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## African-American Freedom in Antebellum Cumberland County, Virginia - Freedom: Personal Liberty and Private Law

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# AFRICAN-AMERICAN FREEDOM IN ANTEBELLUM CUMBERLAND COUNTY, VIRGINIA\*

ELLEN D. KATZ\*\*

## INTRODUCTION

During the antebellum period, free African Americans living in the Southern United States were a third class in a society the legal regime had structured for two.<sup>1</sup> Between the American Revolution and the Civil War, state legislatures enacted increasingly stringent legislation designed to limit the growth of the free black population and to restrict the rights and power enjoyed by those already freed. The legal regimes of the era were committed to preserving the institution of race-based slavery and treated free black communities as unwanted anomalies. Historians studying antebellum laws in Virginia, in the South generally, and in the United States overall have uniformly concluded that the legal status of the free black population was precarious.<sup>2</sup>

This Article examines the scope of freedom experienced by free African Americans living in one county in Virginia during the antebellum period. It finds that much of the restrictive state legislation targeting free blacks was enforced sporadically, if at all, in Cumberland County, and that the events prompting the enactment of new laws—most prominently, reports of slave rebellions—had no discerni-

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1. In this Article, the terms African American and black are used interchangeably to refer to those who, in antebellum Virginia, were referred to as Negroes and mulattoes. Antebellum Virginia laws treated mulattoes and Negroes similarly, although these two groups occupied somewhat different social positions. A. Leon Higginbotham, Jr. & Barbara K. Kopytoff, *Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia*, 77 *Geo. L.J.* 1967, 1967 n.2, 1976 (1989).

2. The extensive literature on free blacks in the United States reveals that significant regional variations existed among free black communities and that some free blacks enjoyed more security than others. See, e.g., Ira Berlin, *The Structure of the Free Negro Caste in the Antebellum United States*, 9 *J. Soc. Hist.* 297, 313-14 (1976). Despite the differences, however, historians have reached similar conclusions regarding the overall legal status of free blacks. See *infra* note 73.

Historians have produced dozens of studies concerning various free black communities during the antebellum period. See *infra* notes 12-25 and accompanying text. Since this Article evaluates Cumberland County, Virginia, it focuses exclusively on Virginia and its legal regime.

ble effect on recorded transactions and litigation in the county. The one realm the Virginia state legislature never racially restricted during the antebellum period—land ownership and the rights accompanying it—appears to have remained open and accessible to Cumberland County's free black residents, who engaged in numerous land transactions during this period. This Article documents seventy-six acquisitions of land by free black residents of Cumberland County between 1782 and 1863 and discusses the circumstances surrounding acquisition, tenure of free black ownership, and ultimate disposition of each piece of property.<sup>3</sup>

Why Virginia legislators failed to restrict free black land ownership is not at all clear. It was neither self-evident nor necessary that the right to own land accompanied freedom from enslavement. In fact, in 1796, St. George Tucker, a Professor of Law at the University of William and Mary, expressly advocated banning land ownership by free blacks. Tucker, convinced that slavery needed to be abolished,<sup>4</sup> and yet unwilling to integrate free blacks into white society,<sup>5</sup> called for the gradual abolition of slavery<sup>6</sup> and proposed immediately subjecting those emancipated to legal restrictions, the stringency of which would prompt their *voluntary* emigration from Virginia and the United States as a whole.<sup>7</sup> Among the restrictions Tucker proposed was a suggestion that the General Assembly prohibit free blacks from acquiring or transferring real property.<sup>8</sup> This measure, Tucker argued,

3. Appendix I describes the sources consulted for this Article and explains the methodology employed in using them. It also sets forth some caveats to both the sources and the methodology. For a map of Cumberland County and its location in Virginia, see APP. II, Fig. 1.

4. ST. GEORGE TUCKER, A DISSERTATION ON SLAVERY: WITH A PROPOSAL FOR THE GRADUAL ABOLITION OF IT, IN THE STATE OF VIRGINIA 48 (reprint ed., N.Y., 1861) (1796) (“[Slavery is] perfectly irreconcilable . . . to the principles of a democracy, which form the *basis* and *foundation* of our government.”). Tucker served as a judge of the General Court of Virginia and compiled an edition of Blackstone's commentaries and a compendium of the laws of Virginia.

5. *Id.* at 84-85 (“[W]ho is there so free from prejudices among us, as candidly to declare that he has none against such a measure?”); see also *id.* at 92 (“I wish not to encourage [free Negroes'] future residence among us.”).

6. Tucker recommended freeing every female slave born after the adoption of his plan. These women would both “transmit freedom to all [their] descendants, both male and female,” and compensate their former owners by serving as indentured servants until they were twenty-eight years old. At that time, they would receive “twenty dollars in money, two suits of clothes, suited to the season, a hat, a pair of shoes, and two blankets.” *Id.* at 89.

7. Tucker's plan dealt expressly with Virginia, rather than the United States as a whole, and his arguments were addressed to the state's legislators. Nevertheless, Tucker's arguments suggest that he intended more than merely prompting free black migration to the North; rather, he envisioned the departure of free blacks from the nation entirely.

8. Tucker wrote:

Let no Negroe [*sic*] or mulattoe [*sic*] be capable of taking, holding, or exercising, any . . . freehold, franchise or privilege, or any estate in lands or tenements, other than a

would “effectually remove the foundation of ambition [from them]” and cause free blacks to leave the state.<sup>9</sup>

But while many Virginia legislators shared Tucker’s desire for the free black population to leave the state, the General Assembly never adopted Tucker’s recommendation to bar free blacks from owning or transferring real property. In fact, with the temporary exception of Georgia,<sup>10</sup> no state—North or South—prohibited or even limited the right of free blacks to own or transfer real property.<sup>11</sup>

Historians of the antebellum period have viewed the absence of legislation restricting property holding by free blacks as anomalous, given the scope and severity of laws targeting free blacks generally. In 1939, historian Luther Porter Jackson wrote, “The right to own and transfer property was one right which an otherwise hostile society never took away from this minority group.”<sup>12</sup> But while historians

lease not exceeding twenty-one years. . . . Nor be an executor or administrator; nor capable of making any will or testament; nor maintain any real action; nor be a trustee of lands or tenements himself, nor any other person to be a trustee to him or to his use.

*Id.* at 91-92.

9. *Id.* at 92, 94.

10. An 1818 Georgia law provided that “[n]o free person of colour within this state, (Indians in amity with this state excepted) shall be permitted to purchase or acquire any real estate, or any slave or slaves” by direct conveyance, will, deed, contract, agreement, or stipulation. The law also prohibited the establishment of an interest in a beneficial trust for a free person of colour. The state claimed the power to confiscate any property so acquired, to sell it at public auction, and to distribute 10% of the proceeds to the informant. See LOREN SCHWENINGER, *BLACK PROPERTY OWNERS IN THE SOUTH 1790-1915*, at 65 (1990). In 1819, the state repealed the law as it applied to real property, although the restrictions were retained in Augusta, Darien, and Savannah. *Id.*

11. No satisfactory explanation has been given for the failure of the Virginia Assembly to enact Professor Tucker’s proposal or a similar measure in the two generations preceding the Civil War. One possible explanation for the lack of legislation on this issue suggests that, had the Virginia Assembly barred blacks from land ownership, it necessarily would have limited the property rights of whites to transfer land freely as they desired. The Assembly was unwilling to take such action.

12. Luther P. Jackson, *The Virginia Free Negro Farmer and Property Owner, 1830-1860*, 24 *J. NEGRO HIST.* 390, 392 (1939) [hereinafter Jackson, *Virginia Free Negro Farmer*]; see also JOHN H. FRANKLIN, *THE FREE NEGRO IN NORTH CAROLINA 1790-1860*, at 150 (reprint ed., N.C., 1969) (1943) (“At no time during the period before the Civil War was the free Negro’s right to own real property questioned.”); SUZANNE LEBSOCK, *THE FREE WOMEN OF PETERSBURG: STATUS AND CULTURE IN A SOUTHERN TOWN, 1784-1860*, at 103 (1982) (“Except for limitations on the purchase of slaves, free blacks were never denied the right to acquire, use, and dispose of property.”); BENJAMIN QUARLES, *THE NEGRO IN THE MAKING OF AMERICA* 88 (1969) (noting that since free blacks throughout the South could make contracts and own property “some things operat[ed] in their favor”); Raymond C. Bailey, *Racial Discrimination Against Free Blacks in Antebellum Virginia: The Case of Harry Jackson*, 39 *W. VA. HIST.* 181, 185 (1978) (noting historians’ observation that economic realities “at least partly” mitigated legally imposed discriminatory barriers); John H. Franklin, *The Free Negro in the Economic Life of Ante-bellum North Carolina*, (pt. 2), 19 *N.C. HIST. REV.* 359, 363 (1942); A. Leon Higginbotham, Jr. & Greer C. Bosworth, “*Rather Than the Free*”: *Free Blacks in Colonial and Antebellum Virginia*, 26 *HARV. C.R.-C.L. L. REV.* 17, 34 (1991) (“Unlike the political and associational freedoms . . . the property rights of free blacks were less restricted.”); L. P. Jackson, *Free Negroes of Petersburg*,

have produced an extensive literature on free black communities in the United States during the antebellum period,<sup>13</sup> only limited attention has been given to property ownership among free blacks.

More than fifty years ago, Jackson first noted the lack of historical analysis of free blacks as property owners.<sup>14</sup> In 1939, Jackson published a study of antebellum free black property ownership in Virginia. Consulting land, tax, and census records, Jackson compared the amount and value of land owned by free blacks in 1830 and in 1860, explained how free blacks acquired land, and described the types of farm operations in which they were engaged. He noted a one hundred percent increase in land ownership between 1830 and 1860, a period during which the free black population increased by only twenty percent and faced the most severe legal restrictions of the antebellum period.<sup>15</sup> Land ownership, he concluded, was of vital importance to the black community and mitigated the harshness of other legal restrictions.<sup>16</sup>

In 1942, John Hope Franklin published the second major study of free black property ownership in the South, focusing on the economic life of free blacks in antebellum North Carolina.<sup>17</sup> In addition to summarizing the various skilled and unskilled professions free blacks entered and the wages they received,<sup>18</sup> Franklin documented trends in property ownership among North Carolina's free blacks. Franklin noted that free blacks possessed full rights to acquire, transfer, and

*Virginia*, 12 J. NEGRO HIST. 365, 367 (1927) (noting that notwithstanding other restrictions, free blacks "were permitted to enter business and to own property") [hereinafter Jackson, *Petersburg*].

13. See generally MARY F. BERRY & JOHN W. BLASSINGAME, *LONG MEMORY: THE BLACK EXPERIENCE IN AMERICA* 33 (1982) (noting that the "massive written record" of primary documents has rendered "[t]he free Negro in the United States . . . a nearly perfect subject for the historian.").

14. Jackson, *Virginia Free Negro Farmer*, *supra* note 12, at 390. Since 1899, several historians have examined free black communities during the antebellum period. See, e.g., JOHN H. RUSSELL, *THE FREE NEGRO IN VIRGINIA, 1619-1865* (1913); JAMES M. WRIGHT, *THE FREE NEGRO IN MARYLAND, 1634-1860* (Studies in History, Economics and Public Law Whole No. 222, 1921); Ralph B. Flanders, *The Free Negro in Ante-bellum Georgia*, 9 N.C. HIST. REV. 250 (1932); John H. Russell, *Colored Freeman as Slave Owners in Virginia*, 1 J. NEGRO HIST. 233 (1916); Charles S. Sydnor, *The Free Negro in Mississippi Before the Civil War*, 32 AM. HIST. REV. 769 (1927); David Y. Thomas, *The Free Negro in Florida Before 1865*, 10 S. ATLANTIC Q. 335 (1911); Herbert Bolton, *The Free Negro in the South Before the Civil War* (1899) (unpublished Ph.D. dissertation, University of Pennsylvania). Jackson, however, was the first scholar specifically to examine land ownership among free blacks.

15. Jackson, *Virginia Free Negro Farmer*, *supra* note 12, at 406.

16. Jackson subsequently published his study as a book. See LUTHER P. JACKSON, *FREE NEGRO LABOR AND PROPERTY HOLDING IN VIRGINIA, 1830-1860* (1942).

17. John H. Franklin, *Free Negro in the Economic Life of Ante-bellum North Carolina* (pt. 1), 19 N.C. HIST. REV. 239 (1942).

18. *Id.* at 241-59.

devise property and he summarized case law recognizing these rights.<sup>19</sup> "The amazing thing," Franklin concluded, was that the free blacks of North Carolina, while "[s]urrounded on all sides . . . by a hostile community that often made them as unwelcome as a contagious disease," acquired property valued at more than one million dollars and owned several hundred slaves during the seventy-year period ending in 1860.<sup>20</sup>

In the fifty years since Franklin and Jackson wrote, many historians have produced studies of free black communities, but few have concentrated on property ownership. The primary focus of most historical work has been analysis of legal restrictions on manumission and civil liberties, with only limited discussion of property ownership.<sup>21</sup> In 1976, one historian observed that "further research is

19. *Id.* at 366-67.

20. Franklin, *supra* note 12, at 375.

21. See, e.g., IRA BERLIN, *SLAVES WITHOUT MASTERS: THE FREE NEGRO IN THE ANTEBELLUM SOUTH* (1974); LETITIA W. BROWN, *FREE NEGROES IN THE DISTRICT OF COLUMBIA, 1790-1846* (1972); H. E. STERKX, *THE FREE NEGRO IN ANTE-BELLUM LOUISIANA* (1972); MARINA WIKRAMANAYAKE, *A WORLD IN SHADOW: THE FREE BLACK IN ANTE-BELLUM SOUTH CAROLINA* (1973); E. Horace Fitchett, *The Origin and Growth of the Free Negro Population of Charleston, South Carolina*, 26 J. NEGRO HIST. 421 (1941); Laura Foner, *The Free People of Color in Louisiana and St. Domingue: A Comparative Portrait of Two Three-Caste Slave Societies*, 3 J. Soc. Hist. 406, 416, 425 (1970) (focusing on legal restrictions, but noting that some free people of color acquired wealth and property); Harold B. Hancock, *Not Quite Men: The Free Negroes in Delaware in the 1830's*, 17 CIVIL WAR HIST. 320, 325-26 (1971) (same); Morris R. Boucher, *The Free Negro in Alabama Prior to 1860* (1950) (unpublished Ph.D. dissertation, State University of Iowa); Leonard P. Stavisky, *The Negro Artisan in the South Atlantic States, 1800-1860: A Study of Status and Economic Opportunity with Special Reference to Charleston* (1958) (unpublished Ph.D. dissertation, Columbia University); Edward F. Sweat, *The Free Negro in Antebellum Georgia* (1957) (unpublished Ph.D. dissertation, Indiana University); Charles N. Zucker, *The Free Negro Question: Race Relations in Antebellum Illinois, 1801-1860* (1972) (unpublished Ph.D. dissertation, Northwestern University); see also Michael S. Hindus, *Black Justice Under White Law: Criminal Prosecution of Blacks in Antebellum South Carolina*, 63 J. AM. HIST. 575, 576 (1976) ("Despite their obvious limitations in describing actual practice, statutes are still the best sources for determining the legal status of blacks."); but see LEONARD P. CURRY, *THE FREE BLACK IN URBAN AMERICA, 1800-1850: THE SHADOW OF THE DREAM* 37-48 (1981) (noting remarkable economic achievements of urban free blacks during antebellum period given limited employment opportunities and attributing success of free blacks to "energy, enterprise, and frugality"); MICHAEL P. JOHNSON & JAMES L. ROARK, *BLACK MASTERS: A FREE FAMILY OF COLOR IN THE OLD SOUTH* (1984); Catherine W. Bishir, *Black Builders in Antebellum North Carolina*, 61 N.C. HIST. REV. 423 (1984); Whittington B. Johnson, *Free Blacks in Antebellum Savannah: An Economic Profile*, 64 GA. HIST. Q. 418, 428 (1980) (finding that free blacks faced no "insuperable difficulties" in obtaining property, notwithstanding laws banning such acquisitions, and that, economically, they were not "slaves without masters") (quoting with disapproval BERLIN, *supra*); Dorothy Provine, *The Economic Position of Free Blacks in the District of Columbia, 1800-1860*, 58 J. NEGRO HIST. 61, 67-72 (1973) (discussing job classifications and property ownership among free blacks in D.C.); Richard Tansey, *Out-of-State Free Blacks in Late Antebellum New Orleans*, 22 LA. HIST. 369 (1981) (noting economic opportunities and real estate holdings by native-born and alien free blacks in New Orleans).

For an anecdotal and empirical analysis of black property ownership in one community during the turbulent 1860-1870 decade, see Edward H. Bonekemper III, *Negro Ownership of*

needed to delineate fully the nature and size of black property ownership and compare it with that of whites."<sup>22</sup> In 1990, another historian noted, "Wealth accumulation among free blacks in the South—perhaps the best key to understanding their attitudes as well as their position in Southern society—remains largely unexplored."<sup>23</sup>

Seeking to fill this void and expand Jackson's and Franklin's work beyond Virginia and North Carolina, Loren Schweningen set out to examine property holdings among African Americans in all Southern states from 1790 until 1915.<sup>24</sup> An ambitious project, Schweningen's study, in large part relying on census reports,<sup>25</sup> sweeps broadly, pointing out the extent of wealth accumulation and the regional and temporal variations in ownership patterns.

This Article seeks to supplement the work begun by Jackson and Franklin and to expand the historical record on antebellum free black property ownership.<sup>26</sup> But while building on previous studies, it differs from them in several respects. First, in contrast to Jackson's study of Virginia which presented periodic "snapshots" of the total of all free black holdings in given years, this Article focuses on individual holdings over time in a single community. It documents, in quantitative terms, how much land *each* free black property owner in Cumber-

*Real Property in Hampton and Elizabeth City County, Virginia, 1860-1870*, 55 J. NEGRO HIST. 165 (1970).

22. Berlin, *supra* note 2, at 308.

23. SCHWENINGER, *supra* note 10, at 63.

24. *Id.*

25. Perhaps because of the project's scope, Schweningen chose to rely on federal census reports rather than local land records. This reliance means that for the antebellum period, Schweningen's data is, as he noted, skewed toward the years after 1850 when federal census reports first began reporting data on property ownership. *See id.* Local land records not only provide data for the entire antebellum period, but provide a more reliable account of ownership patterns than do federal census reports. *See infra* note 338.

26. This Article relies on many of the same sources Jackson used. They include: Cumberland County Deed Books (1782-1863) (Virginia State Archives, Richmond, Va.) (available on microfilm) [hereinafter DEED BOOK, Year]; Cumberland County Land Books (1782-1863) (Virginia State Archives, Richmond, Va.) (available on microfilm through 1850; remainder on file at Virginia State Archives, Richmond, Va.) [hereinafter LAND BOOK, Year]; Cumberland County Order Books (1782-1863) (Virginia State Archives, Richmond, Va.) (available on microfilm) [hereinafter ORDER BOOK, Year]; Cumberland County Personal Property Books (1782-1863) (Virginia State Archives, Richmond, Va.) (available on microfilm for years 1782-1844; remainder on file at Virginia State Archives, Richmond, Va.) [hereinafter PERSONAL PROPERTY BOOK, Year]; Cumberland County Will Books (1782-1863) (Virginia State Archives, Richmond, Va.) (available on microfilm) [hereinafter WILL BOOK, Year]; Population Schedules For the Third through Eighth Censuses of the United States, 1810-1860, Cumberland County, Virginia.

Additional sources consulted included the Free Negro Registers, 1859-1861, Cumberland County, Va. (on file at Virginia State Archives, Richmond, Va.); [Apprenticeship] Indentures, Cumberland County, Virginia (on file at Virginia State Archives, Richmond, Va.); Judgments, Cumberland County, Va., 1800-1860 (on file at Virginia State Archives, Richmond, Va.).

For a more detailed description of these sources and how they were used, see APP. I.

land County held, how and from whom free blacks acquired land, how long they retained property, and how, when, why, and to whom free blacks relinquished ownership. Second, this Article documents all litigation involving a free black property owner residing in the county. While others have evaluated litigation involving free blacks and the legal precedents set in cases involving them,<sup>27</sup> the cases documented here are not noteworthy for their precedential value. Instead, they reveal one means Cumberland County residents used to resolve disputes among neighbors and those arising in the course of business transactions. Third, while other historians have noted that free black property ownership was insignificant in comparison to whites,<sup>28</sup> this Article compares the actual scope of free black property ownership to that of representative white owners.

Fourth, this Article focuses on antebellum Cumberland County, Virginia, a region that has prompted very limited historical research.<sup>29</sup> The lack of interest among historians in Cumberland's history finds explanation in a brief chronicle of the county's history that noted: "To say that Cumberland has led Virginia and the nation, or that she has in any single great way contributed to the development of this nation would be mistake . . . Cumberland was not a Yorktown or a Williamsburg."<sup>30</sup> Yet, it was this very lack of specific contribution to discrete historic events that prompted this investigation into Cumberland County.<sup>31</sup> This Article examines the extent to which the overarching legal regime shaped daily transactions in a region subject to its authority, but relatively isolated from most political events. It finds that the white perceptions of free blacks embodied in the state's laws are not readily evident in the daily interactions between whites and free blacks in the county. Free black residents utilized available legal channels to establish and retain land ownership. Whites and free blacks engaged in daily business transactions, regularly bought and

27. See, e.g., Franklin, *supra* note 12; Higginbotham & Bosworth, *supra* note 12; Higginbotham & Kopytoff, *supra* note 1.

28. See, e.g., LEBSOCK, *supra* note 12, at 111.

29. The only scholarly historical account relating to Cumberland County is an unpublished dissertation discussing an African-American family following the Civil War. See Marilyn M. White, "We Lived On an 'Island'": An Afro-American Family and Community in Rural Virginia, 1865-1940 (1983) (unpublished Ph.D. dissertation, University of Texas at Austin). There have been no in-depth historical accounts of the county during the antebellum period.

30. M.K. VAUGHAN, *CRUCIBLE AND CORNERSTONE—A HISTORY OF CUMBERLAND COUNTY 1* (1969).

31. In addition, Yale University's Manuscripts and Archives Collection holds microfilm copies of the central Cumberland County documents consulted—the Land, Order, Deed, and Will Books. This holding greatly facilitated this research and, in this sense, the selection of Cumberland County was a calculated choice.

sold land from one another, and, on occasion, sued one another regarding land disputes and other controversies. When free blacks engaged in litigation, they relied on white juries and white counsel to vindicate their claims.

