
[74] State v. Hale
[75] Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982), 49.
[76] State v. Tackett
[77] State v. Tackett
[78] State v. Tackett

Will to come down from his work to talk to him, Will "took off his hat in [a] humble manner and came down."[79] Indications of obedience and respect were likely very important to an all white jury in determining guilt and innocence.

North Carolina statutes that applied to slaves in the courtroom are another important factor in how slaves fared and how juries and judges reached decisions. In 1793, the North Carolina legislature passed a statute, and "reaffirmed in 1821 and 1836, [which] required that '…trials of slaves in the county courts, shall be conducted under the same rules regulations and restrictions, as trials of free men.'"[80] This statute afforded slaves the protection of a formal, legal process. The act of 1807, which also concerned similar treatment for slaves and whites in the courts, created the result that "slaves received their first avenue of appeal when their punishment extended to 'life, limb or member.'"[81] In 1816, the legislature assigned capital cases to the superior courts, and like the statutes of 1793 and 1807, it reaffirmed that slaves were entitled to trials which "shall be conducted in the same manner, and under the same rules, regulations and restrictions, as trials of freemen for a like offense are now conducted."[82] So while slaves operated within the court system in fairly similar ways to whites, by having access "to trial by jury, counsel, challenge of jurors, and appeal to the Supreme Court," a major difference did exist.[83] Slaves and free blacks could not testify against a white person.[84] A.E. Keir Nash states that "barring Negro testimony immodestly disadvantaged the black grievant," because he might be the only witness to a crime committed by a white individual, and the law did not allow him to

[79] Devereux and Battle, *Reports of Cases at Law*, 122.
[80] Clark, "Slave cases," 24 n11.
[81] John Harris Kellam, "The Evolution of Slave Law in North Carolina: Supreme Court Decisions, 1800-1860" (Master's thesis, Wake Forest University, 1992), 20.
[82] A.E. Keir Nash, "Fairness and Formalism in the Trials of Blacks in the State Supreme Courts of the Old South," *Virginia Law Review*, Vol. 56, No. 1 (Feb., 1970), 74 n41.
[83] Clark, "Slave cases," 23.
[84] Clark, "Slave cases," 21.

speak out.[85] Ariela Gross believes that slaves considered the prohibition of slave testimony against whites to "most [guarantee] their disempowerment."[86]

The cases that reached the North Carolina State Supreme Court prior to *State v. Will* can be examined in light of the laws of North Carolina and certain issues important in the legal proceedings in which slaves were involved. In 1820, the court applied the statute of 1817 for the first time in its decision in *State v. Tackett*. A jury found Tackett guilty of murdering a slave named Daniel, according to the statute of 1817. Tackett and Daniel were acquainted under unfavorable circumstances. Tackett "kept" Daniel's free African American wife, when he worked on the land in which she lived. Previous to the fatal altercation, the two men had a physical dispute and threatening words were exchanged. Two weeks later, Tackett shot Daniel after returning home to find Daniel lying outside his house. In the initial court proceeding, the judge told the jury to consider the crime with the statute of 1817 in mind, which meant to consider it as if Daniel had been a white man. The judge also did not allow Tackett to present evidence of Daniel's "[turbulence], … [insolence] and [impudence] to white people."[87] The jury heeded the judge's charge and convicted Daniel. On appeal, the North Carolina Supreme Court determined that Tackett should have been able to present evidence of Daniel's behavior. The court stated, "it exists in the very nature of slavery, that the relation between a white man and a slave is different from that between free persons; and therefore, many acts will extenuate the homicide of a slave, which would not constitute a legal provocation if done by a white person."[88] The 1817 statute, Judge Taylor said, allowed for the punishment of the manslaughter of a slave. "It cannot be laid down as a rule, that some of these provocations, if offered by a slave, well

[85] A.E. Keir Nash, "A More Equitable Past? Southern Supreme Courts and the Protection of the Antebellum Negro," *North Carolina Law Review*, Vol. 48 (Feb., 1970), 233.
[86] Ariela J. Gross, *Double Character* (Princeton: Princeton University Press, 2000), 62.
[87] State v. Tackett
[88] State v. Tackett

known to be turbulent and disorderly, would not extenuate the killing, if it were instantly done under the heat of passion, and without circumstances of cruelty," he determined.[89]

In 1823, the North Carolina Supreme Court reached a decision in *State v. Hale* that adhered to the logic of *State v. Tackett*, with slightly more favorable results for slaves. The case concerned an incident in which a white man hit a slave without justification. Because the assault was not justified, the court considered the act to be a crime. Judge Taylor wrote that it was an indictable offense because it "is injurious to the citizens at large by its breach of the peace, by the terror and alarm it excites, by the disturbance of that social order which it is the primary object of the law to maintain, and by the contagious example of crimes."[90] Owners of affected slaves might seek violent redress, and the ability of slaves to perform their work could be diminished. The decision the court made in *State v. Hale* did create more protection for slaves, however it still allowed for justified assault and battery of slaves by those not the slaves' owners. A.E. Keir Nash states that this "extended the common law yet further" in its application to slave cases.[91]

Slaves did not receive any tangible benefit from the 1829 decision in *State v. Mann.*[92] The case presented a situation in which a man named John Mann hired a slave, Lydia, for one year. During this time, Mann attempted to punish Lydia for some minor infraction and she tried to run away. When she did not stop upon instruction to do so, he shot her. She lived, however Mann found himself charged with battery. The judge instructed the jury that if they believed Mann's action to be "cruel and unwarrantable, and disproportionate to the offense committed by the slave, that in law the Defendant was guilty, as he had only a special property in the slave."[93] The jury found Mann guilty, and so he took his case to the state supreme court. Justice Thomas

[89] State v. Tackett
[90] State v. Hale
[91] Nash, "A More Equitable Past?" 210.
[92] State v. John Mann, 13 N.C. 263; 1829 N.C. LEXIS 62.
[93] State v. Mann

Ruffin, in his opinion for the court, utilized a rational but harsh application of the law. The court found that Mann had the same authority of a master for the time he hired Lydia. As master, Mann could not be guilty of the battery of Lydia, for "the power of the master must be absolute, to render the submission of the slave perfect."[94] Ruffin acknowledged the severity of the rule, but stated that "in the actual condition of things, it must be so. There is no remedy."[95] Mark Tushnet refers to Ruffin's position in *State v. Mann* as "a proslavery judge looking into the heart of the law of slavery, and doing so unflinchingly despite what he saw there."[96] The only limitations in place were those enacted by the legislature, which meant that the master could not kill his slave.[97] Deaths of slaves caused by "moderate correction" were not punishable in the statutes.[98] Because Lydia did not die from her wound, Mann was not guilty of a crime.

The laws of North Carolina that affected slaves improved in their favor in certain respects over time, however due to external events and concerns, other laws became more stringent. Historian Julius Yanuck marks 1830 as a year that separates different approaches in how slaves were treated in North Carolina.[99] Prior to 1830, he says that laws governing slave behavior were not as strict as they would be after 1830.[100] Some of the reasons include an anticipated rise in slaves' worth and concerns caused by abolitionists that slaves might rebel, both of which led North Carolina to enact stronger regulations.[101] Another cause for concern to many white North

[94] State v. Mann
[95] State v. Mann
[96] Mark V. Tushnet, *The American Law of Slavery, 1810-1860* (Princeton: Princeton University Press, 1981), 57-58.
[97] State v. Mann
[98] Finkelman, *Casebook*, 200-201.
[99] Julius Yanuck, "Thomas Ruffin and North Carolina Slave Law," *The Journal of Southern History*, Vol. 21, No. 4 (Nov., 1955), 456.
[100] Yanuck, "Thomas Ruffin," 456.
[101] Yanuck. "Thomas Ruffin," 457.

Carolinians was the increase in volume of free blacks in their state.[102] In 1830, the number exceeded 19,000, which was 12,000 more than in 1800.[103] In addition to the large number of free blacks, slaves occupied close to one-third of the population in 1830 North Carolina.[104] The combination of these two numbers could easily unsettle the concerns of the white population around them.

A.E. Keir Nash identifies four specific events between 1829 and 1832 that unnerved North Carolina society and caused the change in its approach toward slaves.[105] The first event was the distribution in 1829 of David Walker's *Appeal in Four Articles*, which "[urged] slaves to revolt."[106] Walker caused alarm because "he warned white Americans… [that] they should not be deceived by the 'outwardly servile character of the Negro' … for there was 'a primitive force in the black slave that, once aroused, will make him a magnificent fighter.'"[107] North Carolina Governor John Owen showed the state legislature the document in 1830, and it prompted "legislature [to enact] statutes revamping the patrol system and prohibiting the instruction of slaves in reading and writing."[108] Professor Sally Hadden states that Walker's *Appeal* did not reach North Carolina as quickly as it did states such as Georgia and Virginia, however Thomas "Ruffin, through letters or the newspaper of his cousin in Richmond, almost certainly knew about David Walker's pamphlet while drafting the *State v. Mann* opinion."[109] Hadden remarks that Ruffin's opinion provided a response to potential outcomes of the *Appeal*'s arrival in his

[102] Sally Hadden, "Judging Slavery: Thomas Ruffin and *State v. Mann,*" in *Local Matters: Race, Crime, and Justice in the Nineteenth Century South.* Ed. Christopher Waldrep and Donald G. Nieman (Athens: The University of Georgia Press, 2001), 13.
[103] Hadden, *Local Matters*,13.
[104] Johnson, *Ante-bellum North Carolina*, 468.
[105] Nash, "A More Equitable Past? " 212.
[106] Nash, "A More Equitable Past? " 212
[107] William S. Powell, ed., *Dictionary of North Carolina Biography: T-Z, Volume 6* (Chapel Hill: The University of North Carolina Press, 1996), 111.
[108] Yanuck, "Thomas Ruffin," 457-458.
[109] Hadden, *Local Matters,* 13-14.

state. "If Walker's pamphlet reached the hands of slaves, Ruffin would not add the authority of the North Carolina Supreme Court to sanction a slave's violent outburst. Ruffin's opinion in *Mann* must be so clear, so plain, that it could never be blamed for 'instigating' a slave to cross words with his master."[110] Ruffin worried about the aftereffects, however North Carolina did not want to give slaves the opportunity to have access to such work. In 1830, the state enacted "a heavy penalty, imprisonment, the pillory, and whipping for the first offense and death for the second," for any individual found guilty of distributing incendiary works in order "to excite the Negroes to conspiracy or resistance."[111]

The remaining three events Nash indicates as causes for North Carolina tightening its hold are: "the first publication of William Lloyd Garrison's *The Liberator* on January 1, 1831, and the Nat Turner rebellion of 1831," which resulted in the fourth event, "the Virginia Slavery Debates of 1831-1832."[112] Garrison's *Liberator* served as "active anti-slavery propaganda," according to historian John Bassett.[113] Fear of slaves acting on what men like Walker and Garrison advocated for became real after what Wyatt-Brown called, "Nat Turner's bloody trail across Southampton County, Virginia."[114] There had been many conspiracies and worries throughout the antebellum South, however this event "was not a figment of popular hysteria," Wyatt-Brown noted.[115] The number of whites Turner's "band" killed amounted to between fifty-five and sixty.[116] Even after the panic his rebellion caused and the concerns raised by the Virginia Slavery Debates, the fair processes of North Carolina law prevailed. When conspiracies of slave plots in the wake of Turner's Rebellion resulted in the arrest of slaves in North Carolina,

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[110] Hadden, *Local Matters*, 14-15.
[111] Johnson, *Ante-bellum North Carolina*, 518.
[112] Nash, "A More Equitable Past? " 212.
[113]John S. Bassett, *The Southern Plantation Overseer* (Reprint, New York: Negro Universities Press, 1968), 14.
[114] Wyatt-Brown, *Southern Honor*, 403.
[115] Wyatt-Brown, *Southern Honor*, 403.
[116] Johnson, *Ante-bellum North Carolina*, 519.

