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State v. Mann Exhumed

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State v. Mann overturned a Chowan County jury's conviction of John Mann for assault upon a slave he had hired from a woman named Elizabeth Jones. Historians interested in exploring the discrepancy between the trial court's verdict and Ruffin's reversal have faced a significant hurdle: the inability to find evidence of the facts surrounding the case. Contrary to what scholars have concluded, however, the record is not silent on John Mann or Elizabeth Jones or her wounded slave Lydia. Evidence available in public records enables us to reconstruct sufficient facts to support tentative conclusions.

Elizabeth Jones was a minor child who had inherited Lydia upon the death of her parents. She was being raised in rural Chowan County in the household of her brother-in-law, Josiah Small. Small, a local farmer of good standing, acted in Elizabeth's interest as her guardian by keeping Lydia hired out. In 1828 Lydia was hired by John Mann, a widowed sea captain living in Edenton. A criminal record of his own, plus the fact that he had gone into bankruptcy with overwhelming debts, suggests that Mann occupied one of the lower rungs of Edenton's well-articulated class structure. To a Chowan County judge and jury, his indictment for assault upon a hired slave would have looked similar to other cases in which a free man was accused of assaulting another man's slave, cases that clearly gave rise to criminal prosecution. Little about John Mann would have suggested that he ought to enjoy the powers of a master.

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** Independent scholar. J.D. 1984, The George Washington University; Ph.D. 1996, University of North Carolina at Chapel Hill. A special thanks to my friend Eric Muller for recognizing the significance, both nationally and to the UNC-Chapel Hill community, of exploring Judge Ruffin's legacy in the light of State v. Mann, as well as for the opportunity to work with him to host this symposium. On the trail in search of Lydia, Elizabeth Jones, and John Mann, I've gathered debts to many other helpful people, including George Stevenson and others on the staff of the North Carolina Office of Archives and History; also Brooks Graebner, Al Brophy, Catherine Bishir, Trish Roberts-Miller, Anne Rowe, Elizabeth Vann Moore, Sally Koestler, Janice Eileen Wallace, Tom Davis, Fitz Brundage, David Cecelski, and Paul Jones. Cara Gardner of the North Carolina Law Review has gone far beyond the line of duty. Thanks to one and all.
Close study of the evidence suggests that Ruffin's reversal would have been seen in Edenton as wrong on the facts. And further study of the law of masters, hirers, and slaves suggests that the reversal was at least questionable on the law. Read in this new light, State v. Mann can be seen to stand on its own as a succinct but powerful treatise in implicit defense of slavery in terms that Ruffin's fellow planters would have readily understood. In justifying the reversal of Mann's conviction, Ruffin successfully enlists the key Burkean themes of conservative southern thought of the day, fatalistic themes emphasizing the surpassing importance of the status quo over any hope of reform. The opinion can be read as part of a broader pattern reflected in the writings of an increasingly defensive slaveholding elite; thematically it foreshadows Thomas Dew's crucially important defense of slavery in his Review of the Debate in the Virginia Legislature of 1831 and 1832. And yet Ruffin's rhetoric outdid itself. In attempting to silence any criticism of the workings of the system from which its author so clearly benefited, ironically State v. Mann may have hastened slavery's undoing.

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INTRODUCTION

The rhetoric of inevitability that Thomas Ruffin so powerfully deploys in State v. Mann¹ is almost enough to obscure a stubborn fact: a jury in Chowan County reached the opposite conclusion. In the fall of 1829, twelve white men listened as the defendant John Mann, who owned no slaves but had hired one named Lydia, recounted how, one day back at the shank end of winter,² he had had quite enough of her insolence. He had tried to correct her physically, but she bolted.

¹ 13 N.C. (2 Dev.) 263 (1829).
² The indictment of John Mann alleges that the assault occurred on March 1, 1829. Chowan County Slave Records, Criminal Actions Concerning Slaves (1767–1829 broken series), North Carolina Office of Archives and History, Raleigh [hereinafter Chowan County Slave Records].
What then was he to do but to "call[] for his gun"3 as she ran away, possibly toward her home,4 possibly out to the marshes where fugitive slaves were known to be biding their time?5 And so he stopped her in her tracks. But the twelve white men did not credit his defense. They saw the case as more like State v. James Wilson,6 filed in 1826, or State v. Charles Creecy,7 filed in 1828, in which free men were indicted for assaulting slaves not their own. Such a scenario could clearly give rise to a criminal charge.8 And in this case, the assault had been committed with a deadly weapon: the slave was lucky to be alive. Thus, upon an instruction from the trial judge that granted Mann only a "special property" in Lydia, not the full rights of her owner, and with the further qualification that his use of force had been cruel and unreasonable, the jury convicted him of assault and battery.9

For all its cloak of authority, the opinion pronounced by Thomas Ruffin overturning the jury’s verdict was far from inevitable. The trial court’s distinction between an owner of a slave and a mere hirer made perfect sense. A decision sanctioning the punishment of one who had abused his temporary and conditional possession of the chattel property of another would have paralleled the civil remedy for

3. State v. John Mann, Superior Court (Fall Term 1829), Chowan County Slave Records, supra note 2.
4. Hired slaves who were victims of abuse had a natural tendency to seek refuge with their owners. JONATHAN D. MARTIN, DIVIDED MASTERY: SLAVE HIRING IN THE AMERICAN SOUTH 140–42 (2004). Lydia could have returned to her owner, complaining of mistreatment, while leaving Mann obligated to pay for the entire unfulfilled term of the hire. As Chowan County slave Allen Parker reported, such a thing happened to a man who had hired his mother in the 1840s. ALLEN PARKER, RECOLLECTIONS OF SLAVERY TIMES 33–35 (Worcester, Chas. W. Burbank & Co. 1895). I am grateful to the students of David Cecelski’s Fall 2000 graduate class, The Slave Narrative in American History, East Carolina University, for their annotated edition of Allen Parker’s narrative. See The Allen Parker Slave Narrative, http://core.ecu.edu/hist/cecelskid/ (last visited Feb. 15, 2009). This incident is reported in Chapter 3.
9. State v. John Mann, Superior Court (Fall Term 1829), Chowan County Slave Records, supra note 2.
the same kind of harm. Indeed, Ruffin goes out of his way to note that the traditional law of bailment, in which such a case would arise, is not disturbed by his ruling. An opinion that gave hirers certain rights of physical control but drew the line at excessive or cruel punishment would have harmonized with the type of common-law reasoning the courts regularly performed.

The few scholars who have puzzled over the discrepancy between the trial court's conviction and the appellate court's reversal have reported a frustrating stumbling block: a near-total lack of documentary evidence of what actually happened in Chowan County, who the principal actors were, and what forces were at play. To the contrary, the record is not silent on John Mann, the enslaved woman Lydia, or her owner Elizabeth Jones. Information available in papers filed in the Chowan County Court enables us to recreate enough of the setting to draw certain conclusions. The conclusions must be tentative, for all that we have to go on are spare documents produced under compulsion of law. The people involved in this drama, even the white people, are not the sort whose letters and diaries are found in the archives of state institutions. The slim evidence that Lydia ever existed underscores what an extraordinary testament we have in the writings of another Chowan County slave, Harriet Jacobs, author of Incidents in the Life of a Slave Girl. Yet out of fragile yellowed pages a sketch of the past emerges, providing enough of a picture to confirm a suspicion that legal historians have held for years: it did not have to be this way.

Close study of the evidence suggests that Ruffin's reversal of Mann's conviction would have been seen in Edenton as unsettling, unnecessary, and wrong. As hard as Judge Ruffin worked to present the case as the definitive word about the physical power of masters over slaves, the stubborn fact remains that the defendant was a slave hirer. Although hiring was commonplace throughout the antebellum period, it was an uneasy business. Few slaveowners would have

12. Mark Tushnet goes so far as to imply that documents relating to State v. Mann were “destroyed during the Civil War.” Mark V. Tushnet, Slave Law in the American South: State v. Mann in History and Literature 67 (2003).
agreed that the hirers of their slaves would become, "for the time being, the owner," as Ruffin’s opinion put it, with all the powers that that entailed. Indeed, as the Tennessee Supreme Court would later say, "[a] more startling proposition to the slave-owner can scarcely be conceived."

The people in Chowan County who would have most strongly objected to Ruffin’s reversal were not closet abolitionists concerned about the “humanity” of one female slave. Rather, they were Ruffin’s own peers—fellow landed slaveowners. Understanding that hirers lacked the self-interest in a slave’s welfare that came as a function of ownership, these men depended on the law to sanction the punishment of those who abused the privilege. The conviction of John Mann for a battery upon a hired slave was the right result from the standpoint of the very class to which Ruffin belonged. Yet the view from Edenton is rarely considered. Over the course of almost two centuries, State v. Mann has come to be best known for its broad holding, for the categorical proposition that the “powers of the master” must be “absolute.” The opinion’s easy elision of slaveowner and slave hirer has been ignored, glossed over, and even accepted as settled law, with the critical emphasis understandably falling on the ways in which Ruffin’s breathtakingly “dehumaniz[ing]” rhetoric confronts us with the realization of slavery’s ultimate dependence on raw physical power. Influenced by Harriet Beecher Stowe’s vocal dismay over what she saw as the unavoidable dilemma that the unbending law had forced upon the reluctant judge—following Stowe in taking his protestations at face

14. See generally MARTIN, supra note 4 (surveying the history of slave hiring).
18. MORRIS, supra note 10, at 190.
20. Id. at 299.
value—some critics continue to conclude that Ruffin was a reluctant agent of the law of slavery, rather than one of its most brilliant, most interested shapers. An insistence upon the importance of the local facts of *State v. Mann* challenges such readings.

Once it becomes plausible that Ruffin’s reversal of the trial court’s conviction represented a choice, not an inevitability, larger questions arise: Were legal precedent and principle really so clear as to require such a result? If not, what elements of Ruffin’s background might have combined with circumstances in slaveholding North Carolina in 1829 to compel such a far-reaching opinion? In the following passages, I argue that neither facts nor precedent appear to have dictated the reversal. Rather, I suggest, *State v. Mann* gave Ruffin, a lawyer and planter with a vested interest in the slave labor system, an opportunity to make a significant contribution to an emerging conversation in defense of slavery—or more precisely, a conversation emerging in response to escalating attacks upon slavery arising on multiple fronts.

To stress the polemical aspect of *State v. Mann* is not to ignore its practical effect upon the behavior of masters, slaves, and hirers. Nor should such an interpretation discount the ways in which the opinion can usefully be analyzed within the broad structures of antebellum law, or within the still broader structures of nineteenth-century American law as it evolved into a distinct system of its own. But the importance of *State v. Mann* radiated beyond the opinion’s status as a pronouncement of law. The political climate of 1829 offered ample reason for Ruffin to reverse Mann’s conviction. Affirming the jury’s verdict would have involved an acknowledgment, at least at some level, of the rights of a wounded slave. Every time the judicial system “recognized the legal personality of the slave,” as James Oakes has observed, it “risked undermining slavery.” In *State v. Mann*, Ruffin takes the opposite stance: he insulates the authority of slaveowners—

(2007). The connection is also discussed in Gregg D. Crane, *Race, Citizenship, and Law in American Literature* 56–86 (2000); and Tushnet, supra note 12, at 97–137.

22. See infra note 145 and accompanying text.

23. By the first conference on the American law of slavery, in 1974, it was clear that *State v. Mann* had become a central point of study by legal historians. See Stanley N. Katz, Opening Address, *Bondage, Freedom, & the Constitution: The New Slavery Scholarship and Its Impact on Law and Legal Historiography*, 17 Cardozo L. Rev. 1689, 1690 (1996). Ruffin’s opinion has been the subject of one casebook, by Mark Tushnet, see supra note 12, dozens of journal articles, and many discussions in books on the legal history of the antebellum period.

indeed of any "person having the possession and command of the slave"—against threatening winds of change. Particularly as read against newly discovered facts surrounding the Chowan County trial, Ruffin’s opinion can be seen to stand on its own as a succinct but powerful treatise in implicit defense of slavery in terms that his fellow planters would have readily understood. In justifying the reversal of Mann’s conviction, Ruffin successfully enlists the key themes of southern conservative thought, fatalistic themes emphasizing the surpassing importance of “the actual condition of things” over any hope of reform. The opinion can be read as part of a broader pattern reflected in the writings of an increasingly defensive slaveholding elite: and in attempting to silence any criticism of the workings of the system from which its author so clearly benefited, ironically State v. Mann may have hastened slavery’s undoing.

I. CHOWAN COUNTY, NORTH CAROLINA: THE TRIAL AND CONVICTION OF CAPT. JOHN MANN

In death, there is life. Lydia comes to life—for us—in the papers settling the estate of Thomas Jones, the Chowan County farmer who owned her. He died in November 1822 without a will, leaving a wife, eight living children (five of them minors), and considerable property. In addition to land holdings of some 640 acres, he left twenty-one slaves, among them a sixteen-year-old girl named Lydia. Lydia stayed on at the Jones’ homestead as a house servant for Thomas’ widow, Temperance Jones. With Temperance’s death two years...

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26. Id. at 266.
27. See Estate of Thomas Jones (1822), Chowan County Estate Records, North Carolina Office of Archives and History, Raleigh [hereinafter Estate of Thomas Jones]; Petition to Divide Negroes, Estate of Thomas Jones, supra; Order on Petition to Divide Negroes, Estate of Thomas Jones, supra; Order on Petition to Divide Land, Estate of Thomas Jones, supra. Lydia’s name and age appear on the Inventory and Account Sales of the Goods and Chattels of Thomas Jones, Estate of Thomas Jones, supra.
28. Inventory and Account Sales of the Goods and Chattels of Thomas Jones, Estate of Thomas Jones, supra note 27. I am hesitant to call Temperance Jones Elizabeth Jones’ mother. The two youngest children, Temperance and Sarah, initially became wards of another man, John Blount, though a year later a different guardianship gave them to one of the adult Jones children, Henderson D. Jones. Id. Possibly Elizabeth was born to a previous wife. Thomas Jones apparently had three other adult children in addition to Henderson: William, John M., and Matilda, of whom William was deceased. The division of land, in 1824, gave one share to “William Jones heirs.” Id. A bill of sale of a slave belonging to William Jones’ estate indicates that he died in 1818. Letter from Thomas Jones to Josiah McKiel (Mar. 1819), Book G-2, at 439, Chowan County Register of Deeds.
later, however, everything changed. The minor Jones children, including Elizabeth, who may have been as old as fifteen by then, went to live (if they had not already) with guardians. With her brothers James and August, Elizabeth became the ward of Josiah Small, who had married their sister Matilda in 1818. For Lydia, the consequences were much worse. What remained of the home she knew was broken up. The slaves were divided among the heirs; some were sold off. For the remainder of 1824, after Temperance Jones’

29. Estate of Temperance Jones, 1824, Chowan County Estate Records, North Carolina Office of Archives and History, Raleigh [hereinafter Estate of Temperance Jones]. Technically, Lydia had been hired by Temperance Jones after her husband’s death. Inventory and Account Sales of the Goods and Chattels of Thomas Jones, Estate of Thomas Jones, supra note 27. We have no specific information on whether the children stayed on with Mrs. Jones after Mr. Jones’ death. But see infra note 31.

30. On Elizabeth’s age: she apparently turned twenty-one, the statutory age for the termination of a guardianship, in 1829. See An Act for the Better Care of Orphans, and Security and Management of Their Estates, ch. 69, § 2, 1 H. POTTER, LAWS OF THE STATE OF NORTH CAROLINA 210-11 (Raleigh, N.C., J. Gales & Son 1821). The last annual guardianship statement that Small filed for her was in 1830 (for 1829). See infra note 56. In 1841, an Elizabeth J. Jones married Jethro M. Riddick. North Carolina Marriage Bonds (1841), Chowan County, North Carolina Office of Archives and History, Raleigh. Elizabeth is referred to as Elizabeth J. Jones in her father’s estate papers, see Estate of Thomas Jones, supra note 27, as well as in the deed of sale of the land she inherited from her father to Josiah Small in 1838. Deed from Elizabeth Jones to Josiah Small (1838), Book L-2, at 282, Chowan County Register of Deeds. A Jethro H. Riddick and wife Elizabeth are later found in nearby Gates County. According to Sally Koestler’s genealogical research, this Riddick came to that marriage with two children by a previous wife; four children were subsequently born after 1841 to him and Elizabeth. See Sally’s Family Place, http://www.sallysfamilyplace.com/MapleLawn/ (last visited Feb. 15, 2009).

In the Gates County Census taken in September 1850, this Elizabeth’s age is given as thirty-eight, which would have made her seventeen or eighteen in March 1829, not twenty-one. 1850 Census, Chowan County, N.C. (S-K Publications CD-ROM, 2002). Elizabeth Jones’ guardianship could have been terminated before age twenty-one, see An Act for the Better Care of Orphans, and Security and Management of Their Estates, ch. 69, § 2, 1 H. POTTER, LAWS OF THE STATE OF NORTH CAROLINA 210–11 (Raleigh, N.C., J. Gales & Son 1821), but if it had been, no evidence of it survives. This couple could be a different Jethro and Elizabeth Riddick.