By highlighting the disjunction between the Virginia legal regime and daily life in Cumberland County, this Article is not suggesting that the county was necessarily unique or that free African Americans living there enjoyed a life free from discrimination. Lacking political power in a white-dominated society dedicated to the institution of slavery, free blacks lived at the "sufferance" of whites.<sup>32</sup> Nevertheless, analysis of state statutes, judicial opinions, and political debates alone obscures the complexity of the society in which free blacks and whites co-existed and provides an incomplete historical account of antebellum life in Virginia. Expanding the scope of the inquiry to include county land and court records reveals numerous transactions, unforeseen in light of the stringency of the controlling legal regime. The portrait of Cumberland County that emerges is one in which individual relationships may have been as important as race in determining the nature of the transactions documented. Yet the portrait this Article presents remains necessarily incomplete; legal documents recorded at the courthouse, while rich in detail, still lack critical information concerning underlying motivations and undisclosed circumstances. The full story is lost with its participants.

This Article proceeds in several parts. Part I provides some background concerning Cumberland County and discusses its geography, economy, and history during the antebellum period as well as the growth and development of the county's free black population. Part II discusses the legal regime governing life in Cumberland County. It first summarizes the increasingly restrictive legislation limiting the liberty of free African Americans in Virginia from the early 1600s until the Civil War. It evaluates the enforcement of these laws in Cumberland County and, finally, discusses the exemption of property ownership from legal restriction.

Part III summarizes empirical findings regarding free African-American ownership of land in Cumberland County. It describes the nature and scope of black land ownership, and includes a comparison of black ownership with white ownership, highlighting significant similarities and differences. The Conclusion notes that the land transaction data involving free blacks in Cumberland County defies any

32. ULRICH B. PHILLIPS, *AMERICAN NEGRO SLAVERY* 441 (1966).

unitary characterization. Not only did the nature and scope of ownership vary considerably among free black landowners, but individual transactions by specific owners may be subject to varied and indeed conflicting evaluations. In the end, personal relationships among residents of a small community may provide the best explanation for the transactions documented.

## I. A BRIEF HISTORY OF CUMBERLAND COUNTY

Cumberland County is situated in central Virginia on the Piedmont Plateau.<sup>33</sup> It is bordered by six counties—Buckingham, Fluvanna, Goochland, Powhatan, Prince Edward, and Amelia—with the James River forming the northern boundary of the county and the Appomattox River separating Cumberland from neighboring counties to the south and southeast.<sup>34</sup>

The Virginia House of Burgesses created the county in 1749 from a portion of the shire of Goochland, in response to a petition from residents of southern Goochland, who had claimed the shire's courthouse was inaccessible.<sup>35</sup> Pursuant to a resolution of the County Court, a new courthouse was constructed on a field at the plantation of Maurice Langhorn in Cumberland County in 1778.<sup>36</sup> From the posting of notices at the courthouse door<sup>37</sup> to the recording of deeds to actual litigation, the courthouse functioned as a significant gathering place and locus for most of the transactions documented in this Article.<sup>38</sup> Eight "gentlemen" justices, appointed by the governor, presided and had jurisdiction over both legal and administrative matters.

33. Cumberland is named after the Duke of Cumberland, William Augustus, the victor of Culloden in 1746. A HORNBOOK OF VIRGINIA HISTORY 13 (J.R.V. Daniel ed., 1949).

34. See APP. II, Fig. 1.

35. In 1777, the House of Burgesses created Powhatan County from southern Cumberland, and in 1778, it incorporated a small part of Buckingham parish into Cumberland. Since then the boundaries of the county have remained unchanged. VAUGHAN, *supra* note 30, at 5.

36. An August 26, 1777 resolution by the court called for "building a Court House, prison, pillory and stocks within the old field at the plantation of Maurice Langhorn." VAUGHAN, *supra* note 30, at 19. On March 23, 1778, Langhorn "came into court and undertook to build a court house." *Id.* (quoting ORDER BOOK, 1778, *supra* note 26).

37. See *infra* notes 142 and accompanying text.

38. See generally CHARLES J. FARMER, IN THE ABSENCE OF TOWNS: SETTLEMENT AND COUNTY TRADE IN SOUTHSIDE VIRGINIA, 1730-1800, at 62 (1993) ("[C]ounty courthouses have been generally and rightfully recognized as the most important gathering places in the backcountry South.").

In 1788, the Virginia legislature established the district court system, 7 WILLIAM W. HENNING, THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 730 (1827) (1788 Va. Acts), to have district judges selected by the judges on the General Court in Richmond. But while the new system was "meant to crowd the county court out of the picture," the change from county to district courts "was to take a century." ALPERT O. PORTER, COUNTY GOVERNMENT IN VIR-

Beginning in the eighteenth century, these justices generally came from the agricultural "aristocracy" and ran the county in accordance with their interests.<sup>39</sup>

Located in the middle of the county, the courthouse and its surrounding area did not develop into a commercial center; instead, commercial development occurred adjacent to the rivers forming the county's boundaries in the two towns established in Cumberland County during the early Republic.<sup>40</sup> The first, known as Carter's Ferry or Cartersville and located on the James River, was established in 1790. Six years later, the General Assembly established the town of Ca Ira,<sup>41</sup> located in the southwestern portion of the county on the Willis River, a tributary of the James River. Intentionally situated adjacent to rivers, both towns developed as trading and transportation centers in the county.<sup>42</sup> By the early nineteenth century, Ca Ira had become the main tobacco exporter on the Willis River.<sup>43</sup>

As the century progressed, railroads became an increasingly important means of transporting goods, rivaling and soon surpassing river transport. By the early 1830s, the Petersburg Railroad Company operated from Petersburg, Virginia to Blakely on the North Carolina border; it was followed shortly thereafter by the establishment of the Norfolk Railroad, connecting Norfolk, Virginia with the town of Weldon on the North Carolina border.<sup>44</sup> During this time, Cumberland still relied on rivers to transport goods as these railroads were located in the eastern portion of the state. By 1847, however, the Richmond and Danville Railroad was established and ran from Richmond southwest to Danville and passed through Cumberland's neighbors Amelia

GINIA: A LEGISLATIVE HISTORY, 1607-1904, at 160 (1947). From 1782 to 1863, the county court remained the dominant judicial arbiter in Cumberland County.

39. PORTER, *supra* note 38, at 46, 51, 100.

40. In his study of eighteenth-century settlement and trade development in southern Virginia, Charles Farmer pointed out that the practice of locating the courthouse in the center of the county often proved "highly artificial." He wrote, "[T]he potential town-building combination of courthouse and ferry site never materialized because of the concern for the centrality of the former and the location of large rivers off-center and on county boundaries." FARMER, *supra* note 38, at 62-63. His analysis appears equally applicable to the nineteenth-century development of Cumberland County.

41. Ca Ira, meaning "it will succeed," was named for a marching song of the French Revolution and the motto of Jefferson's Democrats. See VAUGHAN, *supra* note 30, at 20.

42. See generally FARMER, *supra* note 38, at 28-29; *id.* at 92 (noting the Appomattox and James Rivers were "natural" trading outlets for southern Virginia).

43. VAUGHAN, *supra* note 30, at 21. See generally FARMER, *supra* note 38, at 28 ("Tobacco . . . was easily shipped from plantations to foreign markets because of the availability of . . . navigable waterways.")

44. JOSEPH C. ROBERT, THE TOBACCO KINGDOM: PLANTATION, MARKET, AND FACTORY IN VIRGINIA AND NORTH CAROLINA, 1800-1860, at 64-65 (1938).

and Prince Edward Counties. The Southside Railroad, which by 1860 extended from Petersburg to Lynchburg in western Virginia, stopped at Farmville, just south of the Cumberland border in Prince Edward County.<sup>45</sup> The establishment of Virginia's railroad network provided a critical link from rural to urban markets and contributed to the increase in commercial prosperity by the mid-nineteenth century.<sup>46</sup>

Throughout the antebellum period, the construction and maintenance of roads was of critical importance in Cumberland County. From time to time, landowners petitioned the county court for the construction of a road on or near their property. The court also named road supervisors who, not infrequently, were held accountable for the failure to maintain roads adequately.<sup>47</sup>

From its origins to the present, the primary industry in Cumberland County was agriculture.<sup>48</sup> The main crop during the antebellum period was tobacco, cultivation of which began in the mid-seventeenth century;<sup>49</sup> by the early nineteenth century, corn, wheat, and other grains were also grown in Cumberland. Tobacco was generally grown on white-owned plantations with black slave labor; plantations in Cumberland County and the neighboring counties that comprised the "middle Virginia tobacco region" on average had twenty-four slaves, making them smaller than plantations in the lower South.<sup>50</sup> Tobacco cultivation prompted the growth of small factories, and Cumberland County had both a tobacco factory and flour mill.<sup>51</sup>

The Needham Law School operated in Cumberland County from 1821 to 1842, during which time an estimated three hundred men received legal training there.<sup>52</sup> Graduates of the school included future

45. *Id.* at 69, 71.

46. David R. Goldfield, *Urban-Rural Relations in the Old South; The Example of Virginia*, 2 *J. Urban Hist.* 146, 149 (1976) ("[B]oth farmer and merchant viewed the Iron Horse with a respect that approached reverence.")

47. See, e.g., ORDER BOOK, 1860, *supra* note 26, at 202-03 (grand jury presentment against Benjamin A. Allen, surveyor of highways for interval of Davenport Road to Page Road for not keeping the road "in order" and having permitted it "to be and remain in bad repair"). *But see id.* at 245 (discharging rule against Allen after he appeared and was "fully heard"); see also Judgments, Cumberland County Court, July 1847, *supra* note 26 (dismissing charge against Hezekiah Ford for not keeping road in good repair).

48. White, *supra* note 29, at 13 ("The county is and always has been rural, with agriculture ranking as the leading industry in the county.")

49. ROBERT, *supra* note 44, at 6.

50. 1 LEWIS C. GRAY, HISTORY OF AGRICULTURE IN THE SOUTHERN UNITED STATES TO 1860, at 531 (1933).

51. ROBERT, *supra* note 44, at 175, 175 n.29 ("Nearly every planter who raises tobacco to any extent is a manufacturer.") (quoting JOSEPH MARTIN, A NEW AND COMPREHENSIVE GAZETTEER OF VIRGINIA AND THE DISTRICT OF COLUMBIA (Charlottesville, 1835)).

52. Hoskins M. Sclater, *Chancellor Taylor's Law School at "Needham" In Cumberland County, Virginia (1821-1842)*, CUMBERLAND COUNTY VA. HIST. BULL., Nov. 1984, at 23. The

Missouri Governor Sterling Price and future justice of the Supreme Court of Ohio William Yates Gholson.<sup>53</sup>

It is not known when free African Americans first arrived in Cumberland County. Manumission during the late eighteenth century contributed to the growth of Cumberland's free black population, but the origin of the free black community is not recorded. In Virginia overall, the first African Americans came to the colony as indentured servants in 1619. The free black population grew as indentured servants completed their terms, limited-scale private manumissions began,<sup>54</sup> and free blacks born abroad immigrated to the colony.<sup>55</sup> By 1790, more than twelve thousand free blacks lived in Virginia,<sup>56</sup> and the first United States Census taken that year records 142 free non-white residents in Cumberland County, with 3577 white residents and 4434 slaves.<sup>57</sup> By 1830, the free black population more than doubled and then remained relatively constant until the Civil War.<sup>58</sup>

Overall, the free black population in Cumberland County was quite poor. The inability to "maintain" children led some free black women in the county to apprentice out their children. For example, a May 1817 order instructed the overseer of poor to hire out as apprentices Tarlton, Nancy, Jenny, David, and Fleming Jenkins, the children of a free black woman named Judith Jenkins, because she could not support them.<sup>59</sup> So too, a free black woman named Polly Jenkins, in her will, provided that her children be hired out.<sup>60</sup> The children were apprenticed to a white man named Nate Walton; Peter and James Jenkins were to be taught the carpenters' trade and Sally and Martha Jenkins to be taught the arts of spinning, weaving, sewing, and knit-

law school may have contributed to the access which litigants in Cumberland County had to attorneys. See *infra* note 324 and accompanying text.

53. VAUGHAN, *supra* note 30, at 22.

54. Luther P. Jackson, *Manumission in Certain Virginia Cities*, 15 J. NEGRO HIST. 278, 278 (1930) ("[E]mancipation on a limited, individual scale, had been going on in the South almost from the time of the introduction of slavery in 1619."); cf. Herbert Aptheker, *American Negro Slave Revolts*, 1 SCI. & SOC'Y 512, 513 (1937) (stating that slavery did not exist under law in Virginia until 1660).

55. QUARLES, *supra* note 12, at 84; see also T.H. BREEN & STEPHEN INNES, "MYNE OWNE GROUND": RACE AND FREEDOM ON VIRGINIA'S EASTERN SHORE, 1640-1676, at 68-109 (1980).

56. SCHWENINGER, *supra* note 10, at 18.

57. DEPARTMENT OF COMMERCE AND LABOR, BUREAU OF THE CENSUS, HEADS OF FAMILIES AT THE FIRST CENSUS OF THE UNITED STATES TAKEN IN THE YEAR 1790: VIRGINIA 9 (1908).

58. See APP. II, tbl. 2.

59. ORDER BOOK, 1817, *supra* note 26, at 229.

60. WILL BOOK, 1835, *supra* note 26, at 198.

ting.<sup>61</sup> Other free blacks to be hired out as apprentices were Peter, Albert, Pleasant, and Washington Mayo.<sup>62</sup>

There is evidence that apprenticeship entailed a serious curtailment on individual liberty. For example, on February 23, 1818, Tarlton Jenkins, nine months into his apprenticeship to a white landowner named Alexander Cheatwood, petitioned the county court for permission to end his apprenticeship and set aside the order binding him out. The court found that Jenkins had demonstrated he was not likely to become a public charge and that he would at the time hire for \$80, but nevertheless denied his motion.<sup>63</sup>

Professional opportunities for free blacks in the county were limited, with most performing unskilled labor on farms or working as boatmen. A limited number became carpenters, coopers, waggoners, and blacksmiths.<sup>64</sup> For example, a free black man named Sampson Womack operated a blacksmith shop in the county from 1804 until his death in 1823; his business was apparently quite successful and his customers included numerous white residents of the county.<sup>65</sup> Some of the larger landowners among the county's free black residents were farmers.

As the nineteenth century progressed, free blacks in Cumberland County and in Virginia overall became an increasingly important source of labor. Factors contributing to their importance included the growing diversification of agriculture and increased emigration over immigration.<sup>66</sup> Farmers switched from tobacco to cereal agriculture, stimulating the growth of towns and light industry and reducing the need for slaves.<sup>67</sup> But as economic opportunities for free blacks in Cumberland County developed, the state legislature in Richmond enacted increasingly stringent legislation designed to limit the rights of Virginia's free black community and restrict its growth.

61. [Apprenticeship] Indentures, 1800-83, *supra* note 26; *see also* LEBSOCK, *supra* note 12, at 97-98 (noting comparatively that free black apprentices had access to fewer trades than did white apprentices and that free black girls had fewer opportunities than did free black boys).

62. [Apprenticeship] Indentures, 1800-83, *supra* note 26.

63. ORDER BOOK, 1818, *supra* note 26, at 315.

64. Population Schedules of the Seventh Census of the United States, 1850, Virginia, Cumberland County.

65. WILL BOOK, 1824, *supra* note 26, at 207.

66. Jackson, *Virginia Free Negro Farmer*, *supra* note 12, at 392.

67. Berlin, *supra* note 2, at 304 ("[W]heat agriculture on small units, under existing technology, thrived on free labor."); *see also* CARVILLE EARLE & RONALD HOFFMAN, *THE URBAN SOUTH* (1976) (discussing economic changes in the Upper South).

## II. THE LAW, ITS ENFORCEMENT, AND ITS OMISSIONS

In antebellum Virginia, a complex legal regime regulated the lives of free African Americans.<sup>68</sup> Beginning in the seventeenth century and continuing with increased fervor (with a brief hiatus during the Revolutionary period), the development of the legal regime reflected white fears that an increasing free black population would burden white society. White lawmakers argued that free blacks would fail to support themselves,<sup>69</sup> increase crime rates,<sup>70</sup> assist fugitive slaves, and foment slave rebellion.<sup>71</sup> Lawmakers created a legal regime that restricted the ability of free African Americans to travel, enter various occupations, carry weapons, educate themselves and their children, and assemble in public. This regime levied higher taxes on free blacks than those levied against whites and imposed more stringent penalties on free blacks convicted of criminal offenses than those imposed on whites convicted of the same crimes. It required free blacks to register periodically at the county courthouse and expressly barred free black men from voting and sitting on juries.<sup>72</sup>

Analysis of this regime supplemented by a study of the Cumberland County records and the work of several historians gives rise to two observations. First, specific laws and judicial decisions support the conclusion that the status of free blacks under law was "precarious-

68. With vigor and venom, Virginia continued to enact laws explicitly restricting the rights of the state's African-American population for a century after the Civil War. The scope of this Article, however, is limited to the antebellum period, when the General Assembly targeted for discriminatory treatment the free African-American population and distinguished it both from other free (i.e., white) people and from the slave population.

69. Benjamin Quarles argued that whites may have also feared that should free blacks prove able to support themselves, the institution of slavery would become endangered; advocates of slavery insisted that African Americans lacked the capacity to care for themselves and hence needed a master to survive. See QUARLES, *supra* note 12, at 86.

70. See, e.g., 3 HENING, *supra* note 38, at 87 (Va. 1691) (noting that freeing those enslaved would produce "great inconveniences," including "their . . . entertaining negro slaves from their masters service, or receiving stolen goods, or . . . bringing a charge upon the country."); see also Frederika T. Schmidt & Barbara R. Wilhelm, *Early Proslavery Petitions in Virginia*, 30 WM. & MARY Q. 3D SERIES 133, 136-46 (1973).

71. According to Herbert Aptheker, white southerners had good reason to fear slave rebellion. See Herbert Aptheker, *More on American Negro Slave Revolts*, 2 SCI. & SOC'Y 386 (1938) (documenting 160 American slave revolts between 1663 and 1865). While much of the white population "constantly" suspected members of the free black population in Virginia of initiating slave rebellion, see Jackson, *supra* note 54, at 311, the actual role of free blacks in fomenting slave rebellions is less clear. See Berlin, *supra* note 2, at 306 ("With little supporting evidence, Upper South whites clung to the belief that free Negroes were the chief source of inspiration and leadership for slave unrest.")

72. For a comprehensive catalog of restrictive legislation, see Higginbotham & Bosworth, *supra* note 12.

ous.”<sup>73</sup> As John Hope Franklin wrote regarding North Carolina, free blacks were “[s]urrounded . . . by a hostile community that often made them as unwelcome as a contagious disease.”<sup>74</sup> Yet, the land records from Cumberland County and other documents reveal that restrictive laws targeting free blacks were not consistently enforced. Indeed, Jackson’s remark that “there is evidence to show that all of [the laws] were not always respected”<sup>75</sup> appears to be correct when applied to Cumberland County.

Second, while restrictive laws touched upon most aspects of life affecting free blacks, state legislators and judges never limited the right of free blacks to own and transfer real property, placed only minimal restrictions on the ownership of personal property, and, at times, affirmatively protected the property rights of free blacks.<sup>76</sup> Indeed, the legal protection of the property rights of free blacks was not an aberration, but rather represented the consistent policy of Virginia legislators and judges during the antebellum period.

73. See, e.g., BERLIN, *supra* note 21, at xiii-xiv (1973) (“Free Negroes . . . were slaves without masters. . . . Southern free Negroes balanced precariously between abject slavery . . . and full freedom, which was denied them. Their world straddled one of hell’s elusive boundaries.”); BERRY & BLASSINGAME, *supra* note 13, at 33-34 (“The status of free Negroes in the United States was precarious at best. . . . They were pariahs to the white community, which generally accepted the notion that slavery rather than freedom was their natural condition.”); DAVID R. GOLDFIELD, *URBAN GROWTH IN THE AGE OF SECTIONALISM: VIRGINIA, 1847-1861*, at 127 (1977) (“Free blacks were an anomaly in southern society. They were relegated to a sort of racial purgatory between free white and black slave, yet they were much closer to the latter.”); GREAT DOCUMENTS IN BLACK AMERICAN HISTORY 52 (George Ducas & Charles Van Doren eds., 1970) (“[T]he free Negro had even less of a place in American society than the slave. . . . [T]he free Negro forced the issue of inclusion in or exclusion from the society. American whites recoiled from the former possibility.”); LEBSOCK, *supra* note 12, at 90 (“For free black people in Virginia, freedom was a fragile and changeable condition, its terms shifting with the anxiety levels of the men who ran the legislature.”); QUARLES, *supra* note 12, at 86 (“Certainly to the white South the free Negro was a totally unwanted element.”); PHILLIPS, *supra* note 32, at 441 (“wherever they dwelt, they lived somewhat precariously upon the sufferance of the whites, and in more or less palpable danger of losing their liberty”); Bailey, *supra* note 12, at 181, 183 (noting the “precarious existence” of the free black population in the antebellum South and widespread discrimination “intended to ensure that [free blacks] were confined permanently to a subordinate position in society”).

74. Franklin, *supra* note 12, at 375.

75. Jackson, *Petersburg*, *supra* note 12, at 371; see also BERLIN, *supra* note 21, at 147; GOLDFIELD, *supra* note 73, at 129; LEBSOCK, *supra* note 12, at 90 (“In practice, periods of relative benign neglect alternated with spells of close surveillance and sudden repression. In law, the story was one of progressive deterioration.”); Stavisky, *supra* note 21, at 177 (“[T]here was a wide gap between legislative enactment and existing practice . . . In reality, . . . the authorities closed their eyes to many apparent violations of the law.”); Tansey, *supra* note 21, at 373 (noting New Orleans police “did not rigorously enforce the letter of the law regarding imprisonment of alien free blacks.”); cf. Harold Schoen, *The Free Negro in the Republic of Texas*, ch. V, 40 S.W. HIST. Q. 267 (1937) (noting legal regime regulating lives of free blacks “was to prove more effectual in theory than in practice.”).

76. See *infra* part II-C.

These observations will be discussed, in turn, following a synopsis of the passage and development of laws affecting free blacks and the social and political events that prompted their enactment.

