

1-1-1977

A Study of the Slave System in Alabama Before Statehood

Henry Marks

Marsha Kass Marks

Follow this and additional works at: <https://louis.uah.edu/huntsville-historical-review>



Part of the [History of Art, Architecture, and Archaeology Commons](#), and the [United States History Commons](#)

Recommended Citation

Marks, Henry and Marks, Marsha Kass (1977) "A Study of the Slave System in Alabama Before Statehood," *Huntsville Historical Review*. Vol. 7: No. 1, Article 4.

Available at: <https://louis.uah.edu/huntsville-historical-review/vol7/iss1/4>

This Article is brought to you for free and open access by LOUIS. It has been accepted for inclusion in Huntsville Historical Review by an authorized editor of LOUIS.

A STUDY OF THE SLAVE SYSTEM IN ALABAMA
BEFORE STATEHOOD

BY AN EXAMINATION OF TITLE 46, "NEGROES
AND MULATTOES, BOND AND FREE," OF HARRY
TOULMIN, "A DIGEST OF THE LAWS OF THE
STATE OF ALABAMA," (CAHAWBA: GINN &
CURTIS, 1823)

Henry and Marsha Kass Marks

A study of the slave code of Alabama before the rise of the abolitionist movement is inextricably entwined with the history of Huntsville and Madison County. In 1820 Huntsville proper had a slave population of 448¹, some 09.3 percent of the total slave population of the state of Alabama (941,879).² In 1830 Madison County held 11.6 percent of the state's slaves (13,627 slaves in Madison County of a total of 117,549 slaves in the entire state).³

Some historians specializing in Southern history are still unable to write objectively on subjects involving the institution of slavery, although slavery is among many subjects that have received critical reinterpretation. With these historians there has been a long and recurring theme in Southern historiography, that the rise of the abolitionist movement in the United States before the Civil War profoundly affected Southern attitudes and actions regarding slavery. Although even U. B. Phillips declared that "the regulating statues everywhere were frankly repressive,"⁴ later historians either underestimated the severity of the slave codes (Clement Eaton stating in *The Old South* that "the Southern laws protected the Negro from wanton cruelty or mayhem..."⁵) or assumed that the South enacted harsh slave codes only after the rise of the abolitionist movement. Examples of this latter position are found in the writings of Francis B. Simkins, in his *The South Old and New* ("the South, as self-righteous and as Biblical as New England matched the vehemence of the Abolitionists"⁶); William B. Hesseltine, in *The South in American History* ("one

of the most noticeable effects of the antislavery agitation, whether coming from within or from without the South, was the enactment of more stringent slave codes"⁷⁾ and Louis Filler, in *The Crusade Against Slavery 1830-1860* ("The abolitionist attack finally drove Southerners toward adopting a stern uniformity in outlook and a program of repressing liberal thought. But their stand was neither passive nor defensive."⁸⁾).

Nevertheless, many of the states in the South had always maintained a harsh, oppressive slave system. Indeed, the slave codes go back well into the colonial period of American history, before the turn of the Seventeenth Century. A perusal of the slave laws of Alabama will demonstrate that they were developed before Alabama actually became a state. It is the purpose of this paper to show that the slave code of Alabama existed, in basic form, well before the rise of the abolitionist movement. To support this hypothesis, documentation of the slave laws of Alabama will follow during the period when Alabama was a part of the Mississippi Territory and then the Alabama Territory.

From time to time the slave laws or codes of the various states were compiled and published, along with the other parts of the public statute law of the state, by noted jurists or reporters in the state. In 1823 Harry Toulmin (1767-1823) prepared "A Digest of the Laws of the State of Alabama." At the time he published his Digest, the last year of his life, he was known for his attempts "to uphold a high standard of legal procedure"⁹⁾ in Alabama. Toulmin had also been a prominent member of the constitutional convention of 1819.



NEGROES AND MULATTOES, BOND AND FREE.—1805.

CHAPTER I.

An Act respecting Slaves.—*Passed March 6, 1805.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That no slave shall be admitted a witness against any person, in any matter, cause, or thing whatsoever, civil or criminal, except in criminal cases, in which the evidence of one slave shall be admitted for or against another slave.

