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A Planter and the Courts in Antebellum Louisiana: The Cases of John F. Miller
(Under the direction of PETER CHARLES HOFFER)

This dissertation examines the legal culture of antebellum planters and businessmen in Louisiana through the litigation of one of its number, John F. Miller, and his business associates. Arriving in New Orleans in 1808, Miller earned much of his wealth through his ownership of a sawmill in the city. In the 1830s he became the owner of sugar and cotton plantations in the Attakapas region of southern Louisiana. This dissertation utilizes local court records and conveyances to examine Miller's business and legal activities, sources seldom used in previous studies of antebellum planters. It also pays attention to how Louisiana's unique legal system, based on civil, or Roman, law, shaped the course and outcome of Miller's litigation. Though the volume of Miller's litigation made him atypical, his legal disputes demonstrate the variety of legal areas that could affect a planter in the course of the operation of a plantation. This dissertation argues that the operation of the law and success before the courts were vital factors that determined the success or failure for antebellum planters.

The dissertation considers five varieties of litigation involving Miller. In the first chapter, Miller's purchase of a sugar plantation shows the effect of Louisiana inheritance law on the administration of estates. The second chapter explores the varieties of property and business litigation that sugar planters encountered in the course of operating their enterprises. The third chapter focuses on Miller's sawmill in New Orleans and shows the tensions between municipal eminent domain power and private rights during the construction of a wharf in front of the mill. The fourth chapter reveals the strategies of Miller and his business partner to avoid financial failure and their manipulation of

legal formalities to fend off creditors. The final chapter analyzes Miller's most notable case, in which one of his former slaves secured her freedom by claiming that she was a white woman enslaved by Miller. This chapter examines the ambiguities of race in antebellum Louisiana as well as Miller's fight to preserve his honor and reputation.

INDEX WORDS: Louisiana, Planters, Entrepreneurs, Civil Law, Business, Antebellum, Attakapas, Sugar Plantations, Bankruptcy Law, Honor, Eminent Domain, Riparian Law, Land Law, Estate Law, New Orleans, Racial Identity, Legal Culture

A PLANTER AND THE COURTS IN ANTEBELLUM LOUISIANA: THE CASES OF
JOHN F. MILLER

by

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INTRODUCTION

This dissertation examines the legal culture of planters and entrepreneurs in antebellum Louisiana through its concentration on the career of John Fitz Miller. In a recent meditation on the differences between biography and microhistory, Jill Lepore asserts that while a biography focuses on “the singularity and significance of an individual’s life and his contribution to history,” microhistory assumes that the value in examining a person’s life rests “not in its uniqueness, but in its exemplariness, in how that individual’s life serves as an allegory for broader issues affecting the culture as a whole.” Though a biographical monograph of an antebellum planter seems like a vestige of an older style of southern historiography, a microhistory based on Miller’s career does serve as an “allegory” for an overlooked issue in the lives of antebellum southern elites—their relationship with the law, lawyers, and the courts.¹

A legal microhistory of John Miller remedies two omissions in antebellum historical literature. First, little research has been done on the high volume of litigation initiated by some planters and businessmen in New Orleans and its environs. A case study of Miller’s travails in the Louisiana courts is a valuable contribution to recent work in southern antebellum legal history. In addition, there is a paucity of research done on

¹ Jill Lepore, “Historians Who Love Too Much: Reflections on Microhistory and Biography,” *The Journal of American History* 88 (June 2001): 133. For another analysis of the microhistory genre, see Giovanni Levi, “On Microhistory,” in Peter Burke, ed., *New Perspectives on Historical Writing* (University Park, Pa.: Pennsylvania State University Press, 1992), 93-113. For earlier examples of case studies of antebellum planters, see Wendell Holmes Stephenson, *Isaac Franklin, Slave Trader and Planter of the Old South* (Baton Rouge: Louisiana State University Press, 1938); Stephenson, *Alexander Porter, Whig Planter of Old Louisiana* (Baton Rouge: Louisiana State University Press, 1934); J. Carlyle Sitterson, “The McCollams: A Planter Family of the Old and New South,” *The Journal of Southern History* 6 (1940): 347-367.

the business culture of the antebellum South's most important urban and commercial center and its relationship with outlying sugar and cotton regions. Miller was not only active in urban commerce, but he also was the owner of valuable sugar plantations. His career therefore provides a vehicle for examining questions concerning both the courts and commerce in New Orleans and issues that bridge the urban center and the plantation hinterland.

In accord with Lepore's first proposition on the nature of microhistories, the subjects of these studies are usually individuals who, while usually prominent in their communities in their time, have since fallen into obscurity in the main historical narratives.² Miller's life is a perfect example. Though ordinarily absent in the narratives of Louisiana's plantation elite, Miller was far from obscure in New Orleans business circles during the economic boom of the 1820s and 1830s.

Born in South Carolina in 1780, Miller's father fought for the Whig cause Revolutionary War. His mother's maiden name was Sarah Wessels. She later married a man named Canby after his father's death. After spending part of his adult life in Norfolk, Virginia, Miller arrived in New Orleans in 1808, like many other Americans who came to the nation's newest territorial acquisition to seek their fortune. He did not waste time seeking opportunities to make money, and his efforts led to at least one colorful adventure. According to his obituary, Miller made money by speculating in flour during the War of 1812. On his return voyage to New Orleans from Havana via

² See for example, Martha Ballard, in Laurel Thatcher Ulrich, *A Midwife's Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812* (New York: Vintage Books, 1990); Helen Jewitt, in Patricia Cline Cohen, *The Murder of Helen Jewitt* (New York: Vintage Books, 1998); Matthew Rogers, in Paul E. Johnson and Sean Wilentz, *The Kingdom of Matthias* (New York: Oxford University Press, 1994). See also Steven Weisenburger, *Modern Medea: A Family Story of Slavery and Child-Murder from the Old South* (New York: Hill and Wang, 1998).

Pensacola, pirates commanded by the legendary Jean Lafitte boarded the Spanish vessel on which Miller was traveling. The pirate captain, possibly Lafitte's brother Dominique You, recognized Miller from New Orleans, presented him with a gift of fruit and rum, and allowed the vessel to continue its journey. A short time later, when Miller served on the lines during the Battle of New Orleans in January 1815, he was surprised to meet his pirate benefactor once again, commanding one of the batteries.³

The author of the obituary used words like industry, energy, and enterprise to describe Miller, words more often associated Yankee merchants and entrepreneurs. Miller based his eventual financial success in New Orleans on two things essential to a prospering urban landscape and a burgeoning plantation economy: lumber and slaves. In 1818 Miller entered into a partnership with Aaron Gorham and Hayward Peirce to build and operate a steam sawmill beside the Mississippi River below the city. By the 1830s, the sawmill was perhaps the largest in the vicinity, providing much of the lumber to sustain the city's building boom during this era. As planters demanded slaves to provide the labor for expanding sugar and cotton plantations in the region, Miller bought slaves in Virginia, possibly using his connections in Norfolk, and then sold them in New Orleans and Natchez. By the 1820s, as the boundaries of the city expanded upriver, he found a

³ Obituary, 3 December 1857, in the David Weeks Collection, Louisiana State University. This obituary is an important source of information about Miller. Though unsigned, it was probably written by one of Miller's executors, John Moore. Miller probably relayed the story about the pirate to Moore. The author inserted the name Dominique in parentheses after the phrase "pirate captain", hence the possibility that the captain was Dominique You, who did command a battery during the Battle of New Orleans. However, I have not been able to find Miller's name in lists of New Orleans militias during the battle. It is possible that Miller was a last minute volunteer to the front lines, and therefore no one put his name on any muster rolls. On the other hand, Miller's story could have been fabricated.

new way to augment his wealth through aggressive land speculations in the city's new suburbs.⁴

Ambitious antebellum entrepreneurs like Miller did not confine their investment opportunities to urban commerce. In late 1830s he reached the apogee of his success through his purchase of three sugar plantations outright and half interest in two more in the fertile Attakapas region of southern Louisiana. Miller had entered the ranks of the planter class. But the transition from urban businessman to planter was not as dramatic as it might seem. He managed a slave workforce in his sawmilling enterprise, and both sawmills and sugar refineries employed the great technological advance of the era, steam engines. Miller's social pretensions also flowered. He became a mainstay in Louisiana horseracing circles, furthering his associations with the state's planter and commercial elite. From the perspective of the veranda of his Miller's Island plantation (that doubled as the grandstand of his private racetrack), guests could see that Miller had "arrived."

But today Miller is largely unknown. The reasons for Miller's disappearance from the historical memory of antebellum Louisiana are not difficult to find. First, he never held public office or participated in the important political battles of his day. Second, there is no collection of Miller papers at any library or archive. Miller's career does come to life, though, in records that have often been neglected by historians: his litigation.⁵

⁴ Obituary, 3 December 1857, in the David Weeks Collection; Partnership agreement, notarial books of Carlile Pollock, 16 June 1818, in the New Orleans Notarial Archive. Miller also engaged in small-scale manufacturing. A New Orleans directory in 1822 described him as a "block and pump maker" while he resided at the same address as the sawmill.

⁵ Ann Patton Malone used probate and conveyance records in her excellent analysis of the slave communities on Attakapas plantations, but never used suit records in St. Martin and St. Mary parishes. See *Sweet Chariot: Slave Family & Household Structure in Nineteenth-Century Louisiana* (Chapel Hill: University of North Carolina Press, 1992). Bertram Wyatt-Brown used court records in his account of St. Mary planter Levi Foster and his brother James, but does not give a thorough analysis of their suits. See

Miller was no stranger to the courtrooms of antebellum Louisiana, and the legal record created by his suits renders a marvelous account of his diverse economic activities. The main sources used in this study were the case files and legal records found in the courthouses in the parishes where Miller conducted his business. In Orleans Parish Miller was the plaintiff in twenty-five suits in district and parish courts before 1845. Forty-five suits involving Miller originated in St. Martin and St. Mary parishes, where his planting interests lay. But Miller did not confine his litigation to local courts. He was party to five actions in federal circuit court. Since the antebellum Supreme Court of Louisiana had no right of refusal on any appeals from district or parish courts on matters of more than \$300, Miller was a litigant in or had a peripheral interest in forty cases appealed to the state's highest court. His death in 1857 did not stop the stream of litigation. His estate would face fourteen suits, including one appealed to the state Supreme Court.⁶

Miller's lawsuits verify the variety of disputes that could embroil an ambitious antebellum planter and businessman. Actions over property, slaves, partnerships, promissory notes, bankruptcies, estates, and municipal improvements were just some of the types of suits involving Miller. The interrogatories and ledgers in these case files enhance an understanding of antebellum legal culture and commercial culture. However, the typicality of Miller's litigiousness is problematic. Few planters and businessmen in antebellum Louisiana were as litigious as Miller. Nevertheless, Miller was representative

Southern Honor: Ethics and Behavior in the Old South (New York: Oxford University Press, 1982), 477-480.

⁶ Index to the Suit Records of First Judicial District Court and Parish Court of Orleans Parish, New Orleans Public Library, <http://nutrias.org/~nopl/inv/courts.htm>; Index to the Suit Records, St. Martin Parish, St. Martinsville, La.; Index to the Suits Records, St. Mary Parish, Franklin, La.; The Supreme Court of Louisiana Collection, Earl K. Long Library, University of New Orleans; E-mail communications from Barbara Rust, archivist, National Archives and Records Administration, Ft. Worth, to John Keeling, 26 and 27 April 1999.

of a group, very active in speculating and diverse in their investments, which realized that litigation was an element of doing business.