### A. *The Legal Regime*

For the first two generations of European settlement in Virginia, the free black population remained quite small and the legal regime took little notice of it. In 1649, the approximately three hundred free black residents of the colony enjoyed freedom under law roughly equivalent to that enjoyed by whites.<sup>77</sup> During this period, free African-American men living in Virginia could vote in elections for Virginia's House of Burgesses,<sup>78</sup> and, by the 1650s, at least six free African Americans owned land in Virginia.<sup>79</sup>

By 1670, however, the free black population had grown to two thousand people, amounting to five percent of the total population of the colony<sup>80</sup> and increasing the apprehensions of white Virginians. To stymie the growth of the free black population, the colonial legislature decided that baptism could not "alter the condition of the person as to his bondage or freedom,"<sup>81</sup> and, in 1691, barred virtually all future manumissions.<sup>82</sup> Thereafter, an enslaved person could be freed only as reward for a heroic deed, such as revealing a conspiracy, and then, only if the person left the colony within six months.<sup>83</sup> The legislature

77. *But see* 1 HENING, *supra* note 38, at 226 (1639 Va. Acts) (authorizing the provision of arms and ammunition to all persons in the colony except free blacks). For statistics concerning the growth of the free black population, see 2 GRAY, *supra* note 50, at 1025, tbl. 39.

78. A 1655 law authorized all free men to vote for burgesses. 1 HENING, *supra* note 38, at 403 (1655 Va. Acts). The colonial legislators noted, "[W]e conceive it something hard and unagreeable to reason that any persons shall pay equal taxes and yet have not votes in elections." *Id.* Historians have concluded that the statute's general language meant that free African Americans could exercise the franchise. See RUSSELL, *supra* note 14, at 118 ("There is no reason or evidence which would lead to a belief that the free negroes in the colony were excluded from these 'free elections.'"); Higginbotham & Bosworth, *supra* note 12, at 24, 26 (suggesting that, during the seventeenth century, free blacks "may have" participated in the colony's political process through the exercise of the franchise in the same manner as did whites).

79. See Schweninger, *supra* note 10, at 15.

80. 2 GRAY, *supra* note 50, at 1025, tbl. 39.

81. 2 HENING, *supra* note 38, at 260 (1667 Va. Acts); see also Higginbotham & Bosworth, *supra* note 12, at 35.

82. 3 HENING, *supra* note 38, at 87-88 (1691 Va. Acts) ("[N]o negro or mulatto to be after the end of this present session of assembly set free by any person or persons.").

83. 3 HENING, *supra* note 38, at 87-88 (1691 Va. Acts). In enacting the 1691 law, the legislature noted "the great inconveniences [that] may happen in this country by setting of negroes and mulattos free, by their either entertaining negro slaves from their masters service, or receiving stolen goods, or being grown old bringing a charge upon the country." *Id.* To guard further against these occurrences, the new law required the provision of money to those emancipated to ensure he or she would depart from the colony within the requisite time period. *Id.*

also barred free blacks from holding public office,<sup>84</sup> obtaining weapons,<sup>85</sup> and voting,<sup>86</sup> and imposed penalties on free blacks if they “lifted a hand against any Christian.”<sup>87</sup>

With the American Revolution and its professed commitment to equality and liberty came some easing of the restrictions imposed on the free black population. In 1782, the Virginia Assembly repealed the prohibition on private manumissions and legalized the practice.<sup>88</sup> Some slaveholders responded by emancipating their slaves,<sup>89</sup> thereby causing the free black population to grow significantly.<sup>90</sup> By 1790, 12,766 free blacks lived in Virginia, more than twice the number in the whole South prior to the Revolutionary War,<sup>91</sup> and by 1800, the number had nearly doubled again, to 20,124.<sup>92</sup>

The relative liberalism of the revolutionary generation, however, proved transitory, and Virginia and other Southern states soon reaffirmed harsh racial attitudes and manifested renewed hostility toward free blacks.<sup>93</sup> The state’s increased free black population, Toussaint

84. 3 HENING, *supra* note 38, at 250 (1705 Va. Acts).

85. 4 HENING, *supra* note 38, at 131 (1723 Va. Acts); *see also* Higginbotham & Bosworth, *supra* note 12, at 24.

86. 4 HENING, *supra* note 38, at 133-34 (1723 Va. Acts) (“[N]o free negro [or] mullatto[*sic*] . . . whatsoever, shall hereafter have any vote at the election of burgesses, or any other election whatsoever.”).

87. The law applied to slaves as well. *See* SCHWENINGER, *supra* note 10, at 17.

88. 11 HENING, *supra* note 38, at 39-40 (1782 Va. Acts). In addition, this period brought the imposition of stringent penalties on those convicted of kidnapping free black and mulatto children and selling them into slavery. Act of Jan. 8, 1788, ch. 37, 1788 Va. Acts 531 (penalty for kidnapping black and mulatto children was death without benefit of clergy). This enactment amended earlier legislation that had outlawed the kidnapping, selling, and importing of free blacks, 3 HENING, *supra* note 38, at 447, 448 (1723 Va. Acts), and imposed penalties on such actions. An Act for the Better Government of Servants and Slaves, ch. 7, 1753 Va. Acts 357 (those who kidnapped and sold a free black person must forfeit the deal and pay purchaser double sum of selling price).

89. Historians have attributed both the legislative facilitation of manumission and the slaveholders’ response to the ideas of liberty and equality and strands of the natural rights philosophy which prevailed during the Revolutionary period. *See, e.g.*, SCHWENINGER, *supra* note 10, at 18; Bailey, *supra* note 12, at 181. Jackson noted that deeds of emancipation from this era “speak of freedom as the natural right of all men and declare that no man has a right to enslave another.” Jackson, *supra* note 54, at 281; *see also id.* at 284. Still, Jackson noted that not all manumissions from this period can be explained by this ideology; some represented rewards for “earnest and faithful service,” while others were strictly pecuniary, involving slaves who managed to purchase their own freedom. *Id.*

90. *See, e.g.*, LEBSOCK, *supra* note 12, at 91 (“[T]he change was dramatic. Petersburg’s free black population more than tripled in the space of twenty years.”).

91. SCHWENINGER, *supra* note 10, at 18.

92. A. Leon Higginbotham, Jr. & F. Michael Higginbotham, “Yearning to Breathe Free”; *Legal Barriers Against and Options in Favor of Liberty in Antebellum Virginia*, 68 N.Y.U. L. REV. 1213, 1265 (1993).

93. Bailey, *supra* note 12, at 181. Jackson argued that “[t]he liberality and high idealism of the Revolutionary period . . . had well nigh run its course in Virginia by 1806.” Jackson, *supra* note 54, at 287. Given the increase in restrictive legislation beginning in the 1790s, *see infra* text

L'Ouverture's slave revolt in Saint Domingue, and the emigration of several thousand free blacks from the Caribbean to the lower South aroused white concerns about Virginia's free black population. Contributing further to these sentiments was Gabriel's aborted slave rebellion outside Richmond in 1800, estimated by some to have involved between 1,000 and 10,000 slaves.<sup>94</sup> The rebellion was halted at its inception by forewarned white militiamen and by heavy rains that washed out bridges; Gabriel and thirty-four others were captured and executed.<sup>95</sup> Yet the aborted rebellion fueled white fears of widespread slave revolt and galvanized preventive efforts, which included the imposition of increased restriction on free blacks.<sup>96</sup>

A barrage of restrictive legislative enactments was produced. In 1793, the Virginia General Assembly banned the migration of free blacks to Virginia and authorized the forcible removal of free blacks who entered the state.<sup>97</sup> It also required free black people living in Virginia to register with the clerk of the city or county where they resided and to obtain a certificate describing the person's appearance and how he or she came to be free.<sup>98</sup> An 1801 law authorized the arrest of any free black found in a county where he or she was not registered. If such a person was found to have "no honest employment, . . . [he] shall be deemed and treated as a vagrant."<sup>99</sup>

By 1806, the Assembly had virtually resurrected the 1723 law banning private manumissions. All enslaved persons emancipated after passage of the 1806 law were required either to leave Virginia within a year or forfeit their right to freedom.<sup>100</sup> The same year, the Virginia Supreme Court construed the state's Bill of Rights of 1776 as

accompanying note 97, Jackson's choice of 1806 to mark the close of this relatively liberal era appears to be too late. Nevertheless, while earlier examples exist, the 1806 ban on private manumissions certainly exemplified the change in attitudes that had occurred. As late as 1804 the Virginia General Court upheld a 1781 will manumitting six slaves, noting, "Devises in favour of . . . liberty ought to be liberally expounded." BERLIN, *supra* note 21, at 34.

94. Aptheker, *supra* note 54, at 519-22. See generally DOUGLAS R. EGERTON, GABRIEL'S REBELLION (1993).

95. Aptheker, *supra* note 54, at 519-22.

96. *Id.*

97. Act of Dec. 12, 1793, ch. 23, 1793 Va. Acts 239.

98. The law imposed fines on anyone who harbored or employed free blacks without registration certificates and ordered the incarceration of any free black person found without a certificate until he or she produced a certificate and paid jailor's fees. *Id.*; see also Act of Dec. 10, 1793, ch. 22, 1793 Va. Acts 238; cf. Immigration and Nationality Act, 8 U.S.C. § 1324, 1324a (1988) (outlawing harboring and employing undocumented aliens).

99. Act of Jan. 19, 1801, ch. 70, 1801 Va. Acts 37-38.

100. Act of Jan. 25, 1806, ch. 63, 1806 Va. Acts 35, 36. According to one historian, the 1806 law "revealed a growing tendency of a slaveholding society to view the presence of free Negroes as an undesirable anomaly." Bailey, *supra* note 12, at 181-82.

excluding free blacks from the phrase "all men are by nature equally free"; the court held that for "a person visibly appearing to be a negro, the presumption is, in this country, that he is a slave, and it is incumbent on him to make out his right to freedom."<sup>101</sup> Other laws barred free blacks from buying or selling tobacco,<sup>102</sup> from purchasing or inheriting unrelated black people as slaves,<sup>103</sup> from possessing weapons on board boats and ships,<sup>104</sup> and from obtaining a public education.<sup>105</sup> In 1813, the legislature imposed a head tax on free black men, while white men were not taxed as individuals,<sup>106</sup> and authorized sheriffs to hire out anyone who failed to pay the tax.<sup>107</sup>

In 1822, word of a rebellion organized by free blacks and slaves in South Carolina spread in Virginia.<sup>108</sup> Denmark Vesey, a free black man living in Charlottesville, South Carolina, was arrested and executed for allegedly organizing a rebellion among slaves. The rebellion was said to have involved between six and nine thousand people. Along with Vesey, 130 others were arrested and thirty-four people executed.<sup>109</sup> In the words of one historian, as word of the quashed uprising spread, "public shock turned to hysteria. . . . Every Negro became a possible enemy, indeed assassin; every action by a black could be construed as a prelude to violence."<sup>110</sup>

The Virginia General Assembly responded by authorizing the enslavement of free blacks who committed any criminal offense punish-

101. *Hudgins v. Wright*, 11 Va. (1 Hen. & M.) 134, 141 (1806).

102. Act of Jan. 20, 1801, ch. 54, 1801 Va. Acts 287, 288 ("Every stemmer or manufacturer who shall buy or receive any tobacco from any negro, mulatto or indian, (bond or free,) would forfeit the tobacco and pay five times its value.).

103. Act of Jan. 6, 1803, ch. 23, 1803 Va. Acts 17; *see also* Higginbotham & Bosworth, *supra* note 12, at 37-38.

104. Act of Feb. 9, 1811, ch. 30, 1811 Va. Acts 57.

105. The Assembly prohibited the provision of education to black and mulatto orphans, Higginbotham & Bosworth, *supra* note 12, at 62, and in 1829 enacted an education law providing that a "school shall be constituted into a free school for the instruction, without fee or reward, of every free white child within said district." Act of Feb. 25, 1829, ch. 14, Va. Acts 13-14.

106. Act of Feb. 20, 1813, ch. 1, 1813 Va. Acts 3, 6. Free black apprentices were exempt from the tax. *Id.*

107. Act of Oct. 24, 1814, ch. 20, 1814 Va. Acts 61. Prior to being hired out, free blacks and mulattoes were summoned to show cause as to why they should be spared. Higginbotham and Bosworth noted the absence of any evidence suggesting that free blacks could provide an explanation that would spare them from being hired out. Higginbotham & Bosworth, *supra* note 12, at 41; *see also* Act of Feb. 16, 1820, ch. 32, Va. Acts 26 (providing that free blacks who failed to pay the tax could be hired out for no less than eight cents per day).

108. SCHWENINGER, *supra* note 10, at 63.

109. Aptheker, *supra* note 54, at 525-27. For an account arguing that the Vesey conspiracy did not exist "or at most . . . was a vague and unformulated plan in the minds or on the tongues of a few colored townsmen," *see* Richard C. Wade, *The Vesey Plot: A Reconsideration*, 30 J.S. HIST. 143, 150 (1964).

110. Wade, *supra* note 109, at 144.

able by more than two years in prison.<sup>111</sup> It also expressly outlawed the "enticing, persuading or advising any servant or slave" to leave his or her employer or master, or the "employing [of] any servant or slave knowing the same to have been so enticed away, or [the] harboring or employing [of] any runaway slave or servant, knowing the said slave or servant to be [a] runaway."<sup>112</sup>

After 1831, the sectional crisis became more heated and white Southern attitudes toward slavery and free blacks more entrenched.<sup>113</sup> Not far from Cumberland County, on August 13, 1831, Nat Turner led approximately seventy slaves on a twenty-mile campaign during which they entered the homes of several white families and killed at least sixty white people. Turner was eventually captured and executed.<sup>114</sup> The rebellion helped usher in the era during which the most severe legislation affecting free blacks was enacted.

This period brought an increase in the number and stringency of laws excluding free blacks from most of the civil liberties enjoyed by whites. Noting that Nat Turner had been a preacher, the General Assembly passed an 1832 law barring all free blacks from preaching.<sup>115</sup> Other laws limited the right of free blacks to assemble,<sup>116</sup> authorized localities to restrict free blacks from "wandering" and "assembling" in their jurisdictions,<sup>117</sup> and even authorized the removal of all free

111. Act of Feb. 21, 1823, ch. 32, 1823 Va. Acts 35.

112. Act of Feb. 24, 1825, ch. 35, 1824 Va. Acts 37.

113. See, e.g., Jackson, *supra* note 54, at 295 ("The year 1830 or thereabouts does mark a turning point in the attitude of the South toward slavery, an attitude which we usually consider adverse to the Negro himself.")

114. Aptheker, *supra* note 54, at 529-31.

115. Act of Mar. 15, 1832, ch. 22, 1832 Va. Acts 20. The result was that free blacks could not find ministers to conduct funerals, weddings, and baptisms. Higginbotham & Bosworth, *supra* note 12, at 42 n.126. In 1834 and again in 1839, this shortage prompted whites to petition the Assembly for the repeal of the 1832 law, citing the unavailability of white ministers for ceremonies for free blacks and the inability of free blacks to pay for services. The Assembly denied both petitions. JACKSON, *supra* note 16, at 21.

116. Act of Mar. 15, 1832, ch. 22, 1832 Va. Acts 20 (prohibiting assembly for religious worship conducted for the purpose of teaching reading and writing, and barring all night-time assembly, regardless of purpose); Act of Apr. 7, 1831, ch. 39, 1831 Va. Acts 107 (prohibiting assembly of free blacks for purpose of learning reading and writing).

117. See, e.g., Act of May 7, 1852, ch. 358, 1852 Va. Acts 234, 237 (authorizing city council of Alexandria "to restrain and prohibit the nightly and other disorderly meetings of slaves, free negroes or mulattoes"); Act of Mar. 11, 1834, ch. 238, 1834 Va. Acts 290, 291 (authorizing town of Abingdon to "restrain negroes from wandering about the town after night"); Act of Jan. 29, 1833, ch. 194, 1833 Va. Acts 162 (authorizing trustees of Charlottesville to remove all nuisances within jurisdiction, including controlling roaming dogs and restraining free blacks from unnecessarily wandering or assembling); see also PHILIP S. FONER & JOSEPHINE F. PACHECO, *THREE WHO DARED: PRUDENCE CRANDALL, MARGARET DOUGLASS, MYRTILLA MINER—CHAMPIONS OF ANTEBELLUM BLACK EDUCATION* 63, 91 (1984) (discussing the case of Margaret Douglass, a white woman prosecuted for having "assemble[d] with diverse negroes, for the purpose of instructing them to read and write" and sentenced to one month in jail).

blacks from the area.<sup>118</sup> The Assembly banned publications “advising persons of colour within this state to make insurrection, or to rebel,”<sup>119</sup> as well as other “incendiary literature.”<sup>120</sup>

By 1837, a free black emancipated after 1806 was barred from returning to Virginia once he or she left, and a £100 fine was imposed for anyone bringing “any free negro or mulatto” into the commonwealth.<sup>121</sup> By 1838, *all* free black residents were barred from returning to Virginia if they left the state to seek an education.<sup>122</sup> By 1848, the Assembly had extended the reentry provision, and prohibited the reentry of all free blacks who left the state, regardless of their purpose.<sup>123</sup>

Within the state, all free blacks faced arrest if found without free papers, and, after 1845, localities could hire out undocumented persons for a two-year period.<sup>124</sup> Free black boatmen were denied the right to possess weapons and “any respectable white person” was authorized to search the boat of a free black person.<sup>125</sup> In 1839, white patrols were authorized “to force open the doors [to the homes] of free negroes and mulattoes . . . in search of fire arms or other weapons.”<sup>126</sup> By 1860, free blacks convicted of offenses punishable by incarceration of any term could be sold into “absolute slavery” to satisfy their punishment.<sup>127</sup>

In sum, Virginia’s legal regime during the antebellum period was harsh. It denied the state’s free black population the basic civil liberties that all whites enjoyed. Two factors, however, mitigated the harshness of this regime: enforcement patterns and the exemption of land ownership from the otherwise all-encompassing regulations.

118. Act of Mar. 5, 1832, ch. 23, 1832 Va. Acts 23 (authorizing Northampton County to remove all free blacks from its jurisdiction to help control slaves and ensure the peace and safety of white society).

119. Act of Mar. 15, 1832, ch. 22., 1832 Va. Acts 20-21.

120. Act of Mar. 23, 1836, ch. 66, Va. Acts 44 (prohibiting circulation or encouraging circulation of incendiary doctrines, including abolitionist literature).

121. Act of Mar. 22, 1837, ch. 70, 1837 Va. Acts 48.

122. Act of Apr. 7, 1838, ch. 99, Va. Acts 76; *see also* Higginbotham & Bosworth, *supra* note 12, at 30 (suggesting that this legislation may have been a response to increased abolitionist sentiment in the North and its potential impact on Virginia free blacks who visited there).

123. Criminal Code, ch. 10, § 37, 1848 Va. Acts 119.

124. Act of Feb. 19, 1845, ch. 73, 1845 Va. Acts 62; *see also* Act of Mar. 21, 1836, ch. 73, 1836 Va. Acts 49, 50 (Free blacks employed on boats must carry freedom papers at all times; those without papers could be jailed as runaways.). Free blacks could also be hired out for failing to pay jail fees, taxes, or medical expenses during smallpox epidemics. Act of Feb. 23, 1856, ch. 217, Va. Acts 147.

125. Act of Mar. 21, 1836, ch. 73 1836 Va. Acts 49.

126. Act of Apr. 9, 1839, ch. 31, 1839 Va. Acts 24; *see also* Higginbotham & Bosworth, *supra* note 12, at 24.

127. Act of Mar. 29, 1860, ch. 54, 1860 Va. Acts 163.

## B. Sporadic Enforcement

Historians have noted that the numerous laws targeting free blacks were not always enforced.<sup>128</sup> Records from Cumberland County support this evaluation; indeed, the extent to which the *legal* county records reveal the lack of enforcement of certain laws is striking. While some laws were indeed enforced,<sup>129</sup> laws pertaining to manumission, registration, criminal punishment, miscegenation, and other matters highlight the point regarding irregular law enforcement.

### 1. Manumission

To a certain extent, manumission laws proved quite effective. For example, during the Revolutionary era, the dramatic increase in the free black population following the relaxation of restrictions on manumission may be testimony to the efficacy of manumission restriction during the colonial period.<sup>130</sup> So too, the legal ban on manumission enacted in 1806 brought manumission to a halt, at least in the short term.<sup>131</sup> In both cases, the attitudes and political trends prompting the respective legislation contributed to the population changes noted.

Within a decade of the enactment of the 1806 law, lax enforcement coupled with liberalizing amendments undermined its efficacy. The "first slight modification"<sup>132</sup> was made during the winter of 1815-1816, when the Assembly amended the law to allow a person emancipated after 1806 for an act of "extraordinary merit" to apply to a county court for permission to acquire permanent residence. By 1828, the General Assembly granted time extensions for free blacks to remain in the state.<sup>133</sup> Efforts to restore the 1806 manumission law to its original form (precluding all exceptions) failed,<sup>134</sup> and by 1835 the law

128. See *supra* note 75.

129. For example, in 1850, the Assembly imposed a one dollar head tax on free black men to finance the American Colonization Society's plan for the removal of free blacks from Virginia. Act of Mar. 11, 1850, ch. 6, 1850 Va. Acts 7, 8. Records from Cumberland County reveal that this tax was indeed levied and collected. PERSONAL PROPERTY BOOK, 1851-52, *supra* note 26.

For a discussion of the free black response to colonization projects, see Louis R. Mehlinger, *The Attitude of the Free Negro Toward African Colonization*, 1 J. NEGRO HIST. 276 (1916).

130. See *supra* notes 88-90 and accompanying text.

131. See, e.g., LEBSOCK, *supra* note 12, at 92 ("For a time, the [1806] law was extremely effective. Five years passed before another slave was set free in Petersburg, and from 1810 to 1820, the town's free black community grew scarcely at all.")

132. Jackson, *supra* note 54, at 290.

133. Acts of Feb. 12, 1828, chs. 169-70, 1828 Va. Acts 35.

134. In 1832, the House of Delegates of the General Assembly passed a bill ordering the compulsory deportation of newly freed blacks in the state, and ordered an appropriation to carry out the plan. The Senate, however, defeated the bill. CHARLES H. AMBLER, SECTIONALISM IN VIRGINIA 200-01 (1910).

was liberalized further, allowing free black men the right to remain in Virginia for up to five years to finance relocation expenses and the purchase of enslaved spouses and children.<sup>135</sup> In 1837, the Assembly reaffirmed the 1806 law, but permitted persons of “good character, [who were] peaceable, orderly and industrious, and not addicted to drunkenness, gaming, or any other vice” to remain.<sup>136</sup>

In Cumberland County, passage of the 1806 manumission law brought to an end relatively large scale manumissions by white slaveowners. Free black slaveowners rather than whites were responsible for manumissions occurring after 1806.<sup>137</sup> Moreover, in contrast to its steady growth during the first generation of the nineteenth century, the size of Cumberland’s free black population remained virtually constant in the years from 1830 to the Civil War. Manumission restriction appears responsible, at least in part, for this lack of growth.<sup>138</sup>

Still, Cumberland County records reveal that aspects of the manumission laws were not enforced. For example, recorded in 1815, the will of a white slaveowner named Benjamin Webber provided for the emancipation of at least thirteen people. While the 1806 law, which had yet to be amended, required all persons emancipated after that year to leave the state within twelve months or forfeit their freedom, as late as the 1830s, three free blacks emancipated under Webber’s will still resided in Cumberland County.<sup>139</sup>

Similarly, after a free black landowner named Sampson Womack purchased his daughter Betty and emancipated her in 1816, she appeared before the Cumberland County court; “having adduced satisfactory evidence to the Court of general good character and conduct,” Betty was granted permission “to reside as a free person in any County or Corporation in this state.”<sup>140</sup> Cumberland County court granted this permission even though Betty had not performed an “heroic deed” (as required by the 1806 law). Nor had she demonstrated her emancipation resulted from “extraordinary merit” (as authorized by the 1815-1816 amendments). The court seemed to use its own more lenient standard.