In what case slaves may be witnesses.

SEC. 2. *And be it further enacted,* That no slave shall go from the tenement of his master, or other person with whom he lives, without a pass, or some letter, or token, whereby it may appear that he is proceeding by authority from his master, employer, or overseer; if he does, it shall be lawful for any person to apprehend and carry him before a justice of the peace, to be by his order punished with stripes, or not, in his discretion, not exceeding twenty stripes.

Slaves not to go from home without pass.

SEC. 3. *And be it further enacted,* That if any slave shall presume to come and be upon the plantation of any person whatsoever, without leave in writing from his or her owner or overseer, not being sent upon lawful business, it shall be lawful for the owner or overseer of such plantation, to give or order such slave ten lashes on his or her bare back, for every such offence.

Nor upon the plantation of any person without leave in writing.

SEC. 4. *And be it further enacted,* That no slave shall keep or carry any gun, powder, shot, club, or other weapon whatsoever, offensive or defensive, except the tools given him to work with, or that he is ordered by his master, mistress, or overseer, to carry the said articles from one place to another, but all and every gun, weapon, or ammunition, found in the possession or custody of any slave, may be seized by any person, and upon due proof made thereof, before any justice of the peace of the county or corporation where such seizure shall be made, shall, by his order, be forfeited to the seizer, for his own use; and moreover, every such offender shall have and receive, by order of such justice, any number of lashes, not exceeding thirty-nine, on his bare back for every such offence: *Provided nevertheless,* That any justice of the peace may grant, in his proper county, permission in writing to any slave, on application of his master or overseer, to carry and use a gun and ammunition within the limits of his said master's or owner's plantation, for a term not exceeding one year, and revocable at any time within such term, at the discretion of the said justice, and to prevent the inconveniences arising from the meeting of slaves.

Slaves not to carry offensive or defensive weapons.

In what cases they may get leave to carry gun.

Penalty on persons permitting slaves not their own to remain on their plantations.

SEC. 5. *And be it further enacted,* That if any master, mistress, or overseer of a family, shall knowingly permit or suffer any slave, not belonging to him or her, to be and remain in or about his or her house or kitchen, or upon his or her plantation, above four hours at any one time, without leave of the owner or overseer of such slaves, he or she so permitting, shall forfeit and pay ten dollars for every such offence; and every owner or overseer of a plantation who shall so permit or suffer more than five negroes or slaves, other than his or her own, to be and remain upon his or her plantation or quarter at any one time, shall forfeit and pay ten dollars for each negro or slave above that number, which said several forfeitures shall be to the informer, and recoverable with costs, before any justice of the peace of the county or corporation where such offence shall be committed: *Provided always,* That nothing herein contained shall be construed to prohibit the negroes or slaves of one and the same owner, though seated at different quarters, from meeting with their owner's or overseer's leave, upon any plantation to such owner belonging, nor to restrain the meeting of slaves on their owner's or overseer's business, at any public mill, nor to prohibit their meeting on any other lawful occasion, by license in writing from their owner or overseer, nor their going to church, and attending divine service on the Lord's day, and between sunrise and sunset.

Riots, &c. by slaves, how punishable.

SEC. 6. *And be it further enacted,* That riots, routs, unlawful assemblies, trespasses, and seditious speeches, by a slave, or slaves, shall be punished with stripes, not exceeding thirty-nine, at the discretion of a justice of the peace; and he who will, may apprehend and carry him, her, or them, before such justice.

Penalty on white persons being found in company with slaves at their unlawful meetings.

SEC. 7. *And be it further enacted,* That if any white person, free negro, or mulatto, shall at any time be found in company with slaves, at any unlawful meeting, or shall harbour, or entertain any slave, without the consent of his or her owner, such person being thereof convicted before any justice of the peace, shall forfeit and pay twenty dollars for every such offence to the informer, recoverable with costs before such justice.

Powers of justices of peace in case of such unlawful meetings.