A legal microhistory of John Miller also contributes to recent work in legal history, or “legal-cultural history” as described in a recent law journal article. Law professor and historian Ariela J. Gross provides the most germane assessment of the field of legal-cultural history. Whereas traditional legal history focuses on judicial opinions or statutory law, the legal-cultural approach, in her words, examines “trial records in order to view the law from other perspectives—not only that of the judge but those of witnesses, litigants, jurors, and even slaves.” Drawing on her work on slavery and the courts in the antebellum South, Gross heralds this interpretative model as a means to break down barriers between legal and social history and to view familiar questions in a new light. In particular, through use of analytical tools employed in current legal scholarship, such as conceiving courtroom proceedings as narratives or performances, this approach gives a voice to liminal members of southern society—women, free blacks, and slaves. In her article “Litigating Whiteness,” for example, Gross argues that antebellum racial determination decisions often rested on evidence of the “performance” of whiteness in everyday social activity.⁷

Though legal records have long served historians writing social history from “the bottom up,” antebellum legal history has benefited in recent years from awareness of the symbiosis of law, society, and culture as outlined by Gross. For example, Louisiana legal history has moved beyond the narrow doctrinal debates over the lineage of the state’s

⁷ Ariela J. Gross, “Beyond Black and White: Cultural Approaches to Race and Slavery,” *The Columbia Law Review* 101 (April 2001): 640-689, 643; Gross, “Litigating Whiteness,” 109-188; Ariela J. Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton: Princeton University Press, 2000).

civil code and the conflict between civil and common law traditions in the state to analyze the social implications of the state's unique legal heritage. New interpretations of slave law have also emerged from this framework. Recent research utilizing local court records, in particular the answers of witnesses to interrogatories, has opened windows on the operation of law and slavery in antebellum southern communities. For example, Judith Kelleher Schafer does not confine her study of Louisiana slave law just to the decisions of the state's highest court. Instead, she describes how local incidents shaped opinions handed down by the court. In her monograph *Double Character*, Gross rescues slaves from complete passivity before the law by describing how the actions of slaves often influenced the outcome of warranty disputes. Along similar lines, Walter Johnson uses warranty suits in his study of the New Orleans slave market to demonstrate the agency of slaves in affecting the terms and outcome of their sales. While the legal-cultural model has enhanced the understanding of slavery, its application to other aspects of antebellum law and society has yet to be fully realized, and the career of Miller provides a prime subject.⁸

This study of Miller could also be construed as an anomaly. According to Gross's rationale and in much of the aforementioned scholarship, legal-cultural history seeks to recover the voices of the "outsiders." Miller, on the other hand, was an "insider," a member of a class whose voice has been heard in studies of antebellum society. Use of the analytical tools suggested by Gross, though, illuminates the culture of antebellum

⁸ Mark F. Fernandez, "Introduction: Louisiana Legal History: Past, Present, and Future," in *A Law Unto Itself?: Essays in the New Louisiana Legal History*, Warren M. Billings and Mark F. Fernandez, eds. (Baton Rouge: Louisiana State University Press, 2001), 1-22; Judith Kelleher Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1994); Gross, *Double Character*; Walter Johnson, *Soul By Soul: Life Inside the Antebellum Slave Market* (Cambridge: Harvard University Press, 1999).

plantations and commerce in a fresh way. Revealing legal narratives emerge from in the bitter disputes between business partners, for example. Financial setbacks like bankruptcy attracted more public attention to a planter's plantation management than a warranty dispute over a slave. So the courtroom furnishes stories about the master class as well as their slaves.

Miller's career underscores the diversity of suits involving antebellum planters and businessmen. In their work, Gross and Johnson reveal much about the self-conceptions of slaveowners through an analysis of civil suits involving slaves. In their concentration on actions regarding slave property, however, they convey the impression that such suits formed a preponderance of planter litigation. Undoubtedly, slavery was an important component of Miller's economic pursuits. The sale of slaves provided profits for him, slave labor allowed his plantations and sawmill function, and the value of slaves served as collateral for his loans. But with one notable exception, Miller had very few suits that directly concerned slaves. It is probable that this holds true for other planters. Suits regarding property disputes, debt, and estate matters occupied most of a planter's time before the bar. By analyzing this variety of litigation, a more complete picture of antebellum commerce and planter litigiousness emerges.⁹

This discussion of the commercial and legal culture of Miller's milieu also has to account for its conception of southern honor. In conventional antebellum historiography, however, historians have seldom employed legal records to form their narratives about planter culture because of the assumption that the culture of honor precluded extensive use of the courts to resolve disputes. Though a precise definition of the concept of honor

⁹ Only two of Miller's suits appealed to the state Supreme Court concerned warranty disputes over slaves: *Miller v. Coffman*, 7 Mart. (N. S.) 556, No. 1618-2, and *Desdunes v. Miller*, 2 Mart. (N. S.) 53, No. 900-2, The Supreme Court of Louisiana Collection, University of New Orleans.

is sometimes elusive (it has been described as “an unwritten code,”¹⁰ a “cluster of ethical rules,”¹¹ “a set of cultural virtues,”¹² and “a cultural language”¹³), there is little doubt about the role of the community in endorsing someone as honorable or castigating someone as dishonorable. Honor is therefore closely bound with one’s public reputation as well as the construction of one’s public identity. In the words of Julian Pitt-Rivers, “honor is not only the internalization of the values of society in the individual but the externalization of his self-image in the world.” In addition, the conspicuous rituals and customs of honor practiced by the social elites affirmed their place in their community and set them apart from the lower orders of society.¹⁴

This necessity for communal affirmation of honor, however, makes an honorable society incompatible with a litigious one, according to conventional notions about honor and the law. If a man’s reputation were challenged, the culture of honor demanded personal satisfaction to restore a man’s standing in society, usually through mediation undertaken by associates, or failing that, a duel. If he used the courts as a means of redress, though, a gentleman’s fate no longer rested in his hands or those of his circle. Instead, his redemption depended upon an equivocal legal process and the whims of

¹⁰ Charles S. Sydnor, “The Southerner and the Laws,” *The Journal of Southern History* 6 (February 1940): 13.

¹¹ Wyatt-Brown, *Southern Honor*, xv.

¹² Christopher J. Olsen, *Political Culture and Secession in Mississippi: Masculinity, Honor, and the Antiparty Tradition, 1830-1860* (New York: Oxford University Press, 2000), 11.

¹³ Johnson, *Soul By Soul*, 246.

¹⁴ Julian Pitt-Rivers, “Honor,” *International Encyclopedia of the Social Sciences*, David L. Sills, ed. (New York: Macmillan, 1968), 6, 504. See also Steven M. Stowe, *Intimacy and Power in the Old South: Ritual in the Lives of the Planters* (Baltimore: Johns Hopkins University Press, 1987), 1-49. For a look at honor as practiced by the lower orders in southern society, see Elliot J. Gorn, “‘Gouge and Bite, Pull Hair and Scratch’: The Social Significance of Fighting in the Southern Backcountry,” *American Historical Review* 90 (February 1985): 18-43.

judges, lawyers, and juries. Moreover, no monetary judgment issued by a court offered a valid remedy to one's tarnished reputation in the eyes of an honorable community.¹⁵

Until recently, the incompatibility of southern honor and southern courts remained a defining theme of antebellum historiography. Charles S. Sydnor provided an early conception of the law in antebellum southern society that minimized the role of formal legal institutions. For Sydnor, southern gentlemen settled personal insults through extralegal means like duels in accordance with their code of honor: "the code of honor required action; the state code enjoined submission." The isolation of plantations and farms put distance between individuals and legal institutions, and the customary power of masters to discipline their slaves weakened the role of law in antebellum society. This final point emerged as a key argument in Stephen Michael Hindus's comparative study of criminal justice in South Carolina and Massachusetts. Southern honor as well as weak authority of the state in antebellum South Carolina supported plantation justice meted out by slaveowners and encouraged extralegal and informal forms of social control. In his study of southern criminal justice, Edward L. Ayers stresses the dependence of southern honor on the institution of slavery and contrasts the culture of honor of the antebellum South with the dignity-centered bourgeois culture of the antebellum North that abhorred extralegal forms of justice. These themes of extralegal justice and elite ideology emerge again in Michael Wayne's study of crime and justice in a small Mississippi community in which local planters took the initiative to resolve a possible murder conspiracy without the use of formal legal institutions.¹⁶

¹⁵ Pitt-Rivers, "Honor," 509.

¹⁶ Sydnor, "The Southerner and the Laws," 1-23, 19; Michael Stephen Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: University of North Carolina Press, 1980); Edward L. Ayers, *Vengeance and Justice: Crime and*

The most ambitious attempt to ferret all facets of honor in antebellum southern society remains Bertram Wyatt-Brown's *Southern Honor: Ethics and Behavior in the Old South*. Wyatt-Brown does not discount the value of common and statutory law in southern communities, claiming that the "courthouse, more than the church was the center of local ethical considerations." He maintains, though, that formal law was essentially an appendage of honor and subject to local mores. In his words, "honor was alone and indivisible" while law was subordinated to the needs of the community" and thus often applied inconsistently. As a result, southerners gave no more credence to formal legal institutions than to extralegal mechanisms like the charivari in meting out justice. In fact, Wyatt-Brown often celebrates the southern democratic spirit he seems to find in tar and feathers. Such was the punishment administered to wife killer James Foster by his rural Mississippi neighbors in the climatic episode of *Southern Honor* when a legal technicality upset formal judicial procedure.¹⁷

Generally, though, these studies of law and honor in the antebellum South concentrate on criminal matters at the expense of civil suits, assume that southern mores did not have variations, and minimize the possibility that attitudes change over time. Southern planters were in court too many times to discount the significance of formal legal institutions in their lives. Ayers acknowledges this in noting that rates of litigiousness among southerners were considerable in spite of his assertion that honor and legalism were incompatible. These studies also fail to realize that the courtroom also functioned as a forum in which the honor of the litigants was at stake. Miller's legal

Punishment in the Nineteenth Century South (New York: Oxford University Press, 1984), 9-33; Michael Wayne, "An Old South Morality Play: Reconsidering the Social Underpinnings of the Proslavery Ideology," *The Journal of American History* 77 (December 1990): 838-861.

¹⁷ Wyatt-Brown, *Southern Honor*, 366, 364.

conflicts provide an excellent study of southern honor manifested in the courtroom rather than in the charivari, in an urban commercial environment as opposed to an exclusively rural agricultural one, and in a part of the South where a civil law tradition and a Latin culture governed instead of common law and Protestantism.¹⁸

A detailed examination of Miller's legal activities also contributes to an understanding of the economic motivations of southern elites. One of the perennial debates in antebellum historiography centers on the nature of the southern plantation economy. The classic interpretation of the planter class as expounded by Eugene D. Genovese depicts an economic ideology at odds with the profit-driven, liberal capitalistic ethic of the North. In his words, the planters were "precapitalist, quasi-aristocratic landowners" and their society "in spirit and fundamental direction . . . represented the antithesis of capitalism." A major facet of this worldview was the planters' belief in paternalism, the mutual bonds and obligations between a planter and his slaves.¹⁹

Genovese's interpretation has not gone unchallenged. Other historians have characterized southern planters as capitalists, whether through their drive to make profits or their rational economic decision-making, and recognized the extent of industrialization in the Old South.²⁰ Recent studies have continued to examine this theme. For example, studies on the antebellum slave trade have shown how such commerce belied the tenets

¹⁸ Ayers, *Vengeance and Justice*, 32,18; Peter Charles Hoffer, "Honor and the Roots of American Litigiousness," *The American Journal of Legal History* 33 (1989): 295-319.

