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The Slaves and Slavery of Marie Claire Chabert: Familial Black Slaveholding in Antebellum Louisiana

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THE SLAVES AND SLAVERY OF MARIE CLAIRE CHABERT: FAMILIAL BLACK SLAVEHOLDING IN ANTEBELLUM LOUISIANA

Mitra Sharafi*

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I. INTRODUCTION

Black slaveholding was not unusual in antebellum America.[1] In 1830, one in seven slaves in New Orleans had a black master.[2] A quarter of all free black families in many Louisiana parishes held slaves.[3] For over eighty years, scholars have disagreed over the nature of this type of slavery. Was it "real" and primarily profit-driven, like its white-master prototype? Or was black slaveholding an ingenious use of law that kept families and couples together, using nominal slavery to protect individuals from the dangers accompanying freedom? In 1924, African American historian Carter G. Woodson argued that black slaveholding was predominantly non-commercial in aim.[4] The Woodson thesis was countered by a wave of literature asserting that most black slaveholding was primarily for profit. Both flavors of black slaveholding certainly existed. Since Woodson, however, the commercial variety has received greater attention.[5] As Ariela

1. The device had a long history in Louisiana: black slaveholding had been permitted by law since the period of Spanish rule. J.P. Benjamin & T. Slidell, *Valsain v. Cloutier*, *in* DIGEST OF THE REPORTED DECISIONS OF THE SUPERIOR COURT OF THE LATE TERRITORY OF ORLEANS, AND OF THE SUPREME COURT OF THE STATE OF LOUSIANA 383 (New Orleans, John F. Carter 1834). On black slaveholding in Spanish Louisiana, *see* KIMBERLY S. HANGER, BOUNDED LIVES, BOUNDED PLACES: FREE BLACK SOCIETY IN COLONIAL NEW ORLEANS, 1769-1803, at 70-77 (1997); GARY B. MILLS, THE FORGOTTEN PEOPLE: CANE RIVER'S CREOLES OF COLOR 23-49 (1977).

2. Laurence J. Kotlikoff & Anton J. Rupert, *The Manumission of Slaves in New Orleans, 1827-1846*, SOUTHERN STUD. 177 (1980).

3. LOREN SCHWENINGER, BLACK PROPERTY OWNERS IN THE SOUTH 1790-1915 105 (1990).

4. Carter G. Woodson, *Free Negro Owners of Slaves in the United States in 1830*, THE J. OF NEGRO HIST. 41 (1924). On the work of black historians between 1913 and the 1940s, *see* Philip J. Schwarz, *Emancipators, Protectors, and Anomalies: Free Black Slaveowners in Virginia*, 95 VA. MAG. OF HIST. AND BIOGRAPHY 317, 319-320 (1987).

5. *See e.g.*, *Diary of William Johnson, in* 1 WILLIAM JOHNSON'S NATCHEZ: THE ANTEBELLUM DIARY OF A FREE NEGRO 34-35 (William R. Hogan & Edwin A. Davis eds., 1968) (1951); R. Halliburton, Jr., *Free Black Owners of Slaves: A Reappraisal of the Woodson Thesis*, S.C. HIST. MAG. 129 (July 1975); MICHAEL P. JOHNSON & JAMES L. ROARK, BLACK MASTERS: A FREE FAMILY OF COLOR IN THE OLD SOUTH 141 (1984); NO CHARIOT LET DOWN: CHARLESTON'S FREE PEOPLE OF COLOR ON THE EVE OF THE CIVIL WAR 3 (Michael P. Johnson & James L. Roark eds., 1984); LARRY KOGER, BLACK SLAVEOWNERS: FREE BLACK SLAVE MASTERS IN SOUTH CAROLINA, 1790-1860 80-101 (1985); SCHWENINGER, *supra* note 3, at 22-25, 104-108 (1990); DAVID O. WHITTEN, ANDREW DURNFORD: A BLACK SUGAR PLANTER IN ANTEBELLUM LOUISIANA 57-67, 119-20 (1995). *See also* IRA BERLIN, SLAVES WITHOUT

Gross reminds us, conservative opponents of reparations for slavery stress profit-driven black slaveholding. For them, such emphasis assuages white guilt.[6] A handful of scholars have swum against this current, continuing to focus on other strain of black slaveholding.[7] This article joins their work, reinvigorating the Woodson perspective through an analysis of the previously unexamined legal papers of one familial black slaveholder in newly American New Orleans.[8] Marie Claire Chabert (1769-1847) was a former slave who held her nieces and future husband in slavery.

MASTERS: THE FREE NEGRO IN THE ANTEBELLUM SOUTH 274-76 (1974); H.E. STERKX, THE FREE NEGRO IN ANTE-BELLUM LOUISIANA 202-220 (1972); FRANCES JEROME WOODS, MARGINALITY AND IDENTITY: A COLORED CREOLE FAMILY THROUGH TEN GENERATIONS 35-36 (1972); ARIELA J. GROSS, DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM 65 (2000). The same point has been made for Barbados and the Danish West Indies. *See* JEROME S. HANDLER, THE UNAPPROPRIATED PEOPLE: FREEDMEN IN THE SLAVE SOCIETY OF BARBADOS 146-153 (1974); NEVILLE A. T. HALL, SLAVE SOCIETY IN THE DANISH WEST INDIES: ST. THOMAS, ST. JOHN, & ST. CROIX 163 (1992).

6. Ariela Gross, *When is the Time of Slavery? The History of Slavery in Contemporary Legal and Political Argument,* 96 CAL. L. REV. 283, 302 (2008).

7. Among these are LUTHER PORTER JACKSON, FREE NEGRO LABOR AND PROPERTY HOLDING IN VIRGINIA, 1830-1860 200-229 (1969); Schwarz, *supra* note 4, at 317-338; REBECCA J. SCOTT, DEGREES OF FREEDOM: LOUISIANA AND CUBA AFTER SLAVERY 27 (2005).

8. Papers Relating to the Estate of Marie Claire Chabert, Manumitted Slave (1805-64) (on file with the Princeton University Library, Louisiana Slavery and Civil War Collection, Manuscripts Division, Department of Rare Books and Special Collections) [hereinafter the Chabert Papers]. Translations from the French are my own. I am grateful to Jose-Luis Gastanaga for translating the one Spanish document in the Chabert Papers: Untitled Act of Sale (Feb. 7, 1805), *in* the Chabert Papers, folder 2. The Chabert Papers were compiled by Felix Limonge, who came upon them while collecting postage stamps some time before March 1926. He commented that "[a]mong this mass of papers, I have always prized very highly an account of its entirety and its uniqueness, the papers concerning Jacques Tisserand and his slave for life Marie Claire: in the hands of a fluent and competent writer, properly handled, they will furnish the theme for a capital historical novel showing the institution of slavery in a new light, never before attempted." Felix Limonge, Account of the Life of Marie Claire and Description of Documents (typescript) *in* the Chabert Papers, folder 1, 1 recto. Limonge was probably a lawyer himself, possibly at Durant and Homer, the New Orleans firm involved in litigation relating to Chabert's estate after her death. The firm was the law firm of republican politician and lawyer T. J. Durant, best known for his role as counsel in the Slaughterhouse Cases. The Slaughterhouse Cases, 83 U.S. 36 (1872). I have supplemented Chabert's estate papers with death and notarial records from the Louisiana State Archives [hereinafter LSA] and the New Orleans Notarial Archives Research Center [hereinafter NONARC].

Familial black slaveholding was widespread in antebellum New Orleans.[9] Louisiana case law is rich in examples of free parents owning their slave children, and free lovers owning their enslaved partners.[10] At least 63 percent of the slaves emancipated by free blacks in Louisiana were family members.[11] Marie Claire Chabert was not unusual, then, in privileging the integrity and safety of her kin over their freedom. As an illiterate black woman, she maneuvered the trilingual legal rapids of newly American Louisiana by buying family members and a romantic partner, owning real estate, obtaining loans, creating wills, and engaging in litigation.[12] The Chabert papers illuminate a remarkable vein of African American involvement with the formal legal system.[13]

9. Sumner Eliot Matison, *Manumission by Purchase*, 33 J. OF NEGRO HIST. 153 (1948).

10. For parent-child slaveholding, *see* Valsain v. Cloutier, 3 La. 170 (1831); Fuselier v. Masse, 4 La. 423 (1832); *Mazerolle v. Françoise*, *in* 3 JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO 564 (Helen Tunnicliff Catterall ed., 1932). For slaveholding between lovers, *see Mingo v. Darby*, *Negro Diocou (Tiocou) v. D'Auseville*, and *Lange v. Richoux*, *Id.* at 407, 410, 500. In *Lange,* a free husband agreed to work for seven years without pay to buy his enslaved wife. *See also Succession of Marie Eva La Branche*, *Id.* at 441.

11. Kotlikoff & Rupert, *supra* note 2, at 180. For an example, *see* Rebecca J. Scott, *Public Rights and Private Commerce: A Nineteenth-Century Atlantic Creole Itinerary*, 48 CURRENT ANTHROPOLOGY 237, 241 (Apr. 2007).

12. Dating from between 1805 and 1864, Chabert's estate papers span an intriguing period in the legal history of Louisiana: the beginning of American rule after a century of oscillation between French and Spanish control. In 1712, Louis XIV issued a charter for the development of the Louisiana territory. Under the Treaty of Fontainebleu, the French king placed Louisiana under Spanish control in 1769. The French regained Louisiana under Napoleon in 1800, but actual possession did not occur until 1803, then lasting only three weeks (November 30-December 20 1803). The United States purchased Louisiana from the French and took control of the territory in 1803. JUDITH KELLEHER SCHAFER, SLAVERY, THE CIVIL LAW, AND THE SUPREME COURT OF LOUISIANA 3 (1994). *See also* LOUISIANA UNDER THE RULE OF SPAIN, FRANCE AND THE UNITED STATES, 1785-1807 (James A. Robertson ed., 1911).