31. Chowan County Court document naming Josiah Small guardian of James, Elizabeth, and August Jones (June 15, 1824), Estate of Thomas Jones, supra note 27. The date of this document suggests that the children lived with Temperance Jones until her death.

32. North Carolina Marriage Bonds (1818), Chowan County, North Carolina Office of Archives and History, Raleigh. Josiah Small is cited as husband of Matilda Jones in Estate of Thomas Jones, supra note 27.

33. The value of the slaves was to be settled equally on ten heirs. The slaves' total market worth was $4,525. Each heir, therefore, was to end up with the equivalent of $452.50. Two slaves, Lydia and “Boy Jerry,” went to Elizabeth. Together, they were worth $575. Order on Petition to Divide Negroes, Chowan County Court of Pleas and Quarter Sessions (Dec. Term 1824), Estate of Thomas Jones, supra note 27. In order to settle her debt to the other heirs, Elizabeth sold Jerry. Petition to Chowan County Court of Pleas and Quarter Sessions, seeking permission for Elizabeth Jones to sell Jerry (Dec.
death, Lydia was hired out to Elizabeth’s older brother Henderson D. Jones. That experience would have offered a taste of her new life as a hired slave, the investment property of Elizabeth Jones, a girl at least three years her junior.

Elizabeth’s guardian, Josiah Small, was a farmer, a justice of the peace actively involved in the civic life of Chowan County. In the Revolutionary period, Edenton gained significance as a port city; with other ports having been closed off by the British, it “became a vital life-line for Washington’s army.” Edenton’s strategic importance cemented its position as the political center of the colony. Her sons and daughters gave their all to the cause of liberty. Some of their names—like those of Samuel Johnston, a revolutionary leader, the last colonial governor of North Carolina and one of the state’s first senators, and James Iredell, who became an associate justice on the first United States Supreme Court—live on. Though less well remembered, the Smalls and the Joneses also contributed to the prosperity of the young state, shouldering their responsibilities in an uncertain and exciting time.

Josiah Small was a descendant of John Small (ca. 1639–1700), a Virginia Quaker whose family was among the waves of Quakers who sought refuge in the new colony of North Carolina to escape religious persecution. Virginia’s governor William Berkeley, appointed in 1642, was a faithful servant of Charles I—“a King’s man to his

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34. Account of sales of property belonging to Temperance Jones, Estate of Temperance Jones, supra note 29.
35. Small is identified as justice of the peace in the 1828 criminal proceeding against the entire county magistrate court discussed infra note 103 and accompanying text. For 1826, he is identified as tax assessor. Chowan County Taxables (1825–1828 broken series), North Carolina Office of Archives and History, Raleigh.
36. PARRAMORE, supra note 5, at 33.
37. Id. at 32–38; see also YELLIN, supra note 13, at 3–5 (discussing the role residents of Edenton played in the Revolutionary War).
autocratic fingertips." He suppressed all dissent from the Church of England, even after Cromwell seized control of the British government. Put out of office in 1652, he became governor again in 1660 under Charles II. This time he redoubled his determination to rid the colony of this strange and heretical sect. In its 1659–1660 session, the Virginia legislative assembly passed “An Act for Suppressing Quakers,” a draconian law requiring, among other things, the imprisonment of all Quakers until they left the colony.

On the Albemarle Peninsula, John Small’s family found a more welcoming environment. His son John Small (ca. 1663–1736) settled in a location now known as Folly Swamp, on the western edge of the Great Dismal Swamp, in what is now Gates County (within a region that for most of his lifetime was claimed by both Virginia and North Carolina). This John Small’s son Joseph settled a little farther south, in current-day Chowan County, in an area called Cow Hall Swamp. There he accumulated land and slaves, creating a legacy that his sons and grandsons would build upon. His son Benjamin Sr. left an estate of more than 500 acres and some eighteen slaves. On Benjamin’s death in 1820, his son Josiah Small, who had two years earlier married Matilda Jones, inherited one tract of land and two slaves; this was in addition to a tract of 135 acres the father had

42. Id. at 19–40. Further laws aimed directly against Quakers were passed in 1661 through 1666. Id.
43. Under the Carolina Charter granted by Charles II in 1663 (written largely by John Locke), “No person . . . shall be in any ways molested, punished, disquieted, or called into question for any differences in opinion or practice in matters of religious concernment, but every person shall have and enjoy his conscience in matters of religion throughout the province.” SETH B. HINSHAW, THE CAROLINA QUAKER EXPERIENCE 1665–1985, at 1–2 (1984).
44. RAYMOND PARKER FOUTS, FOLLOWING THE LAND: A GENEALOGICAL HISTORY OF SOME OF THE PARKERS OF NANSEMOND COUNTY, VIRGINIA, AND CHOWAN/HERTFORD/GATES COUNTIES, NORTH CAROLINA, 1604–2004, at 48 (2005); Descendants of Quaker John Small, supra note 40. On the boundary dispute that lasted from 1665 to 1728, see William K. Boyd, Introduction to WILLIAM BYRD’S HISTORIES OF THE DIVIDING LINE BETWIXT VIRGINIA AND NORTH CAROLINA xxi, xxix–xxvi (William K. Boyd ed., 1929). Most of Gates County was originally within Nansemond County, Virginia. Id. According to Jay Worrall, by 1664, as a result of Berkeley’s legislation, “only two little Quaker groups remained in Virginia,” one of them in southeastern Nansemond County. WORRALL, supra note 41, at 32.
45. Cow Hall Swamp, referred to in numerous deeds of land owned in Chowan County by Small family members, does not appear on contemporary maps, but we have some indication that it was on the Chowan/Perquimans County border. See Descendants of Quaker John Small, supra note 40.
deeded to the son in 1817.\textsuperscript{46} By 1830, Josiah Small had charge over seventeen slaves.\textsuperscript{47}

We have no record of how the older generations of Quaker Smalls negotiated their position as slaveowners. According to Seth Hinshaw's history of Quakers in North Carolina, "[t]he religious conviction that slavery was morally wrong developed quite slowly."\textsuperscript{48} By the time it took hold, Hinshaw points out, Quakers in eastern North Carolina had been owning slaves for many years, handing them down (as we see here) from generation to generation.\textsuperscript{49} We do know that in December 1795, when Benjamin Small would have been about fifty years old,\textsuperscript{50} the Quaker community in Chowan County was targeted for its emancipationist advocacy. A grand jury resolved to combat its "insatiated enthusiasm" and its pernicious influence.\textsuperscript{51} Perhaps the slaveholding Benjamin Small failed to see the moral dilemma.\textsuperscript{52} Perhaps he had fallen away from the faith.\textsuperscript{53} Benjamin's

\begin{itemize}
\item \textsuperscript{46} Deed from Benjamin Small Jr. to Josiah Small (1817), Book G-2, at 281, Chowan County Register of Deeds; Will of Benjamin Small (1821), Chowan County Wills, 1694–1938, North Carolina Office of Archives and History, Raleigh. Josiah Small owned at least thirty-two additional acres. Letter from James and Stephen Skinner to Josiah Small (Mar. 17, 1823), Book H-2, at 259, Chowan County Register of Deeds.
\item \textsuperscript{47} 1830 Census, Chowan County, N.C. (S-K Publications CD-ROM, 2002) [hereinafter 1830 Chowan County Census].
\item \textsuperscript{48} HINSHAW, supra note 43, at 128.
\item \textsuperscript{49} Id. at 128–30.
\item \textsuperscript{50} See Descendants of Quaker John Small, supra note 40.
\item \textsuperscript{51} Presentment of grand jury charging that Quakers are inciting negroes to seek freedom, Beaufort, Bertie, Carteret, Chowan, et al. Counties, Miscellaneous Records, 1699–1865, North Carolina Office of Archives and History, Raleigh. This document links the Quaker agitation to "the miserable havoc & malfeasance which have lately taken place in the West Indies," almost certainly a reference to the 1791 revolution in Haiti, which caused much alarm. See YELLIN, supra note 13, at 5–6.
\item \textsuperscript{52} Even if they had resisted the practice of slavery, the proper response was unclear. Emancipation could lead to a dire result: the slave could be recaptured and sold to a market of ready buyers. HINSHAW, supra note 43, at 131. This no-win situation prompted the Society of Friends in North Carolina to establish a trust into which slave owners could place their slaves, a haven in which "in effect [the] slaves were actually free." \textit{Id.} at 132. The Quakers set up this system upon advice given in 1809 by attorney William Gaston, Ruffin's friend and later colleague on the supreme court. JOHN HOPE FRANKLIN, THE FREE NEGRO IN NORTH CAROLINA 1790–1960, at 25 (1995). In 1827, the supreme court declared the trust illegal, upholding a superior court decision by Thomas Ruffin. Trustees of the Quaker Soc'y of Contentnea v. Dickenson, 12 N.C. (1 Dev.) 189, 201–03 (1827). Gaston argued the case for the Quakers. For further discussion, see ROBERT COVER, JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS 75–79 (1975).
\item \textsuperscript{53} The man who mistreated Allen Parker's mother was a farmer named Small. See PARKER, supra note 4, at 33. He was "a very hard, mean man," according to Parker. \textit{Id.} On the other hand, perhaps some Smalls did manumit their slaves. In 1859, a free negro named Benjamin Small was in nearby Pasquotank County. FRANKLIN, supra note 52, at 97.
\end{itemize}
son Josiah may not have considered himself a practicing Quaker at all. If he had, he may well have been disqualified from serving as guardian of Thomas Jones' children.  

Yet Josiah Small did commit himself to the guardianship. He performed his duties diligently. The law required him to “tak[e] care of and improv[e] all the estate” belonging to his charges; and so he did by consistently keeping their chattel property in the hiring market. Beginning in 1825, and for every year thereafter through the fateful engagement with John Mann, Josiah Small hired Lydia out for the benefit of his wife’s little sister. The hiring of slave labor was a common and, by the 1820s, ritualized affair. Writes Harriet Jacobs, who was never offered for hire but saw the practice up close,  

Hiring-day at the south takes place on the 1st of January. On the 2d, the slaves are expected to go to their new masters. On a farm, they work until the corn and cotton are laid. They then have two holidays. Some masters give them a good dinner under the trees. This over, they work until Christmas eve. If no heavy charges are meantime brought against them, they are given four or five holidays, whichever the master or overseer may think proper. Then comes New Year's eve; and they gather together their little alls, or more properly speaking, their little nothings, and wait anxiously for the dawning of day. At the appointed hour the grounds are thronged with men, women, and children, waiting, like criminals, to hear their doom pronounced.

54. North Carolina law prohibited Quakers from assuming guardianships of minor children from families that were not Quaker. An Act for the Better Care of Orphans, and Security and Management of Their Estates, ch. 69, §§ 2–3, 1 H. POTTER, LAWS OF THE STATE OF NORTH CAROLINA 210–11 (Raleigh, N.C., J. Gales & Son 1821). This law was not disturbed in the legislative revisions through 1825. See generally JOHN L. TAYLOR ET AL., REVISAL OF THE LAWS OF THE STATE OF NORTH-CAROLINA: PASSED 1821–1825 (Raleigh, N.C., J. Gales & Son 1827) (documenting revisions of the law of North Carolina from 1821 to 1825). I have found no evidence that the Thomas Jones family was Quaker.

55. The language is from the court paper naming Small guardian of James, Elizabeth, and August Jones, filed in Chowan County Court on June 15, 1824. Estate of Thomas Jones, supra note 27. “The hiring out of slaves for the benefit of orphans was an approved practice and one which could scarcely be avoided; accordingly, the county courts authorized the guardians of orphans to hire out the slaves belonging to their charges to the best advantage.” ROSSER HOWARD TAYLOR, SLAVEHOLDING IN NORTH CAROLINA: AN ECONOMIC VIEW 76–77 (1926).

56. See Annual guardianship accounts for Elizabeth Jones filed by guardian Josiah Small (1825–1829), Estate of Thomas Jones, supra note 27.

57. JACOBS, supra note 13, at 15.
More details are found in the narrative of Allen Parker, a slave born in Chowan County in 1838 who, as a child, accompanied his mother as a hired slave.\textsuperscript{58}

It was customary in those days for those having slaves to let, to take them to some prominent place, such as a point where two roads crossed, on the first day of the New Year, and at a given hour of the day the slaves would be put up at auction, and let to the highest bidders for one year; there was generally quite a gathering on these occasions, both of slaves and of white people. It was always understood that a person hiring a slave must furnish board and clothes in addition to paying a certain sum of money per year, and also agreeing not to misuse the slave in any way that would injure his or her value.\textsuperscript{59}

The terms of Lydia's hiring resembled those laid down for Parker's mother.\textsuperscript{60} Although we know from the criminal proceedings that Lydia was hired out in 1828 to John Mann, the names of those who hired her in 1825 through 1827 are presumably lost. The accounting that Josiah Small kept on Elizabeth Jones' estate ledgers of the amount received each year for "negro hire" is apparently all that survives. These records show that Lydia was able to command a market rate even for the year 1827, when she apparently gave birth to, and buried, a child.\textsuperscript{61}

When 1828 came around, Lydia was hired out as a domestic to a poor white man who lived in town. John Mann was a mariner,

\textsuperscript{58} Like Lydia, Parker and his mother were bequeathed to a young mistress as a result of an estate settlement and were subsequently hired out. See PARKER, supra note 4, at 8–9, 33–41.

\textsuperscript{59} Id. at 9–10.

\textsuperscript{60} The following terms were set forth for the hire of Thomas Jones' slaves: "the hirer furnishing a winter and summer suits, shoes and stockings, hat and blanket pay their taxes and not to go any way by water only at the risk of the hirer." Inventory and Account Sales of the Goods and Chattels of Thomas Jones, Estate of Thomas Jones, supra note 27. Compare the terms for hiring Allen Parker and others out of the estate of Peter Parker, 1839: "The Negroes are to have two Suits of clothes each one Summer and one Winter Suit. Hat. Blanket. Shoes and stockings. Their taxes to be paid and they are not to go by water or fish at any fishery. Returnable here 1st day of January next." Inventory of Estate Sale, Estate of Peter Parker (1830), Chowan County Estates Records, North Carolina Office of Archives and History, Raleigh.

\textsuperscript{61} See Estate of Thomas Jones, supra note 27. Josiah Small's guardianship account for Elizabeth Jones for the year 1827, filed March 1828, lists expenses for a midwife and a coffin, as well as income of $38.25, a rate comparable to other years and to those commanded by the slaves of her siblings for "negro hire," as evidenced by their annual ledgers in the estate papers. Id.
recently widowed, probably in his fifties. In the highly stratified town of Edenton, this old sailor's position hovered near the bottom of the ladder. His name is absent from the rosters of the county's justices of the peace, census takers, and tax assessors. He lived up on the north end of town, next to the town commons where livestock was kept, far from the sound side with its large, gracious houses, some of which contribute to Edenton's historic residential core today. He left no estate papers. It is unlikely that he left any estate. The paper trail that farmers and merchants left in debits and credits to each other is in Mann's case little more than a trail of debt and woe. From what can be pieced together at this distance, we can safely conclude that in Edenton, in the fall of 1829, a jury would have found little reason to look Capt. Mann in the face and decide to accord him the "absolute" powers of a master.

Mann's name appears in two Chowan County land records from 1806, both of which involve an apparent benefactor, a fellow mariner named William Everton. On July 8, 1806, Everton bought at a sheriff's sale four improved half-lots on the north end of what was platted as the "Old Plan" of Edenton, on the east side of Broad Street. Five days later, he gave two of the half-lots to John Mann.

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62. "Mrs. Exeney Mann wife of Capt. John Mann" died on May 18, 1825. 2 LOIS SMATHERS NEAL, ABSTRACTS OF VITAL RECORDS FROM RALEIGH, NORTH CAROLINA, NEWSPAPERS 468 (1980); see also deed records cited infra note 75 (indicating Mann's family connections).

63. The 1830 Chowan County Census indicates that Mann was between fifty and sixty years of age. See 1830 Chowan County Census, supra note 47. Other evidence of his age comes from the tax rolls. From 1817 through the antebellum period in North Carolina, white males were taxed only until age forty-five; white women were not taxed. NORTH CAROLINA RESEARCH: GENEALOGY & LOCAL HISTORY 232 (Helen F.M. Leary ed., 2d ed. 1996). By 1820, John Mann was paying no poll tax. Chowan County Taxables (1820), North Carolina Office of Archives and History, Raleigh.

64. "It was a class-conscious community. The pages of the [Edenton] Gazette echo the continuous irritation of the well-to-do over the shenanigans of the lower-class elements. Many shared a reader's annoyance over 'the midnight revels of sailors, or men who emulate their manners.' " PARRAMORE, supra note 5, at 44; see also YELLIN, supra note 13, at 31 (discussing the hierarchical nature of Edenton society during the 1800s).

65. Mann occupied half-lots 146 and 147 of the Old Plan of Edenton, at the corner of Broad Street and the Town Commons (now Freemason Street). See deeds cited infra note 75; see also Chowan County Taxables (1816), North Carolina Office of Archives and History, Raleigh (describing Mann's property as half-lots 146 and 147).