Johnson reported that, "Fortunately for the accused… under the act of 1816, [they] had to await the regular term of superior court unless the governor granted a special court of oyer and terminer."[117] The wait allowed "the feelings of whites to cool considerably."[118]

For cases that reached the courts, the justices on the North Carolina Supreme Court had the responsibility to make legal decisions with the particular case, relevant statutes, court precedents, and public opinion in mind. A.E. Keir Nash says that, "While the judge may not have been wholly unaware of the general import of his decision-making, it seems likely that he was far more occupied with the general problem of defending slavery in a hostile national environment."[119] Justice Thomas Ruffin is an example of someone who wanted to shape slave law to make it more effective for slavery. Scholar Robert Cover indicated Ruffin concerned himself with "the perpetuation of a secure master-slave relationship, with an emphasis on security."[120] A professor of Communication and Culture, William Wiethoff writes in *A Peculiar Humanism* that judicial opinions in appellate cases supported the characteristics held dear by the upper class.[121] "Professional judges, whose holdings typically included at least a few slaves if not hundreds, ranked in the upper classes of both the Upper and Deep South."[122] As slave-owners themselves and men of influence, the decisions the justices reached in slave cases were carefully considered. Wiethoff comments that judges "were expected not only to reach just decisions but also to promote the justice they were dispensing," which increased the value of their "oratorical form."[123] The form their opinions took and content contained therein "provided a barometer for the social concerns of the state's white population," John Harris Kellam states,

[117] Johnson, *Ante-bellum North Carolina*, 520.
[118] Johnson, *Ante-bellum North Carolina*, 520.
[119] Nash, "Fairness and Formalism," 98.
[120] Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975), 80.
[121] William E. Wiethoff, *A Peculiar Humanism* (Athens: University of Georgia Press, 1996), 6.
[122] Wiethoff, *Peculiar Humanism*, 7.
[123] Wiethoff, *Peculiar Humanism*, 32.

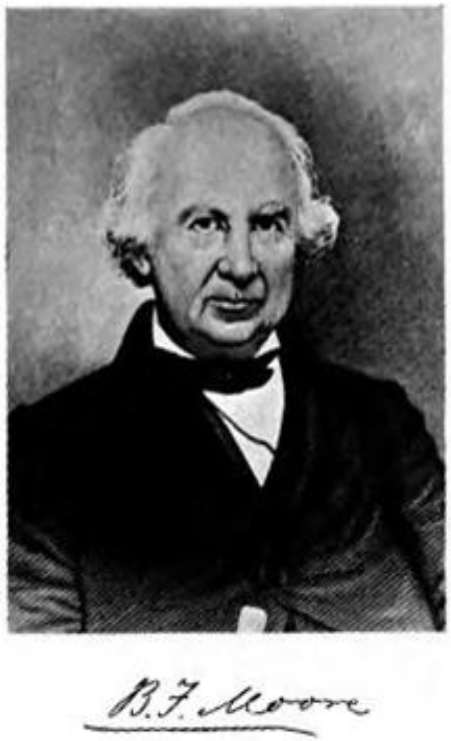
because of the substantial weight placed on "protecting master's property rights and protecting the wellbeing of society."[124] With the entire state populace – from slave owners down to the slaves themselves – potentially impacted by their decisions, the significance of the justices' position is clear.

The importance of the North Carolina Supreme Court and its justices was substantial, even though the duration of the court's history was not. The North Carolina Supreme Court, which heard only matters of appeal, did not exist until 1818.[125] Historian E.J. Clark, Jr. states the General Assembly passed the bill, "largely through efforts of William Gaston."[126] Starting in 1799, judges from the state's superior courts met twice a year to come to consensus on undecided "points of law."[127] Eventually, in 1810, the grouping of judges could decide on appellate cases, as well as choose a chief justice from among their midst.[128] On January 5, 1819, the first court session of the official North Carolina State Supreme Court took place in Raleigh, and the court's first chief justice was John Louis Taylor, William Gaston's brother-in-law.[129] The state paid the justices a salary of $2,500, seven hundred dollars more than the superior court justices received.[130]

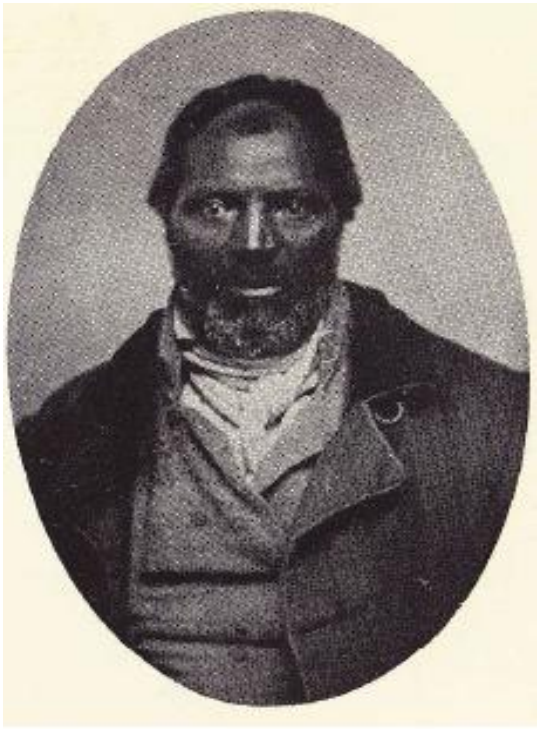
The laws of slavery in North Carolina and the cases affected by them, the context in which the purely appellate North Carolina Supreme Court came into existence, and the seemingly minor detail of the sum the justices received is relevant to the discussion of *State v. Will*. A presentation of the laws and cases is clearly necessary to understand the importance of *State v. Will*. In comparison, a discussion of the state's supreme court and the justices' salary

[124] Kellam, "Evolution of Slave Law," 15, 17.
[125] Kellam, "Evolution of Slave Law," 18.
[126] Clark, "Slave cases," 3; Joseph Herman Schauinger, *William Gaston, Carolinian* (Milwaukee: The Bruce Publishing Company, 1949), 19.
[127] Clark, "Slave cases," 2.
[128] Clark, "Slave cases," 2.
[129] Clark, "Slave cases," 3; Schauinger. *William Gaston,* 19.
[130] Clark, "Slave cases," 3.

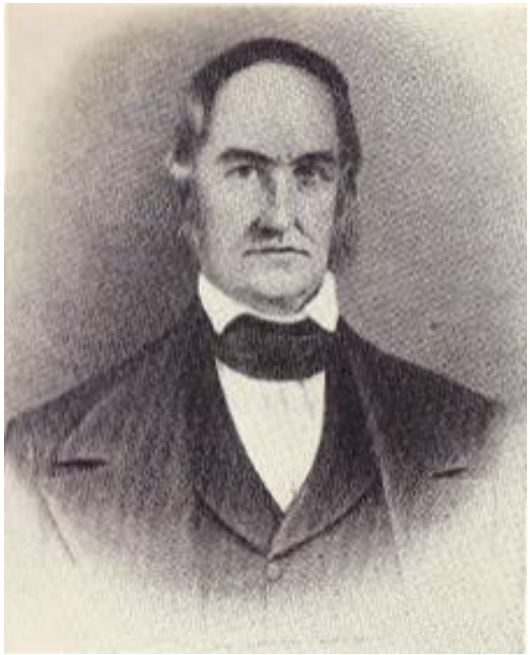
may not seem pertinent. These details do matter, however, in how they relate to the specific individuals who participated in *State v. Will*, in one capacity or another. The details act as influencing factors for the participants who impacted the turn of events in the case. The concept of southern honor, discussed next, is one such factor.



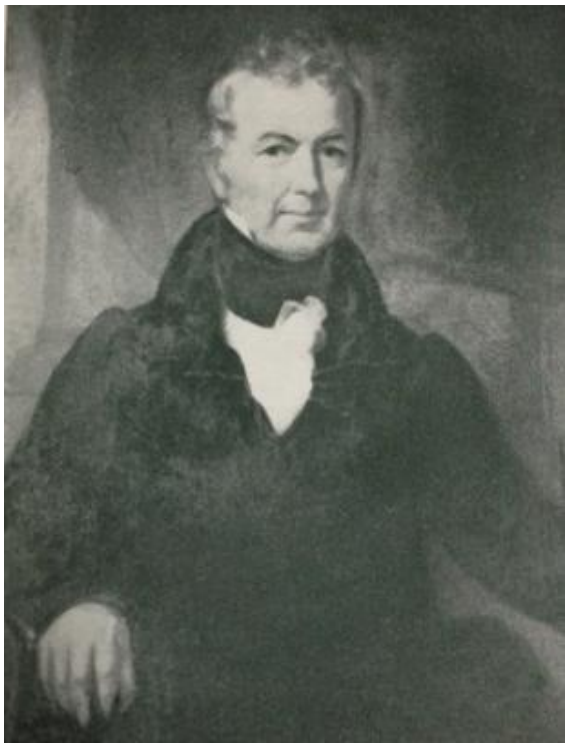
Attorney Bartholomew Figures Moore, pictured later in life. Found in W.C. Allen's *History of Halifax County* (Boston: The Cornhill Company, 1918), 104.



Slave foreman Allen circa 1870. Found in Kemp Plummer Battle's *Memories of an Old-Time Tar Heel* (Chapel Hill: The University of North Carolina Press, 1945), 53.



James S. Battle. Found in Kemp Plummer Battle's *Memories of an Old-Time Tar Heel* (Chapel Hill: The University of North Carolina Press, 1945), 4.



Justice William Gaston. Found in Joseph Herman Schauinger's *William Gaston, Carolinian* (Milwaukee: The Bruce Publishing Company, 1949), courtesy of Mrs. Geo. Vaux, Bryn Mawr, PA.

Chapter 2. Southern Men and Southern Honor

Many men, and even one woman, played an observable role in the events and outcome of *State v. Will*. For this reason, descriptions of those involved will be included to provide a background for their actions, typically in light of the southern honor system. The victim in the eyes of the law, Richard Baxter, is a key figure in the case, and so his role as overseer will be discussed. The attorneys, both for the prosecution and for the defense, played a significant part in the outcome of the decision due to the persuasiveness (or lack thereof) found in their arguments. They, too, require consideration. Will's owner, James S. Battle, likewise is an important figure in the incident. He hired and generously paid the lawyers to defend his slave. The men who held the most direct power in the proceedings, the judges, perhaps had the most tangible effect on the case's outcome. Accordingly, Justices Ruffin and Gaston receive more discussion. However other figures, such as Baxter's unnamed wife and Allen, the slave foreman, also had an impact on the events that led to *State v. Will*. Their actions and how they relate to the southern honor system is one such tool of analysis, because matters of respect and honor played an important – at times, subtle – role in the case of *State v. Will*. Public opinion, respect, and honor influenced the actions of those in antebellum southern communities. A person's public opinion depended on his reputation, and a man could gain a good reputation if the community respected him. However a man did not receive the community's respect if he appeared dishonorable. Historian Edward Ayers notes, "Honor and 'public opinion' came to seem synonymous."[131] As a result, the people and motivations that may or may not have influenced them can be discussed to provide a better context for an analysis of *State v. Will.*

[131] Edward L. Ayers, *Vengeance and Justice* (New York: Oxford University Press, 1984), 13.