13. Similarly, Judith Kelleher Schafer and Kelly Kennington have unearthed a rich body of case records attesting to slaves' freedom suits in the Louisiana and Missouri courts, respectively. JUDITH KELLEHER SCHAFER, BECOMING FREE, REMAINING FREE: MANUMISSION AND ENSLAVEMENT IN NEW ORLEANS, 1846-1862 15-33 (2003); Kelly Marie Kennington, River of Injustice: St. Louis's Freedom Suits and the Changing Nature of Legal Slavery in Antebellum America (2009) (unpublished Ph.D. dissertation, Duke University) (on file with author). On suits involving self-purchase contracts, *see also* SCHAFER, (2003) *supra* at 45-58.

Marie Claire Chabert was born into slavery in Louisiana in 1769.[14] In her first will, she declared herself to be the legitimate daughter of Stanislas and Marie-Louise.[15] Unlike southern common law, Louisiana's European civil law legacy allowed slaves to marry (with their masters' consent), although notably denying them any of the "civil effects which result from such contract."[16] Louisiana had a formalized system of concubinage known as *plaçage,* and many of the slaves who went on to be manumitted were tied to white slave-owners through such relationships—whether as the children or mistresses of white slave-owners.[17] Marie Claire Chabert was unusual in being neither daughter nor concubine of a white man.[18] When she was 26, Chabert was purchased by Jacques Tisserand, a free black carpenter. Marie Claire and Jacques had been slaves on the same plantation before Jacques bought his own freedom.[19] His will ordered the manumission of Chabert. As a result, upon his death Marie Claire became Marie Claire, "free woman of color" (f.w.c.), an epithet that would accompany her name from then on. The label

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14. Death Record for Marie Claire Chabert (died Apr. 2, 1847). LSA, *supra* note 8.

15. "Je me nomme Marie Claire, Je suis créole de la Louisiane, fille légitime de Stanislas et de Marie-Louise, tous deux décédés." Testament de Marie Claire, Veuve Michel, Négresse libre (Nov. 5, 1845) *in* the Chabert Papers, *supra* note 8, folder 20, 1 recto. *See* ROBERT CHESNAIS, LE CODE NOIR 44, Art. 7 (1998).

16. CHESNAIS, *supra* note 16, at 44, Art. 7. On the other consequences of slave status in Louisiana law, *see also* SCHAFER (2003), *supra* note 13, at 153-154. MORGAN, *supra* author's note, (Art. 182).

17. Joan M. Martin, Plaçage *and the Louisiana* Gens de Couleur Libre*: How Race and Sex Defined the Lifestyles of Free Women of Color*, *in* CREOLE: THE HISTORY AND LEGACY OF LOUISIANA'S FREE PEOPLE OF COLOR 57-70 (Sybil Kein ed., 2000).

18. Kotlikoff & Rupert, *supra* note 2, at 176, 180-181; David C. Rankin, *The Tannenbaum Thesis Reconsidered: Slavery and Race Relations in Antebellum Louisiana*, SOUTHERN STUD. 18, 23 (Spring 1979); SCHAFER, (1994), *supra* note 8, at 180-200. Marriage between whites and blacks was prohibited by the *Code Noir* of 1724. Chesnais *supra* note 15, at 43-34, Art. 6. *See* Dupré v. Boulard, 10 La. Ann. 411 (1855). Presumably the same prohibition applied to marriage between whites and people of mixed race.

19. During the Spanish period of Louisiana's history, slaves had the right of self-purchase. In the American period, slaves sometimes sued to have self-purchase contracts upheld, but they more commonly sought freedom through purchase (and eventual manumission) by a third party. *See* SCHAFER, (1994), *supra* note 12, at 2-6; SCHAFER, (2003), *supra* note 13, at 45-58; and THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619-1860 384-385 (1996).

was designed to separate free blacks from whites in all acts of legal record.[20]

Between her manumission and death, Marie Claire purchased and held four of her nieces as slaves. She also bought an older male slave named Michel Bouligny, whom she later manumitted and married. Michel was 66 years old when he married Marie Claire. He died just a year later. Widowed, Marie Claire continued to purchase her nieces from their white owners, and acquired several lots of New Orleans property during the same period.[21] In her will, she bequeathed her estate to her nieces, having ordered her executor to free them. She also ordered these nieces to buy and free another niece. Marie Claire Chabert died at the age of 78 on April 2, 1847.[22]

This article begins with a discussion of the black slaveholding debate and the constant alternative against which familial black slavery defined itself: the law of manumission. At times when manumission was more difficult—and being free, more hazardous—familial black slaveholding was a pragmatic alternative. I next give an overview of Chabert's legal life as chronicled by her papers. Finally, the article focuses upon two specific features of the Chabert Papers that reflect the legal obstacle course through which a familial black slaveholder had to

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20. Ellen Holmes Pearson, *Imperfect Equality: The Legal Status of Free People of Color in New Orleans, 1803-1860*, *in* A LAW UNTO ITSELF? ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY 193-194 (Warren M. Billings & Mark F. Fernandez eds., 2001).

21. Marie Claire owned two lots in the Quartier du faubourg Ste Marie, Compté d'Orléans. *See* map in Plan, Survey and Examination of Title of two lots sold to Marie Claire Chabert by J. Bocage for $650 (Sept. 14, 1810) *in* the Chabert Papers, *supra* note 8, folder 8, 1 recto. Around the same time, Marie Claire also seems to have held property outside of New Orleans. I am grateful to Trish Nugent at the New Orleans Notarial Archives Research Center for drawing my attention to the Act of Oct. 20, 1810. De Armas notarial volume (1810), NONARC, *supra* note 8. At the time of Marie Claire's second and final will, she bequeathed property on faubourg Ste Marie and rue St Jean. Testament de Marie Claire (Nov. 12, 1846) *in* the Chabert Papers, *supra* note 8, folder 23, 1 verso. Marie Claire died in a house on this property; it was probably her home. Death Record for Marie Claire Chabert. LSA, *supra* note 8. The faubourg Ste Marie property appears to have been prime real estate in the commercial center of New Orleans. Samuel Wilson, Jr., *Early History of Faubourg St. Mary*, *in* 2 NEW ORLEANS ARCHITECTURE: THE AMERICAN SECTOR 3-48 (Mary Louise Christovich et al. eds., 1972). Marie Claire's property tax receipts are also among her papers: Tax Receipts (1811-1845) for the City of New Orleans, Parish of Orleans, Territory of Orleans, and State of Louisiana *in* the Chabert Papers, *supra* note 8, at folder 24.

22. Death Record for Marie Claire Chabert. LSA, *supra* note 8.

navigate. First, I analyze clauses in the documents that underscore the threat that banks and white wives posed to Chabert's slave ownership. Second, I look at the careful drafting of Chabert's wills, an acknowledgment of the risk of testamentary invalidation under the law of slavery. By dissecting these legal features of the Chabert Papers, the article offers a more textured picture of how this alternative legal regime worked. In offering a microhistorical approach to non-white Atlantic Creole family history, it joins a body of work most recently exemplified by Rebecca Scott's masterful study of the Tinchant family.[23]

II. BLACK SLAVEHOLDING AND MANUMISSION

I adopt the term *familial* to describe one type of black slaveholding because it is more apt than terms like *benevolent* or *protective*. Families, like slavery itself, could be exploitative in certain ways and protective in others. Familial black slaveholding was protective in a narrow, legal sense. It protected the slave from being forced to leave the state through removal laws or African resettlement schemes. It protected him or her from being kidnapped and sold back into "real"—or commercial—slavery. However, these slaves were not protected against other forms of exploitation. For instance, the fact that a person was held in slavery by a friend, relative or spouse did not prevent profit-driven elements from creeping into the relationship.[24] The black

23. Scott, *supra* note 11, at 237-256. *See also* comments by Cécile Vidale *in* Scott, *supra* note 11, at 252.

24. In the Louisiana case of Mathurin v. Livaudais, the free brother of a slave opposed the slave's manumission. Mathurin v. Livaudais, 5 Mart. (n.s.) 301 (1827). The free brother probably wanted to exclude the slave from inheriting their father's money. The judge called the free brother's demand "one of the harshest . . . and the most revolting to every principle of equity and justice, that has, as yet, fallen under our consideration." *Id. See also* SCHAFER (1994), *supra* note 12, at 216-217; SCHWENINGER, *supra* note 3, at 24-25. In an 1835 case, a mother bought her son then attempted to claim his property as her own at the expense of her son's widow on the basis of his slave status. The judge called her claim "novel and repulsive," and rejected it: "[a] mother. . . comes forward, after his death, to claim the fruits of his industry, on the allegation that her son lived and died her slave; that he was a mere thing." Montreuil v. Pierre, *in* JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO, *supra* note 10, at 508. In a case heard in 1854 and 1856, a free woman of color inherited her brother's estate then tried to sell her sister-in-law and seven nieces and nephews, all of whom had lived as if free for over twenty years. She was unsuccessful. Eulalie v. Long and Mabry, 9 La. Ann. 9 (1854);

slaveholding at the heart of this article was familial in the widest sense of the term: I include romantic partners and even friends who were treated like kin.[25]

The law of manumission was the process against which familial black slaveholding defined itself.[26] Familial black slaveholding linked itself to manumission law in a relationship of inverse proportionality: the less manumission was feasible, the more familial black slaveholding was sustained. To begin with, behavior-based requirements for manumission in Louisiana limited the number of slaves deemed eligible for manumission. Before a manumission could be granted, a declaration of the intention to manumit had to be posted on the courthouse door for forty days so that any public opposition could be filed.[27] To be eligible for manumission, a slave had to be at least thirty years old and must have "behaved well at least for four years preceding his emancipation."[28] Michel's petition of manumission to the police jury attested to "his good morals and character," but not all slaves would have fallen into the same non-subversive category.[29]

Even for those who were eligible for manumission, freedom was a risky business. The assumption that liberty trumped safety and family integrity ignores the many hazards of emancipation. In many states, removal laws required freed slaves to leave the state soon after being manumitted, forcing them to choose between

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Eulalie v. Long and Mabry, 11 La. Ann. 463 (1856); SCHAFER (1994), *supra* note 12*,* at 234-236. *See also* Jackson, *supra* note 7, at 213; Kennington, *supra* note 13.