67. Letter from William Everton to John Mann (July 15, 1806), Book D-1, at 74, Chowan County Register of Deeds. In this deed, Everton is referred to as a "mariner."
We have evidence of the men’s association as sailors from a protracted lawsuit involving an ill-fated voyage that set out from Edenton in 1806. The trip ended in a shipwreck near the Ocracoke Inlet. Both Everton and Mann were called as witnesses on behalf of the ship’s owner. From Everton’s testimony of January 1812, we learn that he had commanded or piloted ships out of Edenton to the West Indies and elsewhere for about ten years.

John Mann presumably had similar experience, but we lack the benefit of his testimony. When his subpoena was issued, in October 1811, no doubt he had more urgent matters on his mind. His finances were in shambles. On January 8, 1812, he was hauled into debtor’s prison.

68. In Benjamin Hassell v. James Hathaway, brought in the Chowan County Court of Pleas and Quarter Sessions and appealed to the county superior court, the issue was liability for a shipwreck that occurred as Hathaway’s Schooner Jane attempted to navigate out of the Pamlico Sound, across the Ocracoke Bar, and out to sea. Benjamin Hassell v. James Hathaway (June 12, 1811), Minutes of the Chowan County Court of Pleas and Quarter Sessions, North Carolina Office of Archives and History, Raleigh. Everton was evidently not on this trip but rather was called to testify about the customs of the trade. Typical of the period, the ship was carrying, for Hassell, some 130,000 pounds of shingles from Edenton to the West Indies on a route that kept to the sound side of the outer banks until reaching the Ocracoke Inlet. See Chowan County Shipping Records (1806), North Carolina Office of Archives and History, Raleigh; Civil Actions Concerning Shipping (1731), Chowan County Civil Action Papers, North Carolina Office of Archives and History, Raleigh. Since 1795, when a hurricane resulted in the closing of the Roanoke Inlet, the distant Ocracoke Inlet provided the only access to the ocean. THOMAS R. BUTCHKO, EDENTON: AN ARCHITECTURAL PORTRAIT 18–19 (1992). As reflected in issues of the Edenton Gazette of the period, trade destinations included Jamaica, Barbados, Antigua, and Havana. See, e.g., Commercial State of the West-Indies, EDENTON GAZETTE, Oct. 22, 1807, at 1 (describing concern about North Carolina ports losing their commercial advantage in trade with the West Indies); Insurrection in Jamaica, EDENTON GAZETTE, Oct. 27, 1811, at 3 (describing merchants’ accounts of the Jamaican insurrection).

69. Subpoena for John Mann (Oct. 4, 1811), Chowan County Civil Action Papers, North Carolina Office of Archives and History, Raleigh. The archival file contains Mann’s subpoena but no corresponding deposition.

70. One Nathan Brinkley was able to have Mann confined to prison for nonpayment of a $50 note he had signed in June 1807. See Letter from John Mann in Debtor’s Prison (Jan. 15, 1812), Chowan County Insolvent Debtors, North Carolina Office of Archives and History, Raleigh [hereinafter Insolvent Debtors]; Note from John Mann to Nathan Brinkley for $50 (June 15, 1807), Insolvent Debtors, North Carolina Office of Archives and History, Raleigh. Although the statutory relief did not include a discounting of the
debtor's law, Mann surrendered himself to jail for twenty days. On January 29, he appeared before two justices of the peace at Mrs. Horniblow's Tavern to plead the statute in defense of his creditors. Although insolvency per se did not put Mann in a class apart from the county's mainstream population—Josiah Small's brother Joseph was in debtor's prison in 1811—his debts were crippling. Already, by 1807, he had lost title to his house, when it was sold out from under him to satisfy a legal judgment obtained by plantation owner Josiah Collins. Even his household furnishings had been deeded out of his debts owed, it did buy the debtor time; he was forgiven until he had money again. See An Act to Alter and Amend the Act for the Benefit of Insolvent Debtors, ch. 380, 1 H. POTTER, LAWS OF THE STATE OF NORTH CAROLINA 705 (Raleigh, N.C., J. Gales & Son 1821); see also GUION GRIFFIS JOHNSON, ANTI-BELLUM NORTH CAROLINA: A SOCIAL HISTORY 654-56 (1937) (describing the law of imprisonment for debt during the eighteenth and nineteenth centuries, including the provision that any property the insolvent party owned or subsequently obtained would be seized to repay the debt).


72. See Letter from John Mann to Justices of the Peace (Jan. 29, 1812), Chowan County Insolvent Debtors, North Carolina Office of Archives and History, Raleigh. Situated near the courthouse, the widow Elizabeth Horniblow's tavern was for many years the regular site of public meetings. “Court week” at the tavern, held six times a year, was a boisterous affair. The cook, Molly Horniblow, was Harriet Jacobs' grandmother. YELLIN, supra note 13, at 1-12. One of the magistrates before whom Mann appeared was James Hathaway. See supra note 68.

73. Statement re Josiah Small from Justices of the Peace (Jan. 31, 1811), Chowan County Insolvent Debtors Records, North Carolina Office of Archives and History, Raleigh. Small was imprisoned for a single debt, to John Coffield. Id.

74. With Mann apparently unable to satisfy the judgment, the court attempted a forced sale of his property. The court states that it “[l]evied on a house & grounds where John Mann lives which is said to be mortgaged & also a horse which is said to belong to Thomas Liles but there was no sale for want of time.” Chowan County Execution Docket, Court of Pleas and Quarter Sessions (Sept. Term 1807), North Carolina Office of Archives and History, Raleigh. In the same season, Mann apparently lost another lawsuit, this one brought by “Sawyer and Norcom.” Another attempted levy on the house failed. Trial, Appearance and Reference Docket, Court of Pleas and Quarter Sessions (Dec. Term 1807), North Carolina Office of Archives and History, Raleigh. Collins then had issued a writ of venditioni exponas, which requires the sheriff to make satisfaction or be personally liable. The amount demanded in the writ was some £36. On December 14, 1807, Myles O'Malley, acting sheriff of Chowan County, sold Mann's property at public auction for £20 to Mathias E. Sawyer. See Letter from Myles O'Malley to Mathias E. Sawyer (Dec. 14, 1807), Book G-2, at 333, Chowan County Register of Deeds. Sawyer was an Edenton physician with an elite background, a relative of Samuel Johnston and James Iredell, and father of Edenton attorney Samuel Tredwell Sawyer. See YELLIN, supra note 13, at 26; see also JOHN G. ZEHMER JR., HAYES: THE PLANTATION, ITS PEOPLE, AND THEIR PAPERS chart 6 (2007) (displaying the Johnston family genealogy). The writ of venditioni exponas would have made O'Malley liable to Collins for the £16 balance; that may explain O'Malley's presence among Mann's creditors in the 1812 proceeding.
legal possession by persons who, apparently, were acting in his interest.\textsuperscript{75} Since the statute afforded only procedural relief, not a reduction in the amounts owed, he would have had difficulty recovering in the best of circumstances. But Edenton in 1812 was not experiencing the best of circumstances. The British blockades brought on by the War of 1812 sharply depressed the local economy.\textsuperscript{76} With a ban imposed on foreign trade, maritime activity reached such a low that the \textit{Edenton Gazette} ceased to report the shipping news.\textsuperscript{77}

How Capt. Mann fared after the war is not clear. The shipping business made something of a comeback,\textsuperscript{78} but it appears doubtful that his fortunes rebounded. He never regained title to his house, though he continued to live there on the northern edge of town.

\textsuperscript{75} Three months after the forced sale of Mann's property, William Everton bought the property from Dr. Sawyer for the considerable sum of £100. Deed from Mathias E. Sawyer to William Everton (Mar. 15, 1808), Book D-1, at 161, Chowan County Register of Deeds. This deed refers to half-lots 148 and 149, an anomaly that may reflect the initial confusion between Everton's purchase of half-lots 146-49 and his gift of two of them to Mann. See deeds and records cited \textit{supra} notes 65-67. Perhaps the profit Sawyer made was intended to cover for Mann's debts in the lawsuit brought by Sawyer and Norcom. Everton sold it immediately for £50 to James Jones, with John Fife and John Mann as witnesses. Deed from William Everton to James Jones (Feb. 20, 1808), Book D-1, at 150, Chowan County Register of Deeds (referring to half-lots 146 and 147). The relationship of James Jones to either the Mann or the Thomas Jones family is not evident, but some association with Mann is indicated by the fact that, in April 1809, Mann subleased to James Jones a garden plot that he had leased from the town. Deed from John Mann to James Jones (Apr. 10, 1809), Book E-2, at 63, Chowan County Register of Deeds. In April 1810, Jones sold the Mann property for $54 in Spanish silver to William Liles, with John Fife and John Mann as witnesses. Deed from James Jones to William Lyles (Apr. 3, 1810), Book F-1, at 251, Chowan County Register of Deeds. In May 1811, William Liles conveyed the property as a gift to John and Thomas Mann, minor sons of John Mann, to be theirs upon their majority, with provision that, if they were to die before reaching majority, then the property would go to Mann's daughter Mary Ann. Deed from William Lyles to John Mann and Thomas Mann (May 4, 1811), Book F-2, at 64, Chowan County Register of Deeds. On February 3, 1812, James Jones executed a gift deed to Nancy and Mary Mann, daughters of Exany Mann, conveying many particular items of household furnishings to the daughters to be used by Exany Mann for her lifetime. Deed from James Jones to Nancy and Mary Mann (Feb. 3, 1812), Book F-2, at 270, Chowan County Register of Deeds. Throughout this period, John Mann continued to be responsible for taxes on this property, half-lots 146 and 147 of the Old Plan of Edenton. See Chowan County Taxables (1816), North Carolina Office of Archives and History, Raleigh (specifying that Mann owns half-lots 146 & 147); Chowan County Taxables (1828, 1832), North Carolina Office of Archives and History, Raleigh.

\textsuperscript{76} \textit{PARRAMORE, supra} note 5, at 49-50.

\textsuperscript{77} \textit{Id.} For more on the impact of the War of 1812 on coastal North Carolina, see SARAH MCCULLOH LEMMON, \textit{FRUSTRATED PATRIOTS: NORTH CAROLINA AND THE WAR OF 1812}, at 120-42 (1973).

\textsuperscript{78} \textit{PARRAMORE, supra} note 5, at 53.
through 1829 and until his probable death a few years later.\textsuperscript{79} But if we can tentatively conclude that Mann failed to escape the ranks of those whom the blacks, according to Guion Johnson, called “poor white trash” and the upper classes called “red necks” or worse,\textsuperscript{80} it would not be correct to assume that he lived completely apart from his “betters.” On the contrary, as Bill Cecil-Fronsman concludes from his research on the “common whites” in antebellum North Carolina, relationships across the classes were fluid.\textsuperscript{81} For all its pretensions, Edenton was a rough town, an old seaport that had seen better days.\textsuperscript{82} Religion was “less than a preoccupation.”\textsuperscript{83} The tavern,

\textsuperscript{79} A John Mann voted in the sheriff’s race in Chowan County in August 1832, and he appears on the Edenton tax rolls for 1832. See List of Voters in Sheriff Election (Aug. 9, 1832), Chowan County Election Records, North Carolina Office of Archives and History, Raleigh; Chowan County Taxables (1832), North Carolina Office of Archives and History, Raleigh. These are the last possible records of him that I have found. In December 1832, Mann’s two half-lots, lots 146 and 147 in the Old Plan of Edenton, were sold for unpaid taxes. Deed from William D. Rascoe to Jonathan H. Haughton (Dec. 17, 1832), Book L-2, at 38, Chowan County Register of Deeds. The buyer, Jonathan H. Haughton, sold the property in 1837 to Mary A. Mann for $1. Deed from Jonathan H. Haughton to Mary A. Mann (Feb. 1, 1837), Book L-2, at 39, Chowan County Register of Deeds. In 1841, William E. Mann of Pasquotank County, as agent for Mary A. Mann, sold the property, noting in the deed that it was “the lots upon which said Mans [sic] father lived.” Deed from Mary A. Mann to James R. Lemitt (Jan. 1, 1841), Book N-2, at 76, Chowan County Register of Deeds. As late as 1853 (as far as I have traced the deed), the property was being described as the two lots where John Mann formerly lived. See Deed from Richard Keough to Thomas W. Hudgins (Aug. 20, 1853), Book P-2, at 520, Chowan County Register of Deeds. Two out of four sales of the property since Mary A. Mann’s ownership, up to 1853, were the result of distressed circumstances. See Deed from Mary A. Mann to James R. Lemitt (Jan. 1, 1841), Book N-2, at 76, Chowan County Register of Deeds; Deed from William D. Rascoe to Enoch Jones (Aug. 30, 1843), Book N-2, at 77, Chowan County Register of Deeds (tax foreclosure sale); Deed from Enoch Jones to Richard Keough (Mar. 24, 1848), Book O-2, at 199, Chowan County Register of Deeds; Deed from Richard Keough to Thomas W. Hudgins (Aug. 20, 1853), Book P-2, at 520, Chowan County Register of Deeds (satisfying a bank debt).

\textsuperscript{80} \textit{JOHNSON, supra} note 70, at 68.

\textsuperscript{81} One reason was that the lines were constantly being rearranged: “Misfortune could quickly transform a family of independent producers into dependent poor whites.” BILL CECIL-FRONSMAN, \textit{COMMON WHITES: CLASS AND CULTURE IN ANTEBELLUM NORTH CAROLINA} 16-17 (1992).

\textsuperscript{82} Revolutionary-era Edenton had direct access to the Atlantic via the Roanoke Inlet, but its closing in 1795 led to a decline in maritime trade. See BUTCHKO, \textit{supra} note 68, at 18-19. In the fall 1828 term of Chowan County Superior Court, solicitor John L. Bailey brought indictments against four “disorderly houses” run by women. See Arrest Warrant for Emily Skittlethorpe (Oct. 9, 1828), Chowan County Criminal Action Papers, North Carolina Office of Archives and History, Raleigh; Arrest Warrant for Rachel Kennedy (Oct. 9, 1828), Chowan County Criminal Action Papers, North Carolina Office of Archives and History, Raleigh; Disorderly House Judgment Against Fanny Reuben (Oct. 8, 1828), Chowan County Criminal Action Papers, North Carolina Office of Archives and History, Raleigh; Indictment of Sally Green (Jan. 3, 1828), Chowan County Criminal Action Papers, North Carolina Office of Archives and History, Raleigh.
open to all comers, promoted a distinct egalitarianism. In March 1825, in conjunction with an assault, Mann or possibly his son was arrested for false imprisonment, along with Elizabeth Jones' older brother and a man named Small. Back in 1812, Thomas Jones had been one of the creditors against whom Mann had pleaded the statutory debtors' relief. Thus when Josiah Small hired out Lydia to the old sailor John Mann in January 1828 he was probably dealing with a known quantity; but the fact that he went through with it tells us that he thought it was a safe enough risk.

Not so, as it turned out. Lydia spent the calendar year 1828 with Mann and apparently stayed on as his servant into 1829. The assault

83. PARRAMORE, supra note 5, at 48; see also id. at 43–49 (describing Edenton's post-Revolutionary period of decline). The criminal court records from 1820 through 1830 are replete with "affrays" and assaults. See, e.g., Indictment of James Wilson (Dec. 1, 1826), Chowan County Criminal Action Papers, North Carolina Office of Archives and History, Raleigh. As Yellin confirms, the names of defendants cut across all classes. YELLIN, supra note 13, at 32.

84. A visitor to the state in the post-Revolutionary period "noted that in the taverns of North Carolina there was only a large sitting room 'where the governor of the state, and the judge of the district ... must associate with their fellow-citizens of every degree.'" CECIL-FRONSMAN, supra note 81, at 51.

85. The grand jury indictment, found in the Chowan County Criminal Action Papers (1826), North Carolina Office of Archives and History, Raleigh, is against Henderson D. Jones, John B. Small, and "John Mann Junior." The victim was one John H. Jones, whose relationship to the Thomas Jones family I have not discovered. The three were found guilty. Chowan County Superior Court Minutes (Fall Term 1826), North Carolina Office of Archives and History, Raleigh. John and Exaney Mann had children named John, Thomas, Nancy, and Mary Ann. See deeds cited supra note 75. A John W. Mann married Frances Thompson in December 1824 and died in September 1827. On the marriage, see North Carolina Marriage Bonds (1824), Chowan County, North Carolina Office of Archives and History, Raleigh, and NEAL, supra note 62, at record #3887; on the death, see NEAL, supra note 62, at record #3888. John W. Mann is called "Jr." in one report of his wedding. Id. at record #3887. Mann the father, however, is called "John Mann Jr." in the property deed conveyed from William Everton in 1806. See Letter from William Everton to John Mann, supra note 67. Further support for the theory that this indictment was against the father is found (perhaps) in the superior court minutes: a "John W. Mann" is taken off of the jury for this case, whereas the defendant Mann is called "John Mann." Chowan County Superior Court Minutes (Fall Term 1826), supra.