135. Acts of Feb. 16, 1835, ch. 217-18, 1835 Va. Acts 240.

136. See PAUL FINKELMAN, *THE LAW OF FREEDOM AND BONDAGE: A CASEBOOK* 114 (1986).

137. The exception is the will of white slaveowner Benjamin Webber, recorded in 1815. See *infra* note 139; see also *ORDER BOOK*, 1815, *supra* note 26, at 68.

138. See *APP. II*, tbl. 3.

139. *ORDER BOOK*, 1838, *supra* note 26, at 379 (registering Sally and Kelsa Webber, both emancipated by will of Benjamin Webber); *ORDER BOOK*, 1831, *supra* note 26, at 294 (registering Charles Webber, emancipated by will of Benjamin Webber).

140. *ORDER BOOK*, 1816, *supra* note 26, at 119.

It is possible that Sampson Womack's ownership of forty-five acres of land facilitated the court's approval of Betty's application, by instilling confidence that Betty would not become a public charge. In fact, when three free blacks who owned no land in the county applied for permission to reside in the county, they encountered slightly more difficulty than did Betty Womack. Ben, Phill, and Pegg Miggs had been emancipated by the will of Jack Miggs, and in August 1816, all three petitioned the court for permission to remain in the county.<sup>141</sup> The court was summoned, but because the Miggses failed to comply with procedural requirements the case was continued until December, at which time the executor of Jack Miggs' estate contested the petition of Ben, Phill, and Pegg.<sup>142</sup> Nevertheless, in January 1817, the court, having heard arguments of counsel, permitted Ben and Pegg to reside in the county, "the general good conduct & character of said Ben & Pegg having been proved to the satisfaction of the court."<sup>143</sup> In May 1817, the court granted Phill "the privilege of residing in the County."<sup>144</sup> As in the case of Betty Womack, the court did not require evidence of "extraordinary merit."

On May 26, 1825, the court granted permission to a man known only as Leary to remain in the commonwealth "as a free person of colour."<sup>145</sup> With the exception of these cases, no evidence was found of any other order granting permission for free blacks to remain in the county even though several emancipations occurred and were recorded after 1806.<sup>146</sup> For example, in 1816, Billy Lipscomb emancipated his wife Chloe, citing his love and affection and a five dollar consideration, but not extraordinary merit. Chloe never petitioned the court for permission to remain in the county, yet no record of any effort to prosecute or deport her exists, even though she and Billy were conspicuous, being landowners of record from 1816 through 1845.<sup>147</sup>

Other applications by recently emancipated blacks for permission to remain in the county were not pursued. On July 23, 1816, three

141. *Id.* at 144.

142. *Id.* at 157 (case continued for failure of petitioners to "advertise their intentions at the courthouse door"); *id.* at 171 (continuance granted).

143. ORDER BOOK, 1817, *supra* note 26, at 186.

144. *Id.* at 228.

145. ORDER BOOK, 1825, *supra* note 26, at 360.

146. Vaughan asserted the existence of "many instances" where slaveowners in Cumberland County petitioned the county court on behalf of their former slaves to secure permission for their residency in the county in place of their exile as mandated by law. VAUGHAN, *supra* note 30, at 27. This study did not locate these "many instances" and, indeed, identified no examples.

147. See APP. II, tbl. 1.

applications are recorded in which free blacks sought permission to remain in the county.<sup>148</sup> No further reference to the first two petitioners was found and the petition of the third, a woman named Tuesday Hughes, was continued for two court sessions<sup>149</sup> and then, like the others, disappeared. Had the petitioners left the county, a record dismissing the action should have been recorded. The absence of a record suggests that the court did not take further action on the petitions.

Finally, a woman known only as Malinda purchased freedom for herself and her children in 1829. The family intended to leave the state, and eventually did so, more than a decade after their emancipation.<sup>150</sup> While the law provided for the reenslavement of emancipated free blacks who remained in the state more than one year after emancipation, Malinda and her family resided in Cumberland County without facing any interference of record for several years.

Other sources confirm the sporadic enforcement of Virginia's manumission laws.<sup>151</sup> Jackson wrote, "The law of 1806 . . . ceased to function with the rigidity of the years immediately following its enactment."<sup>152</sup> Throughout Virginia, many free African Americans never applied for permission to reside while others were permitted to stay even though they did not apply for permission until ten years or more after their actual liberation.<sup>153</sup> According to Jackson, by the 1820s, the 1806 law was "for the most part a dead letter."<sup>154</sup>

Historian John Russell estimated that, by 1860, one-fourth to one-third of the nearly 60,000 free blacks in Virginia were unlawful residents under the provisions of the 1806 law. He wrote, "Only spasmodic efforts here and there were made to give [the law] life."<sup>155</sup> Jackson observed, "Oftentimes the very legislators who quickly voted for some measure hostile to the free Negroes as a class were the very first to come to the rescue of some free Negro in the home community who was about to become a victim of the law of 1806."<sup>156</sup>

148. ORDER BOOK, 1816, *supra* note 26, at 130.

149. *Id.* at 156, 168.

150. ORDER BOOK, 1839, *supra* note 26, at 455.

151. See, e.g., GOLDFIELD, *supra* note 73, at 129 ("[A]ll Virginia cities systematically ignored the state law requiring manumitted slaves to leave Old Dominion within the first twelve months of their freedom."); Bailey, *supra* note 12, at 181 (noting that the 1806 law requiring manumitted slaves to leave the state was "but sporadically enforced"); Jackson, *supra* note 54, at 298 (noting that, in Petersburg, Virginia, the 1837 amendment to the 1806 law enabled liberated blacks to remain in the state "in every instance").

152. Jackson, *supra* note 54, at 290.

153. *Id.* at 298.

154. *Id.*

155. RUSSELL, *supra* note 14, at 156.

156. Jackson, *supra* note 54, at 286.

## 2. County Courthouse Registration

In 1793, the Virginia General Assembly required all free blacks to register with the clerk of the city, borough, or town where they resided and obtain a registration certificate that specified the "age, name, colour and stature, by whom and in what court the said negro or mulatto was emancipated; or that such negro or mulatto was born free."<sup>157</sup> The law set forth fines for those who harbored or employed free blacks without certified copies of their registration. It also mandated incarceration for free blacks found without certificates until they produced certificates and paid jailor's fees.<sup>158</sup>

Many free blacks residing in Cumberland County did indeed register at the county courthouse,<sup>159</sup> and several did so repeatedly.<sup>160</sup> Some, however, registered only belatedly. For example, dozens of free blacks, emancipated in 1803 by the will of Joseph Mayo, a wealthy white slaveowner, registered sporadically during the twenty-three years following Mayo's death.<sup>161</sup> Similarly, Sally and Nancy Lipscomb registered at the courthouse for the first time on September 24, 1827, even though both were adults at the time, and had been born free in the county.<sup>162</sup> Several free black landholders, such as Robert Lynch, Horace Turpin, Peter Jenkins, and Frank Lipscomb, ignored the 1793 law entirely and never registered, even though each engaged in several transactions recorded at the courthouse.

There is no record indicating that a single free black person in Cumberland County was ever incarcerated for failing to obtain a certificate or that any proceedings were ever brought against anyone under the 1793 law; nor is there any record that any person was fined

157. Act of Dec. 10, 1793, ch. 22, 1793 Va. Acts 238; Act of Dec. 12, 1793, ch. 23, 1793 Va. Acts 239.

158. Act of Dec. 10, 1793, ch. 22, 1793 Va. Acts 238; Act of Dec. 12, 1793, ch. 23, 1793 Va. Acts 239.

159. The County Order Books contain records of dozens of registrations. For instance, on July 26, 1809, the Order Book reports:

Laurence Mayo, son of Molly, about twenty years old, five foot, ten inches tall, black complexion . . . who was emancipated by the last will and Testament of Joseph Mayo deceased. It is ordered that said Laurence be entitled to all the privileges & immunities to which free negroes and mulattoes are by law entitled.

ORDER BOOK, 1809, *supra* note 26, at 270.

160. See, e.g., ORDER BOOK, 1837, *supra* note 26, at 250 (registering David Mayo, son of Cato, described as having dark complexion and scar over left temple); ORDER BOOK, 1824, *supra* note 26, at 270 (registering same).

161. ORDER BOOK, 1830, *supra* note 26, at 163; ORDER BOOK, 1828, *supra* note 26, at 33; ORDER BOOK, 1826, *supra* note 26, at 525; ORDER BOOK, 1824, *supra* note 26, at 238; ORDER BOOK, 1818, *supra* note 26, at 21; ORDER BOOK, 1809, *supra* note 26, at 270; ORDER BOOK, 1803, *supra* note 26, at 451.

162. ORDER BOOK, 1827, *supra* note 26, at 307.

for harboring or employing an unregistered free black person. This finding confirms the assessment of historians who have noted the lack of enforcement of the 1793 law. One wrote that the employer requirements under the 1793 registration law “were openly violated with approval from the press. . . . There is no evidence that the authorities ever hauled in an employer who was in violation of these laws.”<sup>163</sup>

### 3. Criminal Law Enforcement

Several free blacks in Cumberland County faced prosecution for criminal offenses. Most defended the charges with success and those convicted received sentences more lenient than those mandated by law.

Free black property owners and other free blacks in Cumberland County were prosecuted for a variety of crimes. Some of these prosecutions dealt with economic infractions such as selling liquor without a license,<sup>164</sup> selling “goods, wares and merchandise, to wit, apples, cakes, cider, fish, and lemonade, not of [one’s] own growth or manufacture . . . without a license,”<sup>165</sup> and receiving stolen wheat.<sup>166</sup> Free blacks also faced charges of breaking and entering,<sup>167</sup> theft,<sup>168</sup> and murder.<sup>169</sup> One free black was prosecuted and convicted for encouraging a slave to escape.<sup>170</sup>

163. GOLDFIELD, *supra* note 73, at 129.

164. *Commonwealth v. Sam Cato* (Cumberland County Ct., May 28, 1855) (charging Cato with releasing “ardent spirits to negroes”) (on file at Virginia State Archives, Richmond, Va.); *Commonwealth v. William Lipscomb* (Cumberland County Ct., May 1818) (jury verdict finding Lipscomb guilty of “selling spiriting liquor” without a license and fining him \$30) (on file at Virginia State Archives, Richmond, Va.).

165. Grand Jury Presentment, *Commonwealth v. John Robertson, alias John Lipscomb* (Cumberland County Ct., May 28, 1860) in *ORDER BOOK, 1860, supra* note 26, at 203. On October 22, 1860, Robertson appeared in the Cumberland County courthouse with his attorney to plead not guilty. *Id.* at 245. The Court ordered a continuance until the next court session, but no further reference to *Commonwealth v. Robertson* was found.

166. *Commonwealth v. Martha Lipscomb* (Cumberland County Ct., Sept. 28, 1863) in *ORDER BOOK, 1863, supra* note 26, at 413.

167. *Commonwealth v. Robert Jenkins*, June 28, 1859, in *ORDER BOOK, 1859, supra* note 26, at 138-39 (charged with the felony of breaking and entering); *Commonwealth v. John Mayo, Free Man of Colour* (Cumberland County Ct., July 1820) in *ORDER BOOK, 1820, supra* note 26, at 355 (breaking and entering and stealing \$10).

168. *Commonwealth v. Burwell Clayton and Warner Johns*, February 1859, in *ORDER BOOK, 1859, supra* note 26, at 103 (charged with feloniously stealing 500 pounds of tobacco valued at \$60); *Commonwealth v. Jack Johns*, March 24, 1845, in *ORDER BOOK, 1845, supra* note 26, at 100 (charged with stealing three pairs of shoes, five one-half calf skins, and one cotton umbrella); *Commonwealth v. George Dungee* (Cumberland County Ct., July 1820) in *ORDER BOOK, 1820, supra* note 26, at 340 (charged with stealing hogs).

169. *Commonwealth v. Betsey Lipscomb, Woman of Color*, June, 1819 (Cumberland County Ct., June 1819) in *ORDER BOOK, 1819, supra* note 26, at 165.

170. *Commonwealth v. William Drew* (Cumberland County Ct., 1864) in *ORDER BOOK, 1864, supra* note 26, at 458.

Nevertheless, when charged with criminal activity, free blacks defended themselves with the assistance of counsel, and were not infrequently successful. Martha Lipscomb's answer to a charge that she received stolen wheat prompted the attorney for the Commonwealth to move that the warrant issued against her be quashed; the court issued the order.<sup>171</sup> In the case of *Commonwealth v. Betsey Lipscomb, Woman of Color*, where Lipscomb stood trial for allegedly "murder[ing] and drown[ing] a male infant child," the jury found the evidence against her insufficient and discharged her.<sup>172</sup> In 1845, Jack Johns pleaded not guilty to a charge of theft and was discharged.<sup>173</sup> In the June 1, 1859 trial against Warner Johns for theft of tobacco, the court unanimously found Warner Johns not guilty and acquitted and discharged him.<sup>174</sup>

In two instances, free black defendants convicted of criminal activity received more lenient sentences than those mandated by law. In 1832, the General Assembly authorized the enslavement of free blacks who committed any criminal offense punishable by two years or more in prison.<sup>175</sup> By 1860, free blacks convicted of offenses punishable by incarceration of any term could be sold into "absolute slavery" to satisfy their punishment.<sup>176</sup> In 1859, Burwell Clayton, who had been charged with theft of tobacco along with Warner Johns, was found guilty and sentenced to two years in jail.<sup>177</sup> There is no indication that he was ordered enslaved, as required by the 1832 law. So too, on July 25, 1864, William Drew, a free black man in Cumberland County, was charged with feloniously advising a slave named Dangerfield to run away. Drew pleaded not guilty, but the court unanimously convicted him of the offense and sent him to jail for ten years.<sup>178</sup> As in Clayton's case, there is no record of any court order at the time of Drew's sentencing ordering Drew to be enslaved.

171. ORDER BOOK, 1863, *supra* note 26, at 413.

172. *Commonwealth v. Betsey Lipscomb, Woman of Color* (Cumberland County Ct., June 1819), in ORDER BOOK, 1819, *supra* note 26, at 165.

173. ORDER BOOK, 1845, *supra* note 26, at 100.

174. ORDER BOOK, 1859, *supra* note 26, at 127.

175. Act of Feb. 21, 1823, ch. 32. 1823 Va. Acts 35.

176. Act of Mar. 29, 1860, ch. 54, 1860 Va. Acts 163.

177. ORDER BOOK, 1859, *supra* note 26, at 127.

178. ORDER BOOK, 1864, *supra* note 26, at 458.

#### 4. Miscegenation and Other Examples

Laws criminalizing interracial sex in Virginia date to 1662,<sup>179</sup> and historically penalized only whites.<sup>180</sup> Several examples of miscegenation between white men and black women were identified in Cumberland County. White landowner Henry Lipscomb had five free black children. An instance of miscegenation between a white man and an enslaved black woman named Malinda is found in the case of slave-owner Laymer Holman; he was likely the father of Malinda's four children.<sup>181</sup>

There is no recorded evidence indicating that Lipscomb or Holman were prosecuted for violating Virginia's miscegenation laws. As Judge A. Leon Higginbotham and Barbara Kopytoff noted, "[S]ociety tended to wink at the casual liaisons of white men and black women."<sup>182</sup> More dramatic, perhaps, than the absence of prosecution was the legal sanction that the Cumberland County Court gave to these interracial relationships by upholding Lipscomb's devise to his children, and even more startlingly, by recognizing the right of mixed-race children to claim shares of estates as heirs at law.<sup>183</sup>

Other examples from Cumberland County support Jackson's observation that restrictive laws were not always enforced. Despite a prohibition against free blacks obtaining an education,<sup>184</sup> several free black residents of Cumberland County—Peter Jenkins, Frank Lipscomb, David Cato Mayo, and Phillip Johns—were literate. While an 1801 statute barred free blacks from the tobacco trade,<sup>185</sup> Frank Lips-

179. Higginbotham & Kopytoff, *supra* note 1, at 1989 n.97 (citing 2 HENING, *supra* note 38, at 170 (1662 Va. Acts) (imposing a fine double that for fornication "if any christian shall commit fornication with a negro man or woman")); *see also* Paul Finkelman, *The Crime of Color*, 67 TUL. L. REV. 2063, 2085 (1993).

180. For a discussion of factors that may explain why whites alone were penalized for interracial sex, *see* Higginbotham & Kopytoff, *supra* note 1, at 2000-01.

181. Additional examples of miscegenation were found, but the circumstances surrounding them are less clear. A free black man named Richard Russell inherited land from Nancy Russell, who was white as were her other heirs. A free black man named Phillip Johns left his estate to his white sister and another white woman. As with the examples discussed in the text, no evidence was found indicating that a prosecution was ever brought.

182. Higginbotham & Kopytoff, *supra* note 1, at 2003.

183. *See infra* text accompanying notes 249-52.

184. *See supra* note 105.

185. Act of Jan. 20, 1801, ch. 54, 1801 Va. Acts 287, 288 ("Every stemmer or manufacturer who shall buy or receive any tobacco from any negro, mulatto or indian, (bond or free,) would forfeit the tobacco and be fined five times its value."); *see also* ROBERT, *supra* note 44, at 218 (noting licensing for tobacco manufacturers included duty to refrain from buying tobacco from blacks and Indians).

comb and Peter Jenkins engaged in tobacco cultivation<sup>186</sup> and tobacco was listed among the inventory of Sampson Womack's estate.<sup>187</sup>

Finally, several examples in Cumberland County reveal that Virginia laws banning blacks from testifying against whites in court were not enforced.<sup>188</sup> Such testimony apparently occurred both in private litigation brought by and against free black defendants and in the often successful defenses brought by free blacks accused of criminal activity. For example, on February 23, 1847, a free black woman and property owner named Nancy Cato appeared in court as the defendant in the case of *Jeter v. Nancy Cato*. The subject matter of the dispute is not evident from the records, but Cato, under oath, denied the charges. The court admitted this testimony even though it necessarily contradicted that of the white plaintiffs in the suit; the twelve white men on the jury found Cato not guilty and awarded her costs.<sup>189</sup>

It is not known whether sporadic enforcement of restrictive laws provided free blacks in Cumberland County a degree of freedom unanticipated given the character of the legal regime; indeed, unrecorded considerations may have been extracted in exchange for lax enforcement.<sup>190</sup> Nevertheless, it is clear that Virginia laws targeting free blacks were not enforced with regularity in Cumberland County, and some were not enforced at all.

### C. Property Exemption

During the antebellum period, legislation addressed virtually every aspect of the lives of free blacks, limiting their enjoyment of the basic civil liberties enjoyed by whites. Nevertheless, this otherwise all-encompassing legal regime never restricted the right of free blacks to own and transfer land.

During the colonial period, free blacks remained at liberty to engage in a variety of commercial transactions, to own and transfer real property, and to make and enforce contracts. After the wane of revolutionary liberalism, the new series of restrictive laws included a law

186. Jackson, *Virginia Free Negro Farmer*, *supra* note 12, at 429 (discussing tobacco cultivation among free blacks in Virginia and listing Peter Jenkins and Frank Lipscomb of Cumberland as "among the leading tobacco growers").

187. Appraisal and Inventory of Estate, Sampson Womack, in *WILL BOOK*, 1823, *supra* note 26, at 134.

188. 4 HENING, *supra* note 38, at 325, 327 (1732 Va. Acts); *cf.* Hindus, *supra* note 21, at 578 (noting free blacks could testify at trials against other blacks and on own behalf against whites, but could not contradict any statement made by a white witness or prosecutor).

189. *ORDER BOOK*, 1847, *supra* note 26, at 294 (noting defendant's testimony that she did not "assume upon herself in any manner and form as the plaintiff alleges").

190. See *infra* Observations and Conclusions.

barring free blacks from purchasing or inheriting unrelated black people as slaves.<sup>191</sup> Nevertheless, the Virginia legislature affirmatively protected the rights of free blacks to inherit other kinds of property<sup>192</sup> and courts expressly upheld the rights of free blacks to enter and maintain contracts.<sup>193</sup>

After 1830, several laws limited the ability of free blacks to enter certain professions and trade specified goods. Free blacks could not sell agricultural products without licenses,<sup>194</sup> and were entirely barred from obtaining permits to be a "hawker" or peddler at any public show<sup>195</sup> and from obtaining licenses to operate taverns<sup>196</sup> and "cook-shops."<sup>197</sup> In addition, free blacks were barred from purchasing slaves, other than spouses and children. Contracts made for prohibited purchases were null and void.<sup>198</sup>

Aside from these restrictions, however, the property rights of free blacks remained intact and were protected by affirmative acts of government. Free blacks remained at liberty to acquire and transfer property, to sue for damage to person or property, to hold and transmit slaves by inheritance to their children,<sup>199</sup> and to devise property

191. Act of Jan. 6, 1803, ch. 23, 1803 Va. Acts 17; *see also* Higginbotham & Bosworth, *supra* note 12, at 37-38.

192. Act of Jan. 6, 1803, ch. 23, 1803 Va. Acts 17 (upholding provisions of will and releasing former master's estate to devisee and former slave Sally Brown). *See generally* Higginbotham & Bosworth, *supra* note 12, at 37-38.

193. *See, e.g.*, Wilson v. Shackelford, 25 Va. (4 Rand.) 5 (1826) (recognizing party status but relying on general contractual principles to deny relief to free black plaintiff who did not realize expected profit from purchase of slave who became ill).

194. Act of Mar. 27, 1843, ch. 86, 1843 Va. Acts 59 (barring free blacks in Accomack and Richmond Counties from selling or bartering "any indian corn, wheat, oats, peas, beans or other agricultural products" without obtaining a certificate in writing from two respectable white persons and penalizing violators with up to fifteen lashes and the confiscation of the products); *see also* Act of Feb. 10, 1844, ch. 75, Va. Acts 58 (extending Accomack and Richmond rule to cover all counties in Virginia). The prosecution of a free black property owner in Cumberland County for allegedly violating the 1844 law is discussed, *supra* note 165 and accompanying text.