25. It should also be noted that people of color who were unconnected by blood, intimacy or friendship sometimes entered into master–slave relationships. These slaves paid back their new master through their labor, after which point the master emancipated them. *See, e.g.*, the complex case of John Berry Meachum, *infra* note 44. This genre of black slaveholding, which arguably falls between commercial and familial varieties, sits beyond the scope of this article. It deserves further scholarly attention.

26. On Louisiana manumission law, *see* Ariela J. Gross, *Legal Transplants: Slavery and the Civil Law in Louisiana*, SOC. SCI. RES. NETWORK, May 18, 2009, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1403422 (last visited April 21, 2011). For the later period of 1855-1857, *see* SCHAFER (2003), *supra* note 14*,* at 71-96.

27. MORGAN, *supra* author's note, at Art. 187.

28. *Id.* at Art. 185. Nolé v. de St. Romes and wife, *in* JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO*, supra* note 10, at 549; SCHAFER (1994), *supra* note 12, at 237-241.

29. Police Jury Petition (Apr. 6, 1835) *in* the Chabert Papers, *supra* note 8, folder 12, 1 recto.

freedom, on the one hand, and friends and family, on the other.[30] As intended, removal laws gave slaves one more reason to remain slaves.[31] Judith Kelleher Schafer notes cases in which freed people of color sold themselves back into slavery to avoid being forced to leave.[32] Here was one place where familial black slaveholding did its work: being a nominal slave owned by a loved one could be preferable to *de jure* freedom in some unknown setting. This function of familial black slaveholding may have been less critical in Marie Claire's state than elsewhere. In Louisiana, an Act of 1830 required freed slaves to leave the state within 30 days, their former masters posting $1,000 security bonds to ensure their departure.[33] However, local manumission juries could permit freed slaves to remain in the state—and they did. Virtually all freed slaves in Louisiana were allowed to stay.[34] Chabert's manumitted slaves were no exception.

Even with the removal laws softened, there were other dangers to consider. Owning one's loved ones could prevent them from being kidnapped and re-enslaved by profit-driven masters.[35] Equally, it could prevent them from being sent "back" to the African resettlement colony of Liberia, a process that was made mandatory for all Louisiana manumissions within a decade of

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30. On the case of Baltimore, *see* RALPH CLAYTON, SLAVERY, SLAVEHOLDING, AND THE FREE BLACK POPULATION OF ANTEBELLUM BALTIMORE 9-11 (1993). On petitions from free people of color requesting permission to remain in the state, contrary to the removal laws, *see* The Race to Slavery Petitions Project (under "Right to reside in state") (2009), http://library.uncg.edu/slavery_petitions (last visited April 21, 2011).

31. For a case of a woman who returned to slavery in order to remain with her husband, *see* HERBERT G. GUTMAN, THE BLACK FAMILY IN SLAVERY AND FREEDOM, 1750-1925 35 (1976). For cases of freed people of color who chose to return to slavery, *see* SCHAFER (2003), *supra* note 13, at 152-162.

32. SCHAFER (2003), *supra* note 13, at 145-162.

33. SCHAFER (1994), *supra* note 12, at 181-182.

34. Kotlikoff & Rupert, *supra* note 2, at 173; Judith Kelleher Schafer, *Forever Free from the Bonds of Slavery: Emancipation in New Orleans, 1855-1857*, *in* A LAW UNTO ITSELF? ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY, *supra* note 20, at 164.

35. Writing on a slightly later period, Judith Kelleher Schafer notes that "[f]ree people of color in the North and the South always lived in fear of being abducted and sold as slaves for life." SCHAFER (1994), *supra* note 12, at 128. *See also Id.* at 103, 106-108; TOMMY L. BOGGER, FREE BLACKS IN NORFOLK VIRGINIA 1790-1860: THE DARKER SIDE OF FREEDOM 99-101 (1997); CAROL WILSON, FREEDOM AT RISK: THE KIDNAPPING OF FREE BLACKS IN AMERICA, 1780-1865- (1994); CLAYTON, *supra* note 29, at 45-50.

Marie Claire's death.[36] In places like the French Antilles, Barbados, and Jamaica, free people of color held their relatives as slaves because they could not afford to pay the heavy emancipation taxes introduced in the late eighteenth century.[37] The duties and risks associated with exiting slavery made freedom frightening. It should come as no surprise that many preferred to structure their lives through familial black slaveholding.

III. THE LEGAL LIFE OF MARIE CLAIRE CHABERT

Sometime before 1799, Jacques Tisserand bought his freedom from his New Orleans master, Don Bartolomeo Le Breton.[38] Jacques was a carpenter. Like most slaves who freed themselves by self-purchase, he did so through the extra earnings of his trade.[39] After Le Breton died in 1799, Jacques Tisserand bought "Maria Clara, negra," from the Le Breton estate for $930 (930 piastres). This was a high price to pay, but it is possible that being of child-bearing age increased Marie Claire's value. It is also possible that Marie Claire was attractive, and commanded a price on par with other pretty young women sold in the "fancy" trade.[40] According to the Spanish Act of Sale, Marie Claire was a healthy 26-year-old woman "with no visible defects." She was a vendor

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36. SCHAFER (1994), *supra* note 12, at 8-12; Schafer, *Forever Free from the Bonds of Slavery: Emancipation in New Orleans, 1855-1857*, *in* A LAW UNTO ITSELF? ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY, *supra* note 20, at 149-151, 156. *See also* AFRICAN-AMERICAN EXPLORATION IN WEST AFRICA: FOUR NINETEENTH-CENTURY DIARIES 9-10 (James Fairhead et al. eds., 2003); MARK TUSHNET, THE AMERICAN LAW OF SLAVERY, 1810-1860: CONSIDERATION OF HUMANITY AND INTEREST 202-204 (1981); Heirs of Henderson v. Executors, *in* JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO, *supra* note 10, at 647. On the African colonization movement generally, *see* P. J. STAUDENRAUS, THE AFRICAN COLONIZATION MOVEMENT 1816-1865 (1961); CLAUDE A. CLEGG III, THE PRICE OF LIBERTY: AFRICAN AMERICANS AND THE MAKING OF LIBERIA (2004).

37. HANGER, *supra* note 1, at 71.

38. On the right of self-purchase in Louisiana law, *see supra* note 19.

39. Matison, *supra* note 9, at 156. *See also* DYLAN C. PENNINGROTH, THE CLAIMS OF KINFOLK: AFRICAN AMERICAN PROPERTY AND COMMUNITY IN THE NINETEENTH–CENTURY SOUTH 51 (2003); Alison Carll-White, *South Carolina's Forgotten Craftsman*, 86 S.C. HIST. MAG. 32-38 (1985); Laura Foner, *The Free People of Color in Louisiana and St. Domingue: A Comparative Portrait of Two Three-Caste Slave Societies*, 3 J. OF SOCIAL HIST. 407 (1969).

40. *See* WALTER JOHNSON, SOUL BY SOUL: LIFE INSIDE THE ANTEBELLUM SLAVE MARKET 113-115, 155 (1999); DEBORAH GRAY WHITE, AR'N'T I A WOMAN? FEMALE SLAVES IN THE PLANTATION SOUTH 37 (1999).

and domestic slave.[41] After many offers and counter-offers, she was sold to her friend, "Santiago Tixerand" (Jacques Tisserand), the highest bidder.[42]

Jacques' will was taken in 1808 on the plantation of Mr. I. Pé. The former slave died soon after. In his will, Jacques revealed that his ownership of Marie Claire was a means of emancipation: "I declare that I bought the negress Marie Claire with the intention of giving her freedom, and that from then on I considered her to be treated as free."[43] Black slaveholding often functioned as a temporary holding station, rather than a final destination. Enslaved loved ones commonly waited in this intermediate state until official manumission became practicable.[44]

The nature of Jacques and Marie Claire's relationship was left vague in the will. The sum of $930 would be a huge amount to pay for a friend, but it is also possible that Marie Claire promised to pay Jacques back.[45] Jacques' will named Marie Claire as his universal heir and bequeathed to her his entire estate "in consideration for her good service and for the friendship that I had

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41. On urban peddling among slave women in Lousiana, *see* Lois Virginia Meacham Gould, *In Full Enjoyment of their Liberty: The Free Women of Color of the Gulf Ports of New Orleans, Mobile, and Pensacola*, 1769-1860 58 (1991) (unpublished Ph.D, dissertation, Emory University) (on file with author).