86. John Mann's file, Insolvent Debtors, supra note 70.

87. If Tushnet is correct that owners charged a premium to hirers with known risks, TUSHNET, supra note 12, at 45, then Small's belief that Mann was not a particularly risky hirer is confirmed by the amount of Lydia's hiring for 1828: $33.75. See infra note 88. This amount was in line with the rates she commanded in prior years as well as the rates charged by Elizabeth's siblings, as evidenced by their guardianship accounts found in the Estate of Thomas Jones, supra note 27.

88. Notably, an odd gap in the narrative occurs at this point. Neither the trial record nor the record on appeal states that the contract of hire was renewed for 1829. From the trial court report: "It was proved upon the trial, that the negro belonged to Elizabeth Jones, but had been hired to the Defendant for the year 1828 and was in his possession at the time the battery took place." State v. John Mann, Superior Court (Fall Term 1829),
took place on Sunday, March 1. Frustrated with Lydia’s resistance to his “chastisement” over what the court concluded was “a small offence,” Mann called out, probably to his daughter Mary Ann, to fetch his gun as Lydia fled. Taken as a whole, the incident was a classic illustration of a hiring gone wrong. According to Jonathan Martin’s research, poor whites like Mann were as likely as any to want a taste of “mastery”; hence they opted to hire slaves even when free labor was available. Slave hirers tended to believe they had “complete authority” over the slaves, despite the different position commonly taken by the slaves’ owners. Slaves, on the other hand,
remained well aware of the difference in authority between their true and hired masters, so much so that they played the one against the other.\footnote{3} When we consider Lydia's assault from her point of view, what emerges is a brave strategy of self-help. Mann's physical beating was something Lydia decided not to tolerate. Trusting that Josiah Small would not stand for her abuse either, she started to run. Mann ordered her to stop. She did not. Even before he found the trigger, she had probably determined that she would make her way back to Cow Hall Swamp—taking her chances on having broken her part of the agreement, hoping to appeal to Small for her own safety while at the same time exposing the malice of John Mann to the whole community.

She was luckier than Frederick Douglass, whose owner promptly returned him to the abusive hirer from whom he had fled.\footnote{4} She avoided the sort of ordeal suffered by the unnamed slave in the Tennessee case of Carey v. State,\footnote{5} who, upon fleeing from an abusive hirer, was next seen two months later and 200 miles away in the company of a man claiming to be his owner (the man was arrested for "stealing" his own slave).\footnote{6} But in choosing to flee from her hirer's cruelty—in putting herself in further jeopardy, with no assurance of safe harbor—Lydia actually wrested a measure of control over her fate. In running away, slaves like Lydia were protesting their abuse while laying bare the contradictions inherent in the practice of slave hiring.\footnote{7} We do not know how badly she was wounded (Elizabeth Jones' guardianship ledger for 1829 shows no medical expense),\footnote{8} but one way or another she presumably did make her way back to the Small homestead. Shortly afterward, in the spring term of Chowan County Superior Court, Josiah Small persuaded solicitor John

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\footnote{93. MARTIN, supra note 4, at 128–31.}
\footnote{94. Id. at 143–44 (discussing FREDERICK DOUGLASS, MY BONDAGE AND MY FREEDOM 114–24 (John Stauffer ed., Modern Library 2003) (1857)). As Martin notes, Douglass made a calculated decision to appeal to his master by emphasizing his value as property, not as a human being deserving of sympathy; yet his effort was to no avail.}
\footnote{95. 26 Tenn. (7 Hum.) 499 (1847).}
\footnote{96. Id. at 500.}
\footnote{97. See MARTIN, supra note 4, at 139.}
\footnote{98. Estate of Thomas Jones, supra note 27.}
Lancaster Bailey to take the case to a grand jury upon a charge of assault and battery, and a true bill was returned.\(^9\)

If Mann was as impoverished as the evidence suggests, then the decision to pursue a criminal indictment would have made sense: a civil claim would have been fruitless. For reasons unknown (perhaps simply because of a crowded docket),\(^10\) the trial was put over until the fall term. By then, in a town “not so large that the inhabitants were ignorant of each other’s affairs,” as Jacobs put it,\(^11\) many would have heard about Mann’s subsequent scrape with the law. Toward the end of April 1829, just two months after the incident with Lydia, a peace warrant was executed upon Mann at the behest of a man who feared for his life. The warrant alleged that, “with a certain loaded gun, [Mann] did shoot at and shoot and maim George Totten with the intent him the said George to kill and murder, and ... there is great danger that said John Mann will kill the said George Totten sure enough.”\(^12\) To all who cared to notice, John Mann’s rough edges were obvious.

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99. Josiah Small swore out the bill of indictment. Chowan County Slave Records, supra note 2. Laura Edwards supposes that the case against Mann was presented to a magistrate, who in turn decided to elevate the case to a jury trial. Laura F. Edwards, Enslaved Women and the Law: The Paradoxes of Subordination in the Post-Revolutionary Carolinas, 26 SLAVERY & ABOLITION 305, 311 (2005). This conclusion is incorrect. As Johnson notes, Small would have had three choices, “namely, indictment, an action for damages at the suit of the party grieved, and finally, a pecuniary penalty recoverable in a summary manner, before a single magistrate.” JOHNSON, supra note 70, at 618 (quoting an antebellum source on North Carolina law).

100. Through the 1820s and beyond, superior court judges across the state were overworked. JOHNSON, supra note 70, at 637–38.

101. JACOBS, supra note 13, at 29.

102. Chowan County Criminal Action Papers (1829), North Carolina Office of Archives and History, Raleigh. The warrant refers to Mann both as “John Mann” and “John Mann Junior,” but it seems almost certain that it is the same Capt. Mann. John W. Mann, who may have been the same as Mann’s son John, see supra note 85, died in September 1827. NEAL, supra note 62, at record #3888. Further, the father had been called “Junior” in the deed to his property from his benefactor William Everett. See Letter from Charles Roberts to William Everton, supra note 66.

Under common law, the peace warrant empowered justices of the peace “to restrain evil doers, rioters and disturbers of the public peace, and to take them and cause them to be imprisoned and punished and take of the security for their good behavior.” SWAIM’S JUSTICE—REVISED: THE NORTH CAROLINA MAGISTRATE 27 (1856); see also State v. Wilson, 46 N.C. (1 Jones) 550, 552 (1854) (discussing the common-law proceedings under which a justice of the peace may issue a peace warrant). Mann provided security until a scheduled appearance at the next session of the county court. Chowan County Criminal Action Papers, supra. Malachi Haughton and Samuel T. Sawyer joined as sureties. Id. Further, earlier in April 1829, Mann had been called as a state’s witness in a case against Richard Middleton for “unlawfully retailing of spirituous liquor by the small measure.” Id.
In causing Lydia's case to be tried, Josiah Small was clearly seeking public vindication on behalf of his young ward Elizabeth Jones. Present in the courtroom, too, would have been the interest of Elizabeth's father. Thomas Jones would still have been remembered as a respected member of the community, a man possessed of significant land holdings, like Small a justice of the peace actively involved in the affairs of the county. The jury, in fact, consisted largely of men from the same broad middle ranks of the community as the Small and Jones families—names like Blount, Brownrigg, Skinner, Hoskins—families that had been around for generations, their men rotating through positions of leadership in the county. Set apart from the wealthier and more self-sufficient planter class to which the Johnstons and Iredells belonged, these, writes Guion Johnson, were the men who sought the county offices and delighted in the title of 'squire which the position of justice of the peace carried with it. By far the largest number in this class was engaged in agriculture. The small planter usually possessed some two or three hundred acres of land and as many as ten or fifteen slaves. He sometimes worked beside his slaves in the field, and seldom risked the management of the farm to an overseer. The homes of the middle class were not infrequently as substantially built as those of the aristocracy. Along the public highway, in the streets, and in the shops their superiors greeted them cordially. They predominated at political gatherings and were often elected to membership in the Legislature.

Being a justice of the peace (as Josiah Small was and Thomas Jones had been) was a particular marker of local power; these men constituted the county magistrate court. The community looked to them for leadership. Indeed, both Cecil-Fronsman and Johnson conclude that the magistrate judges had a way of monopolizing

103. Jones was apparently a justice of the peace at the time of his death in 1822. See Justices of the Peace (1823), Chowan County, Governor's Papers, at 46, North Carolina Office of Archives and History, Raleigh. He is listed as a Chowan County tax assessor for 1819. Chowan County Taxables (1819), North Carolina Office of Archives and History, Raleigh.

104. Jury members are named along with the brief record of the trial and verdict in State v. John Mann. Chowan Minute Docket, Superior Court (Fall Term 1829), North Carolina Office of Archives and History, Raleigh.

105. JOHNSON, supra note 70, at 63.

106. CECIL-FRONSMAN, supra note 81, at 32.
control of the county. Further, these families tended to consolidate their interests by marrying their children to each other. For as Thomas Ruffin wrote to his daughter Catherine in 1832, marriage is a lottery at best; but where the disposition, personal character of the parties and reputation of the connexions are unknown—where education and manners are unlike and may be uncongenial—it is a lottery, in which a ticket does wonders when it comes out a mere blank; generally, it draws ruin and wretchedness.

Genealogies of the members of Mann’s jury would quickly reveal kinships of blood and marriage; and other connections abounded. Josiah McKiel, who represented Chowan County in the House of Commons in 1826 and 1828, was Small’s cousin. (In the same term of court, perhaps on the same day, McKiel was acquitted of two charges of assault and battery against slaves who belonged to other men, one of them being a fellow jury member.) Juror Baker Hoskins, descended from Winifred Hoskins, Secretary of the Edenton Tea Party of 1774, “was a prominent citizen of the county and very popular with the people of Chowan”; he served in the House of Commons from 1806 to 1808 and, in the 1820s, was a justice of the peace. Hoskins was one of the commissioners who presided over

107. Id. at 32–33; JOHNSON, supra note 70, at 617–20.
109. JOHN H. WHEELER, 2 HISTORICAL SKETCHES OF NORTH CAROLINA, FROM 1584 TO 1851, at 97 (Genealogical Pub. Co. for Clearfield Co. 1993) (1851); Descendants of Quaker John Small, supra note 40; E-mail from Janice Eileen Wallace, Family Genealogist, to Sally Greene (Dec. 9, 2003, 21:16:09 EST) (on file with the North Carolina Law Review). McKiel later moved to Arkansas, where he became a lower-court judge. 8 THE REBELLION RECORD: A DIARY OF AMERICAN EVENTS 325–26 (New York, G.P. Putnam 1865). Under the North Carolina Constitution of 1776, members of the House of Commons had to own at least one hundred acres. See CECIL-FRONSMAN, supra note 81, at 34.
110. State v. Josiah McKiel, Indictment Proven (Spring Term 1829), for Assault upon Isaac, Property of Clement H. Blount and Thomas Ware, Chowan County Slave Records, supra note 2; State v. Josiah McKiel, Indictment Proven (Spring Term 1829), for Assault and Battery upon Dover, Property of John Blount, Chowan County Slave Records, supra note 2. Both trials were set for September. See Chowan County Slave Records, supra note 2. McKiel was found not guilty in both trials. Chowan County Superior Court Minutes (Fall Term 1829), North Carolina Office of Archives and History, Raleigh.
112. WHEELER, supra note 109, at 96; Justices of the Peace 46 (1823), Chowan County, Governor’s Papers, North Carolina Office of Archives and History, Raleigh; see also Indictment of Magistrate Court, Chowan County Criminal Action Papers 1827–1829,
the apportionment of the assets of Thomas Jones’ estate.113 His sister Martha was married into the Blount family, a venerable old family tracing itself back to James Blount’s settlement in 1669.114 Juror Clement H. Blount, one of James Blount’s descendants, lived at Mulberry Hill, the family plantation on the Albemarle Sound.115 His maternal grandfather was the Rev. Clement Hall, a distinguished Anglican missionary and rector of St. Paul’s Episcopal Church in Edenton.116 His mother participated in the Edenton Tea Party.117 Juror Joseph H. Skinner owned Montpelier, an estate of 700 to 800 acres on the Albemarle Sound, which included a valuable fishery.118 Juror Thomas I. Brownrigg belonged to a wealthy Irish Protestant family that established the first commercial fishing operation in provincial North Carolina; Wingfield, their estate on the Chowan River, by 1810 consisted of some 1,400 acres.119 His half-sister Priscilla was married to John L. Bailey, the solicitor bringing the case against Mann.120 Of the other members of the jury, perhaps Joseph

113. Estate of Thomas Jones, supra note 27.
114. On the Chowan Blounts, see JOHN H. WHEELER, REMINISCENCES AND MEMOIRS OF NORTH CAROLINA AND EMINENT NORTH CAROLINIANS lvii-lviii (Columbus, Columbus Print Works 1884). On Martha Hoskins Rombough Blount, see JACOBS, supra note 13, at 296 n.2 (indicating that in 1829, Mrs. Blount may have been secretly acting as Harriet Jacobs’ “protector,” helping to plot her escape).
115. CATHERINE W. BISHIR, NORTH CAROLINA ARCHITECTURE 116-17 (portable ed. 2005); WHEELER, supra note 109, at lvii.
119. PARRAMORE, supra note 5, at 22-24; Elizabeth Brownrigg Waddell, Genealogical Essay (1886), in Brownrigg Family Papers (on file with the Southern Historical Collection, Wilson Library, The University of North Carolina at Chapel Hill); Survey of Wingfield Estate, in Brownrigg Family Papers, supra (indicating that in 1810, the estate held by Thomas’ father, also named Thomas, consisted of 1,450 acres); see also Abstracts of Wills, in 1 NORTH CAROLINA HISTORICAL AND GENEALOGICAL REGISTER 26, 530 (J.R.B. Hathaway ed., Genealogical Publishing Co., Inc. 1998) (1900) (confirming Thomas I. as son of Thomas, who was in turn son of Richard Brownrigg).
120. See John L. Bailey, in 4 BIOGRAPHICAL HISTORY OF NORTH CAROLINA FROM COLONIAL TIMES TO THE PRESENT 53, 53-54 (Samuel A. Ashe et al. ed., 1905-1917). Priscilla was the last child born of Thomas and Ruth Baker Brownrigg, who died when
Faribault would have been sympathetic to the defendant; he signed Mann's bail bond. If so, then stronger voices prevailed. Jury members even may have had a hand in crafting Judge Daniel's instruction, which carefully asserted that Mann, as a hirer, had only a limited, "special property" in the slave and thus his powers of correction were constrained. In committing an assault that was "cruel[,] unreasonable[,] and disproportionate to the offence committed by the slave," the jury found, Mann had exceeded the bounds of his authority.

Priscilla was two. Waddell, supra note 119. Priscilla's older brother was Richard T. Brownrigg. See id. He was a justice of the peace. Justices of the Peace 46 (1823), Chowan County, Governor's Papers, North Carolina Office of Archives and History, Raleigh; see also Indictment of Magistrate Court, supra note 112 (including R. T. Brownrigg in a list of Chowan County justices of the peace).

121. Recognizance bond for John Mann, Chowan County Slave Records, Criminal Actions Concerning Slaves (Apr. 10, 1829), North Carolina Office of Archives and History, Raleigh. Signing with Faribault, vouching for Mann a second time, was Samuel Tredwell Sawyer. Id.; see also supra note 102 (indicating that Sawyer had previously acted as a surety for Mann). Sawyer was a young attorney who was secretly having an affair with Harriet Jacobs; in 1829 she bore the first of two children by him. See YELLIN, supra note 13, at 26–40. Also on the jury were Hardy Hurdle, David Harrell, Sr., Thomas I. Charlton, Thomas M. Carter, Isaac Pettijohn, and Lemuel Skinner. Chowan County Minute Docket, Superior Court (Fall Term 1829), North Carolina Office of Archives and History, Raleigh.

Most likely, all of the jurors were slave owners in the fall of 1829. The 1830 Chowan County Census records list eleven of them as heads of household, all with slaves. 1830 Chowan County Census, supra note 47. The twelfth, Isaac Pettijohn, is absent from the 1830 census but is listed in the 1820 census as owning three slaves. 1820 Census, Chowan County, N.C. (S-K Publications CD-ROM, 2002). Most owned quite a few: Joseph H. Skinner, sixty-nine; Hoskins, forty-four; McKiel, thirty-two; Blount, twenty-seven; Faribault, twenty-six; Carter, twenty-six; Brownrigg, twenty-six; Charlton, sixteen; and Lemuel Skinner, fourteen. 1830 Chowan County Census, supra note 47. Harrell owned one; Hurdle owned four. Id.

122. State v. John Mann, Superior Court (Fall Term 1829), Chowan County Slave Records, supra note 2.

123. Id. According to Johnson's research, superior court trials of the period were marked by a "loose method of pleading," the result of which was that "law and fact became inextricably blended so that the jury necessarily decided, as in the county courts, both upon the law and upon the facts and thus usurped the functions of the court." JOHNSON, supra note 70, at 641. In the trial record, the passage articulating the jury instruction is rough, with the word "unreasonable" and the phrase "who had only a special property in the slave" added by carat insertions, indicating perhaps some negotiation. State v. John Mann, Superior Court (Fall Term 1829), Chowan County Slave Records, supra note 2.