195. Act of Mar. 7, 1834, ch. 3, 1834 Va. Acts 7, 14.

196. Act of Mar. 30, 1860, ch. 2, 1860 Va. Acts 38, 39; *see also* BERRY & BLASSINGAME, *supra* note 13, at 40.

197. Mayo v. James, 53 Va. (12 Gratt.) 17 (1855) (upholding municipal ordinance prohibiting free blacks from operating "cook-shops," notwithstanding state law allowing free blacks to operate shops upon obtaining a proper license; since shops were "liable to become sources of infinite disorders and corruption among the black population, slave as well as free," a city could regulate such shops under its police powers). A "cook-shop" was a restaurant, club, and tavern combined.

198. Act of Mar. 15, 1832, ch. 22, 1832 Va. Acts 20, 21; *see also* Dunlap v. Harrison, 55 Va. (14 Gratt.) 251, 260-61 (1858) (construing 1832 ban on black slaveownership to bar free blacks from acquiring slaves by bequest, unless the slaves were members of their family; legislative intent of 1832 statute had been "to keep slaves as far as possible under the control of white men only . . . [and] to evince the distinction of superiority of the white race.").

199. Parks v. Hewlett, 36 Va. (9 Leigh) 511, 522 (1838).

generally.<sup>200</sup> Free blacks could also devise property to enslaved relatives, directly<sup>201</sup> or in a trust.<sup>202</sup>

Thus while between 1830 and 1860 legal restrictions against free blacks in Virginia reached their greatest stringency, the right to own land and other types of property remained free from restriction. It was during this period that property ownership by free blacks in Cumberland County and Virginia overall reached its apogee.<sup>203</sup> Indeed, just as Virginia's legislators and other prominent white citizens were calling for the expulsion of free blacks from the state, free black residents of Cumberland County were acquiring and developing land for themselves and their children.

### III. FREE BLACK LAND OWNERSHIP IN CUMBERLAND COUNTY, VIRGINIA: 1782-1863

During the antebellum period, free black residents in Cumberland County took advantage of the legal right to own and transfer property. The nature of landholding varied substantially among free black landowners: the size of holdings ranged from less than 1 acre to 240 acres; the length of tenure from less than one year to fifty-two years.<sup>204</sup> The majority held land as individuals rather than jointly and a large proportion of free black landowners were women. All but one free black owner resided on the property he or she held.<sup>205</sup>

#### A. Location of Land

Most free black property holders lived in close proximity to other free black landowners. One such "cluster" of free blacks was located in an area approximately two to three miles northeast of the county courthouse. Nineteen free black landowners held property in this vi-

200. Act of Mar. 4, 1846, ch. 192, 1846 Va. Acts 149 (upholding will of Lucy Slaughter, a free black woman who left her estate to her three grandchildren, two of whom were slaves for life, as "according to the true intent and meaning of the said will"); cf. Hepburn v. Dundas, 54 Va. (13 Gratt.) 219 (1856) (protecting rights of collateral heirs to estate of a free black who died intestate and without children).

201. Act of Feb. 10, 1831, ch. 231, 1831 Va. Acts 303; see also Higginbotham & Bosworth, *supra* note 12, at 38 n.102.

202. See M'Candlish v. Edloe, 44 Va. (3 Gratt.) 330 (1846).

203. Jackson, *Virginia Free Negro Farmer*, *supra* note 12, at 393. In 1830, free black farmers in Virginia owned 31,721 acres of land appraised at \$184,184.00. By 1860, free blacks farmers in Virginia owned 60,045 acres valued at \$369,647.00. SCHWENINGER, *supra* note 10, at 73. In all of the South, 16,172 free persons of color in fifteen slave states had accumulated \$20,253,200 worth of property, or totaling \$1252 per person. *Id.* at 96.

204. See App. II, tbls. 1 & 1a.

205. The exception was John Elson, who moved to Richmond some years after acquiring land in Cumberland.

cinity during the antebellum period. Bordering this cluster were three major roads in the county, Buckingham Road, a road defined alternatively as Bernard's Road or Columbia Road, and Cartersville Road.<sup>206</sup> Also near this cluster was Carolina Road, although this road was not mentioned in the descriptions of land free blacks owned in this vicinity. This road was named for the eighteenth-century route used to transport slaves from Virginia to the lower South.<sup>207</sup>

In addition to the large cluster located just north of the courthouse, six free black landowners held property in a smaller cluster located 12.5 miles northeast of the courthouse and eight landowners held property in and near the town of Cartersville. The few free blacks holding land in areas isolated from other free blacks included Sampson Womack, who acquired land before any free black landholding community existed, the Lipscomb devisees, who inherited land in the southeastern portion of the county on the Appomattox River,<sup>208</sup> Cloa Ellison, who lived southwest of the courthouse and the major free black cluster, and, finally, Richard Russell. Two landholders, who initially held land located apart from other free black owners, subsequently acquired property located near or within a free black "cluster."<sup>209</sup>

Most free black property owners held property in rural areas and used the land primarily for agriculture and residence. Four held lots located in the towns of Ca Ira and Cartersville. German Booker, for example, ran a blacksmith shop located on Lot 31 on Main Street in the town of Cartersville from 1850 until his death in 1869 when his son Scott acquired the property.<sup>210</sup>

### B. Free Black Landowners

In 1800, Ceazar Smart became the first free black resident of record to acquire property in Cumberland County.<sup>211</sup> For eleven pounds,

206. Today, Buckingham Road is U.S. Route 60, VAUGHAN, *supra* note 30, at 6, and it appears quite likely that Cartersville Road is now U.S. Route 40.

207. VAUGHAN, *supra* note 30, at 6. The Carolina Road is now U.S. Route 13. *Id.*

208. See APP. II, Fig. 1.

209. Betsey Lipscomb, after defaulting on a 47-acre holding located four miles southwest of the courthouse, moved to what became the largest free black cluster. Sally Lipscomb sold the land Henry Lipscomb devised to her in the southwest portion of the county and purchased a new holding located in the northeast region. See APP. II, tbl. 1.

210. The other free blacks to own town lots included Jeffrey Mayo, who owned Lot 15 in the town of Ca Ira from 1820 until 1832 when he sold the land to J. Lumsford for \$50. William Mayo acquired Lot 10 on Back Street in Cartersville in 1856. Horace Turpin acquired Lot 5 on Main Street in 1857.

211. In 1800, the Land Book contains the letters "F.N." next to Smart's name. It is possible that free blacks acquired land in the county before 1800, and the records beginning in 1773

Smart purchased 10 acres from a white man named Reuben Williams.<sup>212</sup> Fifty-five free black residents followed Smart and, during the next sixty-three years, acquired seventy-six pieces of real property.<sup>213</sup> In 1810, three free black residents in Cumberland County owned real property, less than two percent of the free black population. By 1860, one of every four free black households owned at least some land.<sup>214</sup>

### 1. Black Versus Mulatto Land Ownership

In his 1939 study, historian Luther Porter Jackson challenged the contention that the majority of landowners among free blacks were those of "the mulatto element" who acquired land through white relatives. Jackson insisted that such an assessment, in Virginia, "is incorrect," and concluded that "the total result [of his tabulation of land ownership by free people of color] runs strongly in favor of the black element rather than the mulatto as owners of property."<sup>215</sup> In Cumberland County, a region to which Jackson made no reference in his evaluation of counties with significant black or mulatto populations, "the mulatto element" did indeed acquire land from white relatives in some instances. This group included the Lipscomb devisees, and Richard Russell.

For most of the landowners discussed in this Article, however, records do not distinguish among blacks and mulattoes, often opting for the term "free person of colour."<sup>216</sup> For a few of the owners, registration records provide support for Jackson's argument,<sup>217</sup> but the failure of most owners to register renders that source of limited use.<sup>218</sup> The 1850 and 1860 Census Reports, while purporting to distinguish

simply did not use any racial labels. The alternative explanation is that Smart was the first free black to acquire land in Cumberland County.

212. DEED BOOK, 1800, *supra* note 26, at 348.

213. Sixteen free black landowners acquired more than one piece of property, which explains why the number of actual owners is smaller than the number of total acquisitions. *See* APP. II, tbl. 1.

214. *See* APP. II, tbl. 2.

215. Jackson, *Virginia Free Negro Farmer*, *supra* note 12, at 413-14.

216. *See, e.g.*, DEED BOOK, 1854, *supra* note 26, at 82 (April 6, 1854 deed from Betsey Lipscomb to Margaret Lipscomb referring to each as a "free woman of colour").

217. *See, e.g.*, ORDER BOOK, 1858, *supra* note 26, at 45 (registering of David Jones, a.k.a. David Cato and noting his "dark complexion"); ORDER BOOK, 1832, *supra* note 26, at 457 (describing "black complexion" of Elizabeth Jenkins); ORDER BOOK, 1831, *supra* note 26, at 293 (listing Gracey Mayo as a "free Negro woman" with a "black complexion"); ORDER BOOK, 1831, *supra* note 26, at 311 (describing Cloa Ellison as a "negro woman"); ORDER BOOK, 1826, *supra* note 26, at 326 (describing "dark complexion" of Tarlton Jenkins); *cf.* ORDER BOOK, 1858, *supra* note 26, at 18 (describing "bright mulatto complexion" of Judy Lipscomb).

218. For a discussion of the failure of free black landowners to register under the 1793 registration law, *see supra* notes 157-62 and accompanying text.

blacks and mulattos, did so haphazardly: Horace Turpin, listed as a mulatto landowner in 1850, was listed as black in 1860.<sup>219</sup>

## 2. Individual Owners and Family Structure

In contrast to whites, free blacks owned land overwhelmingly as individuals rather than jointly with siblings or a spouse. Only six pieces of property were held jointly by free blacks during the period studied; four were held by spouses, one by siblings, and one by a black woman and a white man.<sup>220</sup> By contrast, individual ownership of land among whites was the exception to the general practice of holding land jointly with family members.<sup>221</sup>

A second stark difference between free black and white landowners in Cumberland County was that, relative to men, a far greater proportion of free black women owned land than did white women. Free black men initially outnumbered free black women as owners of land, but by the 1820s, ownership among free black women increased significantly and diverged from ownership patterns among white women.<sup>222</sup> Historians have noted the prominence of free black women as landowners during the antebellum period,<sup>223</sup> and have attributed this prominence, at least in part, to the single marital status of free black women property owners. When women remained single, they retained control of the property they did acquire; when they married, they relinquished control of their property to their husbands under Virginia's law of married women's property.<sup>224</sup>

Why free black women were less likely to marry than their white counterparts is not entirely clear, but possible explanations are numerous and controversial.<sup>225</sup> It is possible that for those free black

219. Population Schedules for the Seventh and Eighth Censuses of the United States, 1850-1860, Virginia, Cumberland County.

220. The joint owners were Pricilla and Jane Ellison, German and Alina Booker, Billy and Chloe Lipscomb, Robert and Sally Lynch, and James and Lucy Johns. Sally Lipscomb held property jointly with a white man name Frederick Brooks.

221. See APP. II, tbls. 4a & 4b.

222. *Id.*

223. See, e.g., LEBSOCK, *supra* note 12, at 103 (finding among free blacks in Petersburg, Virginia, who accumulated property, "a high proportion were women"); SCHWENINGER, *supra* note 10, at 87 (noting that during early part of nineteenth century, a "significant portion" of free black wealth was controlled by women, and that, by 1860, one out of five free black landholders was a woman).

224. LEBSOCK, *supra* note 12, at 90; see generally MARYLYNN SALMON, *WOMEN AND THE LAW OF PROPERTY IN EARLY AMERICA* (1986).

225. So controversial is this issue (and its modern counterpart) that a number of historians have endeavored to disprove it by showing historically that black households were not disproportionately headed by women. See, e.g., Frank F. Furstenberg, Jr. et al., *The Origins of the Female-Headed Black Family: The Impact of the Urban Experience*, 6 J. INTERDISCIPLINARY

men and women whose residency in Cumberland County was illegal, under state manumission law, a legally recorded marriage represented a needless and potentially risky contact with the legal system; as a result, they may have viewed mutual consent as a sufficient though not legally binding tie.<sup>226</sup> It is also possible that, in contrast to white women, free black women, whether having endured slavery themselves or having witnessed others do so, were unwilling to sacrifice any portion of legal autonomy and, particularly in nineteenth-century Virginia, getting married required just that sacrifice. Other relevant factors contributing to marriage patterns in the free African-American community included a skewed sex ratio between free black men and women, the illegality of marriage between whites and blacks, and the costs necessary to legalize a marriage.<sup>227</sup> The illegality of marriage between free black women and enslaved men may in fact be the best explanation for the prominence of female-headed households and female land ownership in the free black community. It seems likely that free black women and enslaved men considered themselves to be married or were in fact married in ceremonies not recognized and indeed rendered illegal under Virginia law.

### 3. Slaveholding Practices

Several free black landowners in Cumberland County owned slaves. Historians have emphasized that slaveholding by free African Americans was generally restricted to the ownership of relatives. Jackson wrote, "Negroes went on the market to buy other persons of

HIST. 211 (1975); Herbert G. Gutman, *Persistent Myths About the Afro-American Family*, 6 J. INTERDISCIPLINARY HIST. 181 (1975). *But see* George Blackburn & Sherman L. Richards, *The Mother-Headed Family Among Free Negroes in Charleston, South Carolina, 1850-1860*, PHYLON, Mar. 1981, at 11. In Cumberland County, households headed by single free black women were in fact common and in only four instances was land held by free blacks owned jointly by spouses.

Schweninger's partial explanation for the single status of free black women, that "free women of color remained circumspect about committing themselves to marriage" because they knew that if they chose the "wrong mate," courts would honor the husband's property over the wife's, SCHWENINGER, *supra* note 10, at 87, fails to explain differences noted between white and free black land ownership.

226. The difficulty with this explanation is that free blacks, including those living in the county illegally, frequently engaged in transactions—such as the buying and selling of land—that required them to record their involvement at the county courthouse. Still, free blacks needed to record land deeds in order to acquire and subsequently transfer land while legally recording a marriage did not provide any apparent or necessary legal benefit.

227. *See supra* note 113. *But see* LEBSOCK, *supra* note 12, at 106 ("Nonmarriage among free blacks . . . [was] as much a matter of ethics as of expenses, for even the propertied showed no consistent tendency to make their conjugal ties legal ties.").

their color usually because of blood relationship or for the express purpose of setting them free."<sup>228</sup>

In Cumberland County, several examples support this characterization of slave ownership among free blacks. For instance, Sampson Womack emancipated his daughter Betty, whom he had owned.<sup>229</sup> So too, Billy Lipscomb had owned his wife Chloe, whom he liberated in 1816 and to whom he conveyed 10 acres and other personal property.<sup>230</sup>

But slaveholding by free African Americans in Cumberland County was not confined to family members nor to the beneficent motives articulated by Jackson and other historians. For example, while Sampson Womack emancipated his daughter Betty, he retained ownership of a slave named Stepney, who had worked in Womack's blacksmith shop. Stepney was never emancipated and was listed among Womack's personal property during the administration of his estate.<sup>231</sup>

The devisees of Henry Lipscomb received numerous slaves under his will, not one of whom appears to have been a family member.<sup>232</sup> No record exists indicating that any of the Lipscomb devisees emancipated any of the slaves they inherited. Instead, records indicate that the Lipscomb devisees viewed their slaves as property and dealt with them for economic gain. Judith Lipscomb transferred several of her slaves to her son Frank when she established a trust in his name in 1829,<sup>233</sup> and she had accepted a slave as security for a debt owed to

228. Jackson, *supra* note 54, at 296; *see also id.* at 285 (noting the "vast majority" of slaves owned by free blacks were relatives of their owners); QUARLES, *supra* note 12, at 90 ("[T]he great majority of colored masters were not profit-minded. Their ownership was benevolent and temporary rather than commercial and permanent."); Franklin, *supra* note 12, at 373 ("[T]he larger portion of free Negro owners of slaves were possessor of this human chattel for benevolent reasons."); Higginbotham & Bosworth, *supra* note 12, at 35 (noting that only "a minuscule number" of free blacks owned slaves solely for economic reasons); *cf.* JOHNSON & ROARK, *supra* note 21, at 63-64, 203-04; JOHN H. FRANKLIN & ALFRED A. MOSS, JR., *FROM SLAVERY TO FREEDOM: A HISTORY OF NEGRO AMERICANS* 144 (6th ed. 1988) (noting "instances . . . in which free Negroes had a real economic interest in the institution of slavery and held slaves in order to improve their own economic status"); Laurence J. Kotlikoff & Anton J. Rupert, *The Manumission of Slaves in New Orleans, 1827-1846*, 19 S. STUDIES 172, 181 (1980) (noting that "no single factor dominates the data" concerning the intentions of free black masters who freed their slaves).

229. ORDER BOOK, 1816, *supra* note 26, at 119.

230. DEED BOOK, 1816, *supra* note 26, at 300.

231. Inventory and Appraisal of Estate, Sampson Womack, Jan. 4, 1823, in WILL BOOK, 1823, *supra* note 26, at 134.

232. *See* APP. II, tbl. 6.

233. *See infra* note 267 and accompanying text.

her.<sup>234</sup> Similarly, Sally Lipscomb conveyed several slaves to a trustee in order to secure a debt.<sup>235</sup>

John Robertson, a free black property owner, initially refused to comply with a county requisition that he send one of his slaves to work on Confederate fortifications in 1863.<sup>236</sup> Whether his motivation was beneficent concern for the slave, economic considerations, or opposition to the Confederate cause cannot be determined. On October 7, 1863, Robertson responded to a second summons and sent the slave to the fortifications.<sup>237</sup>

### C. Means of Acquisition

Jackson reported that free blacks in Virginia obtained "the vast majority" of their land by purchase rather than by gift.<sup>238</sup> In Cumberland County, purchase rather than gift or devise was, by far, the most common means for free blacks to acquire land. However, the largest tracts of land acquired by free blacks were acquired by devise and gift rather than by purchase.<sup>239</sup>

#### 1. Purchase and Credit

Free black property owners in Cumberland County most typically acquired land by purchase during the antebellum period. These purchasers either paid cash with their own or with borrowed money and most often purchased land from white property owners.<sup>240</sup>

Purchase prices ranged from \$10 to \$1200 for property of varied sizes and quality. Several free black owners purchased land using money borrowed from whites under deeds of trust. An example of the practice is found in 1813, when a free black man named Billy Lips-

234. After receiving a judgment in her favor pursuant to a debt owed, Judith Lipscomb received "one negro boy named Monroe" to satisfy the writ she obtained against defendant's property pursuant to the judgment. *Indenture, Judith Lipscomb v. Jacob Bramsford, Executor for Benjamin Hobson (Cumberland County Ct., Mar. 23, 1834), in Judgments, supra* note 26.

235. DEED BOOK, 1828, *supra* note 26, at 574-76 (conveying via deed of trust land, farm animals, equipment, crops, and "also 2 negro girls to wit Judy and Mary")

236. List of Slaves Requisitioned to Work on Confederate Fortification (listing all slaves ordered to be sent to work on fortifications, dated Sept. 22, 1863 in Cumberland Ct., and made in compliance with requisition from the governor for 80 slaves from Cumberland County) (on file at the Virginia State Archives, Richmond, Va.).

237. *Id.*

238. Jackson, *Virginia Free Negro Farmer, supra* note 12, at 414.

239. Frank Lipscomb, who purchased 120 acres in 1856, and Peter Jenkins who purchased 96 acres in 1858, are the exceptions. See DEED BOOK, 1858, *supra* note 26, at 636; DEED BOOK, 1856, *supra* note 26, at 352-53.

240. I have assumed that Sabra Dunkum, Ceazar Smart, and Jeffrey Mayo acquired land from white grantors, although the records are incomplete on this matter.

comb acquired 62.75 acres of land at an auction.<sup>241</sup> The purchase price was £90. Lipscomb paid £30 cash and borrowed the remaining £60 in the form of two £30 bonds to two white men, Hezekiah Ford and John Baughan. To secure the loan, Lipscomb conveyed to Willis Wilson the 62.75 acres, and agreed that if he failed to repay his debts, Wilson was to sell the land at public auction to the highest bidder and pay off Ford and Baughan. If however, Billy Lipscomb repaid the amount owed, the conveyance to Wilson was void.<sup>242</sup>

Similarly, John Tyler, a free black resident of Cumberland County, purchased 8 acres from George and Judith Daniel on January 26, 1839. Tyler, who paid \$150 for the property, borrowed the entire sum the same day when he entered a deed of trust with Anthony Walton. The terms of the trust paralleled those in Lipscomb's 1813 trust with Wilson.<sup>243</sup>

## 2. Devisees and Heirs

Five free black property owners acquired land under the will of a single white property owner;<sup>244</sup> four acquired land as the legal heirs to the estate of a free black landowner, and one acquired land as the legal heir of a white landowner. No free black property owner acquired land under a will of another free black person.

The Lipscomb devisees, Nancy, Kitty, William, Sally, and Judy Lipscomb,<sup>245</sup> collectively acquired several hundred acres of land, con-

241. John Baughan held the auction pursuant to a deed of trust recorded in 1809. Baughan had been trustee for Thomas Adams, who had conveyed the land to Baughan to secure a debt. Adams defaulted on a debt and Baughan, in accordance with the terms of the original indenture, sold the land at a public auction to the highest bidder, Billy Lipscomb. DEED BOOK, 1813, *supra* note 26, at 231.

242. DEED BOOK, 1813, *supra* note 26, at 231. It appears that Billy Lipscomb paid off the debt as he continued to hold the property after the 1814 date when the bonds came due. See LAND BOOK, 1814, 1815, 1816, *supra* note 26; DEED BOOK, 1816, *supra* note 26, at 23.

243. DEED BOOK, 1839, *supra* note 26, at 343-44. Unlike Billy Lipscomb, Tyler failed to pay off the debt. On August 29, 1839, Walton, pursuant to the terms of the original indenture, sold the land at a public auction to William Austin. DEED BOOK, 1839, *supra* note 26, at 448; see also APP. II, tbl. 4.

244. In addition, five free blacks inherited personal property and cash, but no real property, under the will of a white man and their former master, Laymer Holman. A black woman, referred to only as Malinda, and her four children, Archer, James, Keziah, and Louisa received a wagon and gear, a horse and \$500, and an additional \$500 per child to be held in trust for each of them. Last Will and Testament of Laymer Holman, WILL BOOK # 10, *supra* note 26, at 94. Laymer may have been the father of Malinda's children. See, e.g., ORDER BOOK, 1839, *supra* note 26, at 455 (registering Archer, "Grandson," Keziah, and Louisa Holman and describing them as mulatto).