42. ". . . se puso en Venta otra Negra de la dicha succecion nombrada María Clara, como de Veinte y seis años, sana, y sin tachas, Vendedora y Doméstica, rematada despues de varias pujas y repujas, a favor del Negro libre nombrado Santiago Tixerand por la Cantidad de nueve cientos y treinta ps. como mayor postor." Untitled Act of Sale (Feb. 7, 1805) (in Spanish) *in* the Chabert Papers, *supra* note 8, folder 2, 2 recto. Many thanks to Jose-Luis Gastanaga for his translation.

43. "Je déclare que j'avois acheté la négresse Marie Claire dans l'intention de lui donner la liberté, et que je l'ai dès lors considérée traitée comme libre." Will of Jacques Tisserand (1808), *in* the Chabert Papers, *supra* note 8, folder 3, 1 verso.

44. *See* Rebecca Scott, Presentation at the Conference on "L'Expérience Coloniale Dynamiques des Echanges dans les Espaces Atlantiques à l'Epoque de l'Esclavage (XVe-XIXe siècles)": Public Rights and Private Commerce: A Nineteenth-century Atlantic Creole Itinerary (June 22, 2005).

45. The use of black intermediary purchasers was a common practice. An example was John Berry Meachum, a slave who freed himself and his family through self-purchase, then bought twenty slaves over his lifetime, encouraging them to buy themselves from him through reasonable repayment schemes. Matison, *supra* note 9, at 166. For a more ambiguous interpretation of Meachum, *see* Kennington, *supra* note 44, at 185-192.

with her."[46] His estate was worth about $600 before payment of his bills for carpentry tools. He declared that he had never been married but had one daughter named Manon. Jacques requested that Marie Claire give $200 to his daughter. Manon was the slave of her aunt, Constance Tisserand, Jacques' then unmarried sister.

Marie Claire's notice of manumission was issued on October 18, 1808.[47] It was accompanied by certification that no opposition to her manumission had been filed by any member of the public.[48] Marie Claire was about forty years old when she became a free woman of color.[49]

In the spring and summer of 1809, Marie Claire tried to give $200 to Manon, as required by Jacques' will. However, Manon's owner and aunt, now married to a Mr. Darreah, objected. In a move that reminds us that familial slavery could be exploitative, Jacques' sister claimed the money for herself and her new husband. She argued that because a slave could not hold property by law, all property accruing to Manon passed automatically to herself (Mrs. Darreah). Marie Claire eventually gave up. Her Act of Payment of $200 to the couple acknowledged that, by law, Manon could not possess property in her own right.[50]

Among Chabert's papers are court-related documents probably pertaining to the distribution of Jacques Tisserand's estate.[51] The

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46. ". . . en considération de ses bons services et de l'amitié que je lui ai portée." Will of Jacques Tisserand (1808), *in* the Chabert Papers, *supra* note 8, folder 3, 1 verso.

47. Act of Manumission of Marie Claire (Nov. 18, 1808), *in* the Chabert Papers, *supra* note 8, folder 4.

48. Notice (Oct. 7, 1808), *in* the Chabert Papers, *supra* note 8, folder 4.

49. "[B]y virtue of a decree issued by the judge of the Parish and City of New Orleans, His Honour Moreau Lislet . . . and by consequence of a declaration of will by the said deceased Negro, [he declares] that he frees and freely gives full and complete liberty to no longer be subjected to slavery to the named Marie Claire, negress of about forty years of age, slave of this succession . . . from this day on." (". . . [E]n vertu d'un décret rendu par le juge de la Paroisse et Cité de la Nlle Orléans le Se Moreau Lislet . . . et en conséquence d'une déclaration du testament du dit nègre décédé declare par [se] presenter qu'il affranchit et donne liberté pleine et entière et gratuitement pour n'être plus sujete à l'esclavage à la nommée Marie Claire négresse d'environ quarante ans esclave de cette succession . . . à compter de ce jour.") Act of Manumission of Marie Claire (Nov. 18, 1808), *in* the Chabert Papers, *supra* note 8, folder 4, 1 recto.

50. Act of Payment (July 29, 1809), *in* the Chabert Papers, *supra* note 8, folder 5, 1 recto.

51. Bills for Court Expenses (for $75 on Apr. 19, 1809, and for $12, undated), *in* the Chabert Papers, *supra* note 8, folder 6.

cataloguer noted the large number of legal services provided to Marie Claire for free, she being of meager means.[52] The next year (1810), Marie Claire bought land from Joseph Bocage for $650, a sum roughly equivalent to the money she inherited from Jacques Tisserand.[53] Marie Claire seems to have invested Jacques' money in real estate. This leaves unanswered the question of how Marie Claire supported herself. Marie Claire may have learned to be a good businesswoman while she was a vendor during her years as a slave.[54] Equally though, Marie Claire may have specialized in any of a range of semi-skilled trades. She may have worked as a seamstress, hairdresser, nurse, or midwife.[55] There was also the business of inn-keeping, an enterprise undertaken almost exclusively by free women of color in port cities of the Gulf of Mexico and the Caribbean. Innkeepers often doubled as brothel madames. The joint trade allowed them to raise the capital needed to launch other business ventures.[56] Marie Claire Chabert owned property in a neighborhood that suggests that she may have owned a brothel. Her three lots were situated in an area where prosecutions for brothel-keeping occurred.[57] Most brothels in New Orleans were run by free women of color in Marie Claire's period, and were generally tolerated by the authorities.[58]

In 1827, Marie Claire bought her niece, Marie Jeanne, from Jean François Laville for $180.[59] Marie Jeanne was about 55 years old. The compiler of the Chabert papers stated that Marie Claire

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52. Limonge, Account of the Life of Marie Claire (typescript), *in* the Chabert Papers, *supra* note 8, folder 1, 5 recto.

53. Act of Sale (August 11, 1810), *in* the Chabert Papers, *supra* note 8, folder 8, 1 verso.

54. Untitled Act of Sale (Feb. 7, 1805) (in Spanish), *in* the Chabert Papers, *supra* note 8, folder 2, 2 recto.

55. STERKX, *supra* note 5, at 231-232.

56. *Id.* at 229-231; Annie Lee West Stahl, *The Free Negro in Antebellum Louisiana*, 25:2 *LA. HIST. Q.* 372-373 (1942). On Bridgetown, Barbados, *see* JEROME HANDLER, THE UNAPPROPRIATED PEOPLE: FREEDMEN IN THE SLAVE SOCIETY OF BARBADOS 133-138 (1974).

57. On Chabert's property, *see supra* note 21. Schafer notes six brothel-keeping cases in 1853 from the same neighborhood (*i.e.,* the Phillippa-Gravier-Perdido area). JUDITH KELLEHER SCHAFER, BROTHELS, DEPRAVITY, AND ABANDONED WOMEN: ILLEGAL SEX IN ANTEBELLUM NEW ORLEANS 139 (2009).

58. Judith Kelleher Schafer's study of brothel-owner prosecutions suggests that New Orleans authorities tolerated prostitution: there was "almost no effort to restrain prostitution in antebellum New Orleans." SCHAFER (2009), *supra* note 56, at 144.

59. Act of Purchase (Apr. 14, 1827), *in* the Chabert Papers, *supra* note 8, folder 9, 1 recto-verso.

also bought another niece and manumitted the two women around the same time.[60] The second niece may have been Louise Jarreau, a free woman of color who was treated generously in Marie Claire's last will. It is impossible to know whether Marie Claire or her nieces provided the purchase money.

Five years later, in December 1832, Marie Claire bought a 63-year old male slave named Michel from the widow of Francisco Bouligny, Madame Louise d'Auberville. During Spanish rule, Francisco Bouligny had been Lieutenant-Governor of Louisiana, and had fought the British in the colony in the 1770s and 80s.[61] Three years passed, then the files contain Marie Claire's Police Jury Petition for manumission of her slave Michel (April 6, 1835). The petition was signed by Marie Claire's attorney and notary public Louis T. Caire, two men by the names of Monsieurs Garnier and Strawbridge, and by Marie Claire. Marie Claire was illiterate; she signed all legal documents with an X. The manuscripts do not reveal how she obtained expert legal advice, nor how she did so for free. However, particular notary publics in New Orleans specialized in providing legal services for free people of color; Louis R. Caire was one.[62] The petition declared that Michel was "a good and faithful servant of good morals and character and that he may be very easily maintain himself by his labor and industry."[63] The police jury was a panel of six local government members who exercised the police power to regulate everything from road maintenance and poor relief to the manumission of slaves.[64] They considered Michel's case in two sittings, ultimately manumitting him with permission to remain in the state. It was standard to grant permission during this period in New Orleans.[65] Michel's deed of manumission followed on 12 June 1835.[66]

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60. Limonge, Compiler's Account of the Life of Marie Claire (typescript), *in* the Chabert Papers, *supra* note 8, folder 1, 2 recto.

61. *See* GILBERT C. DIN, FRANCISCO BOULIGNY: A BOURBON SOLDIER IN SPANISH LOUISIANA (William J. Cooper ed. 1993).

62. Sally Kittredge Evans, *Free People of Color*, *in* IV NEW ORLEANS ARCHITECTURE: THE CREOLE FAUBOURGS 26-27 (Roulhac Toledano et al. eds., 1974).