The language that finally resulted makes it clear that the jury was doubly narrowing its holding: one, it applied only to persons with no more than "a special property in the slave," and two, it applied only to excessive, "cruel," and "unreasonable" incidences of assault. Id. Following this jury's logic, slave hirers may still have been permitted to commit ordinary assault. For more on the "localism" of the law of this period, see generally Laura F. Edwards's contribution to this symposium, The Forgotten
From this enlightened distance, it is tempting to imagine that the men on the jury were acting out of sympathy for a wounded young black woman, coming down on the side of “humanity” as against the legal “interest” of Capt. Mann; and perhaps, at some level, they were. But given the available evidence, such a conclusion would be pure conjecture. We know nothing, unfortunately, of how the community felt about Lydia. We do, however, have some idea how they might have felt about the defendant. John Mann’s jury was not a “jury of his peers.” Rather, many of these men had everything in common with Josiah Small and the late Thomas Jones. The men on the jury included Small’s political colleagues, relatives, and undoubtedly friends. Performing their duty in a criminal trial, as guardians of the public order, this jury had to weigh one proprietary interest against another. Unsurprisingly, they came down in favor of the party with the greater interest in the slave, who also happened to be one of their own.

II. THE QUESTION THAT “CANNOT . . . BE BROUGHT INTO DISCUSSION”: RUFFIN’S REVERSAL IN ITS IDEOLOGICAL CONTEXT

The opinion Thomas Ruffin wrote for the Supreme Court of North Carolina in reversing Mann’s conviction is reviled and repudiated, but also respected, as Robert Cover notes—respected for its “honesty.” Following the interpretation first suggested by Stowe, some readers to this day have taken the position he strikes—that of a dutiful judge resisting, solemnly and with great difficulty, the pull of the human heart—at face value. But the particulars of the


124. For an argument that Lydia had a “humanizing” influence on the jury, see Edwards, supra note 99, at 307.
125. We do have Jacobs’ claim: “Slavery is terrible for men; but it is far more terrible for women.” Jacobs, supra note 13, at 77.
126. Mann was fined $5—a sum he probably was never obligated to pay. He won the right to appeal without having to give security. State v. John Mann, Superior Court (Fall Term 1829), Chowan County Slave Records, supra note 2.
127. Cover, supra note 52, at 77.
128. See, e.g., Brophy, supra note 21, at 1122 (noting Ruffin’s “honest” understanding “that slaves would not abide by the Southerners’ moral philosophy, which taught that slaves should be content with their low place in Southern society”).
129. See id. at 1132–37.
trial in Edenton suggest that he may have been up to something else entirely—that his rhetoric may have served to disguise a conscious avoidance of the realistic possibility that the jury had gotten it right.

Even given the brief trial record before him, Ruffin knew Chowan County well enough to have grasped the essential dynamics of the case. His roommate at Princeton had been a young man from Edenton named James Iredell, son of the Supreme Court justice, later governor of the state and a United States senator. As a circuit-riding superior court judge, Ruffin had spent time in Chowan County as recently as the spring of 1828. During that term, he signed a grand jury indictment related to a nuisance charge that had been brought in 1826 against the entire magistrate court. The magistrates had been indicted for failing to levy sufficient taxes to keep the jail, courthouse, and stocks in repair. Joseph B. Skinner, a prominent member of the community (and another close friend of Ruffin’s), had been jailed on behalf of the magistrate court for its nuisance offense. The indictment that issued under Ruffin’s signature charged the sheriff with negligently allowing Skinner to escape from the county jail.


131. Whichard, supra note 39, at 253–54; Governor William A. Graham, Life and Character of the Hon. Thomas Ruffin, Late Chief Justice of North Carolina (Oct. 21, 1870), reprinted in 1 THE PAPERS OF THOMAS RUFFIN 17, 21 (J.G. de Roubaic Hamilton ed., 1918) (stating that Ruffin and Iredell were roommates for several years and remained friends until Iredell’s death).

132. Ruffin rode the circuits as a superior court judge from 1816 to 1818 and again from 1825 to 1828. Chronology of Thomas Ruffin, in 1 THE PAPERS OF THOMAS RUFFIN, supra note 131, at 5.

133. Joseph B. Skinner, a lawyer and farmer, had served with Ruffin in the House of Commons in 1815. See Wheeler, supra note 109, at 95 (indicating that Skinner was Edenton’s representative to the House of Commons in 1815); Chronology of Thomas Ruffin, in 1 THE PAPERS OF THOMAS RUFFIN, supra note 131, at 5 (indicating that Ruffin was Hillsboro’s representative to the House of Commons in 1815). He is remembered for having transformed the local fishing industry with a technique involving the use of large nets. Parramore, supra note 5, at 54. During the spring 1828 term, Ruffin was boarding with him. See Letter from Thomas Ruffin to Catherine Ruffin (Apr. 14, 1828), in 1 THE PAPERS OF THOMAS RUFFIN, supra note 131, at 442, 444. Joseph B. Skinner was first cousin of jury member Joseph H. Skinner. See Abstract of Chowan County Wills, in 2 NORTH CAROLINA HISTORICAL AND GENEALOGICAL REGISTER 5, 27 (J.R.B. Hathaway ed., Genealogical Publishing Co., Inc. 1998) (1901).

134. Indictment of Magistrate Court, supra note 112 (stating that Joseph B. Skinner had been jailed on behalf of the county justices of the peace, who had been found guilty of failing to levy sufficient taxes “to erect and keep in good repair the public jail, court house and stocks”).
And Ruffin had a further connection to Chowan County, one felt indirectly but powerfully. Toward the end of 1828, he left the bench to head up the State Bank of North Carolina, a position into which he had been recruited in the hopes that he could restore the ailing institution to secure financial footing. He "effectually reinstated the bank in public confidence, and relieved it of its embarrassments," wrote North Carolina Chief Justice Walter Clark many years later.

If the Chowan County records are any indication, Ruffin achieved this turnaround through aggressive litigation: the county's civil action papers for 1829 are replete with successful prosecutions of debts owed to the State Bank. He had been warned that the resolution of the bank's sizeable unpaid accounts in Edenton would require particular skill and discretion. In the end, the bank's successes in court did cost Ruffin some goodwill in the Edenton community. Whatever else might be said, this project certainly would have deepened his knowledge of local affairs.

Thus, when Judge Ruffin picked up the file in the appeal of Mann's conviction, he would have recognized the names of many members of the jury. They were his peers as well as Josiah Small's—men of rank and standing with whom he would normally have identified. Ruffin stood in a position to see that the jury's conviction of an ordinary slave hirer for shooting a slave not his own rested on solid ground. As much as anyone, it would have been those men on the jury to whom he was speaking when he "freely confess[ed]" a "sense of the harshness" of his opinion. But given the nature of

136. Id.
137. Chowan County Civil Action Papers (1829), North Carolina Office of Archives and History, Raleigh.
139. In December 1829, just before he was appointed to the supreme court, Thomas Ruffin was sharply criticized for his insensitive collection techniques. A. Farmer, Letter, EDENTON GAZETTE, Nov. 14, 1829, at 3.
140. Supreme Court Cases, supra note 88. Though docketed in 1829, the appeal was not heard until February 15, 1830. Supreme Court Minute Docket (Feb. 15, 1830), North Carolina Office of Archives and History, Raleigh. At that point, Ruffin had been serving on the Supreme Court for little more than a month; the General Assembly's vote to place him on the court was ratified by Governor John Owen's letter of appointment on January 9, 1830. Commission from Governor John Owen as Judge of the Supreme Court (Jan. 9, 1830), in 2 THE PAPERS OF THOMAS RUFFIN, supra note 108, at 3.
141. State v. Mann, 13 N.C. (2 Dev.) 263, 266 (1829).
appellate practice (then and now), nothing required that he look beyond the "cold record" before him.\textsuperscript{142} He would have been free to disregard what he knew of Edenton, for other than the names of the jury members, very little context would have been included in the report of the proceeding below.\textsuperscript{143} Ruffin's opinion betrays a studied indifference to the facts and conditions that might have motivated the jury's verdict.

In rejecting the significance of a fact that the jury considered crucial—in refusing to recognize a legal distinction between an owner and a hirer—Ruffin set himself against "the established habits and uniform practices of the country" (to use his own phrase).\textsuperscript{144} Owners entered the hiring market with trepidation: entrusting one's own slave to someone who lacked a vested interest in the slave's wellbeing was not a welcome prospect.\textsuperscript{145} Slave hiring continued as a practice throughout the antebellum period because it was profitable.\textsuperscript{146} But as

\textsuperscript{142} For a helpful discussion of the impact of the static, often abbreviated appellate record upon a judge's decision-making process, see Chad M. Oldfather, \textit{Appellate Courts, Historical Facts, and the Civil-Criminal Distinction}, 57 \textit{VAND. L. REV.} 437, 455-56 (2004) ("[W]ritten text triggers a different thought process than oral language, one that is considerably more amenable to logical and abstract operations."); see also Edwards, \textit{supra} note 99, at 306-07 (noting the way "Ruffin uprooted John Mann from context").

\textsuperscript{143} The file preserved in the archives, see Supreme Court Cases, \textit{supra} note 88, consists of a procedural history of the case, the names of the jurors, and a report of the trial court's opinion, followed by a copy of Ruffin's opinion in Ruffin's hand. (This version differs from the published version in one respect: it calls for a new trial.) A rule set forth by the Supreme Court of North Carolina in 1827 prescribed the following:

It is ordered that in all appeal cases, whether on the law or equity side of the Court, the counsel for the appellant shall deliver to the counsel appearing on the other side, if any, a statement in writing of all the points intended to be made and relied on, at least eight clear days before the day of the argument of the cause; and any point or matter of objection to the judgment or decree below, not contained therein, shall be considered as waived, unless the Court shall, for sufficient reasons offered or appearing, allow or desire that such matter or point may be made and discussed.

Regulae Generales, 12 N.C. (2 Dev.) 269, 270 (1827). Given that Mann had no counsel on appeal, it is doubtful that even this much of an argument was submitted to the court.

\textsuperscript{144} Mann, 13 N.C. (2 Dev.) at 265.

\textsuperscript{145} Accordingly, they encumbered the contracts of hire with all sorts of conditions. \textit{See} MARTIN, \textit{supra} note 4, at 106. Contracts in Chowan County, for example, included a standard provision that the slave not be allowed to travel by water. Estate of Thomas Jones, \textit{supra} note 27. Slaves could escape by water—as Harriet Jacobs did. JACOBS, \textit{supra} note 13, at 156-58. Or they could die by water. \textit{See} Wilder v. Creecy, 33 N.C. (1 Ired.) 421, 423 (1850) (per curiam). Judge Ruffin wrote the opinion in \textit{Wilder} denying a slave owner's recovery for the death of his slave by strictly interpreting a contract restriction against employment on the waters. \textit{Id}.

\textsuperscript{146} \textit{See generally} MARTIN, \textit{supra} note 4 (documenting the importance of slave hiring to the capitalist antebellum economy).
Ruffin’s cousin Frank Ruffin put it in 1852 in the pages of *The Southern Planter*, the practice was “felt everywhere to be a serious evil.”\(^{147}\) The inherent conflict between owners and hirers often erupted into actual conflict, putting individual slaves at risk and posing a systematic risk to white solidarity. Ultimately all parties suffered: “the hirer, the hiree, the negro himself, and society at large.”\(^{148}\)

Reflecting this tension, moreover, the case law was not nearly as settled as Ruffin’s opinion suggests. Slaves were burdened with a perplexing “double character,” as Ariela Gross’ research has emphasized—as property and as person, even as property in which more than one legal interest could be held.\(^{149}\) Courts across the South wrestled with the opposing claims of owners and hirers, weighing the interests differently in different circumstances. For example, in 1798 the Supreme Court of North Carolina treated a slave hirer as an owner for purposes of allowing his defense of justifiable homicide in response to a slave who attempted to kill him.\(^{150}\) Yet in a civil case invoking different policy issues, the same court in 1827 clearly stated that “[a] contract of hiring is not a sale of the thing for the period of hiring; the property remains as it did before—it is a contract for the use of the thing hired.”\(^{151}\)

Not only did different legal issues command different approaches: courts did not always resolve the same issues in the same ways. That a hirer should bear the risk of the slave’s running away or falling ill through maltreatment was generally agreed; these were outcomes within the hirer’s arguable control.\(^{152}\) But the states were

\(^{147}\) MARTIN, supra note 4, at 3 (quoting Hiring Negroes, 12 THE SOUTHERN PLANTER 376, 377 (1852)). On Thomas and Frank Ruffin’s kinship, see Genealogical Essay, Letter from Frank G. Ruffin to Paul C. Cameron (June 1, 1870), in 4 THE PAPERS OF THOMAS RUFFIN, supra note 88, at 244.

\(^{148}\) MARTIN, supra note 4, at 3 (citing Hiring Negroes, 12 SOUTHERN PLANTER 376, 376 (1852)).

\(^{149}\) The phrase “double character,” as applied to a slave’s dual status as person and as property, was coined by antebellum Georgia Supreme Court reporter Thomas Cobb. See ARIELA GROSS, DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM 3 (2000).

\(^{150}\) State v. Weaver, 3 N.C. (Tray.) 54, 55 (1798).

\(^{151}\) A hirer “is called the qualified owner, not to express his ownership, or that he has any part of the property, but for want of a proper term to express his interest in it.” Whitaker v. Whitaker, 12 N.C. (1 Dev.) 310, 311 (1827) (emphasis added); see also Pettijohn v. Beasley, 15 N.C. (4 Dev.) 512, 513 (1834) (following Whitaker in holding that ownership of slaves is undisturbed by another’s temporary hiring of them).

\(^{152}\) See, e.g., Lunsford & Davie v. Baynham, 29 Tenn. (1 Hum.) 267, 269–70 (1849). This case reflects a common theme of paternalism:
split on where the risk should lie if a slave were to die unexpectedly during the term of employment.\textsuperscript{153} When a hirer breached the explicit terms of the contract of hire, the liability could vary, both if the hirer or his agent put the slave to an unauthorized use\textsuperscript{154} and if the hirer had turned the slave over to a third party who had not complied with the agreement.\textsuperscript{155} These potential limitations on the hirer's ownership interest and authority are found in civil cases, to be sure, the type of cases that Ruffin in one stroke dismisses as irrelevant to the criminal proceeding of \textit{State v. Mann}.\textsuperscript{156} But the supposed necessity to consider a hirer's power of correction differently in a criminal case is not at all clear. Ruffin cites no authority for such a distinction, nor does he cite an opinion acquitting a slave hirer of a criminal charge of abusive correction. Indeed, by 1857, in a case of civil trespass against an abusive hirer, the Tennessee Supreme Court had come to

\begin{quote}
Id. at 270; see also Jones v. Glass, 35 N.C. (1 Ired.) 305, 309 (1852) (holding hirer liable for his overseer's cruel and unreasonable punishment of a hired slave). For discussion of this type of case, see GROSS, supra note 149, at 102-03.

\textsuperscript{153} It was settled in some states that the hirer should not have to pay for the entire term if the slave were to die through no fault of the hirer's. The leading case for this concept of apportionment was \textit{George v. Elliott}, 12 Va. (1 Hen. & M.) 5, 6 (1808); see also Dudgeon v. Teass, 9 Mo. 867, 868 (1846) (allowing owner an abated recovery for the accidental death of a slave); Bacot v. Parnell, 18 S.C.L. (2 Bail.) 424, 424 (1831) (following explicitly the holding in \textit{George v. Elliott} although it was not binding precedent). But in other states the hirer was fully liable, on the reasoning that "[t]he tenant or hirer is considered as a purchaser for a limited time." Outlaw & McClellan v. Cook, Minor 257, 258 (Ala. 1824); see also Harmon v. Fleming, 25 Miss. 135, 143 (1852) (reasoning that because the hirer did not stipulate to an abated price in the contract in case of a slave's death, he is liable for the full cost); GROSS, supra note 149, at 102-04 (grounding the basis for full recovery in paternalist ideology).

\textsuperscript{154} \textit{Compare} Bell v. Bowen, 46 N.C. (1 Jones) 316, 318 (1854) (holding hirer liable when slave died after hirer took slave out of the county, contrary to agreement, even though hirer not negligent), \textit{with} Slocumb v. Washington, 51 N.C. (1 Jones) 357, 359 (1859) (holding hirer not liable for slaves' frostbite when slaves were worked in area forbidden by contract since frostbite was not result of negligence).

\textsuperscript{155} \textit{Compare} Wilder v. Creecy, 33 N.C. (1 Ired.) 431, 432 (1850) (noting that since "property vested ... in the hirer," party to whom hirer entrusted the slave was not liable for negligence in slave's death under control of sub-hirer; contrary result "would expose third persons to great damage, and, indeed, prevent much of the traffic of life"), \textit{with} Bell v. Cummings, 35 Tenn. (1 Sneed) 275, 277 (1855) (stating that hirer "cannot denude himself of the obligation imposed, or transfer them to another, without the owner's consent"), \textit{and} Traynor v. Johnson, 40 Tenn. (1 Head) 44, 46 (1859) (holding hirer liable for negligence of sub-hirer on "contract implied by law, which forbids the hirer to transfer the possession or services of the slave to a third person, without the owner's consent").