¹⁹ Eugene D. Genovese, *The Political Economy of Slavery: Studies in the Economy and Society of the Slave South*, 2nd ed. (Middletown, CT: Wesleyan University Press, 1989), 11-36; Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1974).

²⁰ See for example James Oakes, *The Ruling Race: A History of American Slaveholders* (New York: W. W. Norton and Company, 1982); Shearer Davis Bowman, *Masters and Lords: Mid-19th Century U. S. Planters and Prussian Junkers* (New York: Oxford University Press, 1993); William Dusbiberre, *Them Dark Days: Slavery in the American Rice Swamps* (Athens: University of Georgia Press, 1996); William K. Scarborough, "Lords or Capitalists? The Natchez Nabobs in Comparative Perspective," *The Journal of Mississippi History* 54, 1992, 239-267; Fred Bateman and Thomas Weiss, *A Deplorable Scarcity: The Failure of Industrialization in the Slave Economy* (Chapel Hill: University of North Carolina Press, 1981).

of southern paternalism. Other recent monographs have explored the similarities in the work routines of northern industry and southern plantations.²¹

Miller's interests in urban commerce and plantation agriculture provide a nuanced view on investment and business in the antebellum South. Despite the active commercial economy found in New Orleans, Louisiana did not possess a purely capitalist economy. Since planters invested such a significant portion of their capital in slaves, the range of economic decisions available to them was limited when compared to the options available for businessmen in the bourgeois North. Miller's heavy investment in slaves occupied capital that could have been channeled into other ventures. But his speculations and strategies demonstrate similarities with entrepreneurs in more capitalist economies. For instance, Miller sought diversification of his investments in both commerce and planting. Due to the failure of his sawmill and the economic depression after the Panics of 1837 and 1839, Miller had to seek protection of his assets under state and federal bankruptcy law, a legal strategy more often associated with merchants than planters. Moreover, Miller built his fortune in a place that was not antagonistic to economic progress. For example, the city of New Orleans eagerly promoted commercial growth through the construction of wharfs along its riverfront. The city's business elite created banks to foster the economic boom of the 1830s and invested in various railroad projects.

²¹ See for example, Johnson, *Soul By Soul*; Michael Tadman, *Speculators and Slaves: Masters, Traders, and Slaves in the Old South* (Madison: University of Wisconsin Press, 1989); Mark M. Smith, "Old South Time in Comparative Perspective," *American Historical Review* 101 (December 1996): 1432-1469; Mark M. Smith, *Mastered by the Clock: Time, Slavery, and Freedom in the American South* (Chapel Hill: University of North Carolina Press, 1997); Richard Follett, "Slavery and Plantation Capitalism in Louisiana's Sugar Country," *American Nineteenth Century History* 1 (Autumn 2000): 1-27; Richard Follett, "The Sugar Masters: Slavery, Economic Development, and Modernization on Louisiana Sugar Plantations, 1820-1860," (Ph. D. dissertation, Louisiana State University, 1997). For parallels between northern and southern legal developments, see Thomas D. Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill: University of North Carolina Press, 1996). For a critique of Morris, see Walter Johnson, "Inconsistency, Contradiction, and Complete Confusion: The Everyday Life of the Law of Slavery," *Law and Social Inquiry* 22 (Spring 1997): 405-430.

In addition, Miller's cases reveal that state courts maintained a bias in favor of economic development, whether commercial or agricultural.²²

Finally, because Miller pursued litigation in a legal environment quite different from the rest of the nation, Louisiana's unique legal heritage needs a brief discussion. During the state's colonial era, France and Spain established a legal system based in the Roman, or civil law, tradition. Whereas judicial case decisions form the basis of the Anglo-American system of common law, a written legal code is the centerpiece of any civil law system. After the Louisiana Purchase in 1803, President Thomas Jefferson wanted the new territory to adopt the common law system present in the rest of the nation. Heated resistance by the Creole inhabitants ultimately led to the retention of Spanish and French law as the basis of the state's legal system. But early in the development of Louisiana's judicial procedure, jurists incorporated many American common law legal practices, such as jury trials. The first step after the territorial legislature's success in retaining a Latin-based legal system was the compilation of all French and Spanish laws in force in the territory, a project finished in 1808. This *Digest* was the precursor to the state's first *Civil Code*, completed in 1825 by a trio of jurists, including Edward Livingston.²³

²² For the view that slave investments affected regional economic development and investment decisions, see Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (Baton Rouge: Louisiana State University Press, 1986), 1-50.

²³ Discussions of Louisiana's civil law system include George Dargo, *Jefferson's Louisiana: Politics and the Clash of Legal Traditions* (Cambridge: Harvard University Press, 1975); Richard Holcombe Kilbourne, Jr., *A History of the Louisiana Civil Code: The Formative Years, 1803-1839* (Baton Rouge: Paul M. Hebert Law Center, 1987); Shael Herman, *The Louisiana Civil Code: A European Legacy for the United States* (New Orleans: Louisiana Bar Foundation, 1993); Mark F. Fernandez, *From Chaos to Continuity: The Evolution of Louisiana's Judicial System, 1712-1862* (Baton Rouge: Louisiana State University Press, 2001). My references to the *Civil Code* rely on the 1838 edition by Wheelock S. Upton and Needler R. Jennings.

There are several notable differences between Louisiana civil law and the common law system of the other states during the antebellum era. First, whereas the common law featured the doctrine of *caveat emptor* in the law of sales, implied warranties accompanied sales in Louisiana, and buyers had the option of legal action to void a sale if they found merchandise defective. While control over marital property rested exclusively with husbands in common law, civil law community property provisions guaranteed wives a share of property earned during marriage, and forced heirship provisions guaranteed a share of the marital estate to any children. After the death of a parent, civil law judges maintained continuous supervision of the guardians of an estate and appointed tutors on the recommendation of family members if a guardian had not been named. Absolute ownership of property was a distinguishing feature of civil law while common law provided for differing categories of ownership. In addition, notaries in civil law jurisdictions were important legal officials, and transactions like the sale of immovable property, estate inventories, and some types of contracts required a notary's seal to render legal weight.²⁴

Each of the five chapters in this dissertation centers on an episode of litigation involving Miller and his circle of business associates. Some these episodes consist of a single dispute between Miller and another person that involved one or more legal actions. Other episodes revolve around a single type of case that Miller encountered on more than one occasion in the course of operating his sugar estates and other enterprises. The first episode describes the negotiations surrounding the purchase of one of Miller's plantations and a challenge to his ownership through estate law. The second chapter considers a series of cases involving land claims and routine business disputes that Miller and his

²⁴ Dargo, *Jefferson's Louisiana*, 12-17; Herman, *The Louisiana Civil Code*, 37-56.

partner faced in the operation of their agricultural enterprises. The third episode looks at the tension between municipal improvements and private rights in the city of New Orleans in an important case involving Miller's sawmill. The fourth chapter examines the operation of state and federal bankruptcy law in antebellum Louisiana and the ways Miller and a partner used the formalities of the law to protect their assets. Finally, in the last chapter, I examine Miller's most notable case. In 1844 one of his former slaves filed a suit for freedom and claimed that she was a German woman that Miller enslaved while she was a young girl. This case reveals the problems of racial determination in antebellum Louisiana and shows how Miller responded to a threat to his honor and reputation.

My selection of cases has been influenced by the "cases of trouble" method first employed by legal scholar Karl Llewellyn and anthropologist E. Adamson Hoebel in their classic work of legal anthropology, *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence*. Llewellyn and Hoebel believed that the best approach to understand a culture's system of laws was the study of disputes and conflicts within the culture, as opposed to the study of a culture's legal rules or practices. In their words, "if there be a portion of a society's life in which tensions of the culture come to expression, in which the play of variant urges can be felt and seen, in which emergent power-patterns, ancient security-drives, religion, politics, personality, and cross-purposed views of justice tangle in the open, that portion of life will concentrate in the case of trouble or disturbance." The tensions underlying planter society in antebellum Louisiana come to the surface in Miller's litigation. Contrary to the idyllic mythology that has encased

popular perceptions of the antebellum South, his cases reveal a society in which livelihoods and reputations were seldom secure.²⁵

²⁵ Karl N. Llewellyn and E. Adamson Hoebel, *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence* (Norman: University of Oklahoma Press, 1941), 21-40, 29. For a critique of the case of trouble approach, see J. F. Holleman, "Trouble-Cases and Trouble-Less Cases in the Study of Customary Law and Legal Reform," *Law & Society Review* 7 (Summer 1973): 585-609. For additional discussions of this approach, see William Twining, *Karl Llewellyn and the Realist Movement* (Norman: University of Oklahoma Press, 1973), 160-167; N. E. H. Hull, *Roscoe Pound and Karl Llewellyn: Searching for an American Jurisprudence* (Chicago: The University of Chicago Press, 1997), 286-295.

CHAPTER 1: PRESSING ONE'S ADVANTAGE ON THE TREMBLING PRAIRIE

In the midst of his negotiations to buy his first plantation in 1833, John Miller confessed to future neighbor John C. Marsh: “It is hardly necessary for me to inform you that I am no farmer & will have to depend intensely on you & your good brother for every assistance that may be in your power to give.”¹ But in many respects, the ownership and management of large agricultural enterprises bore many similarities to Miller’s commercial activities in New Orleans. Like his sawmill, sugar plantations incurred great capital costs, forcing owners to seek investment through partnerships or the manipulation of financial devices like promissory notes and bank loans. Both his sawmill and the most productive sugar plantations employed steam engines, the great technological advance of their day. Moreover, both the sawmill and his sugar plantations used not only slave labor, but also numbers of free whites in varying capacities. And correspondingly, like his urban investments, his agricultural ventures invited litigation.