63. Police Jury Petition (Apr. 6, 1835), *in* the Chabert Papers, *supra* note 8, folder 12, 1 verso.

64. *See* JOHN R. FICKLEN, HISTORY AND CIVIL GOVERNMENT OF LOUISIANA 160-162 (1901).

65. Extract from Proceedings of Police Jury (Apr. 25, 1835, June 1, 1835), *in* the Chabert Papers, *supra* note 8, folder 12, 1 recto. *See* Schafer, *Forever Free from the Bonds of Slavery:' Emancipation in New Orleans, 1855-*

Later that year, Marie Claire married Michel. She was about 61 years old. He was about 66. Marie Claire and Michel had little more than a year of married life together; Michel died late in 1836. Marie Claire's papers include a special permit from the night watch to allow some friends to visit her home for Michel's wake.[67] Night assemblies for free blacks were generally forbidden.[68] There is also a bill for $30.25 from Fernandez, the undertaker, for burying Michel.[69]

Marie Claire borrowed money from the Honoré family, in part for Michel's tomb and funeral expenses. Her files contain papers relating to two loans of roughly $500, one in 1836 and the other two years later.[70] The Honorés charged 10% interest on the loan, a rate of interest that, at least in the following decade, would be considered so high as to constitute usury, forfeiting the creditor's claim to any interest at all.[71] The compiler Limonge noted that the

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1857, *in* A LAW UNTO ITSELF? ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY, *supra* note 20, at 146.

66. "There was no opposition to the manumission of the said slave . . . Consequently, the said Marie Claire declares free and frees genuinely before those present the said Michel to enjoy all the rights, advantages, and prerogatives that freemen enjoy, to relinquish generally in favor of the said Michel all property rights whatsoever which she may hold over him." (". . . [I]l n'y a pas eu d'opposition à l'affranchissement du dit esclave… En conséquence la dite Marie Claire déclare affranchie et affranchit réellement par les présentes le dit Michel pour par lui jouir de tous les droits, avantages et prérogatives dont jouissent les personnes libres, de dessaisissant en faveur du dit Michel de tous les droits de propriété généralement quelconques qu'elle peut avoir sur lui.") Affranchissement Marie Claire à Michel (June 12, 1835), *in* the Chabert Papers, *supra* note 8, folder 12, 1 recto.

67. Night Watch Permit (Nov. 18, 1836), *in* the Chabert Papers, *supra* note 8, folder 13, 1 recto.

68. Rankin, *supra* note 18, at 28.

69. Undertaker's Bill (Nov. 28, 1836), *in* the Chabert Papers, *supra* note 8, folder 14, 1 recto.

70. Notes Acknowledging Loans (June 10, 1836) *in* the Chabert Papers, *supra* note 8, folder 15, 1 recto; Règlement de Compte entre Marie Claire et Isidore Honoré (Jan. 19, 1838), *in* the Chabert Papers, *supra* note 8, folder 15, 1 recto. On freedwomen borrowing from white creditors in the French Caribbean, *see* Susan M. Socolow, *Economic Roles of the Free Women of Color of Cap Français*, *in* MORE THAN CHATTEL: BLACK WOMEN AND SLAVERY IN THE AMERICAS 285 (David Barry Gaspar & Darlene Clark Hine eds., 1996).

71. "Five per cent per annum is the rate of legal interest that is the interest allowed in the absence of any special agreement on the subject; and eight per cent is the highest rate of conventional interest now permitted to be stipulated for. If more than eight per cent be agreed for, it is usury, the penalty of which is a forfeiture of all the interest attempted to be made." CHARLES S. POMEROY, THE PEOPLE'S LAW BOOK: AN INDISPENSABLE ASSISTANT TO BUSINESS MEN, DESIGNED PARTICULARLY FOR THE STATES OF PENNSYLVANIA,

money was originally borrowed for Michel. When Michel died, the Honorés advanced money for the purchase of his coffin and all funeral expenses.[72] Chabert also hired out the unidentified services of her niece Rosalie (aged 49 at the time) in part payment of this loan.[73] Both the free legal services provided to Marie Claire, and the unfair rate of interest charged by the Honorés probably stemmed from the same fact: Marie Claire's vulnerability as a single and illiterate free woman of color.[74]

Marie Claire bought Rosalie around 1827. She manumitted this niece on March 6, 1839. The police jury accepted that "there was no opposition to the freeing of the said slave, Rosalie."[75] Rosalie was granted permission to remain in the state.[76] The police jury also accepted that Rosalie was not acting as security on any loans or mortgages taken out by Marie Claire, a point to which I return below.[77] Rosalie died five years after manumission. Marie Claire held Rosalie's funeral in St. Louis Cathedral, New Orleans. The bill is among her papers.[78] Marie Claire's use of St. Louis Cathedral on repeated occasions is significant. David C. Rankin characterizes this church as particularly racist on the eve of the Civil War. *The Tribune*, a paper owned by free black Catholics, noted in 1862 that New Orleans's St. Louis Cathedral "was only a

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OHIO, KENTUCKY, TENNESSEE, INDIANA, ILLINOIS, MISSOURI, MICHIGAN, IOWA, AND LOUISIANA 109 (1849).

72. Limonge, Account of the Life of Marie Claire (typescript), *in* the Chabert Papers, *supra* note 8, folder 1, 7 recto.

73. Other cases of slaves being leased out by their black owners are Tonnelier v. Maurin, 2 Mart. (o.s.) 206 (La. 1812) and Burke v. Clarke, 11 La. 206 (1837). *See also* Susan M. Socolow, *Economic Roles of the Free Women of Color of Cap Français*, *in* MORE THAN CHATTEL: BLACK WOMEN AND SLAVERY IN THE AMERICAS, *supra* note 69, at 289.

74. That said, a number of other single illiterate free women of color came to be successful property owners in New Orleans. Kittredge Evans, *supra* note 61, at 27-31.

75. ". . . il n'y a pas eu d'opposition à l'affranchissement de la dite esclave Rosalie." Affranchissement par Marie Claire de l'esclave Rosalie (Mar. 6, 1839), *in* the Chabert Papers, *supra* note 8, folder 17, 1 recto.

76. ". . . sans être tenue de quitter l'Etat." Affranchissement par Marie Claire de l'esclave Rosalie (Mar. 6, 1839), *in* the Chabert Papers, *supra* note 8, folder 17, 1 verso.

77. ". . . il appert qu'il n'y a pas d'hypothèque enregistrée contre la dite Marie Claire sur l'esclave Rosalie." Affranchissement par Marie Claire de l'esclave Rosalie (Mar. 6, 1839), *in* the Chabert Papers, *supra* note 8, folder 17, 1 verso.

78. Untitled Funeral Bill (Dec. 21, 1844) *in* the Chabert Papers, *supra* note 9, folder 19, 1 recto.

place where incense is burned in honor of the god of prejudice."[79] Nevertheless, two decades earlier, Marie Claire Chabert was allowed to hold both Michel's and Rosalie's funerals in the cathedral.[80] According to H. E. Sterkx, many of the freed elite of New Orleans were also married in St. Louis' Cathedral.[81]

In November 1845, Marie Claire wrote her first will.[82] She named her freed niece Louise as her universal legatee, on condition that Louise buy two of Marie Claire's other nieces, namely Martine (owned by Gabriel Villeré) and Adélaïde (owned by Hughes de Lavergne), with the proceeds of sale of Marie Claire's property. Adélaïde's former master had been private secretary to the governor of Louisiana, and, later, became the president of the City Bank of New Orleans. His father-in-law was governor of Louisiana between 1816 and 1820.[83] Less than one year later, Marie Claire was able to buy Martine from her master for $600. As the compiler of Marie Claire's papers noted, this was a surprisingly high price for a 46 year-old female slave.[84] Martine's price may have reflected the growing influence of the abolitionist movement. As anti-slavery gained momentum, slaves became a more contested—and more expensive—form of property. The Act of Sale contained two interesting parts. First, Gabriel Villeré, Martine's owner, informed the buyer that Martine was the subject of an "hypothèque" or mortgage by the Banque de l'Union de la Louisiane.[85] Having used Martine as security for a loan from the

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79. Rankin, *supra* note 18, at 14.

80. The father-in-law (Jacques Philippe de Villeré) of the owner (Hughes de Lavergne) of Marie Claire's niece Adelaïde was married at St. Louis Cathedral. Michel's former owner (Francisco Bouligny) was buried there, too. DICTIONARY OF LOUISIANA BIOGRAPHY 95-96, 490 (Glenn R. Conrad ed., 1988). For a history of the cathedral, *see* Rev. C. M. Chambon, IN AND AROUND THE OLD ST. LOUIS CATHEDRAL OF NEW ORLEANS (1908). For an image, *see* SCHAFER (2003), *supra* note 13, at 91.

81. STERKX, *supra* note 5, at 14; *see also* JOHN W. BLASSINGAME, BLACK NEW ORLEANS 1860-1880 14 (1973).

82. Testament de Marie Claire, Veuve Michel, Négresse libre (Nov. 5, 1845), *in* the Chabert Papers, *supra* note 8, folder 20, 1 recto-2 recto.

83. Carolyn E. DeLatte, *Jacques Philippe Villeré*, *in* THE LOUISIANA GOVERNORS 86-90 (Joseph G. Dawson III ed., 1990).

84. Limonge, Account of the Life of Marie Claire (typescript), *in* the Chabert Papers, *supra* note 8, folder 1, 8 recto.