SEC. 8. *And be it further enacted,* That every justice of the peace, upon his own knowledge of such unlawful meeting, or information thereof to him made within ten days after, shall issue his warrant to apprehend the persons so met or assembled, and cause them to be brought before himself, or some other justice of his county or corporation, to be dealt with as this act directs; and every justice failing herein, shall forfeit and pay ten dollars for every such failure; and every sheriff or other officer, who shall fail, upon knowledge or information of such meeting, to endeavour to suppress the same, and bring the offenders before some justice of the peace to receive due punishment, shall be liable to the like penalty of ten dollars; both which penalties shall be to the informer, and recoverable with costs, by action of debt, in any county or corporation court; and every under sheriff, or constable, who upon knowledge or information of

Marks and Marks: A Study of the Slave System in Alabama Before Statehood

such meeting, shall fail to perform his duty in suppressing the same, and apprehending the persons so assembled, shall forfeit and pay ten dollars for every such failure to the informer, recoverable with costs, before any justice of the county or corporation wherein such failure shall be.

SEC. 9. *And be it further enacted,* That no person whatsoever shall buy, sell, or receive of, to, or from a slave, any commodity whatsoever, without the leave or consent of the master, owner, or overseer of such slave, expressive of the articles so permitted to be bought, sold, or bartered.

Trading with slaves prohibited.

And if any person shall presume to deal with any slave, without such leave or consent, he or she so offending, shall forfeit and pay to the master or owner of such slave, four times the value of the thing so bought, sold, or received, to be recovered with costs by action upon the case, in any court having cognizance of the same within this territory, and shall also forfeit and pay the further sum of twenty dollars, to any person who will sue for the same, with costs before any justice of the peace; or on failure or refusal so to pay, shall, by order of such justice, be committed to prison, until he or she make such payment; and any slave offering to sell any article without leave in writing; from his master or owner, shall receive ten lashes, by order of any justice of the peace before whom he or she is convicted.

SEC. 10. *And be it further enacted,* That if any master or owner of a slave, shall license such slave to go at large and trade as a freeman, the master or owner shall forfeit and pay the sum of fifty dollars, one moiety to the use of any person suing for the same, and the other moiety to the use of the territory; and if after conviction such slave shall be found so going at large and trading, the master or overseer shall again be liable to the like penalty, to be recovered as aforesaid, and so, as often after conviction as such slave shall be found so going at large and trading.

Masters not to license their slaves to trade,

SEC. 11. *And be it further enacted,* That if any person shall permit his or her slave to go at large, or hire him, or herself out, every person or persons so offending, shall forfeit and pay to the use of the territory the sum of fifty dollars, and it shall be lawful for any person to apprehend and carry such slave before a justice of the peace, in the county or corporation where apprehended, and if it shall appear to the justice that such slave comes within the purview of this act, he shall order him or her to the jail of the county or corporation, there to be safely kept until the next court, when, if it shall be made to appear to the court, that the slave so ordered to jail hath been permitted or suffered to hire him or herself out, contrary to the meaning of this act, the court shall immediately proceed to enter up judgment, and award execution against such offender, for the amount of said forfeiture with costs: *Provided,* that if the owner or holder of such slave or slaves shall enter into bond before said justice, payable to the governor and his successors in office, with sufficient security, in double the amount of said forfeiture, conditioned to appear at the next county court of the proper

or to go at large to hire him or herself.

county, to do and receive what shall be enjoined him by the court, then and in that case, such slave may be suffered to remain with his or her owner.

Runaway slaves, how to be dealt with.

What slaves to be considered as runaways.

SEC. 12. *And be it further enacted,* That all runaway slaves may be lawfully apprehended by any person, and carried before the next justice of the peace, who shall either commit them to the county jail, or send them to the owner, if known, who shall pay for every slave, so taken up, the sum of six dollars to the person apprehending him or her, and also all reasonable costs and charges. And in order to establish what slaves shall be considered as runaways; if any slave shall absent him or herself, from his or her usual place of residence, or owner's service, without leave, the owner or overseer shall be obliged to give in to the next justice of the peace the name with a description of the person of such slave, within ten days after such slave shall have absented him or herself; all such slaves so reported, shall be considered as runaways; and the person apprehending him, her, or them, shall be entitled to the above reward. And if any master, mistress, or overseer, shall neglect to give in the information above required, such master, mistress, or overseer, shall forfeit and pay one dollar for each day that such information shall have been omitted, which penalty shall be recoverable before any justice of the peace by such person as shall sue for the same. And whereas many times slaves run away and lie out, hid, and lurking in swamps, woods, and other obscure places, killing hogs, and committing other injuries to the inhabitants of this territory: Therefore,

Further powers of justices as to out-lying runaway slaves.