\textsuperscript{156} 13 N.C. (2 Dev.) 263, 264–65 (1829).
repudiate the holding of State v. Mann, asserting that to invest the hirer with the owner’s full complement of rights is “untenable upon any just principles.” A distinction between civil and criminal law does not enter into this court’s reasoning. Rather, the court is simply appalled at the idea that the rights of correction that belong to an owner should be fully transferred to a hirer: such a notion “is sanctioned by neither reason, policy, nor sound authority.” Taken on its own terms as a case about the limits of a slave hirer’s powers of correction over a slave not his own, Ruffin’s opinion is an outlier.

Moreover, even taking with Ruffin the considerable leap of granting the slave hirer the full powers of an owner, his assertion that the common law could offer no help in this criminal context was exaggerated. In 1824, in Commonwealth v. Booth, the Virginia court admitted the possibility that a hirer could cross the line from permissible to criminally cruel punishment, even though the slave was considered to be “his own slave for the time being.” Three years later, in Commonwealth v. Turner, a case directly confronting the situation of a slaveowner who had cruelly beaten his own slave, the same court reversed course and held, in terms much like those that Ruffin would employ in Mann, that “great changes are not to be made by the Courts,” that such an offense could be addressed only by statute or in “the tribunal of public opinion.” A dissenting judge, however, advanced the argument that a measure of common-law protection of a slave against “cruel” and “inhuman” abuse by a master could exist compatibly with “the full enjoyment of the right of

157. James v. Carper, 36 Tenn. 397, 401 (1857). This decision is openly critical of two criminal opinions, both of which cite State v. Mann approvingly: Nelson v. State, 29 Tenn. (1 Hum.) 518 (1850), and Jacob v. State, 22 Tenn. (1 Hum.) 493 (1842).
158. James, 36 Tenn. at 401. The hirer had committed assault and battery upon a slave on suspicion that the slave had committed a criminal offense while in the hirer’s employ. “[T]hough it were conceded, for the sake of the argument, that the owner of the slave, in virtue of his absolute right of property, might take the law into his own hands, . . . it is very clear that this may not be done by the hirer, or by a stranger.” Id. at 403. Compare Gillian v. Senter, 9 Ala. 395, 396 (1846), which allowed an overseer, “standing in loco magisteri,” to inflict moderate corporal punishment on a slave for committing a criminal offense, with Trotter v. McCall, 26 Miss. 410, 413 (1853), and Nelson v. Bondourant, 26 Ala. 341, 352 (1855), both of which granted hirers the full corrective powers of owners, following the law of master and apprentice. But Bondourant states that the hirer, like the owner, “has no right to be barbarous or cruel.” Bondourant, 26 Ala. at 352.
159. 4 Va. (1 Rand.) 394 (1824).
160. Id. at 395; see also MORRIS, supra note 10, at 188 (noting how Booth focused on the common law notions of master-apprentice relationships to justify an action against a slave hirer for cruel or inhumane punishment of a slave).
161. 26 Va. 678 (5 Rand.) (1827).
162. Id. at 686.
property.” As Eric Muller notes elsewhere in this Issue, the author of the dissent, William Brockenbrough, was Judge Ruffin’s cousin.

Finally, within North Carolina law, it would have been possible to come at the case from another direction, extending the argument of State v. Hale, a case holding a white man guilty of common-law assault for beating a slave that he neither owned nor controlled. Although Ruffin is at pains in Mann to dismiss the state’s argument that Hale offered valuable guidance in a case in which the defendant was not the owner of the wounded slave, Chief Justice Taylor’s sketch of the type of man who might be involved in a case like Hale comes close to describing the actual defendant John Mann. According to Taylor, offenses like Hale’s were usually committed by men of dissolute habits, hanging loose upon society, who, being repelled from association with well-disposed citizens, take refuge in the company of coloured persons and slaves, whom they deprave by their example, embolden by their familiarity, and then beat, under the expectation that a slave dare not resent a blow from a white man.

Ruffin could have built upon the reasoning of Hale to extend the protection of the common law to a slave shot in the back by a “dissolute” slave hirer far beneath the class of “well-disposed” Chowan County slave owners. Further following Hale, he could have upheld the jury’s conviction of Mann for an excessive assault, while clarifying that the defendant would not have been liable for an ordinary assault. The resulting opinion would have aligned the

163. Id. at 689 (Brockenbrough, J., dissenting).
165. 9 N.C. (1 Hawks) 582, 584 (1823).
166. State v. Mann 13 N.C. (2 Dev.) 263, 264 (1829).
167. Hale, 9 N.C. (1 Hawks) at 583.
168. Such protection would have had the policy justification of discouraging private acts of retaliation by slave owners. “A wanton injury committed on a slave is a great provocation to the owner, awakens his resentment, and has a direct tendency to breach the peace, by inciting him to seek immediate vengeance.” Id. at 583.
169. As discussed in the superior court case of State v. Mann, State v. John Mann, Superior Court (Fall Term 1829), Chowan County Slave Records, supra note 2, Mann’s jury had distinguished between ordinary and “cruel, unreasonable” assault. Its logic mirrors that of the Virginia court in Commonwealth v. Booth, 4 Va. (2 Va. Cas.) 394, 395
humanity of the slave Lydia with the property interest of her owner Elizabeth Jones, while reinforcing the role of the criminal law in maintaining the security of the slavery system for the peace and well-being of the state.

In sum, neither the facts nor controlling legal authority compelled Thomas Ruffin to reverse the conviction of John Mann for assault and battery against a hired slave. A decision affirming the Chowan County verdict, particularly one written with the unswerving conviction that marked Ruffin's style, could have done much to shore up the authority of slave owners against the corroding influence of abusive hirers. Such an opinion would have buttressed the civil law respecting the owners' property rights in their chattel slaves, lending the solemn weight of the criminal law to the sanctity of such rights. Although, as Thomas Morris observes, by 1850 there had been "no appellate case that upheld the indictment and conviction of masters [owners or hirers] for cruelty to their slaves if the indictment rested solely on a common-law foundation," such use of the common law was clearly available to Ruffin in 1830. Yet he chose not to follow that course.

Against this backdrop, a theory proposed by Sally Hadden becomes increasingly credible. Hadden suggests that Ruffin was motivated by fears of slave revolt and political unrest common to his

(1824). Unlike Ruffin, Chief Justice Taylor in *Hale* was quite willing to assume that the courts could resolve these cases one at a time (judging each, however, "with a view to the actual condition of society, and the difference between a white man and a slave"). *Hale*, 9 N.C. (1 Hawks) at 586. He concludes "that many circumstances which would not constitute a legal provocation for a battery committed by one white man on another, would justify it, if committed on a slave, provided the battery were not excessive." *Id.* For further discussion of the availability of *Hale* as precedent for a different outcome in *State v. Mann*, see Judge James A. Wynn, Jr., *State v. Mann: Judicial Choice or Judicial Duty?*, 87 N.C. L. REV. 991, 1003-05 (2009); and Eric L. Muller, *Judging Thomas Ruffin and the Hindsight Defense*, 87 N.C. L. REV. 757, 772 (2009).

170. MORRIS, supra note 10, at 193. On a related point, Fede notes that the North Carolina legislature did not take up Ruffin's invitation to regulate the master's power of correction, thus implicitly endorsing the standard set forth in *State v. Mann*. FEDE, supra note 164, at 111.

171. Indeed, the strength of *State v. Mann* may well explain the absence of such cases in subsequent years. Citing an 1831 trial in Raleigh, North Carolina, as an example, Stowe maintained that *State v. Mann* served to license unspeakable abuse by slave masters. STOWE, supra note 21, at 105-06. Similarly, John S. Jacobs, brother of Harriet Jacobs, recalled an incident of a Chowan County slave hirer having cruelly punished a slave with impunity, attributing his behavior to the law laid down in *State v. Mann*. John C. Jacobs, *A True Tale of Slavery*, in JACOBS, supra note 13, at 225, 226 & 226 n.50.
class.172 Her theory relies largely on a tenuous conclusion that Ruffin’s fears were motivated by a specific event: the publication of David Walker’s Appeal to the Colored Citizens of the World, published in 1829 but not generally known about in North Carolina until at least March of 1830.173 Although she may or may not be correct that Ruffin had early notice of this incendiary pamphlet by way of The Richmond Enquirer, edited by his cousin Thomas Ritchie,174 such proof would be far from the only evidence that places Ruffin squarely within the elite class of conservative planters who held grave anxieties about the future of slavery, for whom any development that seemed likely to encourage slave rebellion was cause for alarm. One response to such fear might have been to grant power over slaves to as many white men as possible—even a slave hirer like John Mann.

Ruffin had strong family ties to the planter establishment of Tidewater Virginia going back to colonial times. His distinguished older cousin Spencer Roane, a son of the Essex County elite, had served on Virginia’s Supreme Court of Appeals from 1789 to 1822.175


173. Id. at 13–15, 26 n.73. Walker’s Appeal was noted by the Raleigh Star on March 4, 1830; then, in August of that year, after copies began to appear in Wilmington along with associated “rumors of insurrection,” the governor ordered the confiscation of all copies. FRANKLIN, supra note 52, at 66–67 & 66 n.34.


175. TIMOTHY S. HUEBNER, THE SOUTHERN JUDICIAL TRADITION: STATE JUDGES AND SECTионаl DISTinctiveness, 1790–1890, at 10 (1999). Ruffin’s mother, Alice Roane Ruffin, was the first cousin of Spencer Roane (who was the son-in-law of Patrick Henry). See id. at 10–39, 1130–59; Graham, supra note 131, at 19. Roane, a vocal Jeffersonian antifederalist, had established The Richmond Enquirer in 1804 and installed his (and Alice Roane’s) cousin Thomas Ritchie as editor. With his brother-in-law Dr. John Brockenbrough, a founding director of the Bank of Virginia, Roane and Ritchie were at the core of the “Richmond Junto,” a close-knit group of men said to have “virtually governed Virginia through its power to control her courts, legislatures, and financial policies.” RONALD L. HEINEMANN ET AL., OLD DOMINION, NEW COMMONWEALTH: A HISTORY OF VIRGINIA, 1607–2007, at 161–63 (2007); CHARLES HENRY AMBLER, THOMAS RITCHIE: A STUDY IN VIRGINIA POLITICS 11 (1913); see also Rex Beach, Spencer Roane & the Richmond Junto, 22 WM. & MARY Q. 1, 3 (1942) (describing the origins and influence of the Junto). But see generally F. Thornton Miller, The Richmond Junto: The Secret All-Powerful Club—or Myth, 99 V. MAG. OF HIST. & BIOGRAPHY 63 (1991) (questioning the actual existence of a “junto”). Brockenbrough was brother of William Brockenbrough, the judge. See Genealogical Essay in Letter from Frank G. Ruffin to Paul C. Cameron, supra note 147, at 244. Although Ruffin was unable to study law with Roane, he did undergo his initial legal training with a Petersburg attorney. Letter from Spencer Roane to Thomas Ruffin (July 28, 1806), in 1 THE PAPERS OF THOMAS RUFFIN, supra note 131, at 101; Graham, supra note 131, at 21.
Regarding slavery, a shift in attitude took place between his generation and Ruffin's. Whereas Roane was inspired by Revolutionary concepts of liberty to view emancipation claims expansively,176 and whereas Ruffin's father had expressed to his college-age son a hope for a time “when an Alwise, and Mercifull Creator” would “prepare the Hearts of all men to consider each other as Brothers,”177 by the late 1820s the political climate had changed. “Many of the older generation had paid at least rhetorical homage to the idea that slavery ought to yield eventually to liberty,” writes Eva Wolf, “but to Virginia’s new generation of conservative leaders such thoughts were irresponsible.”178 Accounts of this shift are complex and competing, but the weight of the evidence points toward a distinct hardening of the defenses of the slave labor system throughout the South.179 Before the first issue of William Lloyd Garrison’s Liberator sounded its alarms nationwide, before Nat Turner’s terrorizing rampage, slaveholders had begun to close ranks, refining their understanding of the “liberty” guaranteed by the Constitution into “the liberty to own slave property.”180

The “strife-filled atmosphere” under which, according to Hadden, Ruffin labored as he came to decide State v. Mann181 had in

177. Letter from Sterling Ruffin to Thomas Ruffin (June 1804), in 1 THE PAPERS OF THOMAS RUFFIN, supra note 131, at 54–55.
178. Eva Sheppard Wolf, Race and Liberty in the New Nation: Emancipation in Virginia from the Revolution to Nat Turner’s Rebellion 190–91 (2006). On North Carolina, see Johnson, supra note 70, at 560–61 (noting that while “the policy of the State was consistently opposed to emancipation,” western North Carolinians “were opposed to slavery not because of their sympathy for the slave but because of what the system did to the nonslaveholder”).
181. Hadden, supra note 172, at 12.
fact been building for many years. Even in colonial times, planters had “had good reason to worry about their security as slaveowners,” as they agonized over interference from the mother country.182 After the Revolution, the climate of fear darkened considerably with the news of the 1791 slave rebellion in St. Domingue. The unprecedented events that unfolded there—the only successful slave revolt in history—culminated in the abolition of colonial slavery in 1794 and the declaration of a free republic in 1804. The whole affair “horrified white southerners”: so concerned were they about the precedent it could set at home that they avoided even mentioning it in public.183 Two unsuccessful but nevertheless frightening domestic attempts at rebellion—Gabriel’s Rebellion in the Richmond area, in 1800,184 and Denmark Vesey’s plot discovered in 1822 in Charleston185—contributed further to the insecurities of the planter class up and down the eastern seaboard.

North Carolina whites were “thoroughly alarmed” by events in St. Domingue. They were similarly troubled by the Vesey plot and other threatened insurrections closer to home.186 Potential insurrections had been discovered in Onslow County in 1821 and in Tarboro in 1825; and from other counties up into late 1829 and early 1830 came anxious reports of the mobilization of runaway slaves.187 Surrounding Edenton, from the Albemarle Sound and the Chowan River to the Great Dismal Swamp, lived several thousand fugitive

182. YOUNG, supra note 179, at 63.
183. See id. at 102. On the reaction to the revolution in St. Domingue generally, including its connection in southern minds to the French Revolution, see id. at 101–05. Thomas Ritchie’s promise in the pages of The Richmond Enquirer to publish “full accounts” of the events in the new Republic of Haiti, in January 1804, went unfulfilled: “A brief experience revealed . . . that such a promise was not in harmony with the feelings and sentiments of Virginia, which had already decided upon a policy of studied silence upon the subject of negroes and negro slavery.” AMBLER, supra note 175, at 25. As literary historian John Wharton Lowe notes, “The Haitian presence in southern culture has been hushed up. The island’s spectral legacy was regarded as an infection that if acknowledged and released might spread.” John Wharton Lowe, Professor of English and Comparative Literature, and Dir., Program in L.A. and Caribbean Studies, L.A. State Univ., Unleashing the Loas: The Literary Legacy of the Haitian Revolution in the U.S. South and the Caribbean, Hutchins Lecture at the Center for the Study of the American South, UNC-Chapel Hill (Nov. 6, 2007); see also David Lowenthal, On Arraigning Ancestors: A Critique of Historical Contrition, 87 N.C. L. REV. 901, 917 (2009) (discussing the impact of the revolution in St. Domingue on American slaveholders); supra note 51 (regarding the reaction in Chowan County).
184. See WOLF, supra note 178, at 108–09, 118–19.
185. See YOUNG, supra note 179, 167–70.
slaves: the Albemarle was "a slave territory that defies all laws." As David Blight has observed,

at the core of the system of slavery lay the slaveholders' compelling fear of the black people they enslaved. Especially where the slave population was dense, the instances of a field hand's defiance, the cries of despair at a slave auction, the strange and incomprehensible behavior patterns of growing hordes of blacks, and the specter of servile insurrection (whether rumored or real) all combined to create a paranoia which dominated the psyche of the master class.

Across North Carolina, the numbers of free blacks had risen dramatically since 1800, and in 1829 rumors were circulating that they might gain expanded political rights. Hadden plausibly connects these rumors, and their explosive effect, to the state of affairs in Virginia, where a regional dispute over the terms of legislative representation and suffrage had developed into a full-blown debate and a call for a new constitution. Under Virginia's system of freehold suffrage, only white males with significant land holdings could vote, a requirement that disfranchised high percentages of white men outside the eastern region. (By 1829, the only other state that restricted voting rights to property holders was North Carolina, which was similarly split between eastern landed slaveowners and western yeoman farmers. A similar demand for reform was heard beginning around 1820, but the easterners managed to forestall constitutional changes until 1834-1835.) As the population of non-slaveholding white farmers in the western part of the state had grown, they began to demand rights equal with those of the eastern slaveholders.

188. DAVID CECELSKI, THE WATERMAN'S SONG: SLAVERY AND FREEDOM IN MARITIME NORTH CAROLINA 129 (2001) (quoting an Albemarle sea captain); TAYLOR, supra note 55, at 23–24; John Hope Franklin & Loren Schweninger, The Quest for Freedom: Runaway Slaves and the Plantation South, in SLAVERY, RESISTANCE, FREEDOM 21, 26 & n.6 (Gabor Boritt & Scott Hancock eds., 2007); see also supra note 5 (discussing how fugitive slaves often hid in the marshes).