85. An Act of 1855 required the recorder of mortgages to produce a certificate attesting to the mortgage-free status of slaves seeking manumission. Schafer, *Forever Free from the Bonds of Slavery': Emancipation in New Orleans, 1855-1857*, *in* A LAW UNTO ITSELF? ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY, *supra* note 20, at 153.

bank, Villeré promised to pay back the borrowed money as soon as possible. The Act refers to the mortgage "which . . . he shall oblige himself to eliminate as soon as possible, with which the said Marie Claire Chabert declares herself satisfied."[86] Secondly, the back page of the Act contained a standardized printed form to be filled in by the seller's wife (here, Eulalie de Laronde). The statement declared that the seller's wife understood fully the nature of the sale and consented to it, and that she was neither in the presence nor under the influence of her husband.[87] I will return to both features shortly.

Probably because of the purchase of Martine, Marie Claire rewrote her will. This time, she ordered her executor, a free blacksmith named Antoine Remy,[88] to use half the proceeds of sale of her real estate to buy her niece Adélaïde from Madame Veuve Lavergne, "intending that immediately following acquisition she be liberated from the bonds of slavery."[89] Assuming that this transaction would proceed as planned, she then named her two nieces Martine and Adélaïde her universal legatees, giving her free niece Louise Jarreau "for use only" one third of the remaining half of her real estate during her lifetime.[90] By 1850, free people of color owned large amounts of real estate in the center of New Orleans.[91] Marie Claire's will was shrewdly drafted because it contained two saving clauses that would prevent the entire will from being declared void if Adélaïde's manumission failed. I will also return to this feature below.

Marie Claire died the year after her last will was written, on April 2, 1847.[92] Many of the documents in her files are annotated

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86. ". . . laquelle hypothèque il s'oblige à faire radier dans le plus bref delais de laquelle déclaration la dite Marie Claire Chabert se reconnait satisfait." Vente d'esclave de M. Gabriel Villeré à Marie Claire Chabert (Aug. 28, 1846), *in* the Chabert Papers, *supra* note 8, folder 22, 2 verso.

87. *Id.*, folder 22, 3 verso.

88. Remy was also the chief witness to Marie Claire's death certificate. Death Record for Marie Claire Chabert, LSA, *supra* note 8.

89. "[V]oulant qu'aussitôt après cette acquisition elle soit afranchie des liens de l'Esclavage." Testament de Marie Claire (Nov. 12, 1846), *in* the Chabert Papers, *supra* note 8, folder 23, 1 verso.

90. "[E]n usufruit seulement." *Id.*

91. JOHN W. BLASSINGAME, BLACK NEW ORLEANS 1860-1880 11 (1973); Schafer, *Forever Free from the Bonds of Slavery: Emancipation in New Orleans, 1855-1857*, *in* A LAW UNTO ITSELF? ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY, *supra* note 20, at 159.

92. Death Record for Marie Claire Chabert. LSA, *supra* note 8.

in burgundy ink dated 1847—possibly the notary's confirmation that her papers were in order after her death. The papers relating to Marie Claire's estate were compiled by the New Orleans law firm, Durant and Horner.[93] The firm appears to have organized the documents for the purposes of litigation in the 1860s.[94] New Orleans fell to Unionist forces in April 1862, and they occupied the city until 1877. Daily legal business would have been resumed by early 1864, when a relatively stable provisional system of courts was functioning.[95] The litigation may have related to Marie Claire's will, but its exact nature is not described in Marie Claire's papers. Similarly, there is no information on the effect of the Confederacy's Civil War defeat upon this litigation.[96]

The mix of slaveholding arrangements in Marie Claire's papers illustrates the many factors that would have informed the decision to sustain or terminate familial slavery. In the earlier period of her free life, Marie Claire used the device to its fullest, holding her nieces and future mate in slavery for significant periods of time before freeing them. She probably bought Rosalie in 1827, but did not free her officially until twelve years later, in 1839. In the interim, Marie Claire hired out the services of her niece, as already noted. The passage of the 1830 Removal Act in Louisiana may partly explain the delay—Marie Claire may have wanted to wait to see how often emancipated slaves were granted permission to remain in the state before risking removal for Rosalie.

Marie Claire manumitted her later slaves more quickly. She bought Michel in 1832, kept him a slave for 2.5 years, then freed him in June 1835. She married him shortly afterwards: the Louisiana Civil Code (1825) prohibited marriage between a slave and a free person of color.[97] Marie Claire manumitted others

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93. Princeton also holds miscellaneous papers of Durant and Hornor (1854-1872) concerning Civil War claims by civilians against the Union Army for the recovery of property and compensation. Louisiana Slavery and Civil War Collection, Manuscripts Division, Department of Rare Books and Special Collections, Princeton University Library.

94. Handwritten notes confirming the authenticity of copies are dated January 13, 1864. *See* Will of November 12, 1846. Chabert Papers, *supra* note 8, folder 23.

95. Thomas W. Helis, *Of Generals and Jurists: The Judicial System of New Orleans Under Union Occupation, May 1862-April 1865*, 29 LA. HIST. 143, 160-161 (1988).

96. On slave-related litigation in Louisiana after the Civil War, *see* SCHAFER (1994), *supra* note 12, at 289-304.

97. *See* MORGAN, *supra* author's note, (Art. 95).

almost immediately. The cataloguer Limonge noted that she bought and emancipated two nieces, Marie Jeanne and another (possibly Louise Jarreau) in 1827.[98] Chabert's papers indicate that in 1846, she purchased one of her nieces, Martine, and freed her within the next few months. Chabert also requested the purchase and immediate manumission of her niece Adélaïde in both her wills of the same period.[99]

It is likely that growing restrictions on manumission added an element of urgency, making Marie Claire opt for immediate emancipation while it was still available. Marie Claire may also have been anticipating her own death as she grew older. She made her first will in 1845, at the age of 66, nine months before buying Martine. By the time Chabert wrote her second and final will, three and a half months after the purchase, Martine was legally free. Chabert must have realized that if she died while Martine was her slave, Martine could inherit nothing. In the words of the Louisiana Civil Code, "[a]ll that a slave possesses belongs to his master; he possesses nothing of his own, except . . . the sum of money or movable estate which his master chooses he should possess."[100]

IV. THREATS TO FAMILIAL BLACK SLAVEHOLDING

A. Debts

The Chabert papers offer a sample of factors that could threaten the security of the slaves held by familial black masters. This article focuses on three. The first two consist of clauses in the Act of Sale for Marie Claire's niece, Martine. The clauses served as a reminder of the ominous presence of banks and white masters' wives in the background of Marie Claire's slave transactions. Both posed a potential threat to the security of familial black slaveholders' claims to own their slaves. The third feature I consider is the careful phraseology of Marie Claire's wills. Marie Claire's lawyers' pragmatic drafting reflects the myriad ways wills could be invalidated under Louisiana's law of slavery. If Marie

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98. Limonge, Account of the Life of Marie Claire (typescript), *in* the Chabert Papers, *supra* note 8, folder 1, 2 recto.

99. These wills are dated November 5, 1845 and November 12, 1846. Chabert Papers, *supra* note 8, folders 20 and 23 (respectively).

100. MORGAN, *supra* author's note, (Art. 175).

Claire's will had been declared void, her nieces' status as protected slaves would be endangered.

Those engaged in familial black slaveholding must have felt ill at ease whenever white creditors and wives appeared in the background of a slave transaction. Creditors and planters' wives had claims on slaves that could defeat the claim of a new black master. The most common scenario would have involved a loan taken out by the new black master. If the master used his or her slave as security for the loan, that slave would become the property of the creditor—typically, a bank—if the loan was not repaid. Familial black slaveholding could slide into "real" slavery due to the master's unpaid debt. When Marie Claire bought her niece Martine in 1846, she did so subject to the knowledge that the prior owner had used Martine as security for a bank loan. In the deed of sale, Gabriel Villeré promised to discharge the debt as soon as possible.[101] Marie Claire bought Martine even so, risking the possibility that Villeré would default on his loan, and that the Banque de l'Union de la Louisiane would become Martine's new owner.

Martine's legal situation was particularly fragile because repayment of the loan was out of Marie Claire's hands. The purchase of mortgaged property normally involved paying a reduced sum, with the new purchaser or "third possessor" agreeing to pay the seller's remaining mortgage payments to the original creditor.[102] But upon the sale of Martine, the duty to repay the rest of the loan stayed with Villeré. Marie Claire paid full price (600 piastres or $600) for Martine, and Villeré's loan did not transfer to Marie Claire.[103] In other words, Marie Claire had no control over the repayment of the loan upon which Martine's *de facto* freedom depended. Furthermore, the Louisiana Civil Code clearly favored creditors over "third possessors" where the mortgage was undertaken in the state.[104] According to the Civil Code, the bank would have the right to sue Marie Claire for possession of Martine if Villeré did not repay the loan.[105] Marie Claire would then be left to sue Villeré for the value of Martine; small comfort when it was

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101. "[D]ans le plus bref delais." Vente d'esclave (Aug. 28, 1846), *in* the Chabert Papers, *supra* note 8, folder 22, 2 verso.

102. Balfour v. Chew, 4 Mart. (n.s.) 154 (1826).

103. *See* text accompanying note 86, *supra*.

104. MORGAN, *supra* author's note, (Art. 3362-3373).

105. *Id.* at Art. 3362-3364.

possession of Martine, not her monetary value, that Marie Claire wanted.[106] The bank would recover the debt by selling Martine back into "real" slavery. If ever slaves were treated as pawns, it was in mortgage transactions like these.