245. In addition, Henry Lipscomb devised personal property to Frank and James Lipscomb, the sons of Judy and Nancy respectively. Frank and James did not, however, receive any real property. Polly Lipscomb received two slaves and no land. WILL BOOK, 1825, *supra* note 26, at 122.

siderable personal property, and cash by the will of Henry Lipscomb.<sup>246</sup> Henry Lipscomb was a white man and a large landowner in Cumberland County. He owned dozens of slaves, and had periodically emancipated individual ones.<sup>247</sup> In his will, Lipscomb devised his entire estate to eight free people "of colour," five of whom received sizeable tracts of real property. While the will itself does not mention Henry's relationship to his devisees, a subsequent deed indicates that one devisee, Judith Lipscomb, was Henry's daughter.<sup>248</sup> It appears likely that Nancy, Kitty, William, and Sally were also Henry Lipscomb's children. Their mother was likely a free black woman.<sup>249</sup> James and Frank Lipscomb, the sons of Judith and Nancy respectively, were Henry's grandchildren.<sup>250</sup>

Four free black property owners acquired land as heirs to the intestate estate of a free black woman. Billy Dunkum, Joseph Dunkum, and James and Lucy Johns inherited land from the division of the estate of Sabra Dunkum, who died in 1856. On April 6, 1858, a deed of partition is recorded upon which Dunkum's heirs "had mutually agreed." James Johns and his wife Lucy acquired 5 acres which included the "mansion house." Billy Dunkum received 21.5 acres and Joseph Dunkum received 18.5 acres.<sup>251</sup> It appears likely that Lucy, Billy, and Joseph Dunkum were Sabra Dunkum's children.<sup>252</sup>

One free black property owner acquired land as an heir to a white person's intestate estate. Richard Russell inherited 76 $\frac{3}{8}$  acres

246. Last Will and Testament, Henry Lipscomb, Sept. 26, 1825, in WILL BOOK, 1825, *supra* note 26, at 121-123.

247. *See, e.g.*, ORDER BOOK, 1806, *supra* note 26, at 301; ORDER BOOK, 1801, *supra* note 26, at 501.

248. DEED BOOK, 1828, *supra* note 26, at 632 (referring to Judith Lipscomb's land, "which Henry Lipscomb deceased, the said Judith Lipscomb's father bought").

249. Had the mother of the Lipscomb devisees been one of Lipscomb's slaves, her children would have been slaves as well. *See, e.g.*, 2 HENING 170, *supra* note 38, at 170 (1662 Va. Acts) ("[A]ll children borne in this country shalbe [*sic*] held bond or free only according to the condition of the mother.") The absence of any record indicating that Henry Lipscomb's children were emancipated suggests that his children were born to a free woman, although the irregular enforcement of manumission law, *see supra* notes 139-56 and accompanying text, indicates the absence of a record need not be construed to mean the Lipscomb children were born free. There is, however, further support for the theory that the mother of Lipscomb children was free. Jackson, without explanation, cited the Lipscombs of Cumberland and Powhatan Counties as an example of what he termed the rare products of miscegenation between whites and free blacks and one of the rare instances in which free blacks acquired land from whites by gift. *See* Jackson, *Virginia Free Negro Farmer*, *supra* note 12, at 426.

250. *See* APP. II, tbl. 6.

251. DEED BOOK, 1858, *supra* note 26, at 572.

252. The Land Book indicates that Billy and Joseph Dunkum and James Johns were free black residents of the County, *see* LAND BOOK, 1858, *supra* note 26, and registration records reveal Lucy to be Sabra's daughter. *See also* ORDER BOOK, 1834, *supra* note 26, at 180 (registering Lucy Dunkum, "daughter of Sabra Dunkum").

from the estate of Nancy Russell, who was also known as Nancy Rupel. By all indications, Nancy Russell was a white woman who resided in Cumberland County. She had initially acquired forty-five acres as the sole devisee of the will of Sampson Womack, one of the first free black residents in the county to acquire land. Womack's relationship to Russell cannot be determined nor can his motivation for devising his property to her be ascertained.<sup>253</sup> By Nancy Russell's death in 1857 she owned 163.75 acres. Her legal heirs were Ann, Fanny, and Richard Russell. Their relationship to Nancy and to one another is not known, but it does appear that both Ann and Fanny were white while Richard was "a man of colour."<sup>254</sup>

### 3. Gifts and Trusts

Several free black owners acquired land by gift. The majority of these owners received land as gifts from other free black owners, with one acquiring land via an inter vivos trust established by his mother. One free black landowner acquired land as a gift from a white landowner.<sup>255</sup>

In 1841 Tarlton Jenkins recorded a "deed of gift" in which he transferred twenty acres to Elizabeth Jenkins.<sup>256</sup> While the records do not specify their relationship, Tarlton may have been Elizabeth's father.<sup>257</sup> In 1857, Jeter Lipscomb paid \$116 to purchase 30 acres for his infant daughter Mary Johns.<sup>258</sup> Betsey Lipscomb's 1854 transfer of 2 acres to Margaret Lipscomb was a gift as well. The land, located adjacent to the 2 acres Margaret already owned, included buildings valued at \$200 while Margaret paid \$24 for the property.<sup>259</sup>

In 1816, Chloe Lipscomb acquired 10 acres from her husband Billy Lipscomb;<sup>260</sup> in 1823, Rose Mayo acquired a life estate in 3 acres

253. See *infra* notes 298-301 and accompanying text.

254. DEED BOOK, 1857, *supra* note 26, at 656 (listing Ann, Fanny and Nancy without any racial identification, while including the words "man of colour" after Richard's name).

255. In addition, several transactions counted as purchases in part III-C-1 could plausibly have been gifts. In each, the consideration was nominal, albeit not one dollar; six involved transfers among free blacks.

256. DEED BOOK, 1841, *supra* note 26, at 400.

257. Population Schedules of the Eighth Census of the United States, 1860, Cumberland County, Virginia (recording Tarlton Jenkins as a free black property owner aged 57); ORDER BOOK, 1832, *supra* note 26, at 457 (recording registration of Elizabeth Jenkins, aged seven and born free). The "deed of gift" nevertheless included a \$100 consideration for the transfer.

258. DEED BOOK, 1857, *supra* note 26, at 332-33 (noting 30-acre land transfer from Nancy Johns to Mary Johns "at motion and direction of Jeter Lipscomb, at whose insistence and direction, this deed is made to the said Mary Johns, claiming to be her father").

259. DEED BOOK, 1854, *supra* note 26, at 82.

260. DEED BOOK, 1840, *supra* note 26, at 301.

of land from Paul Gray;<sup>261</sup> and in 1831 Lawrence Cato acquired 5 acres from William Ransome.<sup>262</sup> In each of these transactions, the grantee paid only one dollar for the property, suggesting that these transactions were gifts rather than sales.<sup>263</sup>

In Chloe Lipscomb's case, the deed expressly stated that the transaction was intended as a gift. On May 20, 1816, Billy Lipscomb emancipated Chloe,<sup>264</sup> and then transferred real and personal property to her. The deed stated:

Witnessed that the said Billy Lipscomb for the love and affection that he has and do bear to the said Chloe, and for further consideration of One Dollar to me in hand paid by the said Chloe I do hereby give unto the said Chloe one white horse one Bed and furniture, and ten acres of land, lying and being in aforesaid County of Cumberland . . . to her the said Chloe and her heirs and assigns forever, the right and title to aforesaid [property].<sup>265</sup>

One free black property owner in Cumberland County received land under the terms of a trust. On December 15, 1829, Judith Lipscomb, one of the legatees of Henry Lipscomb, established a trust for her nine-year old son Frank Lipscomb and named Hezekiah Ford, the executor of Henry Lipscomb's will, as the trustee. Judith, "in consideration of the natural love and affection she . . . bear[s] towards her only child named Frank Lipscomb," and for an additional ten dollars, paid by Ford, conveyed land and personal property to Ford in trust for the benefit of Frank. Included in the conveyance were 120 acres located on Davenport Road,<sup>266</sup> five slaves, including the future increase of one, and the "household and kitchen furniture, plantation utensils, one horse, two head of cattle, ox cart, the growing crop of wheat and crop of corn."<sup>267</sup>

261. DEED BOOK, 1823, *supra* note 26, at 138. Paul Gray's relationship to Rose Mayo is not known.

262. DEED BOOK, 1831, *supra* note 26, at 26.

263. It is possible that unrecorded considerations were involved. See the Observations & Conclusions of this Article for a more complete discussion of this possibility.

264. The deed of emancipation states:

Know all men by these presents that I Billy Lipscomb a free man of colour in the County of Cumberland and State of Virginia being moved and activated by considerations of humanity and feelings of personal regard for my Negro Woman Chloe as well for and in consideration of the sum of five dollars in hand paid by the said Chloe to me, the receipt of which is hereby acknowledged have emancipated and set free the said negro Woman Chloe together with all her future increase.

DEED BOOK, 1816, *supra* note 26, at 300.

265. DEED BOOK, 1816, *supra* note 26, at 301.

266. In 1828, Judith Lipscomb acquired 230 acres on Davenport Road from John Colquette, paying \$1150 in cash for the property. DEED BOOK, 1828, *supra* note 26, at 463. The money was likely part of the devise Judith received under Henry Lipscomb's will.

267. DEED BOOK, 1829, *supra* note 26, at 478-80.

The trust appears to have served Frank well. By the 1850s, Frank Lipscomb emerged as the largest free black landowner in the county. Engaged in tobacco cultivation,<sup>268</sup> Frank acquired additional property<sup>269</sup> and lent money to other free blacks for the purchase of land.<sup>270</sup>

#### D. Tenure and Disposition of Land

Tenure of free black land holdings varied among owners. Some owners held land for more than a generation, while others owned land for no more than a year. Overall, length of tenure appears unrelated to both the size of the holding and the period during which it was held.<sup>271</sup> During their tenure, a few free black landowners improved the property by constructing buildings. In 1845, Cloa Ellison increased the value of her 2-acre holding by \$400 by constructing buildings on it; Betsey Lipscomb added buildings valued at \$200 in 1844, and Nancy Cato added buildings valued at \$200 in 1849.<sup>272</sup>

##### 1. Sale and Gift

Regardless of the length of tenure, most free black property owners eventually sold their land.<sup>273</sup> Most sold land to white purchasers, though black purchasers acquired land from black owners in a number of instances.

The Lipscomb devisees all sold the land they inherited within a few years of the devise, providing the most dramatic example of short tenure among free black landowners. Henry Lipscomb's will contained a proviso that the land transferred by his will comprising the plantation called "Moody's Old Tract . . . shall remain together undivided at least one year from and after the close of the present year for the purpose of making a crop which crop when made to go to the payments of the debts against me" and those against Billy Lipscomb.<sup>274</sup>

268. Jackson, *Virginia Free Negro Farmer*, *supra* note 12, at 429.

269. DEED BOOK, 1855, *supra* note 26, at 281 (recording Frank Lipscomb's acquisition of 11.75 acres at an auction); DEED BOOK, 1856, *supra* note 26, at 352-53 (recording Frank Lipscomb's acquisition of approximately 120 acres known as "Longwood" for \$1000).

270. See, e.g., DEED BOOK, 1855, *supra* note 26, at 229-30 (recording of Deed of Trust in which John Robertson "a free man of colour" conveyed 16.5 acres purchased the same day to trustee to secure debt of \$100 owed to Frank Lipscomb, "a free man of colour").

271. See APP. II, tpls. 1 & 1a.

272. LAND BOOK, 1844, 1845, 1849, *supra* note 26.

273. The disposition of several tracts of land could not be determined from the land records consulted. As a result, the holdings of Cezar Smart, C. Harris, and Patty are not included in the discussion in this section.

274. WILL BOOK, 1825, *supra* note 26, at 121-23.

Yet by the date the Lipscomb legatees were to take possession, two had already sold their interests in the land and the other three would do so during the next four years. Sally Lipscomb immediately sold the 74.5 acres under Henry's will to Thomas Goode for \$980.75,<sup>275</sup> and, in its place, acquired nearly 200 acres located in the northwest region of the county. The acquisition placed both Sally and her co-owner, a white man named Frederick Brooks, in debt, where they remained until selling the property in 1832.<sup>276</sup>

William Lipscomb also became burdened with debt and, on June 25, 1827, sold the 70.5 acres he inherited as well as a 44.25 acre tract he had previously owned in order to pay off a \$1200 debt.<sup>277</sup> Shortly thereafter, Kitty Lipscomb found herself in debt and conveyed title to the acreage she inherited from Henry.<sup>278</sup>

Judith Lipscomb, who had inherited 44.25 acres from Henry Lipscomb, supplemented this holding by purchasing 230 acres from John Colquett.<sup>279</sup> By March, 1828, however, Judith was indebted to David W. Burton for \$425,<sup>280</sup> and by May, sold Burton 42 of the 44 acres from her father for \$181.<sup>281</sup> The following year, Judith established the trust for her son Frank, perhaps in part because of the difficulties she encountered retaining the land devised to her by her father, and conveyed to Hezekiah Ford, the trustee, a portion of the land she had purchased from John Colquett two years earlier.<sup>282</sup> By 1833, Judith

275. DEED BOOK, 1827, *supra* note 26, at 533-35.

276. The Deed Book indicates that, in 1828, Sally Lipscomb and Frederick Brooks were indebted to Wilson Goodman for \$310.90, and to secure the debt, conveyed 194.75 acres, plus several slaves and plantation equipment to Robert Frayser. DEED BOOK, 1828, *supra* note 26, at 299. The 194.75 acres had apparently belonged to Brooks, who conveyed an interest in it to Sally prior to their entering the deed of trust. In 1831, Sally and Frederick were released from the debt, but within a month found themselves indebted to Goodman for \$656.75. They conveyed approximately 197 acres to Hezekiah Ford in order to secure the debt. The following year, Sally sold the 197 acres to Nicholas Carrington for \$1006, *see* DEED BOOK, 1831, *supra* note 26, at 299, and Ford released Sally and Frederick from the debt. *Id.* at 204. Ford did not release Sally Lipscomb from her obligation under the deed of trust until 1835; thus it is not clear how she was able to convey the land to Carrington in 1832. In addition, no evidence was found to explain why the amount of land owned by Lipscomb and Brooks was listed at times as 197 acres and at times as 194.75 acres.

277. DEED BOOK, 1827, *supra* note 26, at 417-18.

278. Beyond Henry Lipscomb's will providing the original devise to Kitty and a subsequent deed of trust to which Kitty was a party, no additional information regarding this transaction is available. In particular, no deed documenting Kitty's disposition of the property was found.

279. DEED BOOK, 1828, *supra* note 26, at 463. Judith paid \$1150 in cash for this land, likely using the money she inherited from Henry to do so.

280. DEED BOOK, 1828, *supra* note 26, at 631-34 (conveying to Sims 44.25 acres, two slaves, and their future increase to secure debt to Burton).

281. DEED BOOK, 1828, *supra* note 26, at 290-91.

282. *See supra* note 266 and accompanying text.

appears to have sold the remainder of her land,<sup>283</sup> although some discrepancies appear in the land records.<sup>284</sup>

Nancy Lipscomb, the fifth person to inherit land under Henry Lipscomb's will, was the only devisee not confronted with recorded debt problems. Nevertheless, she retained the 150 acres she received only slightly longer than the other devisees. In 1832, Nancy sold her land and moved to Ohio.<sup>285</sup>

## 2. Default

Inability to pay debts explains short tenure in several cases. In 1832, Betsey Lipscomb borrowed \$300 to purchase 47.5 acres, and by 1834, she defaulted on the loan and lost the property.<sup>286</sup> So too, John Tyler defaulted on the \$150 loan he received in 1839 to purchase 8 acres and lost his land.<sup>287</sup> In 1841, Tyler repurchased 5 of the acres he had lost, this time paying the full purchase price in cash.<sup>288</sup> Nevertheless, Tyler quickly found himself in debt again and, when he was incarcerated as an insolvent debtor, conveyed his property to the sheriff.<sup>289</sup> Two other free black landowners who defaulted were Lewis Reynolds and Paul Gray. Reynolds defaulted on an \$82.87 debt he had secured with his 11.75-acre property.<sup>290</sup> Paul Gray lost his 3-acre holding when he defaulted on a \$30 debt in 1826.<sup>291</sup>

But while in these instances, Paul Gray, Betsey Lipscomb, Lewis Reynolds, and John Tyler failed to pay debts and lost their property,

283. DEED BOOK, 1833, *supra* note 26, at 59 (transferring 2 acres to Jane Lipscomb for \$20); DEED BOOK, 1833, *supra* note 26, at 111 (transferring 100 acres to Anthony Crenshaw for \$300).

284. See *infra* APP. I & APP. II, tbl. 1.

285. No deed for the disposition of Nancy Lipscomb's property was found. The final reference to it is found in the paid tax assessment by her in 1832 which lists her residence as "Ohio." LAND BOOK, 1832, *supra* note 26.

In addition to Nancy Lipscomb, other free blacks in Cumberland County emigrated to Ohio. A woman known as Malinda purchased her freedom and that of her children from Laymer Holman in 1829. In his will, Holman (possibly the father of Malinda's children, Archer, James, Keziah, and Louisa) devised to Malinda "a new Two horse waggon, & gear & two work horses for the purpose of removing herself & children to the State they may chose to go to" as well as \$500 for the children. WILL BOOK, 1839, *supra* note 26, at 94. The subsequent administration of Holman's estate includes "cash paid for land for Keziah, Archer, and Louisa in Pike Co., Ohio." WILL BOOK, 1840, *supra* note 26, at 266. For a discussion of the emigration of free blacks from Southern states to Ohio, see *Transplanting Free Negroes to Ohio*, 1 J. NEGRO HIST. 302 (1916).

286. DEED BOOK, 1832, *supra* note 26, at 205.

287. DEED BOOK, 1834, *supra* note 26, at 343-44, 448.

288. DEED BOOK, 1841, *supra* note 26, at 203.

289. *Id.* at 502.

290. DEED BOOK, 1852, *supra* note 26, at 438; DEED BOOK, 1855, *supra* note 26, at 281. Pursuant to the terms of the deed of trust, Reynolds's property was sold at an auction; the purchaser was Frank Lipscomb. *Id.*

291. DEED BOOK, 1826, *supra* note 26, at 138; *id.* at 127.

most free black property owners, who were parties to deeds of trust, paid off the indenture and retained their land.<sup>292</sup>

### 3. Wills and Intestate Succession

In Cumberland County, most free black property owners relinquished ownership during their lifetimes, rather than relying on legal transfer by will or intestate succession. Only two black property owners devised their land by will, and in only two instances was land owned by free black residents of the county transferred by intestate succession.<sup>293</sup> The preferred mode of land disposition was to sell land to children late in life, as Cloa Ellison did, or simply to transfer the land as gifts to family members during one's life.<sup>294</sup> The infrequent use of wills among free black landowners in Cumberland County conflicts with Jackson's finding that free black landowners in Virginia "frequently made wills."<sup>295</sup> Free blacks may have eschewed wills, fearing their heirs would have difficulty claiming the devise.<sup>296</sup> In the alternative, free black property owners may have avoided making wills because few were literate.<sup>297</sup>

Among the free black landowners to leave wills was Sampson Womack, who devised his 45 acres to a white woman named Nancy Rupel.<sup>298</sup> The relationship between Rupel and Womack is not known. Womack's will, recorded in December 1822, simply states:

A Sampson Wommock a man of culler dus agree before me that it is his desire that *Nanse* Rupel sud have all his estate at his *deth*.  
Sampson Wommack X (his mark)<sup>299</sup>

292. See APP. II, tbl. 4.

293. The two were Sabra Dunkum and Jack Drew. See DEED BOOK, 1858, *supra* note 26, at 572 (recording partition of estate of Sabra Dunkum); LAND BOOK, 1840-63, *supra* note 26 (taxing estate of "Jack Drew, f.n.").

294. See *supra* notes 255-69 and accompanying text.

295. Jackson, *Virginia Free Negro Farmer*, *supra* note 12.

296. Franklin, *supra* note 12, at 366 ("Free Negroes, as other individuals, sometimes had difficulty in establishing their rightful claim to property left them in a will.").

297. Data on literacy rates among free blacks in Cumberland County is not available, but the widespread practice of signing local deeds and other documents with a "mark" suggests that illiteracy was commonplace. The difficulty with illiteracy as an explanation for the infrequency of wills is that free blacks entered numerous other recorded transactions which they could not read. Of course, free blacks needed to record deeds in order for the transaction to be valid legally, but could utilize means other than wills to transfer their property.

298. Womack, who is listed in the Land Book under the name "Sampson," purchased 30 acres from Littleberry Scruggs in 1804 and an additional 15 acres from Scruggs in 1807. DEED BOOK, 1804, *supra* note 26, at 417; DEED BOOK, 1807, *supra* note 26, at 424. In subsequent records, Nancy Rupel is listed as Nancy Russell.

299. WILL BOOK, 1823, *supra* note 26, at 145 (emphasis in original).

On January 4, 1823, Nancy Rupel presented this paper as Womack's will, but several questions were raised regarding the absence of attestation. In particular, William M. Thornton, the Escheator for the Commonwealth, opposed probate of the will. George H. Matthews served as Rupel's attorney, and ultimately vindicated her interest in the property, title to which she obtained on November 27, 1826.<sup>300</sup> During the interim period, a white man named Charles Womack served as administrator of the estate, paying all debts and collecting money owed.<sup>301</sup>

In his will of 1840, Philip Johns left his property to two women; his sister Ceily Johns received 5 acres for life and Anne Bailey received the remainder of the land as well as all of Philip's personal property.<sup>302</sup> The relationship between Philip Johns and Anne Bailey cannot be ascertained from the records, and while it is clear that Philip Johns was not white,<sup>303</sup> there is no indication that Anne Bailey or Ceily Johns was not white.

#### 4. Involuntary Dispositions

Two free black property owners lost possession of their land involuntarily;<sup>304</sup> one regained possession by pursuing civil litigation, while the other lost possession permanently. The first was Lawrence Cato, a free black man who had acquired 5 acres from William Ransome in November 1831. By December 1833, Cato had been expelled from the property by a white woman named Valentine Scruggs. The details of this expulsion are not clear, but on December 23, 1833, Cato swore a complaint alleging that Scruggs had "forcibly turned him out of possession of a certain tenement containing an estate of five acres of land . . . in Cumberland County."<sup>305</sup> Following the January 16, 1834 trial, the all-white jury found in Cato's favor.<sup>306</sup> A January 18 order from Miller Woodson, the County Clerk, commanded the Sheriff of

300. WILL BOOK, 1823, *supra* note 26, at 207.

301. WILL BOOK, 1823, *supra* note 26, at 145.

302. WILL BOOK, 1840, *supra* note 26, at 248.

303. See LAND BOOK, 1836-1838, *supra* note 26 (listing Philip Johns as "free").

304. It is possible that other transactions documented in this Article were involuntary in the sense that owners were coerced to transfer land under circumstances not evident from land records. In addition, the loss of land from default under a deed of trust may be understood as involuntary as the owner most likely did not intend to relinquish ownership. The two cases discussed in this section, however, involved transfers where the lack of the owner's consent is evident from the legal records in which the transfers were recorded.