The success or failure of large plantations in the antebellum South hinged on many factors, including the harvest, management, labor, and financing. But litigation, an element more closely associated with the world of urban commerce, has seldom been considered in traditional studies of plantation life. The experience of Miller and his business partner Jonas Marsh suggests that performance before the bar was vital to the livelihood of a large sugar planter during this time. This chapter and the next examine

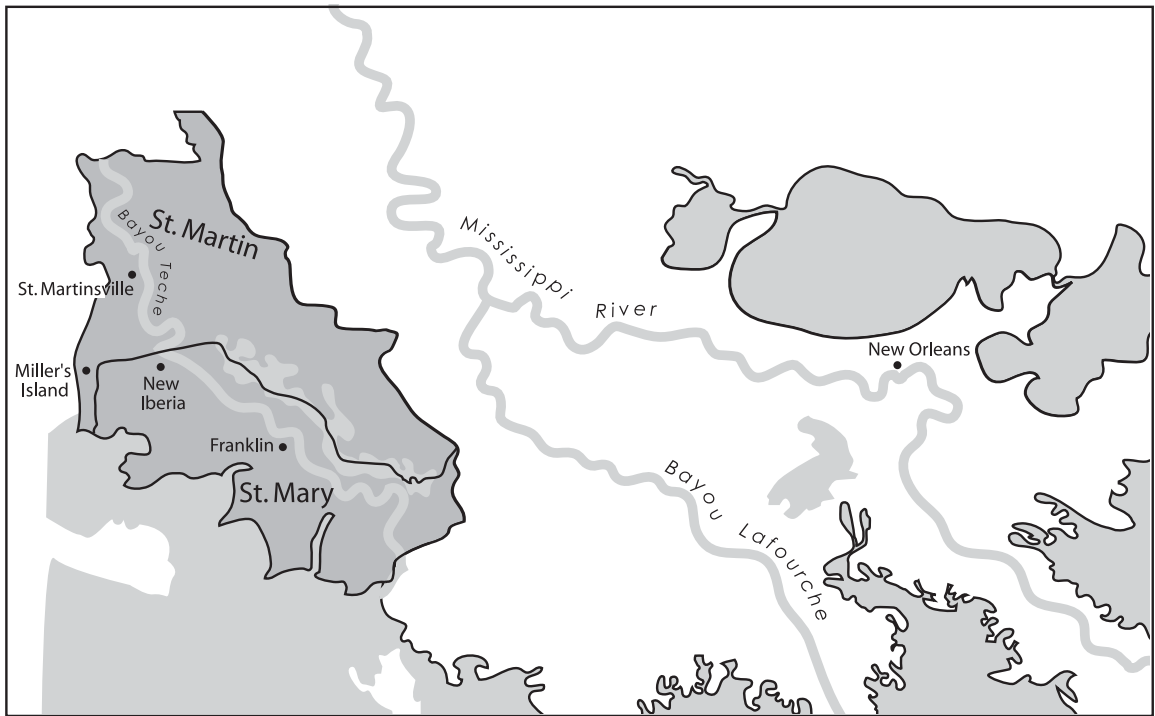
¹John F. Miller, New Orleans, to John C. Marsh, New Iberia, 24 May 1833 in St. Martin Parish District Court, *Thomas Randolph et als v. John F. Miller*, No. 4030.

Miller's civil suits originating in St. Martin and St. Mary parishes that stemmed from his foray into sugar planting in the Attakapas region of southern Louisiana. This chapter focuses on one particular case but also considers debt, estates, and the perils of failure before the bar. But before discussion of courthouse endeavors, it is necessary to discuss briefly antebellum sugar planting in Louisiana and to describe the region in which and the plantations by which Miller became part of the planter class.

Large-scale sugar production did not begin in Louisiana until late in the colonial period after planter Etienne de Boré and émigré sugar maker Antoine Morin successfully refined syrup from locally grown sugar cane into granulated sugar in 1795. The older Creole-owned plantations along the Mississippi River quickly switched to cane cultivation, and sugar production gradually spread into the Lafourche and Teche regions of the state in the first two decades of the nineteenth century. Congress insured the further expansion of sugar production with the passage in 1816 of a three cents per pound duty on imported sugar. As cotton prices stagnated in the 1820s, planters from other southern states found the steady profits of sugar production attractive.²

The main drawback to sugar planting was initial capital costs that were greater than those in cotton cultivation. In addition to buying land and slaves, planters had to purchase sugar mills, and mills powered by horses cost between \$2000 and \$3000. By the 1830s, many planters converted to steam-powered mills, which cost as much as \$4500 to grind their cane. The more efficient steam engines not only increased the

² J. Carlyle Sitterson, *Sugar Country: The Cane Sugar Industry in the South, 1753-1950* (Lexington: University of Kentucky Press, 1953), 3-5, 24, 175-177; Glenn R. Conrad and Ray F. Lucas, *White Gold: A Brief History of the Louisiana Sugar Industry, 1795-1995* (Lafayette: The Center of Louisiana Studies, 1995), 12-13; Richard J. Follett, "The Sugar Masters: Slavery, Economic Development, and Modernization on Louisiana Sugar Plantations, 1820-1860" Ph.D. dissertation, Louisiana State University, 1997, 87.



Map of antebellum Southeastern Louisiana
and the Attakapas District

amount of juice extracted from the cane, but they also sped the refining process lest an early fall freeze ruin a planter's harvest. Not only did the success of his sawmill give Miller the financial resources to meet the initial costs of sugar planting, but his experience managing a steam-powered industrial process with his sawmill probably enabled him to master quickly the nuances of steam-powered sugar refining as well.³

Those who wanted to make their fortunes in the sugar boom of the 1820s confronted established Creole and Anglo planters who had already taken the best lands along the Mississippi River. The Attakapas region along the coast of southern Louisiana, on the other hand, was still relatively unsettled, and public lands were available at reasonable prices. Bayou Teche traversed the region for about 130 miles, entering the Atchafalaya River, which then drained into the Gulf of Mexico. Navigable for schooners for nearly half of its length, the Teche provided an efficient way for planters to ship their crops to market, and its banks seldom overflowed, adding value to adjacent lands. Three small towns dotted the bayou—Franklin, New Iberia, and St. Martinsville, the former and the latter the parish seats of St. Mary and St. Martin parishes, respectively. Miller settled near New Iberia and conducted his litigation in the courthouses in the other two towns.⁴

³ Follett, "Sugar Masters," 71; Sitterson, *Sugar Country*, 134, 138. St. Martin planter and justice of the peace David Rees illustrated the pressures of the capital costs of sugar planting in a letter to his sister. After several bad cotton harvests, Rees desired the higher profits in sugar production. But he fretted over the need for more labor and the "considerable capital to commence." He built a sugar mill later in 1830, but lacking the resources of Miller, his livelihood was in the balance with his decision. David Rees, St. Martin Parish, to Elizabeth Rees, 21 February 1830, and David Rees Plantation Journal, 29-30 October 1830, in David Rees Papers, Tulane University.

⁴ Sitterson, *Sugar Country*, 15-16; Follett, "Sugar Masters," 94-98. Travelling to the Attakapas from New Orleans was difficult and time-consuming during periods when the water level was low. Snags, sandbars, and debris provided constant problems for steamboats when steam transportation began on the Teche in the 1820s. Travellers often took steamboats up the Mississippi River from New Orleans to Plaquemines, a distance of 116 miles. There, they took either small steamers or flatboats west through various bayous and the Atchafalaya River to the Teche. On 1818 guide estimated the entire journey from New Orleans to New Iberia through the Atchafalaya River basin to the mouth of the Teche and then up the Teche at 262 miles. See Donald J. Millet, "The Saga of Water Transportation into Southwest Louisiana to 1900," in *The Louisiana Purchase Bicentennial Series in Louisiana History—Volume XVI, Agriculture*

The richness of its soil and the loveliness of its landscape in this region produced descriptions from travelers that bordered on hyperbole. William Darby's 1816 guide promoted the state to the later emigrants to the sugar fields, and he believed that the fertility of the Attakapas was unequaled. In his words, "Nature has been more than usually beneficent [sic] to the Attacapas [sic], the fertility of the land excessive, and the facility of navigation is seldom exceeded." A visitor in the 1840s declared that it "was truly the garden spot of the U. S." Praise continued even after the demise of the Old South. Writing immediately after the Civil War, journalist Edward King called the Teche region "the pearl of Louisiana" and "the gem of the South," a place where "Nature has invested it with everything that is delicious and fairest."⁵

Anglo-Americans began their emigration to the Attakapas after the War of 1812 and increased their rate of settlement in the following years. With the passage of another sugar tariff in 1828, the number of sugar plantations in the Attakapas jumped from ninety-nine in that year to one hundred sixty-two in the next. Planter Francis Richardson observed a veritable rush to these "sugar gold fields." As late as 1832, he recalled, earlier experiments in indigo cultivation were still evident, but by 1835 older planters in the region had abandoned cotton and joined the wave of Anglo-Americans in seeking higher profits in sugar cane. Though they did not displace native Acadian or Creole planters in

and Economic Development in Louisiana, Thomas A. Becnel, ed. (Lafayette: The Center for Louisiana Studies, 1997), and William Darby, *The Emigrant's Guide to the Western and Southwestern States and Territories* (New York: Kirk & Mercein, 1818), 48.

⁵ William Darby, *A Geographical Description of the State of Louisiana* (Philadelphia: John Melish, 1816), 73; Osborne Macdaniel to Elijah P. Grant, Batavia, New York, Elijah P. Grant Papers, University of Chicago Library; Edward King, *The Great South*, W. Magruder Drake and Robert R. Jones, eds. (Baton Rouge: Louisiana State University Press, 1972), 85-86.

the Attakapas entirely, these Anglo-Americans eventually became preponderant in terms of political and social influence in the region.⁶

Great prosperity resulted. In his journey up the Teche in 1853, Thomas Bangs Thorpe compared the residences along its green banks with English parks, the homes “surrounded by gardens, the shrubbery of which reaches to the water’s edge, and hedges of rose and hawthorn, of lemon and orange.” Though he joined the rush somewhat late, Miller entered as many large planters devoted their profits into the purchase of steam-powered sugar mills.⁷

For what became his primary plantation and residence in the Attakapas, Miller chose one of the most picturesque places in the entire region—a place now known as Jefferson Island, about twelve miles west of New Iberia. Island, in this usage, actually refers to a salt dome, a spot of elevation surrounded by flat marsh and prairie. Formed by geological forces pushing the rock salt above the earth’s surface, five visible domes line the coast of Louisiana in St. Martin and St. Mary parishes, all but the most southern emerging from the marsh at regular intervals of seven to nine miles. The remarkable fertility of the soil around the domes made them prime plantation sites in the antebellum period. But the commanding presence of the islands along the flat coastal plain and their scenic beauty no doubt added to the self-image of any planter that owned them. Miller

⁶ Follett, “The Sugar Masters,” 96; Sitterson, *Sugar Country*, 25; F. D. Richardson, “The Teche Country Fifty Years Ago,” *Southern Bivouac* 1 (February 1886): 593; Glenn R. Conrad, *Land Records of the Attakapas District: Volume 1, The Attakapas Domesday Book--Land Grants, Claims and Confirmations in the Attakapas District, 1764-1826* (Lafayette: The Center for Louisiana Studies, 1990), 1-15; Pierre A. Degalos, “Statement of Sugar Made in Louisiana in 1828 and 1829,” *The Louisiana Planter and Sugar Manufacturer* 9 (1892): 65-68. Of the 162 planters in the Attakapas in 1829, roughly 55% were Acadian or Creole. In St. Martin parish, 34 out of 46 planters were Acadian or Creole, 10 out of 19 in Lafayette, and 45 out of 101 in St. Mary. My determination of ethnicity from the names on Degalos’ list is not exact and could be revised.