There was also the question of Villeré's wife, Eulalie de Laronde: could she have a property claim to Martine even after Marie Claire had purchased her own niece? The answer was no, but only because the bank made sure of it. Martine's Act of Sale included a section signed by Eulalie. In it, Eulalie acknowledged that the notary had informed her that according to the laws of the state, she had a tacit mortgage upon the immovables of her husband.[107] Under the Civil Code, slaves were considered immovables, "though movables by their nature."[108] Eulalie also agreed that she consented to the sale outside of her husband's presence and free of his influence.[109] Here, common-law influences seem to have been absorbed into the Roman law-based substrate of Louisiana law.[110] Louisiana's Civil Code was silent on

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106. *Id.* at Art. 3373.

107. "[D]'après les lois de cet état, la femme a une hypothèque tacite sur les biens immeubles de son mari." Vente d'esclave (Aug. 28, 1846), *in* the Chabert Papers, *supra* note 8, folder 22, 3 verso. *See* MORGAN, supra author's note, (Arts. 2355-2368).

108. *See* MORGAN, *supra* author's note, (Art. 461).

109. "[L]aquelle étant hors de la présence et de l'influence de son dit époux." Vente d'esclave (Aug. 28, 1846), *in* the Chabert Papers, *supra* note 8, folder 22, 2 verso.

110. Hybrid jurisdictions like Louisiana, Quebec, Mauritius, Sri Lanka and South Africa are all the products of colonization by multiple European nationalities. Despite Anglophone promises to continue applying earlier Roman-based law, common-law influences seeped into the law of these jurisdictions. *See, e.g.,* L. J. M. COORAY, THE RECEPTION IN CEYLON OF THE ENGLISH TRUST: AN ANALYSIS OF THE CASE LAW AND STATUTORY PRINCIPLES RELATING TO TRUSTS AND TRUSTEES IN CEYLON IN LIGHT OF THE RELEVANT FOREIGN CASES AND AUTHORITIES 22-24 (1971). On such doubly (or triply) colonized jurisdictions, *see* William Tetley, *Mixed Jurisdictions: Common Law vs. Civil Law (Codified and Uncodified)*, 60 LA. L. REV. 677, 677-728 (2000). There is debate over whether Louisiana leaned more toward its civilian past or common-law present after 1803. The New Louisiana legal historians argue for the latter. *See* A LAW UNTO ITSELF? ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY, *supra* note 20. On Louisiana and the law of slavery specifically, *see* Ariela Gross, Legal Transplants: Slavery and the Civil Law of Louisiana (May 12, 2009)(USC Law, Legal Studies Working Paper No. 09-16), *available at:* http://ssrn.com/abstract=1403422 (last visited April 21, 2011). Gross's work is the latest contribution to the Tannenbaum debate, a discussion that asks whether common-law systems were less humane than slave systems based upon Roman law. *See* FRANK TANNENBAUM, SLAVE AND CITIZEN(Beacon Press 1992); ALAN WATSON, SLAVE LAW IN THE AMERICAS (1989); Alejandro de la Fuente, *Slave*

the situation in which a husband might use his coercive influence to secure his wife's consent to mortgage a portion of their shared property, which included slaves.[111] He had the power to dispose of joint property without his wife's consent, except where he had used fraud.[112] In common-law systems, on the other hand, the doctrine of undue influence was a well-developed part of equity by this time, operating to invalidate coerced contracts and wills, and to create constructive trusts in favor of the weaker party.[113]

The standardized form in Marie Claire's papers was an attempt to protect the bank against a claim of undue influence by the white seller's wife. The doctrine of undue influence grew out of the equitable tradition of Anglo-American law, and talk of equity seeped into Louisiana case law in the early American period.[114] Both historically and today, undue influence cases arose in jurisdictions under English-speaking rule where a husband defaulted on a mortgage.[115] When the bank tried to collect the property that secured the loan, the wife would argue that her claim to the property should defeat the bank's because she had only consented to the mortgage under the coercive pressure—or undue influence—of her husband.[116] Such cases existed in American Louisiana, and with slaves as security.[117] White wives enjoyed considerable power in Louisiana's slave-law regime, as they did in Caribbean jurisdictions like Jamaica and Barbados.[118] The special clause pertaining to the wife's situation in Martine's Act of Sale was intended to protect the bank against the wife's claim. Its

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Law and Claims-Making in Cuba: The Tannenbaum Debate Revisited, 22 L. AND HIST. REV. 339, 340-353 (2004).

111. MORGAN, *supra* author's note, (Arts. 2369-2392) The "community of gains" applied to property gained during the marriage.

112. MORGAN, *supra* author's note, (Art. 2373).

113. *See*, *e.g,* COMMENTARIES ON EQUITY JURISPRUDENCE BY HON. MR. JUSTICE STORY 98-99 (A. E. Randall ed., 1920); ALFRED G. REEVES, A TREATISE ON THE LAW OF REAL PROPERTY 544, 1548 (1909).

114. *See* JOSEPH STORY, COMMENTARIES ON EQUITABLE JURISPRUDENCE: AS ADMINISTERED IN ENGLAND AND AMERICA I, 243-244 (1836); Bourcier v Lanusse 3 Mart.(o.s.) 581, 1815 WL 794 (La.).

115. *See* Christine N. Booth, *Undue Influence and Triangular Situations: The Husband, the Wife, and the Bank,* 26 HONG KONG L. J. 58 (1996).

116. For a leading British imperial case, *see* Turnbull and Co. v. Duval [1902] A.C. 429.

117. *See* Webb v. Union Bank of Louisiana 2 La. Ann. 585, 1847 WL 3172 (La.). For a non-slave case, *see* Beatty v Tete 9 La. Ann. 131, 1854 WL 4029 (La.).

118. KATHLEEN MARY BUTLER, THE ECONOMICS OF EMANCIPATION: JAMAICA AND BARBADOS, 1823-1843 92-97 (1995).

presence underscores the vulnerability of mortgaged slaves, even while held within the familial black regime.[119]

B. Wills

The careful phraseology of Marie Claire's wills is a third feature to note. In the construction of wills, the intention of the testator was "the first and great object of inquiry," wrote James Kent, paying homage to the rights of property owners in his *Commentaries on American Law*.[120] Nevertheless, courts intervened often in deciding what property owners could do with their property after death: "To allow the testator to interfere with the established rules of the law, would be to permit every man to make a law for himself, and disturb the metes and bounds of property."[121] In passing from the world of the living to that of the dead, the property owner ceded "despotic dominion" over personal property to the greater public interest.[122]

A careful choice of words was critical to the writing of valid wills.[123] An imprudent comma or a polite use of the conditional instead of the present indicative had the potential to invalidate a clause in a will.[124] A charitable judge might have minimized the damage by performing a tidy surgical excision of the offending line. A less generous judge could void the entire will. Imprudent grammar and unsympathetic judges (often slaveholders themselves) made for dire consequences.[125]

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119. Some black slave-owners also mortgaged their slave property to further other financial ventures. *See* HANGER, *supra* note 1, at 75.

120. JAMES KENT, COMMENTARIES ON AMERICAN LAW 534 (1832).

121. *Id.* at 535.

122. WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 17 (1803).

123. In the context of slavery, *see* BERNIE D. JONES, FATHERS OF CONSCIENCE: MIXED-RACE INHERITANCE IN THE ANTEBELLUM SOUTH (2009).

124. For instance, southern common-law courts distinguished between a declaration of *intention* to manumit (*e.g.* "I *would like* my slaves to be free") and an *actual declaration* of manumission (*e.g.* "I hereby *declare* my slaves free"). Thomas R. R. Cobb, *An Inquiry into the Law of Negro Slavery in the United States of America to which is Prefixed an Historical Sketch of Slavery* 286 (1858). The former was void. *Id.*

125. Executors of Henderson v. Heirs (1846) and Rost and Montgomery v. Heirs of Doyle (1860), *in* JUDICIAL CASES CONCERNING AMERICAN SLAVERY, *supra* note 10, at 575, 668 (respectively). Also available as Rost v Henderson 12 Rob. (LA) 549; Rost v Doyal's Heirs 15 La. Ann. 256 (respectively). *See also* Bailey v. Poindexter's Executor, 14 Gratten (Va.) 132, 428-455 (1858). In

Not surprisingly, southern judges voided wills for being contrary to the spirit of slave law. As Mark Tushnet observes, "[a] master might find his or her most carefully structured will destroyed by the use of one of the doctrines floating throughout the South."[126] A will that gave a slave freedom—or, "in the event of a change in the law," a right of action for his or her freedom—was declared void for attempting to navigate around a future change in the law.[127] Where a state prohibited the testamentary manumission of slaves, any attempt to circumvent the law in one's will by creating a trust for the benefit of slaves was void.[128] The testator might order that his slaves be taken to another state and manumitted there. If that state subsequently passed a law forbidding the entry of new free people of color into the state, the manumission order would be declared void.[129]

Judges took the liberty of voiding wills for uncertainty or vagueness, and for offending against public policy. A will in North Carolina was struck down because the request to emancipate the slave "when the owner thinks proper" was too vague to be enforced by a court at any given time.[130] A prime example of public policy violations related to *statu liberi,* slaves set by contract to be emancipated at a future date. Most states had the policy of discouraging *statu liberi* in the belief that the status undermined the current authority of a master over his or her slave. Testators in a state that prohibited manumission could order the immediate removal of their slaves upon their death to another state where the slaves would be manumitted. However, should they use a phrase that implied a slightly more delayed reaction (e.g. "for future transfer there" as opposed to "immediate removal"), the will

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common–law jurisdictions, the doctrine of *cy pres* (old legal French related to the modern French *près d'ici* or "near here") allowed the judge to adjust a trust to the new conditions that threatened to invalidate it, in the spirit of the testator's original wishes. BLACK'S LAW DICTIONARY (8th ed. 2004). On southern judges' hostility to the doctrine's use in slave cases, *see* the Georgian joined cases of Hunter v. Bass and American Colonization Society v. Bass (1855), *in* JUDICIAL CASES CONCERNING AMERICAN SLAVERY, *supra* note 10, at 42; MORRIS, *supra* note 19, at 376-377.