Richard Baxter's actions on January 22, 1834 are vital to understanding *State v. Will* and its ramifications, however little information on the man himself is available. His occupation as an overseer for James S. Battle is made clear in the court record.[132] For that reason, information pertaining to overseers can be presented in an attempt to clarify his role and behavior. His behavior, as recorded in the court document, was not flattering. Historian John S. Bassett said that he "[was] a man whose temper differed materially from that of his pious namesake."[133] His namesake was that of a "Protestant adviser to the soul."[134] If he had aspired to follow that path, perhaps he could have assuaged his temper. His impious behavior might be attributable, in part, to his job. His actions might also be more understandable in light of the honor system.

In *The Plantation Overseer*, John S. Bassett remarked that the overseer's role "was central in the southern system," and yet the necessity of his role did not translate into automatic respect. [135] Bassett said that overseers often had little respect from their employers, and even less respect from the slaves they supervised.[136] Generally, men who became overseers did not receive much education.[137] It was not necessary for them. The characteristics that made overseers successful "were courage, industry, and common sense."[138] Such traits allowed overseers to keep "the institution of slavery [from going] to pieces under their supervision," Bassett claimed.[139] Planters hired overseers to keep their slaves and stock in a condition that

[132] Thomas P. Devereux and William H. Battle, *Reports of Cases at Law, Argued and Determined in the Supreme Court of North Carolina, From December Term, 1834, to June Term 1835, Both Inclusive* (Philadelphia: P.H. Nicklin & T. Johnson, 1837) , 121-172.
[133] John S. Bassett, "The Case of the State v. Will," (Trinity College Historical Papers 2, 1898), 12.
[134] Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982), 100.
[135] John S. Bassett, *The Southern Plantation Overseer* (Reprint, New York: Negro Universities Press, 1968), 2.
[136] Bassett, *Overseer*, 3.
[137] Bassett, *Overseer*, 7.
[138] Bassett, *Overseer*, 9.
[139] Bassett, *Overseer*, 22.

would allow them to exact as much labor and crops as possible, for as long as possible.[140] They had to keep the slaves fed, working, and compliant.[141] Due to the nature of their work, William Wiethoff states that "planters often treated overseers as subordinates."[142] As they were subordinates to the master, this treatment is not surprising. Slaves' perception of their overseer's standing, on the other hand, is interesting. Bassett wrote, "To the slaves he was 'Buckra,' a word expressing scorn for a man of no standing."[143]

Slaves with some standing on the plantation – drivers or foremen – had the ability to influence the overseers' actions and even act within a curtailed honor system. Although subordinates of the overseers to whom they reported, slave foremen had influence in their role. Part of an overseer's responsibility concerned the punishment of slaves when they had committed a wrong.[144] Each day, the overseer checked periodically on the slaves' labor and actions with the slave foreman who oversaw them.[145] The opportunity to inform the overseer of a slave's disobedience presented itself in such a scenario. In the events that led to the *State v. Will* court case, the slave foreman, Allen, went directly to Richard Baxter after Will acted unfavorably towards Allen. Will's behavior likely angered Allen and he might have believed that he needed to assert his authority over Will through Baxter. Bertram Wyatt-Brown stated, "The subject of male slave identity and psychology involves issues of honor and shame not only in the presence of masters but also among the slaves themselves."[146] Although Ayers notes that "slaves had no honor," they still operated within a society shaped by its customs, and responses to insults

[140] Bassett, *Overseer*, 11.
[141] Bassett, *Overseer*, 11, 12, 15.
[142] William E. Wiethoff, *Crafting the Overseer's Image* (Columbia, South Carolina: University of South Carolina Press, 2006), xx.
[143] Bassett, *Overseer*, 8.
[144] Bassett, *Overseer*, 15.
[145] Bassett, *Overseer*, 12.
[146] Bertram Wyatt-Brown, *The Shaping of Southern Culture: Honor, Grace, and War, 1760s-1880s* (Chapel Hill: The University of North Carolina Press, 2001), 3.

varied from class to class.[147] Allen's decision to notify Baxter was the catalyst responsible for the events that followed and ended in Baxter's death.

Interestingly, the Battle family held Allen in high regard both before and after the altercation. Kemp P. Battle, who later owned Allen through his marriage to James Battle's daughter, said Allen "was a fine looking man, one-fourth white, [and was] as honest and honorable as ever lived and a very good farmer."[148] James Battle purchased Allen after the death of his previous master, Joel Battle, for $500 at auction in the midst "of financial depression."[149] Others purchased the rest of Joel Battle's male slaves for $300 each.[150] Kemp Battle said Allen's purchase shows "the estimation in which Allen was held by the neighborhood."[151] Another demonstration of the good opinion he harbored is how in *The Battle Book*, a comprehensive family genealogy published in 1930, Allen received his own section, with no reference to *State v. Will*.[152] Instead, it noted his agricultural abilities and his respected personal attributes. Allen stayed with the Battle family after *State v. Will* and the Civil War, until his death in 1876.[153] At the time of his death, Allen held the role of overseer for Dr. and Mrs. Kemp P. Battle and owned close to $2,000 in assets.[154]

Clearly a cherished figure to the Battle family, Allen's actions in the record of *State v. Will* are similarly important in what they revealed to the court. After Allen discussed Will's behavior with Baxter, Baxter decided to retrieve his gun before confronting him. When he

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[147] Ayers, *Vengeance and Justice*, 13-14.
[148] Kemp P. Battle, *Memories of an Old-Time Tar Heel* (Chapel Hill: The University of North Carolina Press, 1945), 126.
[149] Battle, *Memories*, 127.
[150] Battle, *Memories*, 127.
[151] Battle, *Memories*, 127.
[152] William James Battle, *The Battle Book: A Genealogy of the Battle Family in America* (Montgomery: The Paragon Press, 1930), 190.
[153] Battle, *Battle Book*, 190.
[154] Battle, *Memories*, 127.

entered his house, it was probably Allen who heard and later reported that Baxter's wife said, "I would not my dear."[155] Baxter, perhaps in duty and more likely in anger, responded, "I will."[156] In addition to the belief that Baxter's actions were unnecessary, his wife's comment could also indicate a societal value judgment. Only men had honor in southern society, however women did participate as "audience and reward," and Ayers states "no woman wanted to share in a dishonored name."[157] At the very least, the overheard conversation would become important in the trial. In his opinion, Justice Gaston noted the wife's comment and Baxter's decision to take his gun to infer a violent intent of some kind.

Richard Baxter's role as overseer and the actions he took to confront Will are important factors to consider for two reasons. First, they influenced how the attorneys argued and what the North Carolina Supreme Court decided. Second, they allow for a discussion of his actions in the context of the southern honor system. Ariela Gross states that, "Historians have chronicled the many ways in which punishments went beyond what was 'necessary' to enforce obedience, in order to humiliate and dishonor the slave."[158] While Baxter's motive for shooting Will was not likely punishment as much as it was retribution, the idea of honor – and dishonor – is relevant. In one of his descriptions of the events, George Gordon Battle said, "Will had an impediment in his speech which prevented him from talking when he was excited. For this reason he did not answer the overseer, and thus produced the impression of sullenness and insubordination."[159] Will's impediment is not recorded in any official document. In the court's decision, Justice Gaston did acknowledge that "a complaint of some act of petulance and impropriety" against

[155] Thomas P. Devereux and William H. Battle, *Reports of Cases at Law, Argued and Determined in the Supreme Court of North Carolina, From December Term, 1834, to June Term 1835, Both Inclusive*. (Philadelphia: P.H. Nicklin & T. Johnson, 1837) , 122.
[156] Devereux and Battle, *Reports of Cases at Law*, 122.
[157] Ayers, *Vengeance and Justice*, 29.
[158] Ariela J. Gross, *Double Character* (Princeton: Princeton University Press, 2000), 50.
[159] Battle, *Battle Book*, 94.

Will caused Baxter to take action.[160] While Will directed the "petulance and impropriety" toward Allen, Baxter responded as if he had been disrespected. Both versions support an interpretation of how the events of *State v. Will* connect to Edward Ayers's general comment on the importance of respect and honor, and how "when that respect was not forthcoming between men, violence might be the result."[161] In confrontations between overseers and slaves that did not reach the court, the master acted as arbiter over the conflicts.

Masters did not always agree with the extent of the overseers' violent actions.[162] In 1824, a planter from South Carolina said, "I put overseers on my plantations to protect my negroes, not to kill them."[163] A fellow South Carolinian's contract with overseers contained the rule that, "The proprietor is always ready to excuse such errors as may proceed from want of judgment; but he never can or will excuse any cruelty, severity, or want of care towards the negroes."[164] It is an understandable rule. Masters would not want irreparable damage to come toward their slaves, at the very least, for economic reasons. Ariela Gross provides another reason. She says, "Buyers, sellers, hirers, owners, and overseers all told different stories about why slaves behaved as they did, all of which reflected on their masters' character."[165] Character and honor were intertwined in the southern honor system.[166] While referring to overseers' necessary correction of slaves and how it should be implemented, P.C. Weston, Esq. of South Carolina wrote in an 1857 issue of *Debow's Review* how "abusive language or violence of demeanor should be

[160] Devereux and Battle, *Reports of Cases*,164.
[161] Ayers, *Vengeance and Justice*, 19.
[162] Wyatt-Brown, *Southern Honor*, 377.
[163] Wyatt-Brown, *Southern Honor,* 377.
[164] Bassett, *Overseer*, 24.
[165] Gross, *Double Character*, 99.
[166] Gross, *Double Character*, 48.

avoided: they reduce the man who uses them to a level with the negro."[167] William Wiethoff writes, "Some planters appeared to tolerate pragmatically the moral stain they sometimes suffered when their overseers brutalized slaves."[168] James S. Battle does not appear to be one of them.

From family records and available information, James Battle seems to be an honorable man. In his discussion of *State v. Will*, John Bassett commented that "feelings of humanity and honor… have usually characterized members of the family which Will was the property."[169] When James Battle died in 1854, he owned "several hundred slaves" and close to twenty thousand acres of land.[170] George Gordon Battle painted a romantic picture of life on Battle's plantation: "on a plantation such as that of my grandfather undoubtedly the conditions were as favorable as possible. The slaves were well and humanely treated. They lived comfortably and were by universal report happy and contented."[171] George Gordon Battle's rosy perspective may be founded in truth.

Kemp Battle recalled an interesting story about James Battle's treatment of slaves, supposedly recounted by a slave named Dick. According to the account, James Battle informed Dick that the owner of Dick's wife decided to move to Mississippi. Battle offered to purchase her, however the owner declined. Battle then asked the man if he would purchase Dick, to which he agreed. Battle told Dick what had happened and said it was Dick's decision whether he would stay with Battle or be sold to his wife's owner and accompany her to Mississippi. The

[167] "Management of a Southern Plantation – Rules Enforced on the Rice Estate of P.C. Weston, Esq., of South Carolina," *Debow's Review, Agricultural, Commercial, Industrial Progress and Resources*, Vol. 22, No.1 (Jan., 1857), 44.
[168] Wiethoff, *Overseer's Image,* 31.
[169] Bassett, "The Case of the State v. Will," 15.
[170] William S. Powell, ed., *Dictionary of North Carolina Biography, Volume 1 A-C* (Chapel Hill: University of North Carolina Press, 1979), 112.
[171] Battle, *Battle Book*, 95.

next day, Dick answered Battle, "Well, Marster, I 'clude dat I'll never git as good a marster as you is, but I kin git as good a wife as I got now."[172] It is likely that Battle's other slaves considered him to be a good master as well. Rather than attempt to run away, Will went to Battle the very same day of his altercation with Baxter. While he did not know that Baxter had died, it is not likely that a slave would have sought out his master if he thought a cruel response awaited him.