⁷ T. B. Thorpe, “Sugar and the Sugar Region of Louisiana,” *Harper’s New Monthly Magazine* 42 (November 1853): 750-751.

purchased the most northern of the chain, and new ownership of the island brought it a new name—Miller’s Island.⁸

Miller acquired his island and the land below its slopes in several transactions in the summer and fall of 1833. Before his purchase, the island was divided property, its northeastern half undeveloped and the southwestern side a working plantation. On August 26 Eliza Prevost Dismuke sold to Miller her one-seventh share of the undeveloped half of the island, representing her part of the estate of her grandfather, for \$389. Local attorney John Brownson acquired the plantation from Isaac Randolph and quickly sold it to Miller for \$19,500 on October 24. The sale included not only the buildings and the improvements of the sugar plantation and a tract of woodland on a nearby bayou, but also included the slave community of five men, eight women, and seven children. I will discuss the negotiations surrounding his purchase of the plantation later, for the heirs of Randolph sued Miller over terms of the sale fifteen years later. By November Miller acquired the remaining six-sevenths of the undeveloped half of the island from Godfroy Prevost for \$3428.50 in cash.⁹

To ensure ready access to his new home and investment, Miller bought at an estate sale a four and a half arpent tract fronting Bayou Petit Anse for \$504, then sold two

⁸Fred B. Kniffen, *Louisiana: Its Land and People* (Baton Rouge: Louisiana State University Press, 1968), 34, 69-71; Before Miller’s purchase of the island, it was known as Butte a Peigneur, Cote de Carlin, Isle des Torreaux, and Pine Island. After Miller’s death and sale of the island, it was known as Orange Island. Finally, with its sale in 1870 to actor Joseph Jefferson, it acquired the name Jefferson Island, which it still has today. Glenn R. Conrad, “Wilderness Paradise: A Glimpse of Jefferson Island and Its Owners for the Past Two Centuries,” *Attakapas Gazette* 14 (Summer 1979): 53. See also Eugene W. Hilgard, “On the Geology of Lower Louisiana and the Salt Deposit on Petit Anse Island,” in *Smithsonian Contributions to Knowledge*, Vol. 23 (Washington: The Smithsonian Institution, 1881), 1-34.

⁹ Glenn R. Conrad, “Wilderness Paradise,” 56-57; St. Martin Parish Conveyances, Vol. 8, Page 200, Act 7421; St. Martin Parish Conveyances, Vol. 8, Page 236, Act 7451; St. Mary Parish Conveyances, Book D, Page 100, Act 1895; see also St. Mary Parish Conveyances, Book D, Page 75, Act 1857.

and one-sixth arpents to neighboring farmer Dephi Lelou for \$250.¹⁰ As part of the transaction, Lelou agreed to give Miller the rights of way for a road across the property from the back of their lands to the bayou and for a causeway across it. Though Miller would build the causeway, both would share the maintenance expenses of it and the road. Miller also entered into an agreement with other nearby landowners to secure a passage for the causeway and road. Such bridges were a necessary expense for local planters to traverse this bayou and adjacent marsh. The causeway that connected neighboring Petit Anse Island with solid prairie was two miles in length. Eventually, both Lelou and the causeway became sources of later litigation.¹¹

Nineteenth-century visitors to the island left several vivid descriptions. The elevation of the butte was only eighty-five feet; but it was enough to provide a scenic view of the surrounding countryside, particularly Petit Anse Island and the Vermillion Bay in the distance. Breezes coming off of the Gulf of Mexico moderated the stifling heat and humidity of summer. Though one enthusiastic guest claimed that the island was devoid of mosquitoes, the time of his visit was the probable cause for their absence. The island even moved John Lloyd Lewis, the husband of Miller's niece, to verse: "I roam

¹⁰ The modern value of an arpent is difficult to determine. Its value varied from place to place, and it was a measure both area and distance. As a measurement of land frontage, an arpent was approximately 192 feet. As a measurement of area, an arpent is approximately .85 acres. For more on the problems on converting colonial Spanish and French measurements into modern equivalents, see Jack D. L. Holmes, "The Value of the Arpent in Spanish Louisiana and West Florida," *Louisiana History* 24 (Summer 1983): 314-320.

¹¹ St. Martin Parish Conveyances, Vol. 8, Page 187, Act 7408; St. Martin Parish Mortgage Book, Vol. E, Page 80, Act 2724; St. Martin Parish Mortgage Book, Vol. E, Page 80, Act 2725; Agreement, 28 August 1833, in District Court St. Martin Parish, *Jean Segre Darby v. John F. Miller et als.*, No. 4186; Hilgard, "On the Geology of Lower Louisiana and the Salt Deposit on Petit Anse Island," 14.

amid Arcadian bowers / And breathe the fragrance of the flowers. / It is indeed a charming place / Adorned with Nature's every grace."¹²

The crescent-shaped Lake Peigneur, named in French for its resemblance to a wool comber, bordered the northern half of the island, its "watery arms" forming a semicircle around a steep bank. Though one antebellum geological survey of the area suggested that the lake was an ancient volcanic crater, it is actually a solution lake, caused by a partial collapse of the salt dome underneath. The shimmering effect of the water was the result of quartz gravel amid the sands in the lakebed. A mile and a half to two miles long, the lake possessed both the "finest fish—and the biggest alligators!" During autumn the lake and adjoining marshes became a sportsman's dream, as variety of wild birds—ducks, teal, snipe, woodcock, killdeer, meadowlark— paused on their way to winter nesting grounds.¹³

From the lake, dense forest covered the island's crest to the gentle slopes on the opposite side. The thick undergrowth flourished amid the elms, cypresses, water oaks, red oaks, pin oaks, hackberry, pecan trees, and magnolias—"the noblest trees I ever saw" marveled one visitor to the island. But the "hoary Monarchs" of the island, in the prose of Lewis, were a grove of live oak trees. One astonished visitor described them as "an absolute expression of muscle, a vigorous anatomy . . . that recall to mind the marvelous

¹² Hilgard, "On the Geology of Lower Louisiana," 21; Warner; Osborne Macdaniel to E. P. Grant, 13 August 1847, Grant Papers; Gertrude C. Taylor, "How Do I Love Thee? The Life and Writings of John Lloyd Lewis," *Attakapas Gazette* 15 (Fall 1980): 137.

¹³ Charles Dudley Warner, "The Acadian Land," *Harper's New Monthly Magazine* 74 (February 1887): 350, 349; Mahlstick, "The Home of Jo. Jefferson," in Weeks Family Collection, University of Louisiana-Lafayette; Raymond Thomassy (?), "Intervention of Hydrothermal and Volcanic Causes in the Formation of Lower Louisiana," in Weeks Family Collection, University of Louisiana-Lafayette; Osborne Macdaniel to E. P. Grant, 13 August 1847, Grant Papers; Kniffen, *Louisiana: Its Land and People*, 70. A neighbor recorded the following selections served during a meal in her journal: oyster gumbo; roasted duck, teal, and jacksnipe; stewed oysters, baked custard, and mince pie. Eliza Anne Marsh Robertson Journal, 2 February 1855, Records of Ante-Bellum Southern Plantations Series, Series J, Part 5, Reel 12.

Laocoon of the Vatican, or the Torso which awoke the enthusiasm of Michael Angelo [sic].” The largest one in a cluster of five trees measured forty-five feet in circumference at its base. After one of these giants was uprooted in the early 1830s, curious locals proceeded to chop the oak into sections, and through counting its rings, ascertained that it was 987 years old.¹⁴

Drained by what is now the Vermillion River and Bayou Petit Anse, the topography of the basin between Miller’s Island and neighboring Petit Anse Island featured a unique blend of marsh and prairie, called *prairie tremblant*, or trembling prairie as it was sometimes translated in English. Though firm in places, parts of the prairie consisted of a thin mat of vegetation over water, and any stranger, man or beast, could find himself or itself sinking. Travel across the prairie from New Iberia was sometimes an adventure, particularly during and after inclement weather. Small, difficult-to-ford ponds dotted the land, and trails had a tendency to fade even in decent weather. Miller’s attorney Thomas C. Nicholls recalled spending a night on the marsh as a young man when he and his brother got completely lost trying to find a place to ford the water-slogged prairie while en route to a dance.¹⁵

The marsh and prairie provided rich grazing land for herds of cattle owned by Miller and his neighbors. As one neighbor affirmed, the trembling prairies were “unfit for any other purposes than those of pasturage.” The herds of the prairies of southwestern Louisiana were the main source of beef for the urban center of New Orleans, and many of the larger planters in the region established stock farms, or

¹⁴ Osborne Macdaniel to E. P. Grant, 13 August 1847, Grant Papers; Malhstick; Warner, “The Acadian Land,” 350.

¹⁵Richard Joel Russell, “Flotant,” *Geographical Review* 32 (January 1942): 79; Allen C. Redwood, “A Little World,” *Scribner’s Monthly* 22 (August 1881): 556; Lyle Saxon, *Old Louisiana* (New York: The Century Co., 1929), 115-116.

vacheries. Travel writer Darby attested to large herds roaming the nearby Opelousas prairie, witnessing “thousands of horses and cows, of all sizes, scattered over the interminable mead, intermingled in wild confusion.” This practice of free range grazing found support in the *Civil Code* of the state, which declared pasturage as a principal rural privilege.¹⁶

The cattle typical of the region were small—“they are sleek as moles, nimble and high-mettled, and elegantly formed,” but their stature enabled them to adapt to the soft soil of the trembling prairie. Though one visitor doubted the cattle and horses of the marsh were “web-footed,” he nevertheless asserted that the marsh was such “a treacherous surface, in which such animals, bred on firmer ground, will instantly sink and flounder.” Though the cattle’s production of milk was relatively low, observers considered their meat excellent. As a sideline to his production of staple crops, Miller raised cattle and owned a herd of five hundred head at the island when he died in 1857.¹⁷

Stock raising was not the only agricultural pursuit on the island that differed from the traditional southern staples of sugar and cotton. Near the lake was a fabulous grove of orange trees, which gave the island an alternative name, Orange Island. There is some dispute about who planted the trees. Though later owner Joseph Jefferson believed that Isaac Randolph did, Miller included the planting of fruit trees in a later list of improvements he made to the property. But for whoever planted the trees, they were not

¹⁶ Testimony of Norbert LeBlanc, in District Court St. Martin Parish, *John F. Miller v. Delphi Lelou*, No. 2483; Darby, *A Geographical Description of the State of Louisiana*, 86; Darby, *The Emigrant’s Guide to the Western and Southwestern States and Territories*, 76-77; Wheelock S. Upton and Needler R. Jennings, *Civil Code of the State of Louisiana* (New Orleans: E. Johns & Co., 1838), 108.