305. Complaint, Cato v. Scruggs (Cumberland County Ct., Dec. 23, 1833) (on file at Virginia State Archives, Richmond, Va.).

306. Judgment, Cato v. Scruggs, Jan. 16, 1834 (on file at Virginia State Archives, Richmond, Va.).

the County to "cause Lawrence Cato to have his possession of a certain tenement."<sup>307</sup>

A second involuntary disposition occurred in the case of Peter Jenkins, a free black man who, in 1858, purchased 92.25 acres known as "Egypt," for \$1000 to be paid in three installments, with Jenkins entering a deed of trust to secure his debt on the property.<sup>308</sup> On April 1, 1863, a deed conveying that same land was recorded, noting that Jenkins had entered a deed of trust with Isham and Jesse Parker to secure his debt on the land. It notes further that the General Assembly prohibited the transfer of land subject to a deed of trust without the consent of the trustor. The covenant states, however, that since Jenkins's consent cannot be obtained, "he being abroad in the service of the government," Isham and Jesse Parker are "satisfied" that the interest of the parties would be served by selling the land to M. J. Flipper, II. The conveyance, promising clear title, is recorded.<sup>309</sup>

### E. Private Litigation

In several instances, free black property owners sued and were sued by whites in the county. Few documents exist regarding these cases; unrecorded oral testimony provided the basis on which juries in the Cumberland County Court decided cases. Moreover, it is not known whether these suits represent the typical means of dispute resolution, or whether they were aberrations. Nevertheless, existing documentation reveals that free black property owners in the county did engage in litigation, both as plaintiffs and defendants, and that they achieved at least a modicum of success.

#### 1. Cases

Suits brought by free black plaintiffs include the case of Lawrence Cato, who sued a white woman, Valentine Scruggs, for illegal entry and detainer of Cato's 5-acre estate. Cato's neighbors, all white, testified during the proceeding and the all-white jury decided Cato should

307. Order, Miller Woodson, County Clerk, on behalf of the Commonwealth, to County Sheriff, Cato v. Scruggs (on file at Virginia State Archives, Richmond, Va.).

308. DEED BOOK, 1858, *supra* note 26, at 638.

309. DEED BOOK, 1863, *supra* note 26, at 276. Jenkins may have been among the free blacks "detailed" for service as hospital attendants in Farmville, pursuant to a July 18, 1862 requisition by H.D. Fallafecco, Secretary C.S. in charge of Farmville, Virginia, and approved by B.B. Margo active Commandant of the Post. Register of Free Blacks Detailed for Service as Hospital Attendants at Farmville, Jul. 18, 1862 (on file at Virginia State Archives, Richmond, Va.).

regain possession of the property and be reimbursed by the defendant for his costs in bringing the litigation.<sup>310</sup>

Other civil suits brought by free black property owners include Judith Lipscomb's 1834 suit against Ben Hobson, Jacob Bramsford's executor. Bramsford had purchased one hundred bushels of wheat from Lipscomb, but did not pay the \$100 purchase price. Lipscomb repeatedly asked Bramsford for payments, and, after his death, made similar overtures to Hobson. Since these pleas proved unsuccessful, Lipscomb filed suit. In February 1834, Lipscomb received a jury verdict in her favor, an award of \$150.00 and \$35.81 in costs.<sup>311</sup>

Less successful was the 1847 suit that Kitty Lipscomb, a free black woman and property holder, filed against a white man. Lipscomb swore a complaint against William Bradley, alleging that on December 19, 1846, Bradley had assaulted her. Lipscomb sought \$200.00 in damages.<sup>312</sup> Three whites, including Hezekiah Ford, were summoned to testify. At the trial held in July 1848, the jury found for the plaintiff, but rejected her assessment of damages. The jury awarded Lipscomb only \$6.66 plus costs.<sup>313</sup>

In several instances, free black property owners initiated litigation against whites, but then decided not to pursue the actions for reasons that are not disclosed in court records.<sup>314</sup> In other cases, claims brought by free blacks were dismissed by the court.<sup>315</sup> In one instance, one free black property owner sued another at the Cumberland County Court. The details surrounding this dispute and the reasons why Jane Lipscomb decided to sue Nancy Cato are not

310. *Cato v. Scruggs*, (Cumberland County Ct., Jan. 16, 1834) (on file at Virginia State Archives, Richmond, Va.); see also *ORDER BOOK*, 1834, *supra* note 26, at 151.

311. Complaint, Judgment, *Judith Lipscomb v. Benjamin Hobson, Executor for Jacob Bramsford* (Cumberland County Ct. Feb. 1834) (on file at Virginia State Archives, Richmond Va.); see also *ORDER BOOK*, 1834, *supra* note 26, at 185.

312. Complaint, *Kitty Lipscomb v. William H. Bradley* (Cumberland County Ct., Dec. 19, 1846) (on file at Virginia State Archives, Richmond, Va.) (alleging Bradley "with force and arms, to wit, with clubs, sticks and fists, made an assault upon the said plaintiff . . . [and] then did beat, wound, and ill-treat so that her life was dispaired [*sic*].")

313. *Kitty Lipscomb v. William H. Bradley*; see also *ORDER BOOK*, 1846, *supra* note 26, at 431.

314. See, e.g., *Nancy Lipscomb v. Francis Grimstone*, Feb. 27, 1833 (five years after filing case and a multitude of continuances, plaintiff, by her attorney, moved to dismiss suit; court granted the dismissal). *ORDER BOOK*, 1833, *supra* note 26, at 30; *William Lipscomb v. Thomas Morn*, May 26, 1815 (dismissed per order of plaintiff's attorneys); *Billy Lipscomb v. Edmund Eggleston*, Jan. 27, 1813 (dismissed by order of the plaintiff).

315. *Cato a free man v. Thomas Goode*, July 27, 1815 (after numerous continuances, court dismissed plaintiff's claim, which alleged trespass, assault, and battery, and awarded defendant costs; plaintiff did not appear when called), in *ORDER BOOK*, 1815, *supra* note 26, at 15. While this appeared to have been a final judgment, the *Order Book* reports in October that the case of *Cato v. Goode* was to be continued forward. *Id.* at 53. This is the final reference to the case.

known; in particular, it cannot be determined why these two free black women opted to seek resolution of their dispute by an all-white, all-male jury. Nevertheless, in 1848, Jane Lipscomb sued Nancy Cato alleging "trespass," and on February 29, both the plaintiff and the defendant came with their attorneys to court. Cato argued she was not guilty, and the jury found for the defendant and awarded her costs.<sup>316</sup>

Whites also sued free blacks. On February 19, 1833, Lumsford and Eaton, assignees of Reuben T. Clapton, sued Judith Lipscomb for a debt of \$30.18 and damages amounting \$210.<sup>317</sup> Additional examples were identified involving free black property owners, the precise nature of which cannot be determined.<sup>318</sup>

## 2. Testimony, Witnesses, and Legal Representation

In several instances, whites testified against free blacks in the course of legal proceedings. The 1860 Grand Jury presentment against free black landowner John Robertson for selling goods without a license was based "on the information of Peter B. Foster and Samuel Booker."<sup>319</sup> Four whites testified against John Mayo, a "Free Man of Color" charged with breaking and entering and theft.<sup>320</sup>

In other cases, whites testified in support of free blacks and helped them vindicate their claims. In 1833, pursuant to a sworn complaint by Lawrence Cato alleging illegal entry and detainer by Valentine Scruggs, the Justice of the Peace, Hezekiah Ford, summoned Roderick Frayser, William Ransome, and Sarah Deane. All three owned land adjoining the property in dispute, and Ransome had given Cato the land the previous year. The content of their testimony at the

316. ORDER BOOK, 1848, *supra* note 26, at 398. No record of *Lipscomb v. Cato* was found at the Virginia State Archives, notwithstanding the 1848 entry in the Order Book. The trial papers may have been among records from the era that were partially destroyed and are no longer legible. As a result, the precise nature of trespass Lipscomb alleged cannot be determined.

317. Lumsford & Eaton v. Judith Lipscomb, Feb. 19, 1833 (on file at Virginia State Archives, Richmond, Va.). The source of the debt and damages is not known nor is the resolution of the dispute.

318. Jeter et al. v. Nancy Cato (Cumberland County Ct., Feb. 23, 1847) (jury verdict finding defendant not guilty and awarding her costs) in ORDER BOOK, 1847, *supra* note 26, at 294; William L.N. Asham v. Nancy Cato (Cumberland County Ct., Feb. 25, 1845) (awarding defendant \$5 in damages from the plaintiff plus her costs) in ORDER BOOK, 1845, *supra* note 26, at 192; Clairborne Lipscomb v. William Lipscomb (Cumberland County Ct., Feb. 26, 1824) (finding for plaintiff and ordering that he recover \$102.75) in ORDER BOOK, 1824, *supra* note 26, at 54; Henry Lipscomb v. Nancy Caldwell (sometimes called Nancy Lipscomb) (Cumberland County Ct., Apr. 5, 1817) (finding for plaintiff on a writ of forcible entry and detainer and ordering that he recover possession of the tenement plus his costs) in ORDER BOOK, 1817, *supra* note 26, at 216.

319. ORDER BOOK, 1860, *supra* note 26, at 203.

320. Commonwealth v. John Mayo, Free Man of Color, July 1820, in ORDER BOOK, 1820, *supra* note 26, at 355.

January 16, 1834 trial is not known, but the jury returned a verdict in Cato's favor.<sup>321</sup>

White testimony also proved crucial in the case of Henry Ward, a free black man imprisoned in 1848 on charges that he was in fact a fugitive slave. J.W. Poe and his father, Hartin Poe of "Pittsbo" sent letters to the Cumberland County Court vouching that Ward was a free man. J.W. Poe wrote that Ward had been raised by his father and was free. His letter stated, "I procured his papers myself. There is no doubt in my mind he is free."<sup>322</sup> Hartin Poe sent a letter of his own, stating that Ward "is free I say unquestionably."<sup>323</sup>

Free black plaintiffs and defendants were typically represented by counsel during legal proceedings. For example, John Robertson,<sup>324</sup> Burwell Clayton, and Warner Johns<sup>325</sup> were all represented by counsel when defending against the criminal charges against them. All parties in civil matters were likewise represented.<sup>326</sup> Free blacks also had counsel when filing petitions before the court, such as when Leary and the Miggses applied for permission to reside in the county.<sup>327</sup> Access to legal representation was not unusual in the antebellum South; one historian noted, "In very few antebellum cases does it appear that blacks lacked counsel either at their original trial or on appeal. . . . [T]he right to counsel may have been better secured to indigent blacks during the antebellum era than in any later period prior to *Gideon v. Wainwright*."<sup>328</sup>

## OBSERVATIONS AND CONCLUSIONS

Taken together, the data collected neither refutes nor confirms the characterization of historians regarding the "precarious" status of

321. Judgment, *Cato v. Scruggs*, Jan. 16, 1834 (on file at Virginia State Archives, Richmond Va.).

322. Letter from J.W. Poe to Cumberland County Court (Sept. 13, 1848) (on file at the Virginia State Archives, Richmond, Va.).

323. Letter from Hartin Poe to Cumberland County Court (Aug. 27, 1848) (on file at the Virginia State Archives, Richmond, Va.).

324. *Commonwealth v. John Robertson*, Oct. 22, 1860, in *ORDER BOOK*, 1860, *supra* note 26, at 245 (noting "the defendant by his attorney . . . saith that he is not guilty in manner and form as in the presentment against him is alleged").

325. *Commonwealth v. Burwell Clayton and Warner Johns* (Cumberland County Ct., Feb. 1859), in *ORDER BOOK*, 1859, *supra* note 26, at 127.

326. *See, e.g., Jane Lipscomb v. Nancy Cato* (Cumberland County Ct., Feb. 29, 1848) in *ORDER BOOK*, 1848, *supra* note 26, at 398 (noting that the plaintiff and defendant came "by their attorneys").

327. *See supra* notes 141-45.

328. A.E. Keir Nash, *Fairness and Formalism in the Trials of Blacks in the State Supreme Courts of the Old South*, 56 VA. L. REV. 64, 83-84 (1970).

free blacks in the antebellum South. The lack of enforcement of restrictive laws in Cumberland County indicates that the legal regime alone did not define the parameters of freedom for Cumberland County's free black community. The prevalence of land ownership suggests that some free blacks achieved a degree of economic security that blunted the impact of the social and political attitudes that propelled restrictive legislation. The pursuance of and success in civil litigation brought by free black plaintiffs suggests that their apparent confidence in the judicial system was not misplaced. But whether sporadic enforcement of restrictive laws, the availability of land ownership, and access to Cumberland County's court provided free blacks greater freedom than that anticipated by a pure legal analysis cannot be answered by the data collected in this Article. While some evidence suggests race was not the determinative factor in the transactions documented, other factors suggest that free blacks in Cumberland County remained vulnerable to the vagaries of their white neighbors.

For example, Lawrence Cato's 1833 suit against Valentine Scruggs could possibly be seen as refuting arguments concerning the precarious status of free blacks. Cato, a free black landowner who sued a white woman, recovered a judgment and possession of his land from an all-white jury. Nevertheless, Cato sold his land two years later, with Scruggs acquiring more than half of it. It is possible that Scruggs, after failing to obtain the land by force, simply decided to purchase the land legally and made an offer Cato freely chose to accept; but it is also possible that as a result of the litigation, Cato was subject to undocumented pressure, intimidation, and threats from Scruggs or others that forced him to relinquish ownership. After 1835, no further reference to Lawrence Cato was found in any county record.

Kitty Lipscomb also prevailed as a plaintiff and yet received only nominal damages. Judith Lipscomb won her suit against Jacob Bramsford's estate, but relinquished title to her land in the interim. Other free black plaintiffs decided, for undocumented and unknowable reasons, not to pursue litigation they had initiated. Compared to whites, free blacks were also subject to what appears to be a disproportionate number of criminal prosecutions, suggesting a campaign of harassment or selective prosecution; and yet, free blacks defended against criminal charges with a surprising degree of success.

So too, certain interracial transactions, while facially suggesting race was not determinative, are ultimately ambiguous on this matter.

For example, Sally Lipscomb owned land jointly with Frederick Brooks, a white man. William Mayo purchased a town lot with money provided by a white man named George Fuseymore, who retained a remainder interest in the property.<sup>329</sup> Lawrence Cato acquired his land as a gift from a white man named William Ransome. Finally, Sampson Womack devised his entire estate to a white woman named Nancy Rupel. Benign or beneficent reasons may explain each transaction and yet more invidious explanations suggesting duress or intimidation are equally plausible.

Finally, the prominence of Hezekiah Ford in numerous transactions documented highlights the character of much of the data collected. Ford was a prominent white man in the county, a trustee in several deeds of trusts to which free blacks were parties and beneficiary of several others. Ford was the executor of Henry Lipscomb's will, the trustee for the trust Judith Lipscomb established for her son Frank, and the justice who presided over Lawrence Cato's 1833 suit against Valentine Scruggs. Ford testified at the 1847 suit brought by Kitty Lipscomb, but documents do not reveal for which side. He also served as a Justice of the Peace and Commissioner of Revenue between 1839 and 1849. It is possible that Ford was a reliable and trusted friend of Cumberland County's free black residents, but it is also plausible that he was a manipulative figure who provided credit and used his authority as tax collector to exploit free blacks in the county.

For all these examples, reality likely fell somewhere in between the benign and the invidious, with the transactions documented here providing a critical portion, but only a portion of the story. Moreover, it is certain that no single characterization can apply to all the free black residents of Cumberland County or to the landholding practices among them. Rather, the data collected here may be best understood as presenting a series of facts from which a multi-faceted portrait of Cumberland County emerges. This portrait reveals the complex intertwining of race and status, law and land, personal relationships, and economic realities.

329. DEED BOOK, 1865, *supra* note 26, at 390-91.

APPENDIX I: A NOTE ON SOURCES,  
METHODOLOGY, AND CAVEATS

The first task in conducting this study was to identify free black property holders in Cumberland County. Several primary sources were consulted to compile this list. The County Land Book<sup>330</sup> listed the yearly tax assessment for each owner of real property in the county beginning in 1782. During the antebellum period, the Land Book typically listed "Free Negro," "Free," or the initials "F.N." following the name of each free black property owner. This material was supplemented with information from Personal Property Books,<sup>331</sup> recording the yearly tax assessment on personal property and using racial labels as used in the Land Book; County Order Books,<sup>332</sup> in which periodic registrations by free blacks are recorded;<sup>333</sup> the Free Negro Register, a yearly list of the names, ages, and occupations of free blacks kept by the Cumberland County clerk in 1859, 1860, and 1861;<sup>334</sup> several sets of "free papers," the documents free blacks obtained from the county courthouse to prove their status;<sup>335</sup> and apprenticeship reports,<sup>336</sup> documenting the "binding out" of the children, including those of indigent free blacks. Further information was found in the United States Census Population Schedules, which, from 1810 to 1840, listed free black household heads and the size of each household, and in 1850 and 1860, listed all free blacks in the county and their gender, age, household affiliation, property holding, if any, and profession.<sup>337</sup> Where the census data differed from that kept directly by the county, county records were followed and census data disregarded.<sup>338</sup>

330. LAND BOOKS (1782-1863), *supra* note 26.

331. PERSONAL PROPERTY BOOKS (1782-1860), *supra* note 26.

332. ORDER BOOKS (1782-1863), *supra* note 26.

333. See Act of Dec. 10, 1793, ch. 22, 1793 Va. Acts 238; Act of Dec. 12, 1793, ch. 23, 1793 Va. Acts 239.

334. Free Negro Register, 1859-1861, *supra* note 26.

335. Free Negro Register, 1822-1861, *supra* note 26.

336. [Apprenticeship] Indentures, 1800-1863, *supra* note 26.

337. Population Schedules for the Third Through Eighth Censuses of the United States, 1810-1860, Cumberland County, Virginia.

338. Professor Jackson analyzed the Land, Deed, and Will Books kept by state and local officials as well as federal census data. He observed:

Accuracy is the characteristic of these State sources; inaccuracy is the characteristic of the federal sources . . . . In many instances this [federal] material lists persons who were not actually owners of land, in others it fails to list some who did own; and in still others, a wide variation in value is shown between the actual owners in the state list and the federal.

Jackson, *supra* note 12, at 406 n.40.

Land records from Cumberland County support this analysis. For example, in 1850, the federal census found only nine free black landowners in the county, even though county and

The second step in this project was to document each land transfer to which a free black landowner was a party. The Deed and Will Books, containing all recorded deeds and wills beginning in 1770, provide the details concerning the transfer of property.<sup>339</sup> Four maps of particular properties provided additional information.<sup>340</sup>

The names of all free black property owners were then checked against the listings of all motions, continuances, orders and judgments recorded in the County Court Order Books. From these listings, the dates of final judgments in actions to which free blacks were parties were obtained. Using these dates, suit papers and other documents relating to these actions were obtained at the Virginia State Archives in Richmond.<sup>341</sup>

Finally, for comparative purposes, a representative group of white property owners was selected from the land records. For each free black owner to acquire land in a given year, a white owner was selected randomly from a composite list of all whites acquiring land for that year.

Several factors complicated this project. First, the state and county records consulted did not use racial identifications consistently. The means of identification varied; labels used included "F.N.," "Free," "Free Negro," "person of colour," and "free person of colour." More significantly, racial identifications were sporadically omitted.<sup>342</sup> For example, Cloa Ellison was a free black woman who lived in Cumberland County from the time she was emancipated by the will of Gerard Ellison in 1793<sup>343</sup> until her death in 1859.<sup>344</sup> Ellison purchased 2 acres of land from James and Elizabeth Cooper in 1822 and held the land for thirty-one years at which time she sold the property to her children.<sup>345</sup> The Land Book recording Ellison's tax pay-

state records contain deeds and tax assessments documenting ownership by nineteen free blacks at the time. See APP. II, tbls. 1 & 2.

339. DEED BOOK, *supra* note 26; WILL BOOK, *supra* note 26.

340. DEED BOOK, 1858, *supra* note 26, at 572 (map of partition of estate of Sabra Dunkum); DEED BOOK, 1858, *supra* note 26, at 510 (David Cato Mayo's estate); *Id.* at 333 (map of land transferred from Nancy Johns to Mary Johns in 1856); WILL BOOK, 1827, *supra* note 26, at 365 (map of division of Henry Lipscomb's estate indicating subsequent transfers).

341. Judgments, Cumberland County, Va. (1800-1860), *supra* note 26.

342. State and local records in Virginia did not distinguish among races as an official practice until 1891. Prior to this time, the decision to use racial labels was a matter of discretion among public officials. Professor Jackson estimated that prior to 1891, one-third of Virginia counties used racial labels regularly, one-third did so irregularly, and the remaining third did not use racial labels at all. Jackson, *supra* note 12, at 406 n.40.

343. WILL BOOK, 1793, *supra* note 26, at 13.

344. FREE NEGRO REGISTER, 1859, *supra* note 26.

345. DEED BOOK, 1822, *supra* note 26, at 441.

ments on the property listed the initials "F.N." next to her name from 1823 to 1831, in 1833, and in 1834. In 1835 and 1838, the word "Free" appeared.<sup>346</sup> The Land Book, however, provides no indication of Ellison's race or status for the years 1832, 1839, and 1840.<sup>347</sup> Moreover, neither the deed of purchase nor the deed of sale indicated Ellison's race or status.<sup>348</sup> In Ellison's case, the absence of racial and status identifications in these documents does not present any difficulty for the purposes of this project. Sufficient references to her race and status appear in the Land Book and elsewhere<sup>349</sup> to link her with certainty to the 2-acre holding. However, the sporadic use of race and status labels means that the scope of free black property holding in Cumberland County potentially may have been greater than the findings discussed in this Article suggest. In particular, potential omissions encompass short-term holdings by free blacks who are listed without racial identifications in the Land Book, who are not listed as household heads in the census, and who did not register at the county courthouse.