SEC. 13. *Be it further enacted,* That in all such cases, upon intelligence given of two or more slaves lying out as aforesaid, any one justice of the peace, of the county where the slaves are supposed to lurk, or to do mischief, shall be, and are empowered and required, by warrant, reciting their names and owner's names, if known, to direct the provost of the patrols to take such power with him as he shall think fit and necessary for the effectual apprehending of such out-lying slave or slaves, and go in search of them, and upon their being apprehended, to commit them, or any of them, to the jail of his county for further trial; and for every such out-lying slave by him apprehended and committed to jail as aforesaid, he shall be entitled to a reward of thirty dollars, to be paid out of the territorial treasury, three-fourths of which sum shall be reimbursed to the treasury by the owner of such slave: *Provided,* That if the owner be an inhabitant of this territory, the said sum shall be added to his tax for the current year, and be collected and accounted for in the same manner as other public taxes are: *And provided also,* that any other person or persons who shall apprehend and commit to jail as aforesaid, any out-lying slave, he or they shall be entitled to the same reward for every such apprehension and commitment.

Slaves not to keep dogs.

SEC. 14. *And be it further enacted,* That all slaves be prohibited from keeping dogs, under any pretence or consideration whatsoever, and the slave or slaves so offending, upon complaint

Marks and Marks: A Study of the Slave System in Alabama Before Statehood

thereof before any justice of the peace, shall be punished with not exceeding twenty-five stripes for every such offence, and the master or owner who shall permit his slaves to keep dogs contrary to this law, shall forfeit and pay the sum of five dollars for each and every dog so kept, to and for the use of the person complaining; and moreover, shall make good all damages done by dogs appertaining to, or kept by any of his or her slaves.

SEC. 15. *And be it further enacted,* That no slaves shall be allowed to own any horse, mare, gelding, or mule, and if any slave shall actually own such property, the same shall be forfeited, and sold under the direction of the court of the county where such property shall be so owned; one moiety of the proceeds for the use of the territory, and the other moiety to any person who will sue for the same. It is also forbidden to slaves to keep hogs running at large, or to keep in enclosures more than they can conveniently maintain, the number of which to be regulated by the several owners, and to be distinctly marked, and register thereof made for the inspection of any person who shall require to see the same: *And whereas,* it has been the humane policy of all civilized nations, where slavery has been permitted, to protect this useful but degraded class of men from cruelty and oppression: Therefore,

Not to own any horse or mare.

In what manner they may keep hogs.

SEC. 16. *Be it further enacted,* That no cruel or unusual punishment shall be inflicted on any slave within this territory. And any owner of slaves authorizing or permitting the same, shall, on conviction thereof, before any court having cognizance, be fined according to the nature of the offence, and at the discretion of the court, in any sum not exceeding two hundred dollars, to, and for the use of this territory.

No cruel or unusual punishment to be inflicted on slaves.

[*SEC. 17. *And be it further enacted,* That if any slave shall at any time lift his or her hand in opposition to any white person, he or she so offending shall, for every such offence, upon conviction before a justice of the peace of the county where such offence shall be committed, receive not exceeding twenty lashes, on his or her bare back, well laid on, by order of such justice.]

No slave to lift his hand against white persons.

Penalty thereon.

SEC. 18. *And be it further enacted,* That if any slave shall, at any time, consult, advise, or conspire to rebel, or make insurrection, or shall plot, or conspire the murder of any person or persons whatsoever, every such consulting, plotting, or conspiring shall be adjudged and deemed felony, and the slave or slaves convicted thereof, in manner herein after directed, shall suffer death.†

In case of rebellion.