¹⁷ Edmund Dana, *Geographical Sketches on the Western Country* (Cincinnati: Looker, Reynolds & Co., 1819), 235; King, *The Great South*, 85; Darby, *Emigrant’s Guide*, 77; Estate of John F. Miller, Weeks Collection, LSU. Even the cattle inspired Miller’s nephew-in-law Lewis: “Sometimes the Cattle move quite slow / . . . Anon they play and leap and run / Their sleek sides glistening in the sun. . .” Taylor, “How Do I Love Thee?,” 137.

merely for personal enjoyment—they also provided revenue for the plantation. In 1847 visitor Osborne Macdaniel estimated that there were 1200 trees in the grove and asserted that the trees were forty years old, which predated both Miller and Randolph’s ownership of the island. Though the number of trees seems exaggerated, another visitor in 1868 reported that the grove produced a half a million oranges even though no one had tended the trees in the previous ten years.¹⁸

Miller told Macdaniel that an insect that infested orange trees in Florida nearly destroyed his grove two or three years earlier. The possible destruction of the grove must have caused him much distress, for he affirmed that he “would rather have lost \$20,000 than his trees.” Such a statement was not simply rhetorical—the grove earned \$3,000 for Miller each year, according to Macdaniel. Regardless of the pecuniary awards in citrus, abundant oranges also allowed Miller to indulge in neighborly hospitality. For example, the niece of his business partner Jonas Marsh once noted in her journal the receipt of a barrel of oranges from Miller.¹⁹

That Macdaniel would provide most descriptive account of the island during Miller’s ownership would seem unlikely—he was a Fourierist editor, part of a movement not considered compatible with the antebellum master class. But his visit offered an unusual perspective on the economic potential of plantations like Miller’s. The American followers of Charles Fourier’s brand of utopian reform opposed slavery, but sought a rational and “scientific” solution to the problem and often deplored the “fanaticism” of

¹⁸ Glenn R. Conrad, “Wilderness Paradise,” 57; Joseph Jefferson, *The Autobiography of Joseph Jefferson*, edited by Alan S. Downer (Cambridge: The Belknap Press of Harvard University Press, 1964), 343; Amended answer, 19 March 1849, *Thomas Randolph et als v. John F. Miller*; Osborne Macdaniel to E. P. Grant, 13 August, 1847, Grant Papers; King, *The Great South*, 86.

¹⁹ Osborne Macdaniel to E. P. Grant, 13 August 1847, Grant Papers; Eliza Anne Marsh Robertson Journal, 23 November 1854. The ten-year hiatus in orange production corresponded with the first decade after Miller’s death. Another visitor in the mid-1870s reported orange production on the island at 10,000 barrels, though he did not indicate that this was an annual harvest. Mahlstick, “The Home of Jo. Jefferson.”

the abolitionists. Born in the South, Macdaniel became the movement's leading expert on the issue of slavery and devised a plan for emancipation within the framework of Fourierist doctrine. To investigate the feasibility of his ideas, Macdaniel traveled in the spring of 1847 to the Attakapas, a surprising hotbed of Fourierist sentiment. Though small in number, these socialist sympathizers included St. Mary sugar planter John D. Wilkins, a leading financial contributor to the movement, and the editor of the newspaper in Franklin. On May 8 Macdaniel gave a lecture on Fourierist ideas there.²⁰

Macdaniel and his associates believed that in order for their emancipation plan to work a credible alternative for the plantation was necessary. To test this idea, they considered the formation of a model cooperative community. Since a key tenet in their plan was to "Secure the prosecution of Industry without interruption," Macdaniel evaluated the prospects for manufacturing as well as agriculture in the Attakapas during his travels in the region. Therefore proximity to water transportation and availability of power sources were important factors in his evaluation of a site.²¹

Searching for a location for his model community, Macdaniel stumbled upon Miller's Island and began to assess its prospects as the site. In his words, it was "the grandest site for a phalanx in the world—it cannot be beat at any rate." In addition to island's beauty and fertile soil, Macdaniel believed that nearby waterways solved his

²⁰ Carl J. Guarneri, "Two Utopian Socialist Plans for Emancipation in Antebellum Louisiana," *Louisiana History* 24 (Winter 1983): 5-24. Macdaniel thought the only drawback to the Attakapas were the mosquitoes, and he observed the lack of mosquitoes at Miller's Island noted earlier. Earlier in his letter to fellow Fourierist Elijah P. Grant, Macdaniel compared mosquitoes to lawyers, a bane for utopians. Both were actually in abundance in the Attakapas.

²¹ Guarneri, "Two Utopian Socialist Plans," 11-13. Though sometimes overly exuberant in his judgments, Macdaniel brought a perspective on the economic potential of the region that differed from the typical sugar planter, and some of his ideas were intriguing. For example, noting that the steam engines that power sugar houses were idle for most of the year, he implied that they could be used in some industrial capacity outside of grinding season. With an eye toward economic diversification, he suggested the development of a shoe industry to complement the region's livestock trade, and locally produced sugar could stimulate the creation of candy and confection businesses. Macdaniel to E. P. Grant, 13 August 1847, Grant Papers.

need for transportation and waterpower. He determined that Lake Peigneur had a slightly higher elevation than the surrounding marsh and prairie. He therefore proposed digging a canal running six miles from the lake to a nearby bayou (probably Bayou Petit Anse) that would “give a fall of six feet.” Water from this canal could be then harnessed as a power source, and it could provide a route to facilitate the shipment of goods and produce to Vermillion Bay ten to fifteen miles distant and the Gulf of Mexico. Moreover, this canal could not only drain surrounding marsh for agricultural production but also bring large areas into rice cultivation. Possibly from his conversation with Miller, Macdaniel learned that the island was not on the market, but he reported that it could be bought for the relatively low price of \$60,000. But despite his enthusiasm for Miller’s Island as the site of “a splendid demonstration,” plans for this model community as well as Fourierist schemes for a “scientific” way to emancipate slaves evaporated soon after Macdaniel’s visit.²²

Instead of a Fourierist phalanx or an industrial village, Miller’s Island remained a plantation worked by slaves and devoted to the production of staple crops. Miller approached his entry into planting with zest. Though he divided his time between New Orleans and the Attakapas in the 1830s and 40s, he had no intention of becoming an absentee owner of his sugar estate. Miller attempted to learn all he could about sugar planting in the months before the completion of his purchase of the island. As revealed in the letter quoted in the introduction to this chapter, he relied on the experience of his neighbor John C. Marsh to provide instruction in the intricacies of sugar production. Miller asked him about the number of hands needed to attend the cane crop and inquired about the availability of a brick maker whose work for Marsh’s brother, Jonas, Miller

²² Macdaniel to E. P. Grant, 13 August 1847, Grant Papers.

found impressive. He also asked John C. Marsh to inform him about necessary supplies and articles needed for the “comforts” of the slaves. From another planter he sought advice on the hiring of a sugar maker for his first grinding season. With guidance from his new friends and associates in the Attakapas, Miller quickly mastered the details of running a sugar plantation.²³

Though at first a novice in the sugar planting trade, Miller had what Randolph did not—capital to improve the operations of the plantation. In his inquiry to Marsh regarding the size of the plantation workforce, Miller realized that Randolph did not have enough labor to attend to the crops effectively and probably planned to transfer slaves he owned from New Orleans or to buy more. Once he purchased the tract, he immediately invested his resources to make Miller’s Island a profitable plantation. In a later case against Randolph’s heirs, Miller demanded \$20,000 as compensation for his improvements if the court’s decision forced him to relinquish ownership of the island. His list of general improvements on the property included buildings, fences, and the planting of fruit and ornamental trees.²⁴

Although that sum may have been exaggerated for legal effect, witnesses in the case attested to Miller’s investment in the plantation. He tore down all of the dilapidated buildings that existed during Randolph’s ownership, though one witness recalled that he

²³ Miller to John C. Marsh, 24 May 1833, and John F. Miller, St. Martinsville, to Joshua Baker, Franklin, 27 August 1833, in *Thomas Randolph et als v. John F. Miller*. Miller needed the bricks for the construction of his new house on the island, which had a brick bottom story and a wooden upper story. Communication with Glenn R. Conrad, 17 June 2002. This half brick/half wooden plan was typical for Creole-style plantation houses in antebellum Louisiana. See John B. Rehder, *Delta Sugar: Louisiana’s Vanishing Plantation Landscape* (Baltimore: Johns Hopkins University Press, 1999), 70-71. Large sugar planters desired security from fluctuating commodity prices and often diversified their staple crop production. With the acquisition of additional sugar producing property, Miller primarily grew cotton at the island by the 1840s.

²⁴ Miller to John C. Marsh, 24 May 1833, and amended answer, 19 March 1849, *Thomas Randolph et als v. John F. Miller*.

repaired one old building. Miller erected a new house for himself plus a new sugarhouse, blacksmith's shop, slave cabins, corncribs, and stables. One witness estimated that Miller spent \$2000 on fencing. The causeway discussed earlier cost from \$800 to \$1200. Another witness added that he ditched "a great deal," and the land was worth two dollars more per acre as a result. Estimates of the total value of the buildings and improvements varied—one witness estimated the new sugarhouse and appurtenances at \$5-6000, another had the buildings at \$8000, while a third placed the total at \$10,000. Fortified with such financial resources, Miller looked to expand his holdings along the Teche.²⁵

Though the island remained his centerpiece, it was not his only agricultural investment in the Attakapas. By the late 1830s Miller either owned outright or was a partner in four additional plantations or large tracts of land plus a distillery, all in the vicinity of New Iberia. These purchases tied Miller's financial fortunes with John C. Marsh and his brother Jonas, one of the most important planting families in that part of St. Martin Parish. Another associated family, the Morses, included a congressman, Isaac E. Morse, by the 1840s. Bitter litigation between Miller and the Marshes later in the 1840s arose from their aggressive investing in land and plantations in the 1830s. The Marshes also engaged in practices that, like Miller's, may seem unethical to modern eyes, but was a product of a determined approach to business that led to copious litigation.²⁶

²⁵ Testimony of David Hays, Onezine Giroir, Francis Segura, Daniel French, and Drauzin LeBlanc, *Thomas Randolph et als v. John F. Miller*. Standing water is damaging to sugar cane. Therefore, slaves spent much time maintaining ditches to provide good drainage from the cane fields, particularly in the winter before the cane sprouted. A lack of labor to insure good ditches could have contributed to Randolph's poor sugar harvests.

²⁶ Ann Patton Malone, *Sweet Chariot: Slave Family & Household Structure in Nineteenth-Century Louisiana* (Chapel Hill: University of North Carolina Press, 1992), 92-103. In 1818, in preparation to begin planting in the Attakapas, John C. Marsh and his partner William Stone engaged in a scheme to buy and funnel slaves from New Jersey and New York in order to stock his plantation with slaves. This was in violation New Jersey's gradual emancipation laws.

Northerners migrated to the Attakapas in the 1810s and 1820s to make fortunes in cotton and later sugar planting and achieved prominence in the region on par with emigrants from the South. The Morse and Marsh families hailed from the towns of Elizabeth and Rahway, New Jersey. Nathan Morse first emigrated from New Jersey to Louisiana during the territorial period to capitalize on the new opportunities offered to ambitious young lawyers there. By 1808 he had opened a law office in New Iberia and become a leading member of the bar in both the Attakapas and later New Orleans. His arrival in the region apparently encouraged other members of his extended family to come, too. In 1818 John C. Marsh began to buy land on Petit Anse Island and engage in planting there, and by the end of the next decade, his brother Jonas had arrived in the Attakapas, already married to Morse's younger sister Elizabeth.²⁷

By the 1820s Morse had acquired from his father-in-law a tract of land below New Iberia with a frontage of seven arpents along the Bayou Teche with the standard depth of forty arpents. Probably preoccupied practicing law in New Orleans, Morse failed to pay taxes on the tract. In 1822 the sheriff seized and sold the tract for \$23.90 in back taxes for the previous two years. Morse bought the land back from its purchasers in 1824 via John C. Marsh. Morse entered into a partnership with his brother-in-law Jonas Marsh to develop the tract into a sugar plantation probably in 1828, the year he finally recorded his re-purchase of the tract. A secure title was important tool in any exploitation

²⁷ Dr. Edward C. Morse, "The Morse Family in Louisiana," *Louisiana Historical Quarterly* 7 (July 1924): 441-442; Saxon, *Old Louisiana*, 117-118; Ann Patton Malone, *Sweet Chariot*, 92-103. See also Gertrude C. Taylor, "The Saga of Petite Anse Island," *Attakapas Gazette* 19 (Winter 1984): 158-164.

of the “sugar gold fields;” but their plantation did not begin production at least until 1830.²⁸

Unfortunately, very little information exists regarding the partnership of Morse and Jonas Marsh or their plantation. If the later partnership between Miller and Marsh were any guide, Morse probably put up a larger portion of the capital for the plantation and continued to practice law in New Orleans while Marsh personally managed planting operations. In an inventory taken after Morse’s death in a steamboat accident in 1833, the plantation had a value of \$32,130.77 and contained a slave community of twenty-three men, women, and children. Though not referred to in the inventory, the plantation also included a rum distillery. The Morse/Marsh venture in sugar and rum was apparently successful. In a letter to his wife in late 1833, Morse reported that he had just finished the arduous job of settling the annual accounts of the distillery and expected a profit of \$15,000 for the partnership once he balanced all of their expenses and losses.²⁹

But with Morse’s death, Jonas Marsh needed a new partner, and Morse’s wife and son had little interest in keeping a share of the sugar estate. Miller was available and possessed enough capital to further his holdings in the Teche country. Miller was well acquainted with both the Marsh brothers and Morse before his entry into sugar planting.