Battle's response to the events that transpired between Baxter and Will was to defend his slave, for which he paid a fee of $1,000.[173] Battle could have had several reasons for defending Will. One possible reason is very simple: he did not want to lose his investment. Financial reasons alone do not explain his decision, though. The amount he paid the attorneys was quite substantial. To put it into perspective, the attorneys' fees equaled forty percent of the justices' annual salaries.[174] If finances were Battle's only concern, he would have spent less money and purchased another slave to replace Will.

Duty and honor, then, were probably the reasons for Battle's actions. Masters had a duty to protect their slaves from harm. In reference to interference from strangers, Justice Charles Colcock of South Carolina, as quoted by Joseph H. Schauinger, said, "It is the duty as well as the interest of every master to protect his slave from unnecessary punishment and to resist the abuse of legal authority."[175] Bertram Wyatt-Brown noted that owners sometimes supported their slaves because they did not want outside interference. "After all," he wrote, "a man's honor was

[172] Battle, *Memories*, 122. Unless Baxter owned another slave named Dick who also happened to be a blacksmith, according to G.G. Battle, Dick did remain at the Cool Spring plantation and find another wife. After her return to North Carolina from Mississippi, Dick married Will's wife, Rose. George Gordon Battle, "The State of North Carolina v. Negro Will, a Slave of James S. Battle: A Cause Celebre of Ante-Bellum Times," *Virginia Law Review*, Vol. 6, No. 7 (Apr., 1920), 530. Battle, "The State of North Carolina v. Negro Will," 530.
[173] Battle, "The State of North Carolina v. Negro Will," 518.
[174] Ernest James Clark, Jr., "Slave cases before the North Carolina Supreme Court, 1818-1858" (Master's thesis, University of North Carolina at Chapel Hill, 1959), 3.
[175] Wyatt-Brown. *Southern Honor*, 378.

compromised when outsiders questioned his style of business."[176] Ariela Gross comments on how cases involving slaves "mattered to white southerners because their self-understandings as white masters depended on their relationships to black slaves; putting black character on trial called white character into question as well."[177]

James Battle hired George Washington Mordecai and Bartholomew Figures Moore to defend Will and perhaps his own honor. Both men were in their early thirties when they argued the case before the North Carolina Supreme Court.[178] Mordecai had studied law under his older brother and finished his lessons at age nineteen, however he did not receive his law license until he turned twenty-one. During the time he represented Will, Mordecai operated a dry goods store with another brother and he would pursue several business ventures throughout his life.[179] For Moore, his involvement in *State v. Will* ignited his legal career.[180] He began his political career two years after the case as a member of the House of Commons in North Carolina in 1836, and later became North Carolina's Attorney General in 1848.[181] A monument of Moore in North Carolina had an inscription that read, in part, "To evade a duty was to him impossible."[182] His daughter L.C. Capehart recounted one of his slave's reactions to the monument. Sukey reportedly said, "It's mity like marster, all but one thing; it ain't go no *arms*. Marster was such a busy man, always at work, it ought to have *arms* put to it."[183] In an address to the Dialectic and Philanthropic Societies of the University of North Carolina in 1846, Moore said, "It is an error to

[176] Wyatt-Brown, *Southern Honor*, 379.
[177] Gross, *Double Character*, 4.
[178] William S. Powell, ed., *Dictionary of North Carolina Biography: L-O* (Chapel Hill: University of North Carolina Press, 1986), 294, 315.
[179] Powell, *Dictionary: L-O*, 315.
[180] Battle, *Memories*, 97; Powell, *Dictionary: L-O*, 294.
[181] W.C. Allen, *History of Halifax County* (Boston: The Cornhill Company, 1918), 189.
[182] Allen, *Halifax*,190.
[183] L.C. Capehart, *Reminiscences of Isaac and Sukey, Slaves of B. F. Moore, of Raleigh, N. C.* (Raleigh: Edwards and Broughton Printing Co., 1907), 9. Emphasis in original.

suppose that we may avoid our share of responsibility by surrendering it to others."[184] Whether Moore considered *State v. Will* purely a professional responsibility or a responsibility to mankind, his work furthered justice for slaves within the confines of the institution of slavery. On the topic of justice, Moore stated in his address that, "The idea of justice is not innate, and to possess a proper sense of it, is more difficult than the acquisition of any other virtue."[185]

Justice is a relative concept. The attorney for the prosecution, Attorney General John Reeves Jones Daniel, may have very well believed his position in *State v. Will* was just. He "had a reputation as a brilliant lawyer and an able speaker," according to a biographical account.[186] Kemp Battle wrote that Daniel "ably opposed B.F. Moore" in *State v. Will*.[187] His favorable traits that aided him in his career were said to be a "clear and discriminating mind, patient industry, and high integrity."[188] The judge in the original trial was another respected figure. A man named Stephen F. Miller wrote that Judge John Robert Donnell "was a quiet, unobtrusive, upright gentleman . . . His life was exemplary, and his abilities and integrity as a Judge secured him a spotless reputation."[189] At age seventeen, Donnell lived in New Bern in order to study law under none other than William Gaston.[190] Politics consumed Gaston's time at that stage, however, and so he did not spend a lot of time with Donnell.[191] It is an interesting thought that, perhaps, if Donnell had received more tutelage and shaping from Gaston, *State v. Will* may not have reached North Carolina's Supreme Court.

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[184] Bartholomew F. Moore, "An address delivered before the two literary societies at the University of North Carolina," June 5, 1846, 14.
[185] Moore, "Address," 15.
[186] William S. Powell, ed., *Dictionary of North Carolina Biography: D-G* (Chapel Hill: University of North Carolina Press, 1986), 8.
[187] Battle, *Memories*, 100.
[188] Powell, *Dictionary: D-G*, 8.
[189] Powell, *Dictionary D*-G, 92.
[190] Schauinger, *William Gaston*, 48.
[191] Schauinger, *William Gaston*, 48.

Of course, the North Carolina Supreme Court did review *State v. Will* and issue a decision in December of 1834. The three justices on the court at the time were Joseph John Daniel, Thomas Ruffin, and William Gaston. Kemp Battle wrote, "I do not believe that either England or America ever had a stronger court."[192] In 1832, Joseph J. Daniel became a justice on the North Carolina Supreme Court.[193] Many people wanted William Gaston to accept a nomination to the bench at that time, but he refused.[194] At the same time, he did not want Daniel to become a justice. Joseph H. Schauinger wrote, "Gaston felt that Daniel was entirely unqualified for the station, telling his daughter that he had formed this opinion not on prejudice but through sober judgment."[195] When Daniel won the election and Gaston heard, he "groaned, 'My country, O my country.'"[196] Perhaps Daniel exceeded Gaston's expectations. Kemp Battle believed, "[Daniel's] opinions were strong and clear … but he made no effort to… gain reputation by rhetorical effort."[197]

Nevertheless, the North Carolina Supreme Court was in jeopardy in the early 1830's.[198] Disapproval existed, Schauinger wrote, "because of the tardiness with which business was done, its concealment of opinions until moment of adjournment, and its haste in drafting opinions."[199] When Chief Justice Leonard Henderson died in 1833, men ranging from Governor Swain of North Carolina to Justice Thomas Ruffin "besieged" Gaston "'to save the court'" and accept a

[192] Battle, *Memories*, 96.
[193] Schauinger, *William Gaston*, 157.
[194] Schauinger, *William Gaston*, 157.
[195] Schauinger, *William Gaston*, 157.
[196] Schauinger, *William Gaston*, 157.
[197] Battle, *Memories*, 99.
[198] Schauinger, *William Gaston*, 157-158.
[199] Schauinger, *William Gaston*, 158.

nomination.[200] Ruffin went so far as to tell Gaston that if he could not join the supreme court, Ruffin would resign and the court would no longer exist.[201]

There were two major barriers Gaston had to overcome before he could accept the nomination. One barrier was debt in the amount of $8,000.[202] Schauinger reported that "by accepting the proffered position he was giving up an income of $6,000 for $2,500."[203] A new payment plan allowed Gaston to repay his debt in four or five years, in yearly installments.[204] The other hurdle was a law meant to prevent Catholics from obtaining state office.[205] Gaston, a devout Catholic, did not know if he could legally assume office. In a letter to Ruffin, Gaston wrote, "I had sworn to support that Constitution, and it seemed safer in conscience to remain always a private citizen, than to run the risque [sic] of breaking that oath by accepting an office from which perhaps that Constitution excluded me."[206] After much contemplation and discussions with men such as Ruffin, Gaston concluded, "that whatever views some of the framers of the Constitution may have entertained this disqualification is not plainly expressed in it – can not judicially be inferred from it – and must therefore be regarded as not contained in it."[207] With the major obstacles cleared from his path, William Gaston accepted the nomination and won the election with 59.89% of the overall vote and 72.72% of named votes.[208] He became

[200] Schauinger, *William Gaston*, 158.
[201] Schauinger, *William Gaston*, 158.
[202] Hamilton, J.G. de Roulhac, ed., *The Papers of Thomas Ruffin Volume II* (Raleigh: Edwards & Broughton Printing Co., 1918), 94.
[203] Schauinger, *William Gaston*, 161.
[204] Schauinger, *William Gaston*, 161.
[205] Schauinger Schauinger, *William Gaston*, 159.
[206] Hamilton, "Papers of Thomas Ruffin," 94.
[207] Hamilton, "Papers of Thomas Ruffin," 94.
[208] Schauinger, *William Gaston*, 162.

a justice on the Supreme Court of North Carolina on November 27, 1833, shortly before he would write the opinion for *State v. Will*.[209]

The man who urged Gaston to join him on the court, Thomas Ruffin, had been a justice of the Supreme Court of North Carolina since 1829.[210] Because the death of Leonard Henderson in 1833 left the position of chief justice empty, Justices Ruffin, Gaston and Daniel had to fill the role when they met for the first session. Justice Daniel informed the men he did not want to be chief justice, which resulted in Ruffin and Gaston "[settling] the matter by lot," and Ruffin becoming chief justice.[211] Throughout his time on the court between 1829 and 1852, with a brief reprisal in 1858 to 1859, Ruffin's reputation grew strong.[212] Kemp Battle wrote, "Chief Justice Thomas Ruffin was considered one of the most learned lawyers in the land. His opinions were quoted with praise by the highest courts in the country and even in England."[213] The editors' preface to Mark Tushnet's *Slave Law in the American South* supports Battle's statement with the contention that Ruffin was "one of the foremost southern jurists of his day."[214]

Justice Ruffin's opinion in the 1829 case *State v. Mann* gained him notoriety. He reversed a trial court's judgment that found John Mann guilty of the battery of a slave he had hired. Ruffin disagreed with the trial judge who instructed the jury that Mann only had a "special property" of the slave as a hirer.[215] He believed Mann had the same rights as the owner of the slave during the contracted time. Furthermore, Ruffin ruled that owners could not be held criminally liable for batteries upon their slaves. Masters had unlimited power over their slaves in

[209] Schauinger, *William Gaston*, 162.
[210] Clark, "Slave cases," 4.
[211] Schauinger, *William Gaston*, 162.
[212] Clark, "Slave cases," 4.
[213] Battle, *Memories*, 100.
[214] Mark V. Tushnet, *Slave Law in the American South* (Lawrence, Kansas: University Press of Kansas, 2003), x.
[215] State v. John Mann, 13 N.C. 263; 1829 N.C. LEXIS 62.