Second, and related to the first difficulty, white and black residents of Cumberland County frequently had the same first and last names. Upon emancipation, newly freed African Americans sometimes took the family name of their former masters. In Cumberland County, this practice explains the numerous free blacks named Lipscomb and Mayo. Coupled with the inconsistent use of racial identifications, names shared by white and black residents complicated tracing various land transactions. For example, two men named German Booker resided in Cumberland County during the period preceding the Civil War. One owned several hundred acres of land and dozens of slaves. He died in 1855. The other owned a single lot in the town of Cartersville, where he lived with his wife and two children and

346. LAND BOOK, 1823-1831, 1833, 1835, 1838, *supra* note 26.

347. LAND BOOK, 1832, 1839, 1840, *supra* note 26. The omission of this information during these years appears to have been an oversight. The Land Book identified other free black property holders with racial labels during these years.

348. DEED BOOK, 1822, *supra* note 26, at 498; DEED BOOK, 1852, *supra* note 26, at 531. Race and status identifications appeared haphazardly in deeds. While the deeds to which Ellison was a party contained no racial labels, others contain numerous references to a party's race and status. See, e.g., DEED BOOK, 1804, *supra* note 26, at 93 (on single page deed of sale, words "a free negro" appear five times after each reference to purchaser Sampson Womack); DEED BOOK, 1813, *supra* note 26, at 229-31 (deed recording sale of land to "Bill (a free negro).")

349. Ellison and her six children registered at the Cumberland County Courthouse. See ORDER BOOK, 1809, *supra* note 26, at 250, 284; ORDER BOOK, 1817, *supra* note 26, at 311. In addition, the United States Census lists Cloa Ellison as the head of a free black household in each census between 1820 and 1850. Population Schedules of the Fourth through Seventh Censuses of the United States, 1820-1850, Cumberland County, Virginia.

operated a blacksmith shop. Both the Land Book and the United States Census for 1850 and 1860 indicate that the latter German Booker was a free black resident of the county.<sup>350</sup> Since the two German Bookers held different types of land and the Land Book contains racial labels for only one, the land held by the free black German Booker can be ascertained. Yet, the phenomenon of duplicate names means that some transactions involving free blacks may have erroneously been read as involving whites, and, conversely, some transactions identified as involving free blacks may have involved whites. In this Article, all uncertainties regarding particular transactions are noted. Where no note exists, there is no reason to doubt that the transaction took place as described.<sup>351</sup>

The third factor complicating this project involved several free black property owners who had more than one name. For instance, David Cato was also called David Cato Mayo, Lawrence Cato was also called Lawrence Mayo, John and Jeter Robertson were also known by the surname Lipscomb, and Nancy Lipscomb also went by Nancy Caldwell. The family names Robertson and Robinson were used interchangeably as were Jones and Johns. To complicate matters further, several women may have changed their names upon marriage, although no marriage records documenting these changes are available for the period under study.

That a single individual could have more than one name may explain certain discrepancies in the data and may also explain the fourth difficulty encountered in this project—the inability, in certain cases, to document complete transactions. For example, Jeffrey Mayo, a free black man, owned a lot in the town of Ca Ira, in Cumberland County which he sold in 1832. The Land Book records tax payments by Mayo beginning in 1820, but no record exists documenting how and when Mayo acquired the property. It is possible that Mayo had a different name when he acquired the land. Similarly, a free black woman known only as Patty acquired 17 acres of land in 1812.<sup>352</sup> The Land Book records her tax payments through 1822,<sup>353</sup> after which, no further reference to Patty can be found in any document. Since there is no evidence that Patty ever transferred the property or that it was

350. LAND BOOK, 1850-1863, *supra* note 26; Population Schedules of the Seventh and Eighth Censuses of the United States, 1850-1860, Cumberland County, Virginia.

351. More detailed descriptions concerning how each transaction can be tied with certainty to a particular African-American resident of Cumberland County are on file with the author.

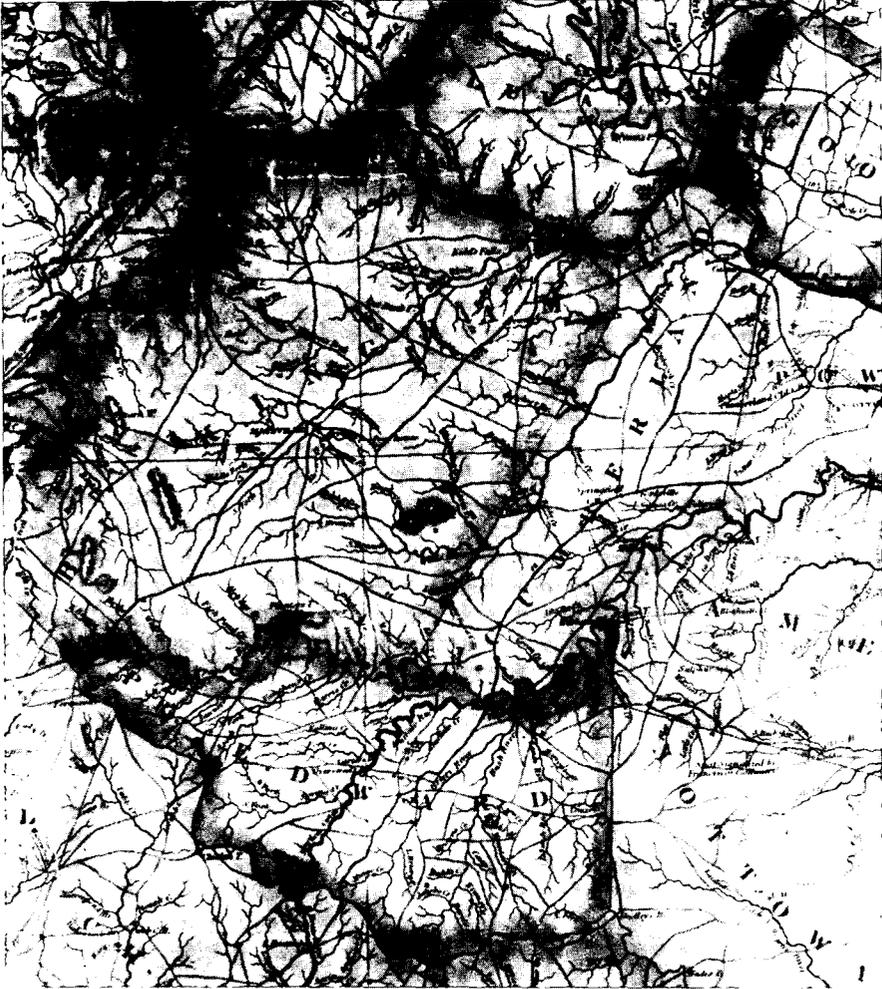
352. DEED BOOK, 1812, *supra* note 26, at 93.

353. LAND BOOK, 1812-1822, *supra* note 26.

transferred following her death, it appears likely that she either married or adopted a surname. The absence of documentation on this name change, however, makes tracking the property impossible. In this Article, the first or last date containing a reference to a piece of property for which recorded transactions are incomplete is used at the date of acquisition or disposition of the property. This practice is noted when employed. Likewise, for those transactions in which a piece of land was divided and disposed of in separate transactions and for which the sum of the parts does not match the size of the original tract, the transaction is recorded as it appears in the land records, including the discrepancy. This explains why not all the transactions recorded in Table 1 appear complete.

## APPENDIX II: FIGURES AND TABLES

## FIGURE I: CUMBERLAND COUNTY



This map of Cumberland County, Virginia and the surrounding territory was originally prepared by Herman Boye in 1826. It was provided to the author courtesy of the Library of Congress.

TABLE 1: ALPHABETICAL LISTING OF ACQUISITIONS AND TENURE OF OWNERSHIP\*

Name	Size (Acres)	Years Held	Acquired From	Disposed To
Booker, German & Alina	Lot	1850-1869	Smith (W)	Scott Booker (B)
Cato, David (Mayo)	18.25	1821-1856	A. Cheatwood (W)	Exor Powell (W)
Cato, Lawrence (Mayo)	5.00	1831-1835	Wm. Ransome (W) <sup>§</sup>	Lor. Scruggs (3) (W)
Cato, Nancy	50.00	1841-1861	Flood (W)	Wm. Ransome (2) (W)
Drew, Jack	16.50	1822-1840	Wharton (W)	Jeter Lipscomb (21) (B)
Dungee, George	1.00	1828-1838	Hudgens (W) <sup>§</sup>	Jesse Jones (34) (B)
Dunkum, Billy	21.50	1858-1859 (?)	Sabra Dunkum (B) <sup>§</sup>	Intestate Est.
Dunkum, Joseph	18.50	1858-1863+	Sabra Dunkum (B) <sup>§</sup>	Default
Dunkum, Sabra	45.00	n/a-1856	n/a	n/a
Elson, John	50.25	1806-1827	M. Elson (W)	B. Dunkum (21.5) (B)
Ellison, Cloa	2.00	1822-1852	Cooper (W)	J. Dunkum (18.5) (B)
Ellison, Pric. & Jane	2.00	1852-1857	Cloa Ellison (B)	J. & L. Jones (5) (B)
Gray, Paul	3.00	1820-1823	Billy Lipscomb (B) <sup>§</sup>	Daniels & Mathews (W)
Harris, Charles	39.50	1811-1818	J. Ford (W)	Pric. & Jane Ellison (B)
Jenkins, Elizabeth	20.00	1841-1863+	Tarilton Jenkins(B) <sup>§</sup>	E. Spencer (W)
Jenkins, Peter	92.25	1858-1863	Rich. & Wm. Scott (W)	Rose Mayo (B) <sup>§</sup>
Jenkins, Sally	6.00	1840-1863+	A. Pledge (W)	Default
Jenkins, Tarilton	20.00	1830-1841	A. Cheatwood (W)	n/a
Jenkins, Tarilton	38.00	1845-1850	Carrington (W)	Isham Parker (W)
Johns, James & Lucy	5.00	1857-1863+	Sabra Dunkum (B)	n/a
Johns, Mary K.	30.00	1857-1907	Nancy Johns(B) <sup>§</sup>	Smith by Clerk
Johns, Nancy	45.00	1854-1855	Hez. Ford (W)	Mary Johns (30) (B)
Johns, Nancy	37.50	1855-1863+	T. Southall (W)	n/a
Johns, Philip	48.00	1816-1840	Martin (W)	Ceily Johns (W) <sup>d</sup> (life estate in 5 acres)
Johns, Philip	7.25	1830-1831	Patsey Johns (W)	Anne Bailey (W) <sup>d</sup> (remainder of estate)
Jones, Jesse	34.00	1861-n/a	Nancy Cato (B)	Betsy Johns (2) (W)
Ligon, Betsey	6.50	1813-1818	Hez. Ford (W)	Ths Cooper (5.75) (W)
Lipscomb, Betsey	47.50	1832-1834	Chs. Palmore (W)	n/a
Lipscomb, Betsey	1.00	1832-1837	Billy & Chloe Lipscomb (B) <sup>§</sup>	Eliza Carson (W)
Lipscomb, Betsey	18.50	1837-1872	Hez. Ford (W)	Hez. Ford (Default)
Lipscomb, Betsey	22.00	1840-1854	Wm Bradley (W)	John Winfree (W)
Lipscomb, Billy	62.50	1813-1816	Baughan (W)	Francis Cousins
Lipscomb, Billy & Chloe	18.50	1816-1820	T. Southall (W)	Margaret Lipscomb (2) (B)
Lipscomb, Chloe	10.00	1816-1816	Billy Lipscomb (B) <sup>§</sup>	Francis Cousins (38)
Lipscomb, Frank	120.00	1829-1863+	Judith Lipscomb (B) <sup>§</sup>	Cloe Lipscomb (10) (B)
Lipscomb, Frank	11.75	1855-n/a	Auction	J. Robertson (35) (B)
Lipscomb, Frank	119.00	1857-n/a	T. Isbell (W)	T. Southall (18.5) (W)
Lipscomb, Jane	2.00	1832-1833	Judith Lipscomb (B) <sup>§</sup>	Paul Gray (3) (B)
Lipscomb, Judith	44.25	1826-1828	Henry Lipscomb (W) <sup>d</sup>	M. Vaughan (2) (W)
				Martha Lipscomb (2) (B)
				Betsy Lipscomb (2) (B)
				Ths. Flipper (2) (W)
				T. Southall (W)
				n/a
				n/a
				n/a
				John Merryman (W)
				Burton (W)

Table 1 (continued)

Name	Size (Acres)	Years Held	Acquired From	Disposed To
Lipscomb, Judith	230.00	1828- -1829 -1832 -1833	J. Colquett (W)	Hez. Ford Trustee for Frank Lipscomb (120) Jane Lipscomb (2) (B) Anthony Crenshaw (100) (W)
Lipscomb, Kitty	44.25	1826-1828	Henry Lipscomb (W) <sup>d</sup>	n/a
Lipscomb, Kitty	40.25	1829-1829 (?)	Nat Roberson (W)	n/a
Lipscomb, Kitty	6.75	1841-1850+	M.B. Elson (W)	n/a
Lipscomb, Margaret	2.00	1840-1863+	Wm. Bradley (W) <sup>n</sup>	n/a
Lipscomb, Margaret	2.00	1854-1863+	Betsey Lipscomb (B) <sup>n</sup>	n/a
Lipscomb, Margaret	1.00	1853-n/a	Martha Winfree (W) <sup>g</sup>	n/a
Lipscomb, Martha	1.00	1832-1853	Billy & Chloe Lipscomb (B) <sup>n</sup>	n/a
Lipscomb, Nancy	150.00	1826-1832	Henry Lipscomb (W) <sup>d</sup>	Ohio
Lipscomb, Sally	74.5	1826-1827	Henry Lipscomb (W) <sup>d</sup>	T. Goode (W)
Lipscomb, Sally (with F. Brooks)	197.00	1827-1831 (?)	F. Brooks (W)	Goodman (W)
Lipscomb, Susan	4.00	1861-n/a	Mary Jane Bailey(W) <sup>n</sup>	n/a
Lipscomb, William	44.25	1819-1827	Wright (W)	Hobson (W)
Lipscomb, William	70.50	1826-1827	Henry Lipscomb (W) <sup>d</sup>	Hobson (W)
Lynch, Rich. & Sally	2.00	1850-1863	Tarlton Jenkins (B) <sup>n</sup>	J. Miller (W)
Mayo, Gracy	2.00	1825-1876	Armistead (W)	Booker (by clk)
Mayo, Jeffrey	Lot	1820-1832	n/a	J. Lumsford (W)
Mayo, Richard	3.00	1863-n/a	A. Southall (W)	n/a
Mayo, Robert	45.00	1837-1863+	R. Glover (W)	n/a
Mayo, Rose	3.00	1823-1824	Paul Gray (B) <sup>g</sup>	[life estate]
Mayo, William	Lot	1856-1865	Benj. Powell (W)	George Fuseymore (W)
Patty	17.00	1812-1818	Richardson (W)	n/a
Reynolds, Lewis	11.75	1850-1855	Elijah Glover (W)	R. England (Def)
Robertson, Jeter (Lipscomb)	6.75	1841-1857	Catherine Lipscomb (B)	John R. Robertson (B)
Robertson, John (Lipscomb)	16.50	1855-n/a	Newton Ford (W)	n/a
Robertson, John (Lipscomb)	1.00	1857-n/a	Sally Morris (W)	n/a
Robertson, John (Lipscomb)	6.50	1857-n/a	Jeter Lipscomb (B)	n/a
Robertson, John (Lipscomb)	21.00	1861-1866 -1875	Nancy Cato (B)	Ryals (W)
Russell, Richard	76.625	1857-1859 (?)	Nancy Russell (Rupel) (W) <sup>b</sup>	John Woodson (10) (W) Heirs
Smart, Ceazar	10.00	1800-1812	n/a	n/a
Turpin, Horace	Lot	1849-1859	J. Miller (W)	Heirs
Turpin, Strabo	13.50	1822-1847	Wharton (W)	n/a
Tyler, John	8.00	1839-1839	Daniel (W)	Austin (Default)
Tyler, John	5.00	1841-1845	W. Austin (W)	Sheriff
Womack, Sampson	30	1804-1823	L. Scruggs (W)	Nancy Russell (Rupel) (W)
Womack, Sampson	15	1807-1823	L. Scruggs (W)	Nancy Russell (Rupel) (W)

\* n/a = information not available from the records

B = Black

W = White

d = by devise

g = by gift

h = by intestate succession

n = by purchase for nominal amount

? = the years are *suggested* by the records, but the records are not completely clear

+ = the property was held until at least the given year, but the records do not clearly indicate the year of disposition

Where property was disposed of in parts, the number of acres disposed of in each transaction is indicated in parentheses.

TABLE 1A: ACQUISITIONS

Year	0-10 acres	10-20 acres	20-50 acres	50-100 acres	100+ acres	Town lots	Total
1800-1810	1	1	1	1	—	—	4
1811-1820	3	2	3	1	—	1	10
1821-1830	5	5	2	2	4	—	19
1831-1840	7	1	3	—	—	—	11
1841-1850	4	3	2	—	—	2	11
1851-1860	6	3	5	2	1	1	17
1861-1863	2	—	2	—	—	—	4
Total	28	15	18	6	5	4	76

TABLE 2: NUMBER OF FREE BLACK OWNERS, HOUSEHOLDS,  
AND POPULATION

Year	Number of Owners	Number Households	Free Black Population	Total Free Population
1790	0	n/a	142	3577
1810	3	n/a	175	3904
1830	16	69	326	4210
1850	17	64	340	3506

TABLE 3: RACE OF GRANTOR

Year	White	Black
1800-1810	3	—
1811-1820	10	1
1821-1830	16	2
1831-1840	8	3
1841-1850	8	3
1851-1860	13	5
1861-1863	2	2
Total	60	16

TABLE 4(A): ACQUISITIONS BY WOMEN, MEN, AND JOINT OWNERSHIP AMONG FREE BLACK GRANTEES

Year	Women	Men	Joint Owners
1800-1810	—	4	—
1811-1820	4	6	1
1821-1830	8	8	1*
1831-1840	8	3	—
1841-1850	5	5	2
1851-1860	5	10	2
1861-1863	1	3	—
Total	31	39	6

\* Property held jointly by a free black woman and a white man.

TABLE 4(B): ACQUISITIONS BY WOMEN, MEN, AND JOINT OWNERSHIP AMONG WHITE GRANTEES

Year	Women	Men	Joint Owners
1800-1810	—	1	3
1811-1820	1	3	8
1821-1830	—	3	14
1831-1840	—	4	7
1841-1850	1	2	8
1851-1860	1	5	11
1861-1863	—	—	4
Total	3	18	54

TABLE 5: DEEDS OF TRUST\*

Trustor	Year	Debt	Security	Trustee- (Lender)	Beneficiary	Release- Default
Booker, German & Alina <sup>p</sup>	1850	\$ 115.88 \$ 24.12 \$ 45.26 \$ 42.26 \$ 80.00	1 Lot CV Pers. Prop.	Brown, Wm J.	Carrington, England, Smith, Miller	Rel.
Cato, David Mayo Est.	1858	n/a	21 acres	Miller, James	n/a	n/a
Cato, Nancy	1844	n/a	50 acres	Trent, Richard	Palmore	Rel.
Cato, Nancy	1855	\$ 50.00	50 acres	Clarke, Wm	Henderson	Rel.
Cato, Nancy	1857	\$ 97.00	50 acres	Brown, Edw.	Hobson	Rel.
Dungee, George	1836	\$ 30.26	21 acres	Cooke, Stephen	Ford, Hez.	Def.
Gray, Paul	1823	\$ 53.95	1 acre, pers. prop.	Hatcher, S.	Nash & Block	Def.
Harris, Ch.	1811	\$ 365.00	39.5 acres	Gordon, T.	Ford, Hez.	Rel.
Johns, Phil.	1832	\$ 450.00	50 acres	Cooke, Stephen	Ford, Hez.	Rel.
Lipscomb, Betsey <sup>p</sup>	1832	\$ 300.00	47.5 acres	Ford, Hez.	Palmore	Def.
Lipscomb, Betsey <sup>p</sup>	1837	\$ 77.50	18.5 acres	Hobson	Ford, Hez.	Rel.
Lipscomb, Billy <sup>p</sup>	1813	£60	62.75 acres	Wilson	Ford, Hez. Baughan, J.	Rel.
Lipscomb, Billy	1815	\$ 50.00	60+ acres	Dabney & Wilson	Booker, G.	Rel.
Lipscomb, Billy	1825	\$ 58.00	9.75 acres	Daniel	Ford, Hez.	Rel.
Lipscomb, Billy	1826	\$ 50.00	9.75 acres	Cooke, Stephen	Ford, Hez.	Rel.
Lipscomb, Judith	1828	\$ 425.00	44.25 acres	Sims	Burton, D.	Rel.
Lipscomb, Kitty	1828	n/a	54.25 acres	Ford, Hez.	n/a	n/a
Lipscomb, Kitty	1841	\$ 132.00	6.5 acres	Ford, Hez.	n/a	n/a
Lipscomb, Sally	1828	\$ 310.00 \$ 90.00 \$ 72.00 \$ 57.99	197+ acres	Frayser	Goodman	Rel.
Lipscomb, Sally	1831	\$ 656.75	197+ acres	Ford, Hez.	Goodman	Rel.
Lipscomb, William	1826	\$1200.00	70 acres	Ford, Hez.	Lipscomb, Judith	n/a
Reynolds, Lewis	1852	\$ 82.87	11.75 acres	England, Robert & Isa.	Powell, B.H.	Def.
Robertson, John <sup>p</sup>	1855	\$ 100.00	16.5 acres	Ford, Newton	Lipscomb, Frank	Rel.
Tyler, John	1839	\$ 150.00	8 acres	Walton, A.	Daniels	Def.

\* n/a = information not available

p = by purchase

TABLE 6: PROPERTY DEVISED BY HENRY LIPSCOMB

Devisee	Land	Slaves	Other
Nancy Lipscomb	150 acres	Gilbert, Nancy, Abner, Lucy	1/3 stock <sup>c</sup> at Moody's Tract
Kitty Lipscomb	44.25 acres	Nancy, Charles, Hall	—
William Lipscomb	1/2 balance Moody's Tract	Tom, George, Amy, Aby, Betty, Ligy, Susan	1/3 stock at Moody's Tract; plantation tools; kitchen furniture
Sally Lipscomb	1/2 balance Moody's Tract	Judy, Mary	1/3 stock at Moody's Tract
Polly Lipscomb	—	Matilda	—
Judy Lipscomb	44.25 acres	Hannabal, Billy, Will, Charity, Patrick, Daniel, Candard	\$1800 due from Hederson; plantation tools; furniture
Frank Lipscomb (son of Judy)	—	Anarchy, Archer	—
James Lipscomb (son of Nancy)	—	Armistead	—

<sup>c</sup> While not specified, stock likely meant existing crops and farm animals.