SEC. 20. *And be it further enacted,* That the trial of a slave for felony, or any capital offence, shall be in all respects similar to the trial of a free citizen or inhabitant, for the like offence, except that the jury, or two-thirds at least thereof, empannelled for such trial, shall be composed of owners of slaves. And the court may take for evidence the confession of the offender, the oath of one or more credible witnesses, or

And how for felony and capital offences.

* Repealed in January, 1814.

† The act ends here; query as to the two next Sections.

CHAPTER III.

An Act regulating the Importation of Slaves, and for other purposes.—Passed March 1, 1808.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That from and after the first day of January, 1809, it shall not be lawful for any person or persons, importing slaves into this territory from any of the United States, or from any of the territories thereof, to expose to sale within the limits of this territory any slave, either negro, mulatto, or person of colour above the age of fifteen years, without having previously exhibited to the chief justice of the orphans' court of that county where such slave or slaves are offered for sale, a certificate signed by two respectable freeholders in the county of the state or territory from whence said negro, mulatto, or person of colour is brought, which certificate shall contain a particular description of the stature and complexion of said slave or slaves, together with the names and sex of the same, and shall furthermore certify, that neither the slave or slaves therein mentioned and described, have been guilty of or convicted of any crimes, either murder, burglary, arson, felony, or larceny, to their knowledge or belief, in the state or territory from whence said slave or slaves have been imported, which certificate shall be signed or acknowledged before the clerk of the county of the state or territory from whence said slaves are brought, and certified by said clerk that the persons whose signatures are affixed to said certificate, are respectable freeholders of said county and neighbourhood.

Slaves imported for sale, how certified.

Certificate by whom to be signed.

SEC. 2. *And be it further enacted,* That if any person shall, from and after the first day of January, 1809, purchase or sell any slave, either negro, mulatto, or person of colour, without having complied with the provisions of the foregoing section, he, she, or they, so offending, shall pay the sum of one hundred dollars for every slave so sold or purchased, recoverable in any court having competent jurisdiction, one moiety to the territory, the other to the person prosecuting the same to effect.

Penalty.

SEC. 3. *And be it further enacted,* That the seller or purchaser of any slave or slaves, brought into the territory after the first day of January, 1809, shall cause to be registered with the register of the orphans' court of that county where such slave or slaves are first sold, all certificates as aforesaid, the seller previously swearing that he believes the contents of the said certificate to be just and true, which oath said register is hereby authorized and required to administer, for which services he shall receive the usual fees for registering or recording, as is allowed by law to the clerks of the county courts of this territory.

Certificate to be registered in the orphans' court.

SEC. 4. *And be it further enacted,* That if any seller of any slave or slaves, shall cause to be registered any fraudulent certificate of sale, he shall pay the sum of one hundred dollars for every

Penalty for registering a fraudulent certificate.

slave so enumerated in said certificate, forfeit and pay the sum of five hundred dollars, recoverable in any court having competent jurisdiction; one moiety to the territory, and the other to the person prosecuting the same to effect, and shall moreover be subject to the pains and penalties of perjury.

Account on oath to be given of the number of slaves imported.

SEC. 5. *And be it further enacted*, That every person or persons, bringing and importing any slave or slaves into this territory, after the first day of January, 1809, shall, within five days after their arrival within the limits of the same, furnish to the clerk of the county court of that county where they may first land or arrive, an accurate account on oath, of all and every slave or slaves, by him, her, or them so imported or brought: whereupon it shall be the duty of said clerk to transmit copies of the said list or account, one to the assessor and inquirer for the county, and one to the auditor of public accounts.

Assessor and Inquirer's duty.

SEC. 6. *And be it further enacted*, That it shall be the duty of said assessor and inquirer to assess on every slave contained in said list or account, the sum of five dollars, which sum or sums the tax collector of the county is hereby required, authorized, and directed to collect from the importer, master, or owner of said slaves, within thirty days after the arrival of the same into this territory, and account on oath within thirty days thereafter to the auditor of public accounts.

Further penalty.