North Carolina, except where statutes said otherwise. According to North Carolina law, they could not kill their slaves outside of "moderate correction."[216] Mann did not kill Lydia, and according to the court, he had the same authority of owner at the time he shot her. Therefore, he could not be indicted for battery, either, said Ruffin. Ruffin predicated his ruling "upon the ground, that this dominion is essential to the value of slaves as property, to the security of the master, and the public tranquility, greatly dependent upon their subordination."[217]

The legacy of Justice Ruffin differed from that of Justice Gaston. Both men's legal abilities have received acclaim, however their approaches varied. Historian E.J. Clark writes, "Ruffin was consistently strict in his interpretation and application of the law."[218] In the cases presented to Ruffin, he deemed it important to consider the effect they would have. "The rule the court adopted, not… individualized justice" concerned him, according to Tushnet.[219] Had Ruffin ruled to uphold the jury's decision in *State v. Mann*, Sally Greene says it "would have involved an acknowledgement, at least at some level, of the rights of a wounded slave."[220] Robert M. Cover, on the other hand, said William Gaston "would author some of the most eloquent of the liberal opinions of slavery, relying heavily on 'humanity' and natural right."[221] Five years after *State v. Mann*, Gaston penned the decision in *State v. Will*, what Schauinger called his "most famous decision . . . [which] became a landmark in a more liberal and humane attitude."[222]

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[216] Finkelman, *Casebook*, 200-201.
[217] State v. Mann
[218] Clark, "Slave cases," 12.
[219] Tushnet, *Slave Law*, 81.
[220] Sally Greene, "*State v. Mann* Exhumed," *North Carolina Law Review*, Vol. 87 No. 3(2009), 706.
[221] Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975), 78.
[222] Schauinger, *William Gaston*, 166.

Judges such as Ruffin and Gaston, along with others in the legal community, were well respected in southern society. Upon deciding to assume office, Gaston wrote to Ruffin, "There is no civil office which man can hold of which I think more respectfully than of that of a Judge."[223] Bertram Wyatt-Brown agreed in *Southern Honor*. He noted that "judges usually enjoyed the highest respect," and that they, along with the lawyers, "were the intelligentsia of community life, especially in the more isolated, rural settings."[224] When Gaston guided the effort to create the purely appellate North Carolina Supreme Court in 1818, he included in his bill to the House of Commons that it "must have men of ability and integrity in order to obtain respect."[225] Edward Ayers states, "It is significant that lawyers made up a large portion of state legislators and won great wealth and respect through their profession."[226]

The people involved in *State v. Will* ranged in status, and yet they all had a crucial role in the outcome of the case. The roles varied from slave foreman to justices of the North Carolina Supreme Court. Ayers remarks that "honor did not reside only within the South's planter class," however the most influential men in the *State v. Will* court case were either lawyers or judges.[227] As "keepers of tradition," it is clear that they recognized honor's impact in their day-to-day lives and in the community.[228] Likewise, honor had a role in *State v. Will*. Wyatt-Brown believed, "Whatever the outcome might be in any particular case, the moral focus was honor."[229] James Battle might have paid a high fee to the attorneys to defend his own honor while the jury and justices may have considered Richard Baxter's actions against Will dishonorable. In the South, whites believed that "to allow the ultimate inferior, a slave, to ruffle one's calm would be

[223] Hamilton, "Papers of Thomas Ruffin," 95.
[224] Wyatt-Brown, *Southern Honor*, 392.
[225] Schauinger, *William Gaston*, 105.
[226] Ayers, *Vengeance and Justice*, 31.
[227] Ayers, *Vengeance and Justice*, 13.
[228] Wyatt-Brown, *Southern Honor*, 393.
[229] Wyatt-Brown, *Southern Honor*, 400.

dishonorable," according to Gross.[230] Baxter's actions, as reported in the court record, certainly indicate a lack of composure.

Because of the importance it held in southern society, the arguments the attorneys made and the decision Justice Gaston wrote in *State v. Will* should be understood within the context of the honor system. Perhaps more important to understanding the actual case is the tension between the roles of slaves as "persons" and "property."[231] Because while "both law and honor culture found the moral agency of slaves threatening," Ariela Gross states "it was in the legal arena that white men were forced to confront the contradictions such agency raised."[232]

[230] Gross, *Double Character*, 106.
[231] Gross, *Double Character*, 3.
[232] Gross, *Double Character*, 73.

Chapter 3. The Attorneys' Arguments and the Judge's Justice

The fatal incident that transpired on January 22, 1834 on a plantation in Edgecombe County, North Carolina created an avenue for progress in North Carolina slave justice – a justice bound by the needs of its slave society. Ultimately, the case concerned how much of the slaves' humanity would be accepted in light of its society's desire to maintain the existing social order. According to the prosecution, masters' discretion and slaves' submission were at stake. Relying on slaves' status as property, Attorney General Daniel believed they were usually willing to accept "the severest chastisement" without "[feelings of] degradation or sentiment of indignity common to the breast of the white man." The defense conceded that slaves' "passions are not subject to be aroused by the same causes and circumstances, which would arouse those of a freeman." However, George W. Mordecai asked the court while appealing for Will, "Should not the same allowance be made for the infirmity of his nature, the operation of his passions, the excitement of his feelings, that is made in the case of a white man?" In *State v. Will*, the attorneys and justices had to contend with the dual roles slaves occupied in their slave society. After consideration of slaves' personhood and property status, along with the legal precedents, Justice William Gaston wrote an opinion for the North Carolina Supreme Court that acknowledged that slave passion could be recognized as a mitigation for crime. The decision stated that if a slave killed his master in self-defense, the slave had committed manslaughter rather than murder. *State v. Will* had the effect of granting slaves in North Carolina more protection within the institution of slavery, as evidenced by later supreme court cases.[233]

[233] Thomas P. Devereux and William H. Battle, *Reports of Cases at Law, Argued and Determined in the Supreme Court of North Carolina, From December Term, 1834, to June Term 1835, Both Inclusive, vol.1* (Philadelphia: P.H. Nicklin & T. Johnson, 1837), 162, 149, 148.

Will's owner hired Bartholomew F. Moore and George W. Mordecai to defend Will against the murder charge. Moore began his defense with the acceptance that, although Baxter was an overseer, he had the same authority of master over Will. His reasoning came from *State v. Mann*, when Justice Ruffin said, "Our laws uniformly treat the master or other person having the possession and command of the slave, as entitled to the same extent of authority."[234] Given Baxter's master-equivalent status, Moore stated that if Will had died when Baxter shot him, Baxter would have been guilty of murder himself. He told the court that Baxter's actions before the altercation indicated deliberation and "intent to shoot the prisoner." When Allen went to Baxter's house, Baxter made sure to grab his loaded shotgun and he told Allen to follow at a distance. Had the intention of bringing the gun been for defense, Moore said, he would have kept Allen with him as support. Moore believed Baxter decided he would shoot Will before he ever reached the cotton screw. He argued, "[Baxter] was not surprised into the act of shooting; it was expected and intended beforehand, and therefore murderous."[235]

To reach a satisfactory result for his client, Moore had to convince the justices to accept Will's human response to the man who had the authority of master – and property owner – over him. Consequently, Moore delved into masters' authority and slaves' submission in light of *State v. Mann*. He noted how that decision left a master's power over his slave principally unchallenged if the slave should survive a violent incident. Moore told the court, including Chief Justice Thomas Ruffin who wrote the opinion in *State v. Mann*, that he did not believe it meant, "In declaring that a master cannot be indicted for a battery on his slave… that [a master] cannot be indicted for any offence which necessarily includes a battery." The decision, Moore believed, was "never intended to cover the entire relation between master and slave." If that had

[234] State v. Mann, 13 N.C. 263; 1829 N.C. LEXIS 62; Devereux's Ct. Cl. 263.
[235] Devereux and Battle, *Reports of Cases*, 164, 125.

been the court's intention five years earlier in *State v. Mann*, Moore claimed the decision was "starting and abhorrent to humanity . . . [and] at variance with statute law and decided cases."[236]

Masters did not have complete uncontrolled discretion in how to treat slaves. In addition to laws that punished the murder of slaves, masters had to face "the irresistible force of public sentiment," which Ruffin had also mentioned in *State v. Mann*. Moore posed to the court that, "If that force is now setting in a counter-current against the license of absolute power, either it is to be deprecated and stopped, or absolute power is most clearly proved to be unnecessary to the ends of slavery." The rejection of providing masters with absolute power was evident in acts the North Carolina legislature passed and public opinion, as stated by Moore. He went on to say, "The Courts of the country should foster the enlightened benevolence of the age." Moore appealed to the white men's "benevolence" before he asked them to consider slaves' humanity. He had the difficult task of balancing a master's superior role with a slave's human response.[237]

In *State v. Mann*, Ruffin wrote that slaves must believe that their masters are the ultimate authority in order "to remain a slave." Moore believed the implication of that belief "denies to the slave the smallest attribute of a rational or feeling creature." To have completely mindless slaves, an insurmountable task in and of itself, would actually have adverse consequences. Moore told the court, "If the relation [between slave and master] require that the slave should be disrobed of the essential features which distinguish him from the brute, the relation must adapt itself to the consequences, and leave its subject the instinctive privileges of a brute." It would not be in a master's best interest to have such a slave. Allowances must be granted, Moore stated, because "any attempt to restrain or punish a slave for the exercise of a right, which even

[236] Devereux and Battle, *Reports of Cases*, 126, 127, 127.
[237] Devereux and Battle, *Reports of Cases*, 128 (all).

absolute power cannot destroy, is inhuman, and without the slightest benefit to the security of the master, or that of society at large."[238]

Moore knew how North Carolina society functioned and the importance of slavery to its powerful citizens. His argument called attention to how his client's case, and those like it, could threaten what many southerners held dear if allowances were not made. In a situation of self-defense, "punishment will be powerless to reclaim, or to warn by example. It can serve no purpose but to gratify the revengeful feelings of one class of people, and to inflame the hidden animosities of the other." Moore could have purposely brought to mind events such as the Nat Turner rebellion that happened only a few years prior to *State v. Will* with that statement. If it was not his intent, it is likely that the justices thought of it anyway. With or without examples of slave uprising in mind, Moore reiterated that "punishment short of death serves the end of the master, both as a corrective and as an example."[239]

The courts should take instances of masters who extended their punishment to result in a slave's death very seriously, Moore believed. "The examination should be rigorous, for it is the only protection which the slave can claim at the hands of the law, and therefore ought to be strict, in order to be the more efficient." Ironically, in their death, slaves could receive more legal acceptance of their humanity than ever before. Moore pointed out to the court, "It is here alone that the slave, in the eye of the law, ascends from the level of mere property, and takes an humble stand amid his species. Here he is regarded as a rational creature." Moore wanted his

[238] Devereux and Battle, *Reports of Cases*, 129 , 129, 129, 130.
[239] Devereux and Battle, *Reports of Cases*, 130, 131.