²⁸ Glenn R. Conrad, *New Iberia: Essays on the Town and Its People*, (Lafayette: Center for Louisiana Studies, 1986), 53-54; St. Martin Parish Sheriff’s Book, Vol. A, Page 100, Act 92; St. Martin Parish Conveyances, Vol. 4, Page 150. Under Louisiana law, Morse had two years to buy back the land from its purchasers at the sheriff’s sale for the amount of the purchase price plus 20% interest. There is record for sugar production by Morse and Jonas in the sugar report of 1828-29. Degalos, “Statement of Sugar,” 65-68.

²⁹ St. Martin Parish Estates, Estate of Nathan Morse, No. 751; Nathan Morse to Martha C. Morse, 9 October 1833, Morse-Wederstrandt Family Papers, Tulane University. The partnership also owned a tract of woodland on the opposite side of the Teche, bought at a sheriff’s sale in 1831. See District Court St. Martin Parish, *Eli Riggs v. J. Y. Gibson*, No. 1586. The Morse estate sold their share in this tract to Miller in 1837. St. Martin Parish Conveyances, Vol. 10, Page 153, Act 8116. Unfortunately, there are no data regarding the distillery’s production of rum. In the summer of 1835, though, the shipping notes of a New Orleans newspaper reported the arrival of a total of 120 puncheons and 145 barrels of rum from Miller in three shipments from the Attakapas. *New Orleans Bee*, 17 June 1835, 25 June 1835, 3 July 1835. A puncheon equals 72-120 gallons, while a barrel equals 30-40 gallons.

John C. Marsh acted as an intermediary during his purchase of the island. Familiar with Randolph's difficulties, he probably made Miller aware of its availability. Miller probably knew Morse through business and litigation in New Orleans. While Miller settled the purchase of the plantation from Randolph, Morse accompanied him on a trip to the Attakapas in 1833 with a few slaves, possibly to augment the plantation's workforce. Before becoming partners with Marsh, Miller had entered into an earlier deal with Jonas Marsh to secure hogs for his new plantation. After the settling of Morse's estate, his widow sold her share of the New Iberia plantation to Miller and Jonas Marsh for \$17,453.52. With the sale, the new partnership known as Jonas Marsh & Co. was born.³⁰

Sustained by the profits from Marsh & Co. and Miller's sawmill in New Orleans, the partners continued to buy land and plantations in the region at a fast pace. At an estate sale in April 1836 Jonas bought for Marsh & Co. a sugar plantation along the Bayou Teche above New Iberia at a large bend in the bayou known at Fausse Pointe. The buildings, improvements, and community of thirty-seven slaves cost the firm \$44,000. Later it would become Jonas's principal residence. In October 1836 they bought five tracts of undeveloped land on either side of the Teche also at Fausse Pointe from Joseph Thomas, who inherited them after the death of his granddaughter. Collectively known as the "Ballow" tract, this property cost the partnership \$10,603. Miller later purchased for himself the adjoining tract of land below the New Iberia plantation from Daniel W. Coxe

³⁰ Miller to John C. Marsh, 24 May 1833, *Thomas Randolph et als v. John F. Miller*; St. Martin Parish Conveyances, Vol. 9, Page 360, Act 7802; Conrad, *New Iberia*, 54. For clarity I will call this plantation the New Iberia plantation. Miller and Jonas often transferred their shares of the New Iberia plantation back and forth according to their financial need. See for example, St. Martin Parish Conveyances, Vol. 9, Page 503, Act 7918; St. Martin Parish Conveyances, Vol. 10, Page 151, Act 8114; St. Martin Parish Conveyances, Vol. 10, Page 302, Act 8245.

of Philadelphia for \$10,700 in April 1839. This undeveloped “Coxe” tract contained twenty arpents fronting the Teche to a depth of eighty arpents. Though it probably shared resources with the next-door New Iberia operation, Miller considered this tract a separate plantation in listing his assets in his later bankruptcy filing.³¹

Eventually, Miller had to confront litigation that threatened his enjoyment of all of his holdings in the Attakapas. Some of these suits surfaced in the wake of his bankruptcy and the bitter dissolution of his partnership with Jonas Marsh that I will discuss in chapter four. Other suits concerned disputes over property claims, rights of way, and waterway rights that I will discuss later in this chapter. But the first case I will examine in depth did not take place until 1848, after Miller had been established as a planter for fifteen years. It grew out of the sale of Randolph’s property to Miller.

In 1848, the heirs of Isaac Randolph sued Miller for monies due them from their mother’s estate that they did not receive from the sale of the island plantation in 1833. This case is an excellent example of social and financial consequences of failure in antebellum agriculture, and of the way the law, particularly debt and estate law in this instance, shaped the character of pecuniary disappointment. In addition, Randolph provided an instructive contrast to Miller—someone without deep resources and without the same level of legal skill. The case file also offers a rare cache of letters and documents regarding Randolph’s ownership and Miller’s purchase of the island that reveals the particulars of their negotiations.

³¹ St. Martin Parish Estates, Succession of Elmire Broussard, wife of Jean Julian Rousseau, No. 732; St. Martin Parish Conveyances, Vol. 10, Page 48, Act 8013; St. Martin Parish Conveyances, Vol. 11, Page 344, Act 8514. I will refer to the plantation as the Fausse Pointe plantation. The two other tracts I will refer to as the Ballow tract and the Coxe tract.

Isaac Randolph represented that segment of white antebellum population that aspired to enter into the planter class and briefly crossed the threshold, only to meet failure. Little is known about his origins. A later owner of the island thought he was a “Scotchman.” On his arrival in St. Martin parish he may have worked on Petit Anse Island with his brother Hugh for Major Jesse McCall, who purchased tracts of land on that island in 1810. In 1812 Randolph first appeared in the registered St. Martin parish conveyances when he, along with McCall and Hugh, purchased a thirteen-year-old male slave from Virginia. To take advantage of salt shortages during the War of 1812, McCall, the Randolph brothers, and later planter John Palfrey established a salt works on the island to extract salt from its briny springs. That endeavor ended as salt prices returned to normal with the end of the war. In 1814 Randolph made his connection to McCall stronger with a marriage to his daughter Eliza and remained a trusted member of the family, acting as McCall’s agent at times.³²

In his drive to become the proprietor of his own sugar plantation, Randolph aggressively acquired tracts of land in 1819 on the right bank of the Mississippi River in Iberville Parish across from the town of Plaquemines. But he abruptly abandoned his activities there in less than a year, not even pausing to pay his debts to a neighbor, who later sued him in vain. He had probably received word by then of the availability of a tract of land on the island across the marsh and prairie from his father-in-law’s property.

³² Jefferson, *The Autobiography of Joseph Jefferson*, 343; Taylor, “The Saga of Petit Anse Island,” 160-161; St. Martin Parish Conveyances, Vol. 1, Page 93; Conrad, *New Iberia*, 109; John Palfrey, Attakapas, to Henry Palfrey, New Orleans, 2 January 1814 and 22 March 1815, in the Palfrey Family Papers, LSU; St. Mary Parish, Transcript of Marriage, Isaac Randolph and Eliza McCall, 5 October 1814, in *Thomas Randolph et als v. John F. Miller*; St. Martin Parish Estates, *Succession of Jesse McCall*, No. 406. Palfrey first refers to Isaac Randolph in 1811. The salt works were briefly a success. Producing as much as 200 barrels of salt a month, it helped Palfrey pay off debts to New Orleans merchants Beverly Chew and Richard Relf. John Palfrey, Attakapas, to Rezin D. Shepherd, New Orleans, 5 November 1811, and John Palfrey, Attakapas, to Chew & Relf, New Orleans, 2 January, 15 February, and 20 July 1814, in the Palfrey Family Papers.

Also, with Jesse McCall possibly in declining health, his wife may have wished to live closer to her family. In March 1820 Randolph completed the purchase for a total sum of \$2100. Though planting was his primary occupation on the island, a reminiscence written at the end of the century claimed that Randolph was an agent of legendary pirate Jean Lafitte. Though any piracy on his part remains undocumented, the marshy inlets off of the Gulf of Mexico did provide safe havens for smugglers of slaves and other contraband.³³

Whatever talents Randolph may have had as a pirate failed him as a plantation owner by the end of the 1820s. Before then, his plantation apparently performed well. Randolph produced a respectable seventy-five hogsheads of sugar on the island in 1828. Later in the antebellum period, after most of the large planters converted to steam-powered sugarhouses, that number would be quite modest. In 1828, though, with only two steam-powered refineries in the entire Attakapas, only twenty-five out of ninety-nine planters produced more.³⁴

As the number of planters in the Teche region expanded the following year, the state's sugar industry suffered one of the most serious reverses in the antebellum era. Production fell statewide by nearly 45%, from 87,965 hogsheads in 1828 to 48,238 in 1829. In St. Martin Parish, of the nineteen planters reporting their sugar production in 1828, all but two made less the following year. Randolph's descent was one of most

³³ Iberville Parish Conveyances, Book G, Acts 16, 17, 115, 147, 178; Parish Court Iberville Parish, *John Maitden v. Isaac Randolph*, No. 551; Conrad, "Wilderness Paradise," 56; St. Mary Parish Conveyances, Vol. B4, Page 14, Act 35; Conrad, *New Iberia*, 103. Randolph sold his land in Iberville Parish to Thomas Brown on January 22, 1820, less than two months before he bought the island property. Iberville Parish Conveyances, Book G, Act 178. In an example of smuggling during this time, a suit on Jesse McCall's estate turned on a slave that the defendants claimed was illegally imported from Galveston in Spanish territory. St. Martin Probate Court, *Jacob Jennings v. Jesse McCall's Heirs*, No. 2.