126. TUSHNET, *supra* note 35, at 228.

127. Jamison v. Bridge, 14 La. Ann. 31 (1859).

128. MORRIS, *supra* note 16, at 379; COBB, *supra* note 112, at 291-292, 296.

129. Theoretically, judges could rescue the order through the doctrine of *cy pres.* COBB, *supra* note 112, at 302. *But see supra* note 113.

130. Bryan v. Wadsworth, *in* COBB, *supra* note 112, at 295. Also available at 18 N.C. 384 (1835).

could be voided for increasing the number of *statu liberi* in the state, working against public policy.[131] According to Justice Lumpkin in the Georgia case of *Vance v Crawford* (1848), it had been the constant project of the state to prevent the increase of freed slaves: "[n]either humanity, nor religion, nor common justice, requires us to sanction domestic emancipation."[132]

Writing a valid will with respect to slaves was no easier in Louisiana than in common-law jurisdictions.[133] A slave-owner could not free a slave whose value represented more than ten percent of his estate.[134] If he had lived with a slave mistress in "open concubinage," he could not leave her any immovable property even if he did succeed in freeing her.[135] Nor could he leave her movables representing over ten percent of his estate.[136] Perhaps worse still was the general uncertainty surrounding the invalidation of wills in Louisiana and French law alike. Even in the late nineteenth century, textbooks on Louisiana succession law expressed frustration over the vagueness of both bodies of law.[137] The only general principles that offered guidance were those with which the Civil Code opened. Individuals could not by their conventions derogate from the force of laws made "for the preservation of public order or good morals."[138] Whatever was done in contravention of a prohibitory law would be void.[139] This included orders prohibited only indirectly by the intent and policy of the law.[140] Further, the Code made testamentary manumission valid only when ordered in express and formal terms. It would not be implied by any other circumstances of a will.[141] Given this

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131. COBB, *supra* note 112, at 290-291.

132. 4 Ga. 445 (1848); JUDICIAL CASES CONCERNING AMERICAN SLAVERY, *supra* note 9, at 19. On Lumpkin, *see* PAUL DEFOREST HICKS, JOSEPH HENRY LUMPKIN: GEORGIA'S FIRST CHIEF JUSTICE (2002); TUSHNET, *supra* note 35, at 218-227.

133. On freeing slaves by will in Louisiana in a slightly later period (1846-1862), *see* SCHAFER (2003), *supra* note 13, at 59-70.

134. SCHAFER (1994), *supra* note 12, at 185-187.

135. *Id.*, at 185.

136. *Id.* at 199.

137. K. A. CROSS, A TREATISE, ANALYTICAL, CRITICAL AND HISTORICAL ON SUCCESSIONS 105 (1891).

138. MORGAN, *supra* author's note, (Art. 11).

139. *Id.*

140. CROSS (1891), *supra* note 137 at 108.

141. MORGAN, *supra* author's note, (Art. 184) Testamentary manumissions had to be carried out by executors, many of whom neglected their duty. See SCHAFER, *supra* note 13, at 59-70. Manumission of all kinds was

generally strict approach to testamentary manumission, Louisiana courts may have looked to other southern states for guidance, reflecting the model suggested by the new Louisiana legal historians.[142] The common law offered a number of specific doctrines that put the more general civilian principles into action.

Given that so many wills were "wrecked on the shoals of legal technicalities, greed, or racial prejudice," Chabert's wills reflected shrewd and careful draftsmanship by her lawyer.[143] Crucially, he included two provisions to save her final will from invalidation in the event that her niece, Adélaïde, could not be manumitted. The first read: "I name and institute as my universal legatees my two nieces Martine and Adélaïde, and in the event that half of the property designated below is insufficient for the acquisition of my said niece Adélaïde, Martine shall be my sole universal legatee."[144] In the second security clause, Marie Claire's free niece Louise was given one sixth of Marie Claire's land for use during her lifetime only. After Louise's death, the land was to return to Martine and Adélaïde. If Adélaïde could not be purchased due to lack of funds or because her mistress did not consent, the land would go to Martine alone.[145] As the compiler Limonge advised his reader, "[p]lease do not forget that slaves could not inherit, that Marie Claire knew it and was careful that her legacy to Adelaide would not revert to Madame Lavergne."[146] Furthermore, Marie Claire's lawyers could have been tempted to use less specific terms in order to ensure the purchase of Adélaïde. Marie Claire could have left the maximum amount of money available more open-ended than she did when she specified that half of her property was to be sold. But this could have put the clause—and possibly the entire will—

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prohibited by legislation in Louisiana in 1857. *See* SCHAFER , *supra* note 12, at 183-184.

142. A LAW UNTO ITSELF? ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY (Warren M. Billings & Mark F. Fernandez eds., 2001).

143. Frank Mathias, *Manumission*, *in* THE ENCYCLOPEDIA OF SOUTHERN HISTORY: LOUISIANA 778 (David C. Roller & Robert W. Twyman eds., 1979).

144. "Je nomme et institue pour mes légataires universelles mes deux nièces Martine et Adélaïde, et dans le cas où la moitié du terrain susdésigné ne suffirait pas à l'acquisition de ma dite nièce Adélaïde, Martine sera seule légataire universelle." Testament de Marie Claire Chabert (Nov. 12, 1846), *in* the Chabert Papers, *supra* note 8, folder 23, 1 verso.

145. "[O]u de Martine seule, dans le cas où l'on ne pourrait faire l'acquisition d'Adélaïde ainsi qu'il a été dit ci-dessous, faute de moyens ou faute de consentement de sa maitresse." *Id.*

146. Limonge, Account of the Life of Marie Claire (typescript), *in* the Chabert Papers, *supra* note 8, folder 1, 9 recto.

in jeopardy of being void for vagueness. Had Marie Claire attempted to ensure the purchase even despite future frustrating laws, the will could have been declared contrary to law. The shrewdest strategy was a simple, specific set of clauses that prepared for the possible failure of the purchase of Adélaïde. Marie Claire's lawyer was well aware of the delicate and insecure nature of slave-related testamentary dispositions. He adjusted the will's text—and perhaps Marie Claire's expectations—accordingly.

V. CONCLUSION

Marie Claire exhibited a striking degree of legal agility in her dealings. She did so as a woman who was unmarried for most of her life, and who forged no close alliances with white men. She signed her documents with an X, preceded by the note, "[t]he said Marie Claire having declared not to know how to write or sign has made her usual mark after having [had the document] read."[147] Remarkably, this illiterate woman of color was a party to five slave purchases, six manumissions, two major loans, court proceedings over Jacques Tisserand's estate, the legal dispute over Jacques' enslaved daughter Manon, the purchase of real estate, a marriage, two deaths, and the creation of two wills.[148] Lois V. M. Gould observes that free women of color generally went unnoticed in most of the antebellum South. They owned little property and rarely participated in court cases.[149] Marie Claire Chabert was a notable exception. Her manumission created the possibility for a chain of familial black slaveholding that would draw five others into this strategic legal regime.

Woodson's critics argue that most black slaveholders, like their white counterparts, were primarily profit-driven. They downplay or ignore familial black slaveholders like Marie Claire Chabert.

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147. "[L]a dite Marie Claire ayant déclaré ne savoir écrire ni signer a fait sa marque ordinaire après lecture faite." Affranchissement Marie Claire à Michel (June 12, 1835), *in* the Chabert Papers, folder 12, 1 verso. Literacy rates amongst freedwomen using notarial services in French Saint Domingue were about 25% between 1775 and 1789. David P. Geggus, *Slave and Free Colored Women in Saint Domingue*, *in* MORE THAN CHATTEL: BLACK WOMEN AND SLAVERY IN THE AMERICAS, *supra* note 69, at 271.

148. Davis notes that it was common for free people of color not to leave wills at all. Adrienne D. Davis, *The Private Law of Race and Sex: An Antebellum Perspective*, 51 STAN. L. REV. 221, 238 (Jan. 1999).

149. Gould, *supra* note 40, at 20-22.

Familial slaveholding did not by definition exclude a profit motive. Families can be both protective *and* exploitative, and Marie Claire's slaves occasionally generated income for her. It is equally important to note that as a legal device, familial black slaveholding was not unassailable. Marie Claire's papers reveal mortgage and inheritance-related vulnerabilities. They reflect her purchase of a niece on precarious terms. The niece would return to "real" slavery if her former white owner defaulted on a loan. The Chabert papers also exhibit the forced modesty of manumission provisions that Marie Claire's legal adviser wrote into her will: he was trying to ensure the will's validity.

Familial black slaveholding was legally fragile and had profit-generating potential. But it also offered protection of a particular type. Familial black slaveholding shielded kin from the risks of being kidnapped and re-enslaved. It prevented them from being sent to Liberia through African recolonization schemes. And in many parts of the American South, it kept newly freed people of color from being expelled from the state through removal laws. It is a type of black slaveholding that deserves greater acknowledgment and attention, not just from historians of slave law, but equally on the politically charged stage of the reparations debate.