SEC. 7. *And be it further enacted*, That if any person or persons, either owner, master, or importer of any slave, shall fail or refuse, from and after the said first day of January, 1809, to comply with the provisions of the foregoing section, he, she, or they so refusing, shall pay a double tax for which the tax collector is hereby authorized and directed to issue his execution forthwith to the sheriff of the county, in the same manner as he is directed in the case of delinquents or defaulters on the tax list of the county.

SEC. 8. *And be it further enacted*, That the provisions, forfeitures, and requisitions of this act, as far as it relates to tax on slaves, shall not be construed so as to affect persons residing within this territory, or persons emigrating to the same for the purpose of being permanent inhabitants thereof.

CHAPTER IV.

An Act respecting Runaway Slaves committed to Jail.—*Passed December 22, 1809.*

Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, That where any slave is now in the jail of any county, or shall hereafter be committed to the jail of any county within this territory, as a runaway, and such runaway slave shall not be claimed and proved by the owner thereof within six months from the first publication of the commitment of such slave, in some newspaper published in this territory, it shall be lawful for the sheriff of the proper county to sell said runaway

slave at public auction, at the court-house of his proper county, upon giving at least thirty days previous notice of such sale, by advertisement published in some newspaper in this territory, at the court-house of the proper county, and at least two other public places within the same; and out of the proceeds arising from the sale of any runaway slave as aforesaid, the sheriff shall be entitled to the same commission and fees as are allowed in cases of execution; and the balance, after paying all prison fees, and the maintenance of said runaway slave while in jail, shall be for the use of the proper county: *Provided*. That if the owner of such runaway slave shall, after such sale, prove his property in any such slave, the proper county shall pay to him the amount that shall have been paid into the county treasury, on account of the sale of such slave, but the right to any slave sold as aforesaid, shall be and remain vested in the purchaser under the sale made by the sheriff, as aforesaid, any law to the contrary notwithstanding.

CHAPTER V.

An Act to amend an Act, entitled "An Act establishing Patrols, and for other Purposes."—*Passed December 18, 1812.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That it shall be the duty of every militia captain or commanding officer of a company, within this territory, to cause to be made, as soon as may be, after the passing of this act, a complete list of all male persons within his district, liable by the first section of the act to which this is an amendment, to perform patrol duty; including in the said list every person liable as aforesaid, whether belonging to the militia company under his command, or to any other militia or volunteer company; and in the said list, the said captain shall cause to be included, every person liable as aforesaid, who shall come to reside within his district, within ten days after such person shall so come to reside therein.

Duty of militia captain.

SEC. 2. *And be it further enacted*, That the leader of every patrol detachment shall give notice to every person appointed, of his detachment, of the time and place of meeting for the said detachment to patrol, and every such person, who after such notice, or after other information of the said time and place of meeting, shall fail to attend or send a substitute in his stead, or shall, after attendance, neglect a faithful performance of patrol duty, shall forfeit and pay the sum of five dollars, one half whereof, when recovered, shall accrue to the said leader, and the other half to the other persons who shall have performed patrol duty in the detachment wherein the default shall have occurred.

Leaders of patrol to give notice.

SEC. 3. *And be it further enacted*, That it shall be the duty of the leader of every patrol detachment, to forthwith return to the nearest or most convenient justice of the peace, the name

Duty of patrol leaders.

of every defaulter, which said justice shall, within ten days thereafter, issue his summons or warrant, requiring such defaulter to appear, or be brought before him, and in case the said defaulter shall not appear, or be brought before him, it shall then be the duty of the said justice, on proof of service of the process, and on proof of service of the notice, required by the preceding section, or on proof of other information of the time and place of meeting to patrol, to give judgment, and issue execution against the said defaulter for the said forfeiture: *Provided*, that in case a sufficient excuse be given to the said justice, within ten days after the default made, the said justice shall not issue process against the said defaulter, nor if such sufficient excuse be given at the hearing, shall the said justice give judgment against the said defaulter for the said forfeiture, but the said defaulter shall nevertheless pay costs.

Penalty for neglect of duty.