audience to consider the treatment Will received and his subsequent actions in light of his humanity.[240]

In *State v. Will*, Moore highlighted Baxter's unlawful actions and explained how they caused a natural, human response in his client. Baxter should not have shot Will, Moore argued, because even law enforcement could not kill an escaping criminal without repercussions. He contended that, "No one will be found to maintain that it is the duty of the master to kill his slave rather than suffer his temporary escape. The prisoner was in the act of disobedience, and not of resistance, between which there is a substantial difference." Had Will resisted Baxter, the man could have legally used force to punish him. Simple disobedience did not allow for a lethal punishment, and Will's initial attempt to run away did not give Baxter the right to shoot him. Therefore, Moore asked the court a question central to the case: "Was the prisoner justly so provoked by the shooting, as under the influence of ordinary human frailty, to cause his reason to be dethroned, and to be deprived of deliberation?"[241]

The answer to Moore's question would have an impact in determining whether Will had committed murder or manslaughter. As a capable attorney, Moore answered the question in his client's favor. "An appeal to human nature in its most degraded state, will answer, unhesitatingly, it was," he told the court. To answer the question in the negative would mean Will's actions "may be murder; but if so, it must find its guilt, not in the human disposition, but in a policy that knows no frailty and shows no mercy." Will's attorneys denied that Will's

[240] Devereux and Battle, *Reports of Cases*, 133 (all).
[241] Devereux and Battle, *Reports of Cases*, 134 (all).

actions had been deliberate because he had been provoked. If his actions were not deliberate, he had not committed murder.[242]

Slaves were not provoked to the same extent that white men were, but as humans they still experienced emotions such as surprise and fear. "When a slave is required to bare his back to the rod, he does it, because it is usual," Moore told the court. However he reasoned that slaves would not – and could not – accept any and all treatment from their masters. "When he is required to stand as a target for his master's gun, he is startled: no idea of duty sustains the requirement, and the unquelled portion of his instinct rouses his passions to resistance." The law and precedent supported Moore in his assertion that slaves were "reasonable or human creature[s]." Moore referenced *State v. Scott*, *State v. Hale*, and *State v. Reed* to show that the law "would seem to result, that [a slave] was acknowledged to possess the human infirmities common to his species." The cases illustrated how slaves could commit crimes and have crimes committed against them, and how the law took action against them and for them. Slaves were not brainless brutes, and while they could not always respond in the same way a white man would, they could not be denied "from feeling and pleading a legal provocation" in every instance.[243]

Moore thought the only unsettled question was whether the time between when Baxter shot Will and when he received his fatal wound indicated that Will acted out of passion. Will slashed Baxter six to eight minutes after Baxter shot him, however he spent the intermediate time in pursuit from Baxter and fellow slaves. Moore said, "The law would be vain and nugatory as a rule of action, if it should allow that the passions may be justly provoked, and yet refuse to allow

[242] Devereux and Battle, *Reports of Cases*, 134, 135.
[243] Devereux and Battle, *Reports of Cases*, 138, 138, 138, 138, 139.

a reasonable time for their subsidence." The circumstances of each case should be considered to determine whether provocation had factored into someone's action, he believed. The more serious the wound received, the more time the individual should be granted to have recovered his faculties. Moore argued that Will could not have regained his senses in such a short period of time. Will, he said, believed his injury to be fatal, and ran from the man who had delivered the wound. In addition, three slaves pursued Will, per Baxter's order. Moore told the court that Baxter "was well aware of the mangled condition of his victim, and who, under the full conviction of his shot proving fatal, cheered his comrades of the chase by the unfeeling exclamation, 'he can't run far.'"[244]

Given the circumstances, attorney Bartholomew Moore maintained that his client had only committed manslaughter. Will did not initiate the violent altercation and he tried to avoid the aftermath. Moore said, "In no part of the slave's conduct does he evince a disposition to seek a conflict. He takes every occasion to avoid it." Here, Moore perhaps tried to calm concerns of slaves acting out in response to a master's discipline. He even conceded Will's disobedience and how he ran to evade punishment. As Will had obeyed Baxter's demand to come down from the cotton screw, he must have referred to the earlier incident between Will and Allen. Moore did not dispute that Will had killed Baxter, either. However, he said "the tamest and most domestic brute will do likewise" if they "[had] been dangerously shot, pursued, and overtaken."[245]

Moore emphasized the importance of the court's decision, a concern of which the justices were likely very aware. The extent of a master's authority over his slave had to be determined, for society's sake. "No question can be more delicate, or attended with so many bad

[244] Devereux and Battle, *Reports of Cases*, 139, 140.
[245] Devereux and Battle, *Reports of Cases*, 141 (all).

consequences if settled in error," he told them. The North Carolina Supreme Court had the opportunity to influence public opinion and create a settled principle. Moore reminded the court of some of its previous decisions that indicated "the progression of humanity… and their clear conviction, that the condition of the slave was rapidly advancing in amelioration, under the benign influence of Christian precepts and the benevolent auspices of improving civilization." His statement signified the importance of the justices' decision, while at the same time trying to minimize the controversial aspects of it. By remarking on the gradual progress that had taken place, Moore wanted the court to realize that it would be in line with accepted ideas in society.[246]

The North Carolina legislature had been a part of the gradual change. Over time, it had passed laws and made improvements in acceptable treatment of slaves. It did so despite events such as Nat Turner's Rebellion and other incidents throughout the South which caused concern for the institution of slavery. Moore reminded the court that the legislature continued to uphold progress in slave treatment "at a time when the public mind was inflamed and alarmed at a recent and yet reeking massacre." The direction the law continued to go in was one of "raising the slave higher and higher in the scale of moral being," he said. Moore believed the court had to consider the "enlightened sentiment of the State." He suggested to not do so would be unreasonable. He asked, "Will [the court] rebuke the spirit of the age, and strike back this unfortunate race of men, advancing from the depths of misery and wretchedness, to a higher ground, under the shield of so much legislation enacted in their behalf?"[247]

Moore ended his argument powerfully by referencing an idea Justice Ruffin posed in *State v. Mann,* along with Northern zeal. Moore commented, "I know it is has been frequently

[246] Devereux and Battle, *Reports of Cases*, 141,142.
[247] Devereux and Battle, *Reports of Cases*, 142, 142-143, 143.

said, and with some it is a favorite idea, that the more cruel the master, the more subservient will be the slave."[248] It is likely that Moore meant his comment to address Thomas Ruffin's statement in *State v. Mann*, that "The power of the master must be absolute, to render the submission of the slave perfect."[249] While Ruffin himself acknowledged the severity of it, Moore said "this precept is abhorrent to humanity, and is a heresy unsupported by the great mass of historic experience." If North Carolina allowed masters to shoot their slaves, Moore did not believe it would create perfect submission. Rather, it would "produce open conflicts or secret assassinations." Slaves' submission was very important to southern society, and he did not believe granting slaves more humanity would damage it. Moore warned that the court could not escape this reality, and that it "must pass through Scylla and Charybdis." If the South tried to avoid "the whirlpool of Northern fanaticism" by not accepting slaves' humanity, it would ignore "that of the South[, which] is equally fatal." Moore cautioned that southern fanaticism "may not be so visibly seen; but it is as deep, as wide, and as dangerous." To decide in Will's favor would not damage the institution of slavery, he implied. It would preserve it.[250]

In the court records, attorney George W. Mordecai followed Moore's poignant argument to further discuss slaves' humanity and its acceptance in North Carolina law. He provided the court with a brief history of the state's legislative actions. "Slaves seem formerly to have been regarded in this State as mere chattels," he began. Their importance rested in their worth as property, and not as human beings. Mordecai went on to show how, in 1834, the law considered a slave to be more than a possession. He reminded the court of the acts of 1774, 1791, and 1817, all of which concerned the killing of slaves. The acts increased the punishment of killing a slave,

[248] Devereux and Battle, *Reports of Cases*, 145.
[249] State v. John Mann
[250] All subsequent quotes in the paragraph are from Devereux and Battle, *Reports of Cases*, 145.

and by 1817 "placed the killing of a slave, on the same footing, under like circumstances, with the killing of a free man." The gradual progress in North Carolina law pointed to an increasing acknowledgment and acceptance that slaves were human beings. After all, a person would not be charged with the murder of "mere chattel." The North Carolina Supreme Court itself had aided in the progress, as well. For example, in *State v. Hale*, the court determined that a free man could be charged with the battery of a slave. "These various acts[,] both legislative and judicial," Mordecai asserted, indicated that "slaves are no longer regarded as mere brutes or chattels, but that they are now viewed both in the eye of the law and of society, as human beings, liable to be operated upon by the same passions… and under the protection of the same laws with the white man." Therefore, slaves' personhood and accompanying passion in moments such as the altercation between Will and Baxter should be accepted.[251]

Mordecai anticipated the distinction between slave and freeman, and their varied conditioned responses. He admitted that the same actions which would incite a freeman should not incite a slave. Still, he believed to deny the slave his passion in a moment of great injury would be unreasonable. In an almost chastising comment, Mordecai proclaimed, "All law should be founded on reason; and when we are led to a conclusion to utterly absurd, and so manifestly contradictory to reason, it is time that we should look around, and at least suspect that we have mistaken the meaning of a law, which leads us to such results." He proceeded to temper his oratory with more concessions, chiefly that it is "not necessary… that the slave should be placed on the same footing with the freeman."[252]

[251] Devereux and Battle, *Reports of Cases*, 146, 148.
[252] Devereux and Battle, *Reports of Cases*, 149 (all).

Mordecai believed a legal middle-ground existed, and that it applied to his client's case. He said what would be considered justifiable homicide for a freeman should be considered manslaughter – not murder – for a slave. It would be in everyone's best interest. He noted there would be "a sufficiently broad and marked distinction… between the two classes, to secure the dominion of one, and the subserviency of the other, and at the same time to afford the slave all necessary protection against acts of lawless violence and outrage."[253]

Bartholomew Moore had already addressed *State v. Mann*, however George Mordecai attempted to weaken the claim that *State v. Mann* absolved Baxter. The contention that, as a master-equivalent, "the exercise of that authority cannot be called in question by any earthly tribunal," did not reflect reality, Mordecai claimed. *State v. Mann* only addressed masters who committed battery on their slaves. It also qualified a master's power "so far as its exercise is forbidden by statute," and murdering slaves was against the law. Masters could and had been indicted for the murder of their slaves. Mordecai opined to the court that "the master or person representing him has no right to resort to means, or to use weapons, likely to produce death, and the very moment he does so, he is guilty of an abuse of his power." Baxter shot Will, and if it had been fatal, Baxter could have been held guilty of murder. The injured slave simply "[obeyed] the impulse of nature" by acting in "self-preservation." While reasonable and gracious to slaves' instincts, the problem with Mordecai's argument is that it was hypothetical because Will did not die. This crucial fact would be expounded upon by the prosecution in an attempt to seal Will's fate.[254]

[253] Devereux and Battle, *Reports of Cases*, 150.
[254] Devereux and Battle, *Reports of Cases*, 151, 151, 152, 153.