189. Blight, supra note 180, at 145.

190. Hadden, supra note 172, at 13; see also FRANKLIN, supra note 52, at 58 (noting that legal rights of free Negroes tended to be curtailed in proportion to the intensity of the white population's fears of insurrection).


192. For a discussion of the Virginia Constitutional Convention, see SUSAN DUNN, DOMINION OF MEMORIES: JEFFERSON, MADISON, AND THE DECLINE OF VIRGINIA 149–70 (2007); O'BRIEN, supra note 179, at 799–816; and WILLIAM W. FREEHLING, 1 THE ROAD TO DISUNION: SECESSIONISTS AT BAY, 1776–1854, at 169–70 (1990). In the end, the reformers gained little; the convention "was a triumph for the conservative majority."
The very act of questioning the relative power of these two distinct groups brought slavery itself into the conversation; but the issue quickly moved beyond the proportional fairness of white representation to the philosophical issue of natural rights that had informed the Revolutionary-era debates:

The crux of the reformers' argument was, as James Monroe (siding here with the westerners) summarized it, that "putting the citizens in an equal condition" by apportioning legislative representation according to the white population "is just" because it "is founded on the natural rights of man" and because "the revolution was conducted on that principle [of equal rights]."\(^{193}\)

The conservative response was at least twofold. One reflected the logical fear that reform "would 'put the power controlling the wealth of the State, into hands different from whose which hold the wealth.'"\(^{194}\) A second response went to the heart of the matter, beyond slavery to race. Political equality based solely on "the natural rights of man" was an unthinkable concept, as the example of the French Revolution, and St. Domingue in its wake, had taught: As a member of the House of Delegates put it in early 1829, "follow it in its full extent, and to what monstrous conclusion are we brought? Are not slaves men?"\(^{195}\)

For the eastern Virginia slaveholding establishment, the very stability of the commonwealth was at stake. Roused to their defenses, these men drew upon a long tradition of conservative thought, wrapped it securely around the interests and values of the world as they knew it, and launched a forceful series of rebuttals to the reformists' challenges. Borrowing from a broad range of political philosophers including Richard Filmer, Thomas Hobbes, and Edmund Burke, as Michael O'Brien relates in *Conjectures of Order*, they attacked the reformists' proposals for being abstract and ungrounded.\(^{196}\) Lofty "self-evident" ideals that in 1776 had inspired heroism were now called "the 'childish fripperies of natural

\(^{193}\) WOLF, supra note 178, at 187.

\(^{194}\) Id. (quoting Benjamin Watkins Leigh).


\(^{196}\) O'BRIEN, supra note 179, at 804.
Accordingly, convention delegate Benjamin Watkins Leigh “called upon reformers to ‘give us something which we may at least call reasons for [reform]: not arithmetical and mathematical reasons; no mere abstractions; but referring to the actual state of things as they are.’”

Burke’s 1790 Reflections on the Revolution in France proved especially useful to the Virginia conservatives’ arguments. Its direct attack on the excesses of 1789 had obvious relevance, but the real power of Burke’s argument lay in its larger framework. As Frank Turner writes in a recent introduction to the work:

The lasting command of Burke’s polemic is his recognition that the appeal to visionary political goals in the name of the rights of man or another political or religious ideology must necessarily result not in justice but in destruction and death, because rational utopians under the banner of light and reason would define and redefine political terms and social categories to advance their own tyrannical aims.

Repeatedly Burke must reconceptualize “liberty” in the face of “new definitions that rob it of its very being,” Turner observes. “To that end he again and again advocates a politics of prudence, restraint, and moderation while warning against the politics of perfectionism.” Burke’s aim is to repudiate the claims of idealists, “who would sacrifice the good inherent in existing, if imperfect and even inconsistent, political and social arrangements.” As an earlier reader of his work put it, “there is no decier of theories and theorists comparable.”

For the Virginia conservatives, Burke confirmed that the French Revolution dramatized “the importance of political and social stability,” that “any apparently stable system” was inherently “fragile.” Following Burke and others including the Augustan-era

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197. Id. (quoting the vocal Tidewater conservative Abel P. Upshur).
198. Id. at 805.
200. Id. at xxxvi.
201. Id. at xiv.
202. Id.
203. Id.
205. BRUCE, supra note 195, at xv–xvi. On Burke, see DUNN, supra note 192, at 158.
writers Jonathan Swift and Alexander Pope, Virginia conservatism privileged a “social” ethos that entailed a “rejection of [a] competitive, individualistic morality in favor of one in which every citizen would seek to subordinate his own desire to the accomplishment of the public good.” It also counseled an acquiescence to “human finitude,” a kind of resignation that worked to justify a defense of the status quo. All of these arguments, observes Dickson Bruce in The Rhetoric of Conservatism, were put to use by the conservatives in voicing their “openly antidemocratic sentiments and their disapproval of the principles upon which much of reform was based.”

At issue in Virginia in 1829–1830 was the structure of government, not the legitimacy of slavery. Yet “the problem of social order” lay at the heart of both topics. The same pragmatic conservatism that underwrote a successful diffusion of the reformers' demands was adaptable to the explicitly proslavery arguments that soon after, with the appearance of Thomas Dew's Review of the Debate in the Virginia Legislature of 1831 and 1832, would increasingly be heard. Such rhetoric, as Bruce points out, “could be used whenever conservatives needed to defend stability, inequality, and order against proposed changes in social or political life.”

206. On Swift and Pope, see BRUCE, supra note 195, at 153. Pope was a particular favorite of Ruffin’s. Letter from Thomas Ruffin to Catherine Ruffin (Mar. 14, 1826), in 1 THE PAPERS OF THOMAS RUFFIN, supra note 131, at 243.

207. BRUCE, supra note 195, at xvi.

208. Id.

209. Id. For more on southern slave owners' historical “propensity toward tradition,” even while they “embraced the radical cause” of the Revolution, see YOUNG, supra note 179, at 57–89, and DUNN, supra note 192, at 11–12. See also FOX-GENOVESE & GENOVESE, supra note 179, at 649–79 (suggesting that the planter class rejected certain notions of revolutionary “individualism” dating back to the Reformation).

210. BRUCE, supra note 195, at 175; see also WOLF, supra note 178, at 186 (noting that reformers “held back from attacking slavery directly since they wanted slaveholders to agree to their demands”).

211. O'BRIEN, supra note 179, at 812.

212. THOMAS R. DEW, REVIEW OF THE DEBATE IN THE VIRGINIA LEGISLATURE OF 1831 AND 1832 (Negro Universities Press 1970) (1832). Dew was reacting to a subsequent debate in the Virginia legislature on the merits of slavery itself. Inspired by the Nat Turner insurrection, these debates resulted in “a clear statement of ideas in favor of slavery,” after which emancipation “cease[d] to be a significant possibility for Virginia.” BRUCE, supra note 195, at 177; see also FREEHLING, supra note 192, at 181–90 (discussing the debates in the Virginia legislature surrounding Rep. Thomas Jefferson Randolph's proposed plan to free Virginia slaves born on or after July 4, 1840); WOLF, supra note 178, at 196–234 (detailing Virginia emancipation debates).

213. BRUCE, supra note 195, at 175. During the convention, “little regarded were the two great subjects of slavery and democracy. The former was only obliquely germane to
close reading of *State v. Mann* suggests that Ruffin embraced the same body of conservative thought, applying its themes more directly than the Virginia planters had toward a justification of slavery: he adopts a Burkean rhetoric to support a decision that puts the authority of the slaveholder on a stronger legal footing than it had ever been.

The simplest way to resolve the case in Mann’s favor would have been procedural. After determining, as Ruffin did, that neither the jury instruction nor the indictment framed the issue in a way that acknowledged that Lydia was, for purposes of the criminal charges, the “defendant’s own slave,” he could have ordered entry of judgment for the defendant. Instead, the opinion moves directly from the troubling question of the flawed indictment to the highly “general question” of “whether the owner is answerable criminaliter for a battery upon his own slave, or other exercise of authority or force not forbidden by statute”—a question that is confidently answered in the negative. The reasoning that follows is a thorough appropriation of the fundamental premises of conservative ideology, including its manifestation of fear and anxiety, offered up in unwavering, even hermetic tones of authority. On the strength of this rhetoric, Ruffin seals the “power of the master” from judicial interference; and in so doing, he shields the practice of slavery itself from the possibility of question.

The first justification presented for the master’s “absolute” power is an appeal not to precedent or principle but, rather, to the judgment of “the whole community”:

The established habits and uniform practice of the country in this respect is the best evidence of the portion of power deemed by the whole community requisite to the preservation of the master’s dominion. If we thought differently we could not set

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... how the delegates saw their task, or so, at least, the delegates claimed.” O’Brien, *supra* note 179, at 811.

214. Such was the result in *Commonwealth v. Booth*, 4 Va. (1 Rand.) 394 (1824), an appeal of a judgment of assault against a slave hirer, upon the finding of a flawed indictment. Alternatively, Ruffin could have ordered a new trial on a proper indictment, something he considered, as demonstrated by the extant “second draft” opinion, 4 THE PAPERS OF THOMAS RUFFIN 251, 253 (J.G. de Roulhac Hamilton ed., 1920), and even in the draft found in the Supreme Court archive. See Trial Court Record in Supreme Court Cases, State v. Mann, *supra* note 88.


216. *Id.* at 266.
our notions in array against the judgment of everybody else, and say that this or that authority may be safely lopped off.217

Continuing along this line, Ruffin contrasts the “principle of moral right” that he concedes must be felt by “every person in his retirement” with “the actual condition of things” which dictates that “it must be so.”218 That well-settled community norms must take precedence over slippery notions of abstract justice is reiterated with Burkean flair toward the end of the opinion: Ruffin disdains “any rash expositions of abstract truths by a judiciary tainted with a false and fanatical philanthropy, seeking to redress an acknowledged evil by means still more wicked and appalling than that evil.”219

This important distinction between the actual and the abstract was clearly expressed in the Virginia constitutional debate. Following Burke, conservatives argued that “truth” was a function of experience. “[T]o base any government on principles rather than experience was to court disaster, because one was engaging only in speculation.”220 Correspondingly, Ruffin declines to engage in the kind of case-by-case reasoning—permissible under common law—that would have allowed the guilt of the defendant to be decided by a jury:

Merely in the abstract it may well be asked, which power of the master accords with which right? The answer will probably sweep away all of them. But we cannot look at the matter in that light. The truth is that we are forbidden to enter upon a train of general reasoning on the subject. We cannot allow the right of the master to be brought into discussion in the courts of justice . . . . The danger would be great, indeed, if the tribunals of justice should be called on to graduate the punishment appropriate to every temper and every dereliction of menial duty.221

Ruffin is not saying that a case in which the master had abused his authority might never arise—only that the question “cannot . . . be brought into discussion in the courts of justice.”222 Similarly in

217. Id. at 265.
218. Id. at 266.
219. Id. at 268. Some names that Burke gave to theorists include “refining speculatists,” “smugglers of adulterated metaphysics,” and “metaphysical knights of the sorrowful countenance,” according to MACCUNN, supra note 204, at 1.
220. BRUCE, supra note 195, at 119. The crisis of St. Domingue lingered as an example of the colossal error of such thinking. Id. at 91.
221. Mann, 13 N.C. (2 Dev.) at 267.
222. Id.
Virginia in 1828: “Principle, almost everyone including the conservatives recognized, was with the West,” but as one eastern gentleman wrote to another, “‘the actual condition of things’ demanded something else.”

Beneath the emphasis on the primacy of experience as a means of opposing the reformers’ appeal to idealistic “fundamental principles” lay a deeper, more basic theme: the innate weakness and corruptibility of human beings. To the Virginia conservatives, reform movements were at best misguided. They “argued that, given human nature, one could safely predict only the worst possible outcome for any process of social and political change.”

This belief resonated especially with Episcopalians:

Emphasizing human frailty, and ignoring the power of divine providence to overcome that frailty, [Episcopalianism] offered no grounds for optimism about social possibilities. Instead, it was a religion that encouraged believers to recognize the imperfections of life in the world, and to strive continually to make adjustments to those imperfections, rather than to seek perfection in oneself or in one’s society. Such a religious perspective on life could only have reinforced that sense of human weakness and social fragility upon which so much of Virginia political conservatism rested.

Ruffin himself, who would in time become a leading member of the Episcopal Church in North Carolina, shared these sober views on the role of religion in private and public life. Accordingly, a sense of

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223. BRUCE, supra note 195, at 23 & n.60 (quoting a letter from Robert Powell to Waller Halladay).
224. Id. at 81.
225. Id. at 162. As Bruce further notes, the Episcopal emphasis on a ritual that “allow[ed] little if any room for the autonomous expression of emotion” reinforced the conservative reliance on social norms. Id. at 163. “Episcopalian religion gave strong, if implicit support to an outlook on society, or politics, which stressed the dangers of independence while finding virtue in the constant maintenance of proper relationships with others.” Id. at 164.
226. Ruffin was an original vestry member of the reconstituted, post-Revolutionary St. Matthew’s Episcopal Church in Hillsborough beginning in 1824; he was confirmed there four years later. JOSEPH BLOUNT CHESHIRE, AN HISTORICAL ADDRESS DELIVERED IN ST. MATTHEW’S CHURCH HILLSBOROUGH, N.C., ON SUNDAY, AUGUST 24, 1924: BEING THE ONE HUNDREDTH ANNIVERSARY OF THE PARISH 26–27 (1925); RICHARD RANKIN, AMBIVALENT CHURCHMEN & EVANGELICAL CHURCHWOMEN: THE RELIGION OF THE EPISCOPAL ELITE IN NORTH CAROLINA, 1800–1860, at 82–83 (1993). “He was one of [the] most active members [of the church] in the State, and more than once represented the Diocese in the Triennial Convention of the Union.” Graham, supra note 131, at 34. On the “high-church” nature of Ruffin’s belief, which stressed duty and discipline and “intellectual assent to orthodox Christology,” see RANKIN, supra, at 83–84. See also Fox-
resignation pervades the opinion. Though the "principle of moral right" might pull in the other direction, "in the actual condition of things it must be so. There is no remedy." For the slave, "there is no appeal from his master; ... his power is in no instance usurped; but is conferred by the laws of man at least, if not by the law of God."\textsuperscript{227}

Thus, the conservatives' position was not that their system was ideal, but rather that it worked: "it was pretentious to search for perfection based on human devising."\textsuperscript{228} In a recent study, Trish Roberts-Miller suggests that the hallmark pessimism of the rhetoric of the planter class contained an "indirect acknowledgment" of the fundamental contradiction of domestic life that every planter knew, yet few would publicly concede: the simultaneous existence of the genteel "big house" and the common incidences of sheer brutality by which that house, and the slave labor system upon which it was built, were held together.\textsuperscript{229} The organic conception of the slaveholding household, in which slaves were part of one large "family" linked by bonds of affection, was itself a defensive ideology that arose in the early nineteenth century, part of a significant shift in the way in which slaveholders thought of themselves as productive citizens of the new nation.\textsuperscript{230} Containing slavery within an edifice of domesticity was

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\bibitem{genovese_genovese_supra_note_179} \textit{Genovese \& Genovese, supra} note 179, at 427–29 (calling high-church Episcopalianism the preferred religion of "affluent planters of Virginia and the Carolinas").
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\footnote{227. Mann, 13 N.C. (2 Dev.) at 266–67.}
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\footnote{228. \textit{Bruce}, supra note 195, at 86.}
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\footnote{230. \textit{Young, supra} note 179, at 111.}

During the colonial period, the vast difference between imperial administrators and the southern plantations had encouraged southerners to resist the [British-led] campaign to ameliorate slavery. But by the late eighteenth century, the principle of reciprocity between the governed and their governors had become embedded in the public conscience. The slaveowners' prominent role in shaping a new federal political identity placed them at the apex of American society, a position that led them to view organic metaphors with growing enthusiasm .... American slaveowners in the early national period realized that the recognition of the social ties binding every element of society together would serve to reinforce their mastery. Occupying the top rung on the social hierarchy, the planters could finally feel comfortable extending their humanitarian rhetoric to encompass their subordinates.