SEC. 4. *And be it further enacted*, That the leader of every patrol detachment, shall for neglecting to give the notice herein before required, or for neglecting to prosecute for the forfeiture as herein before directed, or for neglecting any other duty required by this act, or the act to which this is an amendment, forfeit the sum of ten dollars, to be recovered before any justice of the peace, one half to the use of the commanding officer of the militia company, within whose district the said leader resides, the other half to the use of those persons of the patrol detachment, which the said leader was appointed to command, and it is hereby made the duty of the commanding officer, to return to some justice of the peace, the name of every such defaulting leader, and the said justice shall proceed against the said defaulting leader, as herein before directed in the case of other defaulters; and if any commanding officer of any militia company shall knowingly neglect for three months to make such return, or shall neglect or omit any other duty, by this act required, or the act to which this is an amendment, he shall forfeit twenty dollars to the use of any person suing for the same.

SEC. 5. *And be it further enacted*, That any person interested in any of the forfeitures prescribed by this act, or by the act to which this is an amendment, shall be deemed and received as a competent witness in any suit for any of the said forfeitures, any law to the contrary notwithstanding.

Detachments appointed.

SEC. 6. *And be it further enacted*, That if the regular muster of any militia company shall not be held, or if from any other cause, patrol detachments, or a sufficient number of them are not appointed, it shall be the duty of the commanding officer of the company to appoint such detachment or detachments, and inform the leader or leaders thereof, and that patrol detachments, appointed by virtue of this act, or the act to which this is an amendment, shall consist of not more than seven, nor less than four persons, including the leader, at the discretion of the commanding officer of the company: *Provided*, That such commanding officer shall not put more than half of his company on patrol duty without orders from the commanding officer of the regiment or battalion to which he belongs.

SEC. 7. *And be it further enacted*, That the fourth and fifth sections of the act to which this is an amendment, and all other acts, and parts of acts, coming within the purview and meaning of this act, shall be, and the same are hereby repealed. Sections, &c. repealed.

SEC. 8. *And be it further enacted*, That it shall be the duty of commanding officers of companies to appoint leaders of patrols from the most discreet persons within their bounds, which leaders shall be accountable for the orderly conduct of their detachments: *Provided*, That if he shall forthwith report any disorderly conduct or disobedience of any patrol-man of his detachment to the nearest justice of the peace, he shall be no further accountable. Leaders to be held accountable.

SEC. 9. *And be it further enacted*, That if any patrol-man shall disobey the orders of his leader when out on duty, or otherwise behave disorderly, he shall be fined by the judgment of a justice of the peace, in a sum not exceeding ten dollars, which when recovered shall accrue to the leader and the other patrol-men of the detachment, in the proportion provided for other fines, and such disobedient or disorderly patrol-man, shall be moreover liable to pay any damages which may happen to any individual in consequence of his disorderly conduct, to be recovered before any court having jurisdiction. Penalty for disobedience.

CHAPTER VI.

An Act concerning Slaves brought into this Territory, contrary to the Laws of the United States.—Passed December 8, 1815.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That any slave or slaves brought or imported into this territory, contrary to the laws of the United States, in such case made and provided, shall be condemned by any superior court of this territory, within whose jurisdiction the said slave or slaves shall be brought or be seized, upon libel filed in the said court; and shall be sold by the proper officer of the court, to the highest bidder, at public auction, for ready money, after advertising the time and place of such sale, in some newspaper in this territory, at least fifteen days previous thereto. Prohibition of the importation of slaves into the territory.

SEC. 2. *And be it further enacted*, That the residue of the money arising from the sale, after deducting the costs of suit, shall be paid, one half to the collector of the customs within whose district the said slave or slaves shall have been seized, and the other half into the territorial treasury. But in case there shall have been an informer, one half of the amount directed to be paid to the collector of the district shall accrue and belong to said informer. When brought. Sale of such slaves.

CHAPTER VII.

Extract from an Act to amend an Act, entitled " An Act to regulate Taverns, and Restrain Tippling Houses.—Passed November 27, 1816

Free negroes not to be licensed to keep taverns or retail liquors.

SEC. 2. *And be it further enacted,* That hereafter it shall not be lawful for free negroes to be licensed to keep tavern, or retail any vinous or spirituous liquors; any law to the contrary notwithstanding.