Attorney General J.R.J. Daniel represented the state in the case, and he certainly tried to counter the defense's arguments to prove that Will had committed murder. From the very beginning, he wanted to show the extent of a master's power over his slave. Daniel agreed that a master could not murder his slave and emphasized how that was the master's only restriction. He laid the foundation for his argument with a history of global and domestic slavery. He noted the existence of slavery in countries such as Israel, Egypt, Greece and Rome, as well as the first slaves to arrive in Virginia in 1620. "From the origin of slavery, it was probably absolute when first introduced," he told the court. And yet in light of the North Carolina Supreme Court's prior decisions and the state's legislative actions, he acknowledged that absolute slavery did not exist in 1834 North Carolina. Just as Will's defense attorneys had, Daniel discussed the acts of 1774, 1779, and 1817 with the court. Daniel said that before the state passed those acts, killing a slave was not a felony, and "if the view which I have presented be correct, the authority of the master is uncontrolled, except by the act of 1817." Echoing a remark Thomas Ruffin made in *State v. Mann*, Daniel admitted the severity of his claim.[255]

With the restriction set forth in *State v. Mann* as his guide, Daniel did not believe Baxter's actions mitigated Will's response. For Will's crime to have been manslaughter and not murder, Will had to have been legally provoked. Daniel did not believe the wound Will received or his subsequent flight and capture amounted to legal provocation. He declared to the court, "If the master's authority be what I contend it is, and the case of the *State v. Mann* has any foundation in law, the conduct of the deceased towards the prisoner was in nowise forbidden by

[255] Devereux and Battle, *Reports of Cases*, 154, 159.

law, and could not[,] therefore, constitute a legal provocation, to extenuate the homicide to manslaughter."[256]

Daniel used Will's status as property to explain why he should have remained submissive after being shot, and what could happen if the court granted him an extenuation. "The truth," Daniel held, "is the slave [is taught] to believe that he is the property of his master, and that submission to his will is commendable." In other words, slaves had a higher level of tolerance, and to lower it would harm society. Baxter had not even committed a crime, according to *State v. Mann,* because Will did not die. Daniel suggested for the court to rule in Will's favor would put further restraints on a master's power, and the results would not be favorable for southern society. If slaves had more legal power to react when a master punished him "with any weapon calculated to produce death, be it a gun, rod, or cane, [the slave] may wreak his vengeance without incurring the punishment of death[.] What will be its tendency?" Daniel asked. He countered one of Moore's previous arguments and said such "humane and benevolent work of advancing [slaves] in the scale of moral beings" could actually be disastrous for the institution of slavery. Perhaps in an attempt to prey upon the justices' fears as slave owners and the relatively recent episodes of slave rebellion, Daniel warned their decision could "increase the importance of the slave, and beget a spirit of insubordination." Eventually, he believed, "nothing short of absolute emancipation would satisfy" them. Daniel explicitly aligned the justices' decision with the strengthening or weakening of slavery. [257]

The justices of the North Carolina State Supreme Court had to contend with many issues as they reached their decision, among them public opinion, legal precedents, and slaves'

[256] Devereux and Battle, *Reports of Cases*, 160.
[257] Devereux and Battle, *Reports of Cases*, 162, 162, 162, 163.

personhood. The North Carolina Supreme Court ultimately decided, unanimously, that Will committed manslaughter and not murder. The difference between the two charges amounted to whether Will committed the crime "with malice aforethought." Justice William Gaston wrote the opinion for the court, and he opened with Will's charges and a brief description of the events that resulted in Baxter's death. "Had this unfortunate affair occurred between two freemen, whatever might have been their relative condition, the homicide could not have been more than manslaughter," Gaston decided. Will, of course, was not a freeman or simply an apprentice. As a slave, Will owed his master submission. Not in all cases, however. Just as a master had absolute power with the exception of killing his slave, Gaston wrote, "I hold it to be equally certain that the slave has a right to defend himself against the unlawful attempt of his master to deprive him of life."[258]

The important question, then, was whether Baxter's actions were unlawful. The justices all agreed that Baxter had the authority to confront Will and punish him for his disobedience. As he approached Will, Baxter acted "within the limits of his rightful authority." Will's attempt to evade punishment deserved punishment, as well. "This act, however, was not resistance nor rebellion, and it certainly afforded no justification nor excuse for the barbarous act which followed," Gaston wrote. If Will had died as a result of the shooting, Gaston believed Baxter "would have been guilty of manslaughter at least – probably of murder." Baxter's actions had a "character of cruelty… and it was too probable that [the act] had been deliberately contemplated and eventually resolved on, before the attempt to escape."[259]

[258] Devereux and Battle, *Reports of Cases*, 163, 165, 165.
[259] Devereux and Battle, *Reports of Cases*, 166 (all).

In light of Baxter's misdeeds, the court had to ascertain whether Will responded in a legally acceptable manner. Gaston believed it important to remind readers "that passion, however excited, is not set up as a legal defence, or excuse for a criminal act." Legal provocation could mitigate a crime, though. As a slave, the potential mitigation was limited and at question. For this reason, Will's attorneys did not argue justifiable homicide on his behalf, only manslaughter. Gaston found that in Will's case, "it became instinct, almost uncontrollable instinct, to fly; it was human infirmity to struggle; it was terror or resentment, the strongest of human passions, or both combined, which gave the struggle its fatal result." The problem remained, however, that Will did not die from his wounds and Baxter did. Adhering to *State v. Mann*, Gaston wrote, "Had the overseer lived he could not have been indicted for the deed; for however criminal his intent, the criminal act was not consummated." He then posed a question: did that fact preclude his action from being "termed as legal provocation?" The answer was no. Gaston used the example of adultery, for which people could not be criminally charged, while at the same time could "excite man to madness [and] the law recognises it as the highest and the strongest [provocation]." He showed Baxter could have legally provoked Will, but Gaston had to go further to settle that he actually did legally provoke Will.[260]

Gaston ended the opinion with consideration of slaves' humanity to establish a rule that would satisfy Will's attorneys and influence future cases to come. "We have no adjudged case that determines this question, or presents us with a precise rule by which to determine it," he found. *State v. Mann* did not apply because it only handled the battery of a slave by his master. It did, however, admit that masters could not kill their slaves. Therefore, Gaston reasoned, "An attempt to take a slave's life is then an attempt to commit a grievous crime, and may rightfully be

[260] Devereux and Battle, *Reports of Cases*, 167, 167, 169, 169, 169.

resisted." Gaston granted Mordecai's hypothetical argument merit. If a slave resisted his master in such an instance, he did not act with malice. "Unless I see my way clear as a sunbeam," Gaston wrote, "I cannot believe that this is the law of a civilised people and of a Christian land." He continued, "I will not presume an arbitrary and inflexible rule so sanguinary in its character… and I see no law which compels me as a judge to infer malice contrary to the truth." Because "the prisoner is a human being, degraded indeed by slavery, but yet having 'organs, dimensions, sense, affections, passions,' like our own," Gaston believed Will acted as any person would. In consideration of his role as a slave – and therefore property – and his undeniably instinctual response, the North Carolina Supreme Court overruled the lower court's special verdict. The court determined that Will had committed manslaughter and not murder. Despite the court's ruling, however, Will was not retried for the manslaughter of Richard Baxter. Instead, his master sent him to Mississippi, where he would receive a capital sentence, after all.[261]

[261] Devereux and Battle, *Reports of Cases*, 171 and 172; George Gordon Battle, "The State of North Carolina v. Negro Will, a Slave of James S. Battle: A Cause Celebre of Ante-Bellum Times," *Virginia Law Review,* Vol. 6, No. 7 (Apr., 1920), 530.

Conclusion

The outcome reached in *State v. Will* not only impacted Will. While still interesting, the case would not be significant if that were true. It solidified the limitation of a master's power over his slave and granted slaves more protection within North Carolina's institution of slavery. An examination of four cases that reached the North Carolina Supreme Court after *State v. Will* will show the effect the case had – as far as twenty years later. The cases are *State v. John Hoover*, *Martha Copeland v. John F. Parker*, *State v. Caesar*, and *State v. Christopher Robbins*. Ranging from 1839 to 1855, the cases tackled some of the same issues as in *State v. Will*: a master's power, the shooting of slaves, and slaves' human passion. Several people – such as Bartholomew Moore – appeared again, as well, and sometimes their stance on the law was at variance with a previous position. Most importantly, however, these cases form the legacy of *State v. Will*, whether it is cited or not.

Five years after *State v. Will*, in 1839, the North Carolina Supreme Court heard the case *State v. John Hoover*.[262] A jury found Hoover guilty of the murder of his slave, Mira. In the trial at the superior court, the judge told the jury they had to believe Hoover killed her without legal provocation in order to convict him of murder. Had there been legal provocation, Hoover could only be found guilty of manslaughter. The prisoner believed the jury's charge to be incorrect, however the judge disagreed and sentenced him to death. As a result, his case went on appeal to the higher court. Attorney General J.R.J Daniel represented the state and Chief Justice Ruffin wrote the opinion that affirmed the trial judge's sentence.[263] The logical, pro-slavery Ruffin opened his opinion with the belief "that the case was left hypothetically to the jury[] much more

[262] State v. John Hoover, 20 N.C. 500; 1839 N.C. LEXIS 92.
[263] William S. Powell, ed., *Dictionary of North Carolina Biography, Volume 2 D-G* (Chapel Hill: University of North Carolina Press, 1986), 8.

favourably for the prisoner than the circumstances authorized."[264] The circumstances Ruffin alluded to were the "series of the most brutal and barbarous whippings, scourgings and privations" Hoover committed against his pregnant slave.[265] These punishments were supposedly a response to Mira's theft of turnips, disobedience, and the attempted murder of his family through poison. The only evidence for such crimes came from her coerced confessions.

Ruffin used *State v. Will* to show that a master could be could be charged with the murder of his slave, and that Hoover should be as well. As Ruffin stated in his decision in *State v. Mann* ten years prior, a master was allowed to punish his slave as he saw fit. In *State v. Hoover*, he believed "the acts imputed to this unhappy man do not belong to a state of civilization," and therefore did not result from a desire to simply punish or reform. He cited *State v. Will* to prove "the killing of a slave may amount to murder; and this rule includes a killing by the master as well as that by a stranger." Hoover had committed murder, Ruffin wrote, because he did not kill Mira "in sudden heat of blood, but [his actions] must have flowed from a settled and malignant pleasure in inflicting pain, or a settled and malignant insensibility to human suffering." Ruffin determined that even if a master did not mean to kill his slave, if the slave died after he inflicted intentional "great bodily harm," it was murder. *State v. Will* therefore helped grant slaves more protection in North Carolina laws through *State v. Hoover*.[266]

The later cases *Martha Copeland v. John F. Parker* and *State v. Christopher Robbins* also used principles discussed in *State v. Will* to further protect slaves. In 1843, the North Carolina Supreme Court heard the *Copeland* case, in which an owner sought damages from an overseer who gave her hired-out slave a nonfatal shot wound. The slave, Gilbert, received the wound

[264] State v. Hoover.
[265] State v. Hoover.
[266] State v. Hoover.

when he tried to run away to avoid punishment and the defendant shot him. Parker did not believe he was wrong in doing so. Justice Daniel wrote the opinion and determined Parker did act unlawfully. While he did not cite *State v. Will* or any statute in his very short ruling, the material facts of the case were the same. Parker, an overseer, shot Gilbert, a slave, who tried to run away from him. Baxter did the same thing to Will in 1834. Daniel wrote, "The slave was not in resistance to him, but was only retreating against his orders, [and Parker] had no right, we think, to use a deadly instrument to stop him."[267] In *State v. Will*, Gaston determined that Will's running away did not amount to resistance, either. Parker was entitled to punish the slave for running away, but "the act of shooting the slave betrayed passion in the overseer, rather than a desire to promote the true interest of his employers, or to keep up that subordination, which the state of our society demands."[268] Accordingly, he owed Copeland the damages he had caused. Had *State v. Will* never been decided, it is likely that Parker's use of a deadly weapon would not have unlawful because of the precedent in *State v. Mann*. In *State v. Mann*, the defendant used a gun, as well.