\textit{Id.} (footnote omitted); see also \textit{Fox-Genovese \& Genovese, supra} note 179, at 670–79 (arguing anti-abolitionists "accepted self-interest as the guiding principle in human affairs").
\end{footnotesize}
critical to the slaveholders' efforts "to secure their mastery over an African American slave population that thirsted for freedom."\footnote{YOUNG, supra note 179, at 122.}

One of the most startling aspects of State v. Mann—the part that most viscerally strikes readers as "honest"\footnote{See Alfred L. Brophy, Thomas Ruffin: Of Moral Philosophy and Monuments, 87 N.C. L. REV. 799, 802 (2009).}—is the way in which Ruffin pierces through the romantic fiction of the happy slaveholding family. The slave’s obedience, he writes, "is the consequence only of uncontrolled authority over the body. There is nothing else which can operate to produce the effect."\footnote{State v. Mann, 13 N.C. (2 Dev.) 263, 266 (1829).} Although Ruffin eloquently makes the conventional appeal to the moral responsibility of the master to treat even erring slaves with humanity and restraint,\footnote{Id. at 267.} he does not rest his argument on hollow notions of paternalism. Forthrightly recognizing that the slave does not "labor upon a principle of natural duty, or for the sake of his own personal happiness,"\footnote{The protection already afforded by several statutes, that all-powerful motive, the private interest of the owner, the benevolences towards each other, seated in the hearts of those who have been born and bred together, the frowns and deep execrations of the community upon the barbarian who is guilty of excessive and brutal cruelty to his unprotected slave, all combined, have produced a mildness of treatment and attention to the comforts of the unfortunate class of slaves, greatly mitigating the rigors of servitude and ameliorating the condition of the slaves. Id. According to YOUNG, supra note 179, at 124, "ever increasing numbers of slaveowners were, by 1815, subscribing to the notion that mastery entailed responsibility and morality."} he acknowledges that the system of slavery is inherently unstable. And with this point he again draws upon one of the key themes of conservative thinking, one also reflected in the Virginia debates of 1829–1830, the fragility of any social or political system.\footnote{See supra note 205 and accompanying text.} Slavery itself had to be protected from any "threats ... to the established order."\footnote{BRUCE, supra note 195, at 91.}

The trial court's conviction of John Mann for callously taking aim against a hired slave would seem an unlikely threat to the integrity of the entire slave system. Within a planter ideology that privileged freeholders on the theory that an investment in land promoted the building of other ties to the community, Mann owned no estate. Within an ideology that looked upon unfettered expressions of "passion" with suspicion, he had acted with reckless
abandon. Even on the few facts that we can confidently assign to Ruffin's knowledge, Mann was a dubious torchbearer for the "absolute" rights of the master. But his conviction, while it vindicated the rights of Lydia's owner Elizabeth Jones and her family, also sent a message of sympathy—perhaps even reward—regarding a slave who had been shot as she tried to escape a white man's control. If Ruffin were indeed troubled by fears of political unrest and potential slave revolt, State v. Mann provided him with a ready platform: with the "disparity in numbers between whites and blacks" possibly working to the advantage of restless slaves, the case afforded an opportunity to consolidate the authority of white men, without regard to social rank. American slaveowners had only to look to the plantation economies of the Caribbean to see that when slaves and free blacks vastly outnumbered free whites, mass runaways and rebellion were a constant reality. One way to understand the reversal of Mann's conviction is as a dramatic, preemptive expansion of the numbers of white men with an unqualified right of discipline over slaves.

Ruffin's elision of the difference between a slaveowner and a slave hirer was a crucial strategic and rhetorical move that enabled him to avoid nuance, to expound upon the issue of the master's authority in broad, firm strokes. Granted, the nature of American judicial discourse is to "adopt a tone of overweening confidence," as Sanford Levinson has observed. "Few judges ... have made their reputation by confessing (at least in print) how close they were to deciding the case in the opposite direction." Over the course of his career, Ruffin continued to write in a style that, as one student of his work has said, leaves the reader "feeling that he is inevitably swept

238. Id. at 75–79, 120–21. Indeed, it was believed that owning property could induce a man to keep control of his passions. Id. at 83.
239. Mann, 13 N.C. (2 Dev.) at 268.
240. "[T]he master or other person having the possession and command of the slave [is] entitled to the same authority." Id. at 265; see also supra note 88 (suggesting the possibility that Lydia was not technically Mann's hired slave when the assault occurred). A recognition of white solidarity in this context, however, would not necessarily have indicated a belief that all whites had equal rights of representation and suffrage. See Wolf, supra note 178, at 225.
241. Cecil-Fronsman, supra note 81, at 18–20. By the mid-1820s, in response to the growing numbers of free blacks in the state, North Carolina was already moving toward strengthened legislative controls over their activity. See Franklin, supra note 52, at 62–64.
toward an unavoidable decision." But even this quality of State v. Mann finds expression in ways corresponding to the particular rhetoric that Ruffin's contemporaries were coming to adopt in response to perceived threats, direct and indirect, to the institution of slavery.

Historians going back at least to Kenneth Stampp have remarked upon the "aura of pathos" that permeated the slaveholding South. What Roberts-Miller and others have identified alternatively as a "rhetoric of doom" or a "rhetoric of defense" in southern discourse strikes a posture that "depends upon seeing people's options as severely limited, if not entirely controlled, by imperious external circumstances." This sense of tragic inevitability (together with a certain frustration that northern readers may not sufficiently grasp his point) is present in the preamble to Ruffin's opinion:

A Judge cannot but lament when such cases as the present are brought into judgment. It is impossible that the reasons on which they go can be appreciated, but where institutions similar to our own exist and are thoroughly understood. The struggle, too, in the Judge's own breast between the feelings of the man and the duty of the magistrate is a severe one, presenting strong temptation to put aside such questions, if it be possible. It is useless, however, to complain of things inherent in our political state.

Then in the passage citing violence as the ultimate foundation for slavery we find, again, a tone of somber resignation: "I most freely confess my sense of the harshness of this proposition; I feel it as deeply as any man can," Ruffin writes, but "[t]his discipline belongs to the state of slavery." With this fatalistic turn he denies his own considerable power to intercede, in effect "attributing victimhood" to

243. Dillard S. Gardner, Thomas Ruffin as a Judge 4 (ca. 1961–1964) (unpublished manuscript) (on file with the North Carolina Supreme Court Library). Further, "[t]here is a 'take it or leave it' quality in his opinions which reflects a man of strong convictions and rare doubts." Id. Gardner was the Supreme Court marshal-librarian from 1937 to 1964.

244. KENNETH P. STAMPP, THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH 3 (1956); ROBERTS-MILLER, supra note 229 (manuscript at 28).

245. ROBERTS-MILLER, supra note 229, at 2.

246. Id. at 17.


248. Id. at 266.
himself and to all "those who most benefit from (and promote) the systemic injustice" of slavery.  

The consequence of such rhetoric is to preclude real debate—not simply to declare that one party is right (as a legal opinion must), but to present the argument as closed from the beginning. Ruffin’s opinion rejects the notion that any claim of assault brought on behalf of a slave against any “person having command of the slave” could prevail against the combined interest of “the property of the master, his security and the public safety.”  

It assertively avoids an analysis of conflicting principles. It is not seriously engaged in a balancing of competing interests (although the opportunity to weigh the interest of the hirer against that of the owner was certainly available). Within the conventions of a judicial opinion, it is a discourse upon the proper rules of behavior “while slavery exists amongst us in its present state” (and upon the judiciary’s supposed inability to intervene), written with a wary eye toward those who would challenge its very existence. In this respect, again the rhetoric of State v. Mann aligns with contemporaneous writings of defensive slaveholders who “sought to render principles irrelevant to discussions of policy”—who in so doing “increasingly curtailed free discussion of alternative viewpoints on how southern society should be ordered.”

CONCLUSION

“The instability of human knowledge is one of our few certainties,” the journalist Janet Malcolm has written. “Almost everything we know we know incompletely at best. And nothing remains the same when retold.” What the archives have to tell us about the Chowan County trial of a poor white slave hirer named John Mann fills in certain gaps, while leaving other questions unanswered. We can conclude, at least provisionally, that the guilty verdict announced by a jury of slaveholders was a principled result, a public vindication of the interest of the slave Lydia’s owner, the

249. ROBERTS-MILLER, supra note 229, at 18.
251. Id. at 268.
252. BRUCE, supra note 195, at 178.
253. YOUNG, supra note 179, at 218; see also ROBERTS-MILER, supra note 229, at 18 (calling the conservative stance “a view of history that, in various ways, occludes the practical and particular historical causes of and pragmatic solutions to political problems thereby severely limiting the role that rhetoric—that is, public argument—can play in identifying the various options to a polis”).
orphan girl Elizabeth Jones, as well as Elizabeth’s guardian Josiah Small. We can speculate, on the basis of an evolving, unsettled body of law governing the rights and relations of masters, hirers, and slaves, that the common law was capacious enough to have sustained a jury’s conviction on appeal. The remaining task, then, becomes not to understand Ruffin’s opinion as a logical and inevitable statement of law, but rather to try to comprehend what did motivate him to overturn the jury’s verdict (and to do so in such sweeping terms). We are free, that is, to analyze *State v. Mann* as a work of rhetoric that arises within a particular context.

Ruffin’s Virginia background, his position as a prominent North Carolina lawyer and planter, and evidence from the text itself suggest a context of an emerging resistance to pressures upon the planter elite to become a more inclusive polity, pressures accompanied by continuing threats of slave revolt. Among other possible ways we might read *State v. Mann*, then, we can situate it along a continuum of increasingly proslavery polemics, between the positions taken by the conservative Virginians in 1829–1830, who sought at least to contain slavery as part of their successful campaign against efforts to dilute their political power, and the full-throttle defense of slavery mounted by Thomas Dew in the aftermath of the Virginia slavery debates of 1831–1832. But Ruffin’s rhetoric did not just arise within a certain historical moment; he took an active part in defining the moment, making decisions about what mattered and what did not. He chose to elevate the slave hirer John Mann to the status of a master. With that act, he created the urgent situation for which his judicial response became the commanding solution.

In some ways, *State v. Mann* was a perfect storm, the surprising end point of a series of fateful contingencies. If Mann had been possessed of assets, the most likely response to the assault would have been an uncontroversial civil claim for damages. If the case had been tried when it was first docketed, in the spring of 1829, Ruffin would

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not yet have been on the supreme court to hear the appeal. If the incident had happened a year earlier, in fact, Ruffin would have presided over the trial. Perhaps a different jury instruction would have led to an acquittal. Or perhaps in this setting, he would have behaved differently: perhaps his interactions with a jury composed of fellow slaveowners would have resulted in Mann’s conviction, perhaps with an appeal, or perhaps not. But it is “useless,” as Ruffin would say, to embark upon such a train of speculation. *State v. Mann* as we know it quietly inserted itself into the body of North Carolina law, upon which subsequent North Carolina cases worked, if not to undo it, at least to mitigate its effect.257

The real storm coalesced once *State v. Mann* began to circulate more widely: it came from the direction of those living outside of the regions “where institutions similar to [Ruffin’s] own exist[ed] and [were] thoroughly understood.”258 Though Ruffin surely expected that his words would reach a northern audience, he could not control the way in which those words would be taken. In a development far exceeding his intent, the opinion underwent a kind of “ideological drift,” to borrow a concept from Jack Balkin.259 For the abolitionists, Ruffin’s shockingly frank depiction of slavery’s dependency on the “absolute” physical power of one body over another became a rallying cry against the entire institution. “In fact,” writes Laura Korobkin, “it is far more likely that *State v. Mann* would never have become notable in the legal community had it not been taken up and widely circulated by the abolitionist press.”260 Well before Stowe made the opinion the centerpiece of her 1856 novel *Dred*, it was broadly condemned. As Korobkin notes, it was cited in Garrison’s *Liberator* (repeatedly, beginning in 1839)261 and in Charles Elliott’s 1850 *Sinfulness in American Slavery: Proved from Its Evil Sources*.262 It was quoted the same year in a letter to the House of Representatives “to prove that ‘the law sanctions every atrocity

261. *Antislavery Lecture IV: Contentment! Happiness! Kind Treatment!* LIBERATOR (Boston), May 31, 1839, at 85.
262. CHARLES ELLIOTT, *SINFULNESS OF AMERICAN SLAVERY: PROVED FROM ITS EVIL SOURCES; ITS INJUSTICES; ITS WRONGS; ITS CONTRARIETY TO MANY SCRIPTURAL COMMANDS, PROHIBITIONS, AND PRINCIPALS, AND TO THE CHRISTIAN SPIRIT; AND FROM ITS EVIL EFFECTS; TOGETHER WITH OBSERVATIONS OF EMANCIPATION, AND THE DUTIES OF AMERICAN CITIZENS IN REGARD TO SLAVERY* 222 (B. F. Tefft ed., 1850).
perpetrated upon the slave.’”263 The opinion became so well known among abolitionists that it could be invoked without being called by name.264 As Alfred Brophy puts it elsewhere in this Issue, the “clarity of thought” in Ruffin’s opinion facilitated the abolitionists’ “critique of the proslavery legal system.”265

As an unintended exhibit for the brief against slavery, State v. Mann might also be read as part of an earlier conversation, within a body of southern work so stubbornly opposed to any critical discussion of slavery that it resulted in a backlash even prior to the Garrisonian period. In the 1820s, according to David Blight, antislavery activists were already sensing the futility of appeals to moral right; increasingly they saw southerners as “impervious to persuasion.” What they read in southern sources became a “radicalizing stimulus” for their advocacy. The abolitionists’ shift of tactics from gradualism to “immediatism,” in part fueled by a strong Christian evangelical movement, thus also reflected “a rational response to the steadily rising temper of southern intransigence and a dilemma of diminishing alternatives.”266 Considered in this light, Ruffin’s insistence, for example, that he was powerless to act without the legislature’s authority was a way of absolving himself, akin to other southern writers’ invocation of an even higher authority.267 “Appeals to ‘Divine Providence’ were a release from responsibility for many defenders of slavery,” writes Blight. “Psychologically released from culpability, and resigned to a vague faith in divine guidance, many slaveowners avoided seeking solutions.” Abolitionists viewed these appeals as “proslavery ploys,” for


264. Id. at 387–89; see also Brophy, supra note 232, at 799, 807 (“Indeed, abolitionists used State v. Mann as a centerpiece of their attack on slavery and the law.”).


266. Blight, supra note 180, at 142, 144, 162. Building upon David Brion Davis’ definition, Blight calls immediatism “a ‘surrogate religion,’ representing expression of moral sincerity, eagerness for sacrifice, adoption of anti-institutional individualism, and heightened militancy.” Id. at 141; see also Newman, supra note 180, at 86–106 (noting that the influence of the African American moral confrontation of slavery helped facilitate the movement among white reformers to adopt a more impassioned, emotional response). See generally, David Brion Davis, The Emergence of Immediatism in British and American Antislavery Thought, in ANTE-BELLUM REFORM 139 (David Brion Davis ed., 1967) (discussing the shift in social attitudes from a detached, rational abolitionist strategy to a sense of moral responsibility resulting in a transition from gradualism to “immediatism”).

267. State v. Mann, 13 N.C. (2 Dev.) 263, 268 (1829). Recall also that Ruffin adds a suggestion that no less authority than “the law of God” could sanction a slave’s appeal from his master. Id. at 267.
"[w]aiting humbly for 'Providence' to undermine slavery was hardly what most [of them] had in mind."268 Whereas southerners like Ruffin looked to the north (where "[i]t is impossible" that a case such as State v. Mann "can be appreciated") and saw "a false and fanatical philanthropy,"269 abolitionists were already responding by developing "an ideology of faith in man's perfectibility, coupled with an apocalyptic view of the world."270 This fruitless interchange "demonstrated how morally irreconcilable America's conflict over slavery had already become."271

Ruffin's thought during the crucial period of the 1820s and into the 1830s merits further study. Along the lines of the ideological impasse discussed above, such scholarship might take into account Perry Miller's claim that a fundamental "disillusion[ment] about human nature" was characteristic of lawyers in both the North and the South—a tendency that "eventually . . . color[ed] the curiously fatalistic complexion of the Civil War,"272 a claim explored from a different angle by Robert Cover.273 Such study might elaborate on the significance of religion to Ruffin's ideas about slavery, considering him and Dew as fellow Episcopalians.274 Within a period that, for all its "stiffening of proslavery intransigence,"275 nevertheless (as witnessed by the Virginia slavery debates) "retained a residual sense that slavery was not immutable,"276 more can be learned about how Ruffin reflected southern thought and how he shaped it.

The Chowan County story of State v. Mann, meanwhile, remains incomplete. With more sleuthing in the archives, it might yet be possible to connect Elizabeth Jones firmly to living descendants.277

268. Blight, supra note 180, at 147.
269. Mann, 13 N.C. (2 Dev.) at 264, 268.
270. Blight, supra note 180, at 147.
271. Id. at 151.
273. COVER, supra note 52, at 119–30. Ruffin’s insistence that he is powerless before the command of law is an example of what Cover calls “judicial ‘can’t,’ ” a rhetorical move that he identifies primarily (but not exclusively) among judges in free states resolving fugitive slave cases against the freedom of the slave—a strategy that “seemed to move [the conversation] in a direction less and less susceptible to ameliorist solutions.” Id. at 121. Cover mentions State v. Mann in passing. Id. at 121 n.7.
274. O'BRIEN, supra note 179, at 943.
275. Blight, supra note 180, at 142.
276. O'BRIEN, supra note 179, at 942.
277. The Jethro and Elizabeth Riddick found in Gates County in 1850 may not be the same Jethro Riddick and Elizabeth Jones who married in Chowan County in 1841. See supra note 30. One of the children of Jethro H. and Elizabeth Riddick, Carolina, married Alford Rountree; they are buried, with other relatives, near Hobbsville, Gates County,
As to Lydia, her trail has receded far beneath the surface of the archival evidence. Although much of the story is lost, one conclusion is clear: in daring to resist John Mann's abuse, Lydia made a bid for freedom that became far more effective than she would surely ever know.