CHAPTER VIII.

An Act to amend the Act, entitled " An Act to prevent the Liberation of Slaves, only in cases hereafter named, and for other purposes.—Passed December 19, 1815.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the jurisdiction given to the circuit and county courts, by the second section of the act to " Prevent the Liberation of Slaves only in certain cases hereafter named, and for other purposes," passed the twentieth day of July, eighteen hundred and five, shall hereafter be exercised by the superior courts of law and equity alone, and not by the county courts; and that the power vested in said courts to take bonds and recognizances, as expressed in said section, shall and may be exercised by a judge of the territory, out of court, as well as in court.



Several conclusions may be drawn from the legislation quoted above. First, the slave code of Alabama was in existence and oppressive long before the rise of the abolitionist movement. Second, separate treatment for the slave was provided as early as 1805. The scope and intent of this paper precluded step by step comparison of laws affording unequal treatment for the black and the white in Alabama. However, the Act of Assembly of 1805 set the basic dual pattern.

Third, the slave code did not protect the slave from wanton cruelty. The judicial process was quite different for the slave than it was for the slaveholder. This can be seen through the legislation presented. The very processes of criminal and civil justice were so different as to preclude any protection for the slave.

Further, the slave code forbade the slave to protect himself even physically; as early as 1805 he was not allowed to carry or use firearms, except for killing of game in the presence of some white person.

The slave had no recourse to physical means of ameliorating his condition. If a slave was convicted of striking a white person (not in protecting his master) he could be punished by lashing--this was established as early as 1805. If a slave was to be tried by jury for a felony or capital offense he was not, or course, allowed to be judged by his peers. Instead, at least two thirds of the jury had to consist of his superiors, owners of slaves.

The slave was to be kept in perpetual ignorance, without formal education, long before the rise of the abolitionist movement.

Emancipation would be strictly controlled and limited by the slave system. The slave had no hope of being freed on a basis of equality with the free white. This was provided for as early as 1805, when any slave being freed had to have judicial approval and even this did not protect his freedom, for other whites could

reinstitute his slavery. The slave code did not allow the slave the right of legal assembly without full control by the white. For example, the slaves could not even assemble for religious purposes before sun-up, evidently because the white was not ready to begin his day. This also was enacted in 1805.

Thus, many prominent historians specializing in Southern history continue to fail to perceive the awful degradation and viciousness of slavery and slave codes; whether this was and is a conscious phenomenon or not is a moot question, but, regardless, these historians have viewed this aspect of Southern history with definite bias. It is time for a general reappraisal of the slave system as it existed in each colony and state before the War of 1812, for we need to set the record "straight" and better perceive the long, long period of history in which the slave just existed, and the development of lasting attitudes on the part of the Southerner in regard to the slave as an inferior being, before the rise of the abolitionist movement.

FOOTNOTES

¹Edward Chambers Betts, Historic Huntsville (1909) (Birmingham: Southern University Press, 1966) p. 45.

²Negro Population 1790-1915 (Washington: Government Printing Office, 1918), p. 57.

³Abstract of the Returns of the Fifth Census . . . (1830) (Washington: Printed by Duff Green, 1832), p. 39.

⁴Ulrich Bonnell Phillips, Life and Labor in the Old South (Boston: Little, Brown and Company, 1951), p. 163.

⁵Clement Eaton, A History of the Old South, 2nd ed. (New York: The Macmillian Co., 1966), p. 245.

⁶Francis Butler Simkins, The South Old and New (New York: Alfred A. Knopf, 1947), p. 23.

⁷William B. Hesseltine, The South in American History, Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1943), p. 161.

⁸Louis Filler, The Crusade Against Slavery 1830-1860 (New York: Harper and Row, 1960), p. 7.

⁹Isaac J. Cox, Dictionary of American Biography, V. 18 (1936), pp. 601 and 602, and Appleton's Cyclopedia of American Biography (ed. by James Grant Wilson and John Fiske), V. 6 (1889), p. 143.

¹⁰Meaning half, from Joseph E. Worcester, A Dictionary of the English Language (Boston: Hickling, Swan, and Brewer, 1860), p. 922.