The North Carolina Supreme Court made the rule that a master did not have the right to use a deadly weapon to punish his slave more explicit in *State v. Christopher Robbins*. In 1855, Christopher Robbins cruelly killed his slave, Jim, with blows from an axe handle, beatings, stomping, a wagon-whip and heated water, for supposedly not feeding his horse. Robbins's attorney claimed that the death only amounted to manslaughter. He wanted the judge to "charge the jury, that if a master is seen whipping his slave, the presumption is that he is rightfully whipping him," but the court instead told the jury that a master could inflict non-fatal

[267] Martha Copeland v. Parker: 25 N.C. 513; 1843 N.C. LEXIS 56; 3 Ired. Law 513.
[268] Martha Copeland v. Parker.

punishment on his slave.[269] When Robbins's three step-children testified against him and relayed what had happened, the jury found him guilty of murder. On appeal, Justice Battle affirmed the lower court's decision, with the help of *State v. Hoover* and *State v. Will*. He quoted the decision in *State v. Hoover* to counter the claim that Robbins had been legally provoked. Battle cited *State v. Will* as further evidence that Jim's attempt to run away while "his master was beating him with a deadly weapon, and declaring that he intended to kill him" could not be considered legal provocation.[270] With the precedent of *State v. Hoover*, which *State v. Will* influenced, and *State v. Will* itself supporting them, the North Carolina Supreme Court displayed a rejection of masters' fatal cruelty against the unfortunate human beings over whom they had power.

The idea of slaves as human beings took the center stage in the court case *State v. Caesar*, decided in 1849. In *State v. Caesar*, the slave was the perpetrator in question and not the victim. On August 14, 1848, the deceased, Kenneth Mizell, and his friend came upon Caesar and another slave named Dick. The two intoxicated freemen told the slaves that they were patrollers and gave each slave "two or three slight blows" apparently not meant to cause much harm. Drunken conversation followed, and when a third slave approached them, Mizell's friend instructed Dick to procure a whip for him to use. Dick made a few movements and then stopped, which caused the two white men to grab him and begin to beat him. Dick "begged [him] to quit." Caesar took a rail from a nearby fence and struck at the men to protect his friend. Caesar injured them both, however Mizell died in bed from his wounds. The attorney general at the time was Bartholomew Moore, one of Will's defense attorneys. As counsel for the state, he argued Caesar's actions constituted murder. Caesar's attorney, on the other hand, said the death

[269] State v. Christopher Robbins, 48 N.C. 249; 1855 N.C. LEXIS 165; 3 Jones Law 249.
[270] State v. Christopher Robbins.

was manslaughter because Caesar, a "well-disposed negro," acted "under the excitement of passion thus produced." It would be interesting to know Moore's internal thoughts, as Caesar's attorney used arguments Moore helped make feasible. Caesar's attorney went on to say that he did not consider his client's weapon to be deadly, however the court determined that it was. The judge told the jury if they believed Caesar had used it to kill Mizell, he was guilty of murder. Accordingly, the jury found Caesar guilty of murder and, with the accompanying capital sentence, the North Carolina Supreme Court heard the appeal.[271]

The court ultimately decided to reverse the judgment and grant Caesar a new trial. The decision was not unanimous because Chief Justice Thomas Ruffin vehemently dissented. Because each justice wrote an opinion for the case, the material is too extensive to cover in full here. However, it should be noted that Justices Pearson and Nash believed Caesar had been legally provoked, a decision likely aided by *State v. Will*. Justice Pearson said Caesar's action "must be attributed, not to malice, but to a generous impulse, excited by witnessing injury done to a friend." *State v. Will* made the acknowledgment of a slave's "passion" and human response to strangers attacking a friend possible. Justice Pearson claimed the murder charge in *State v. Will*, in light of *State v. Mann*, could have been upheld, "except for an allowance for the feelings of nature."[272]

William Gaston's liberal stance in *State v. Will* helped pave the way for further acceptance of slaves' passions in North Carolina. He adhered to his state's history of gradual progress in slave treatment and rejected a stance that would have held slaves to an inhuman standard. With the help of fair legal processes afforded to slaves and legal precedent, historian

[271] All quotes from State v. Caesar, 31 N.C. 391; 1849 N.C. LEXIS 24; 9 Ired. Law 391.
[272] All quotes from State v. Caesar.

John S. Bassett claimed the case "was a triumph of humanity and served to commit [North Carolina's] law of slavery to a more lenient policy than existed in some other states."[273] The "triumph of humanity" came from the acknowledgment of slaves' humanity and the corresponding expansion of acceptable slave responses within the institution of slavery, evidenced in the later cases.

The case is noteworthy for that expansion, especially in light of the society from which it came. North Carolina society was entrenched in the institution of slavery. In light of events such as David Walker's *Appeal* and Nat Turner's Rebellion which occurred only a few years before the North Carolina Supreme Court heard *State v. Will*, it would be reasonable to assume that all progress in slave law would have been halted. The objective of the ruling class to keep their property submissive was always a concern. The defense and prosecution in *State v. Will* each offered the court their take on the issue of how the case could affect the institution of slavery. Defense attorney Moore believed to accept his client's and other slaves' human responses to attempts to take their lives would not harm slavery. Attorney General Daniel, of course, disagreed. He thought to give what were supposed to be submissive pieces of property further allowances would create a catalyst, eventually, for emancipation.

Although Gaston ruled in Will's favor, it does not mean that he agreed with Moore's claim that the decision would not weaken slavery. Even though he owned slaves, in 1832, Gaston gave a talk before the Philanthropic and Dialectic Societies at the University of North Carolina at Chapel Hill in which he said, "It is slavery which, more than any other cause, keeps us back in the career of improvement." [274] Gaston believed slavery was "fatal to economy and

[273] John S. Bassett, "The Case of the State v. Will," (Trinity College Historical Papers 2, 1898), 20.
[274] Powell, *Dictionary: D-G*, 283; William Gaston, "Address Before the Philanthropic and Dialectic Societies at Chapel-Hill, June 20, 1832," (Raleigh: Jos. Gales & Son,1832), 14.

providence… and poisons morals at the fountain head."[275] He did not hold the belief that slavery was a 'positive good,' and so, perhaps, he would not have mourned the weakening of the institution. In either event, his decision benefitted slaves by ruling that they could defend their lives from their masters and not be charged with murder. Whether his decision benefitted slave society is another matter.

Society did not always have the final say in legal matters, however it certainly did influence the court case. The actors in the events of *State v. Will* were likely influenced by the southern honor system. The ways in which honor may have worked to influence those involved varied by his station in society. Even those in the same class, however, could react in different ways. Still, the southern honor system is one basis from which the actions of those involved can be understood. Even in the initial altercation between the Allen and Will, the concept of honor can be applied. As the slave foreman, Allen had the authority to instruct slaves and when Will challenged that, Allen might have believed his reputation and honor to be at stake. Historian Bertram Wyatt-Brown stated that "slaves, like their masters, did have a sense of honor that applied to their sphere."[276] In his role as overseer, Baxter clearly had authority over Will, and if George Gordon Battle's account that Will "produced the impression of sullenness and insubordination" due to a stutter is true, honor required Baxter to react.[277] The action of James Battle, Will's owner, also makes sense in light of southern honor. He could have held himself responsible for hiring an overseer who acted cruelly when his duty was to protect his slave.

[275] Gaston, "Address," 14.
[276] Bertram Wyatt-Brown, *The Shaping of Southern Culture: Honor, Grace, and War, 1760s-1880s* (Chapel Hill: The University of North Carolina Press, 2001), 3.
[277] George Gordon Battle in William James Battle's *The Battle Book: A Genealogy of the Battle Family in America* (Montgomery: The Paragon Press, 1930), 94.

Historian Ariela Gross asserts that slave cases "mattered to white Southerners because their self-understandings as white masters depend on their relationships to black slaves [and] putting black character on trial called white character into question as well."[278] The significant amount James Battle spent for Will's defense gives this view credence. The actions of the attorneys and judges do, as well. Wyatt-Brown claimed "the moral focus was honor" in court cases, "and the reprisal for its violations was the opposite: the stigma of shame."[279] Each lawyer and judge had a good reputation after the case and so they must have argued appropriately within the context of the honor system. The justices on the bench at the time of *State v. Will*, particularly Ruffin and Gaston, did not always agree, however they both garnered respect from society. The lasting regard of the people is evident in how, in 1914, a bust of William Gaston joined the bust of Thomas Ruffin in North Carolina's State Administration Building, where the state's supreme court would meet.[280] Clearly, the decision in *State v. Will* did not diminish the character of the justices in the eyes of North Carolina's citizens.

More important than how it affected the justices is how *State v. Will* affected North Carolina's slaves. Evidence presented in the form of subsequent court cases shows that it benefitted at least a few slaves, although the total lives touched was probably much higher. Before the court made its decision, though, the justices had to contend with legal and social issues. One over-looming concern was the effect the case would have on the institution of slavery in North Carolina. In the end, a regard for slaves' humanity triumphed and drove the relative liberalism of slave law espoused in the case.

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[278] Ariela J. Gross, *Double Character* (Princeton: Princeton University Press, 2000), 4.
[279] Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982), 400.
[280] North Carolina Bar Association, "Addresses at the Unveiling and Presentation of the Bust of William Gaston" (Raleigh: Edwards & Broughton Printing Co., 1915), 3.

Although the decision in *State v. Will* furthered progress in the acceptance of humanity in North Carolina slave law, it did not completely vindicate Will. The qualified ruling did not hinder the success of the case, though. Gaston ruled, according to the trial jury's special verdict, that Will was guilty of manslaughter. Although it did not go so far as to leave Will completely blameless, as a slave, a manslaughter charge could not have been tremendously troublesome, at least in relation to the death sentence a murder charge would incur. Kemp Battle, the son-in-law of Will's owner, said that Will had been branded to indicate his crime of manslaughter.[281] He also wrote that the family "deemed [it] best to sell him to a planter in Alabama."[282] James Battle's grandson, George Gordon Battle, seemed to be more certain of Will's life after the court case. George Gordon Battle wrote that Will had been discharged of the crime, after which James Battle, "doubtless wishing to remove him from the scene of so much tragedy," had Will moved to one of his plantations in Mississippi.[283] Unfortunately for Will, trouble followed him there and prevented his happy ending. While in Mississippi, Battle reported that Will "killed another slave and was eventually hung."[284] Will's wife, who had accompanied him, later came back to North Carolina and proclaimed, "Will sho'ly had hard luck."[285] Sadly, what could have been a story of victory ultimately ended in defeat.

[281] Kemp P. Battle, *Memories of an Old-Time Tar Heel* (Chapel Hill: The University of North Carolina Press, 1945), 97.
[282] Battle, *Memories,* 97.
[283] George Gordon Battle, "The State of North Carolina v. Negro Will, a Slave of James S. Battle: A Cause Celebre of Ante-Bellum Times," *Virginia Law Review,* Vol. 6, No. 7 (Apr., 1920), 530.
[284] Battle, "The State of North Carolina v. Negro Will," 530.
[285] Battle, "The State of North Carolina v. Negro Will," 530.

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