³⁴ Degalos, "Statement of Sugar," 65-68. A hogshead roughly equals 1000 pounds of sugar. Sitterson, *Sugar Country*, 28.

precipitous. After making seventy-five hogsheads in 1828, he only produced eighteen the next year, a drop of 76%. Despite a neighbor's report sometime in the early 1830s that one of his crops was good, ensuing harvests did not improve his sugar production dramatically. In 1831 Randolph estimated that he made about 40,000 pounds of sugar, or only about 40 hogsheads.³⁵

As a consequence of his difficulties, Randolph lacked the capital to make improvements on the plantation, and this lack of investment contributed to his inability to produce enough sugar to cover his debts. In the suit brought by his heirs against Miller, one witness described the buildings on his plantation as "very bad" but considered the sugarhouse as "passable." Another recalled that the land had few improvements, just a small enclosure, a small dwelling, and a small sugarhouse with "little" slave cabins and a corncrib. Moreover, as Miller and Marsh understood, the number of slaves under Randolph's command was not enough to insure the efficient operation of his sugar plantation. With only eleven adult slaves on the plantation, Randolph had to hire a free man of color to augment his workforce in 1828.³⁶

Even before the terrible 1829 crop, Randolph had trouble satisfying his debts, possibly causing him to sell a portion of his prairie land in 1828. Meager sugar harvests in subsequent years made repayment impossible. Though perhaps more a reflection on his difficulties than Randolph's character, St. Martin parish merchant and later clerk of court Ransom Eastin recalled that "Randolph was not punctual in his payments—He

³⁵ Degalos, "Statement of Sugar," 65-68; Account of John Brownson to Isaac Randolph, and Isaac Randolph, New Town, to John Brownson, St. Martinsville, 14 January 1832, in *Thomas Randolph et als v. John F. Miller*; L. J. Smith, Bachelor's Hall, to David Weeks, Grand Cote, 22 November 1830 (?), David Weeks Collection, Louisiana State University. By comparison, Randolph's neighbor John C. Marsh produced just over half the sugar in 1829 that he made in 1828, from 130 hogsheads to 68.

³⁶ Testimony of David Hays and Onezine Giroir, *Thomas Randolph et als v. John F. Miller*; St. Martin Parish Conveyances, Vol. 4, Page 82, Act 6276; St. Martin Parish Conveyances, Vol. 5, Page 227.

appeared to be always in difficulty in precuniary [sic] matters.” In 1827 he confronted a suit over a note due six years earlier given in the purchase of a tract of land. Ten creditors sued him from 1829 to 1831 seeking payment for accounts and notes totaling \$5227.25 ¼. Among the plaintiffs were local merchants who used the court to force him to pay his accounts for plantation supplies: \$668.86 owed to a store owned by the Muggah family, \$165.31 ¼ owed to Benjamin Turner for goods and merchandise, \$502 to Eastin. Eastin also divulged that merchants usually dealt with delinquent planters through settling “by note for accounts due, and . . . [giving] further time to the debtor.” But no matter what his predicament was, even accommodating merchants eventually had to resort to the courts to insure payments of debts due.³⁷

Before the grinding of the sugar cane began for the disappointing 1829 season, Randolph nevertheless showed confidence that could meet his obligations. He planned to mortgage his plantation to pay a debt owed to neighbor John C. Marsh and lawyer John Brownson and informed Marsh that “rest assured you will see me freed from my present debts [,] let the consequences be hereafter what it may.” But he nevertheless betrayed anguish that his neighbor contemplated legal action to force payment. In his words, “I cannot believe it nor will I as I am certain [sic] you know that my intentions have always

³⁷ St. Martin Parish Conveyances, Vol. 4, Page 118, Act 6292; Testimony of Ransom Eastin, *Thomas Randolph et als v. John F. Miller*. These suits were as follows: St. Martin Parish District Court, *Honore Carlin v. Isaac Randolph*, No. 1318; *Alfred Hennen v. Isaac Randolph*, No. 1435; *John Brownson v. Isaac Randolph*, No. 1452; *Jean Casteneau v. Isaac Randolph*, No. 1456; *James Muggah v. Isaac Randolph*, No. 1483; *John L. Harris v. Isaac Randolph*, 1505; *Benjamin Turner v. Isaac Randolph*, No. 1508; *George J. Conn v. Isaac Randolph*, No. 1529; *Patrick M. Wilkins v. Isaac Randolph*, No. 1531; *Joseph Dubuclet v. Isaac Randolph*, No. 1550; *Herbert Eastin v. Isaac Randolph*, 1632. Illustrative of his mounting problems before 1829, Randolph wrote to Brownson in 1828: “Strange it is I am not able to collect one doller [sic] for sugar that I have sold.” Isaac Randolph, Lake, to John Brownson, St. Martinsville, 13 January 1828.

to avoid difficulties with all men.” However, debt and litigation involving neighbors and associates soon became issues that he could not avoid.³⁸

For planters in financial distress, private embarrassments became public knowledge when a creditor brought an action before the courts. If the court rendered a decision in favor of the plaintiff and the defendant did not have the money to pay the judgment, the judge then issued a writ of *feri facias* ordering the sheriff to seize property belonging to the defendant sufficient to satisfy the judgment. The sheriff then sold the property at a public sale in accord with the law. Among the stipulations governing antebellum sheriff’s sales in Louisiana was the requirement that the sheriff must advertise the time and place of the sale in both French and English in the local newspaper post notices on the courthouse and church doors. It did not matter whether forces beyond his control caused his misfortune or poor decision making on his part. Once in the legal system, a planter could no longer hide his hardship.³⁹

Randolph was conscious of public and personal humiliation caused by his difficulties. In the spring of 1832 two men brought two separate claims against him before a justice of the peace in St. Martin Parish regarding his purchase of two pair of oxen at an estate sale two years before. Essentially a small claims court, the justice of the peace found for the plaintiffs for a total of \$87, and a parish court judge later sustained the judgment. Randolph had avoided the seizure of his property in earlier suits thanks to a settlement worked out with attorney John Brownson. Their agreement did not cover the

³⁸ Isaac Randolph, Lake, to John C. Marsh, New Town, 3 October 1829, in *Thomas Randolph et als v. John F. Miller*. See also Isaac Randolph, Lake, to John Brownson, Vermillionville, 9 November 1829, and Isaac Randolph, New Town, to John Brownson, Franklin, 5 April 1832. In the 1831 settlement Randolph owed Marsh on a note for \$777.39. Though he promised Marsh that he would complete his arrangements for mortgaging the plantation on October 4, there is no record of such a mortgage recorded in St. Martin parish in October 1829.

³⁹ See for example District Court St. Martin Parish, *John Brownson v. Isaac Randolph*, No. 1647; Upton and Jennings, *Civil Code of Louisiana*, 401.

action regarding the oxen, however, and he was unable to satisfy even this small sum. Though the case file does not show that the judge issued a writ of *fieri facias*, Randolph indicated as much in a harried letter to Brownson after a visit by the sheriff one July morning. Afflicted by an illness, he pleaded the lawyer: “I have for the first time in my life suffered a seisure [sic]—Will you oblige me so much as to settle the debt to save me from disgrace and loss.” Although it is certain that his neighbors knew of his problems, Randolph was nevertheless sensitive to the mark on his reputation that a seizure and public sale would bring.⁴⁰

Public embarrassment was not the only challenge to a planter’s honor that debt and legal reverses entailed. In a slave society, the master class clearly understood the perils of dependency and the virtues of freedom. But financial adversity brought the prospect of a loss of their precious independence to lawyers and creditors. For Randolph, his arrangements with the attorney John Brownson dramatically curtailed his autonomy over his household.⁴¹

Originally from New York, John Brownson was part of the wave of eager American lawyers who migrated to Louisiana during the early nineteenth century. He quickly established himself as one of the most successful attorneys in the Attakapas and in 1823 received an appointment as the first U. S. District Attorney for the Western District of Louisiana. Brownson represented the family of Randolph’s father-in-law after the death of Jesse McCall and his wife in 1821. The settlement of the McCall estate took

⁴⁰ St. Martin Parish Court, *Joseph Zepherin Mire v. Isaac Randolph*, No. 989, and *John Hagarty v. Isaac Randolph*, No. 990; Isaac Randolph, Lake, to John Brownson, St. Martinsville, July 1832, in *Thomas Randolph et als v. John F. Miller*.

⁴¹ For planter and yeoman mastery over their households and planter acute sensitivity to the meaning of freedom and slavery, see for example, Stephanie McCurry, *Masters of Small Worlds: Yeomen Households, Gender Relations, and the Political Culture of Antebellum South Carolina Low Country* (New York: Oxford University Press, 1995); William J. Cooper, *Liberty and Slavery* (Columbia: University of South Carolina Press, 2000).

five years to complete, and when finished, the estate owed Brownson \$1583.61 for advances made and debts paid for the succession. Randolph also owed Brownson an additional \$450.60. After the settlement of the estate, Randolph entered into an agreement with the attorney in which he promised to pay him the entire debt in three installments, the first due on 1 May 1827 and the last in 1829. As part of the deal, he mortgaged nine of his slaves. Randolph made none of the payments, however, so Brownson filed suit against him in 1829.⁴²

To add to Randolph's misery, his wife Eliza McCall died in December 1828, three days after giving birth to a child that also died. With her death, inheritance law complicated his financial situation. Louisiana was and still is a community property state in which spouses possess a half interest in property owned and acquired during marriage. When a marriage is dissolved through divorce or the death of one of the spouses, the property is then divided equally between the spouses or between heirs. Therefore, with the death of Eliza, her three surviving children became entitled to a half share of the family estate, her husband the other.⁴³

The administration of the estate followed the provisions laid out in the *Civil Code* of the state. Randolph petitioned and the court quickly confirmed him as the natural tutor of his three minor children. The *Code* mandated that an inventory be made of the community estate, and in July 1829 two neighbors assessed the Randolph property at \$20,383.50. The court then approved the decision of a family meeting to adjudge the

⁴² St. Martin Parish Conveyances, Vol. 2, Page 167, Act 5798; St. Martin Parish Estates, *Succession of Jesse McCall*, No. 406; *John Brownson v. Isaac Randolph*, No. 1452. The information on Brownson found at <http://politicalgraveyard.com>.

⁴³ Answer of Mary McCall, in *Thomas Randolph et als v. John F. Miller*; Conrad, *The Attakapas Domesday Book*, xix-xx; Upton and Jennings, *Civil Code*, 371. This is Article 2375. See also Harriet Spiller Daggett, *The Community Property System of Louisiana with Comparative Studies* (Baton Rouge: Louisiana State University Press, 1931).

entire property to Randolph at the appraised price. By that adjudication, the plantation became specially mortgaged to the Randolph children to secure payment and interest of their share of the estate. In addition, estate law authorized a tacit mortgage as well on the property as security for the tutor's administration.⁴⁴

The debts that Randolph incurred during the marriage became burdens on the estate once a parish court judge settled the community property in June 1831. Including the prior debt to Brownson, they totaled \$9411.93, and once deducted from the community, they left his children's share to less than one-fifth the appraised value of the estate. But before the settlement of the estate, Randolph resolved to remedy his pecuniary plight again and entered into another arrangement with Brownson. In exchange for the attorney's assumption of the other debts against the community, Randolph subscribed a promissory note to Brownson for \$6462.06, a sum to be paid on demand with an interest of 10%. The total amount now owed by Randolph and his children to the lawyer was over \$9000, including the earlier debt to Brownson with interest. Though the terms were steep, the settlement resolved all pending suits brought by creditors against him, providing a modicum of relief.⁴⁵

But as part of this new arrangement, the lawyer gained control over the marketing and sale of the planter's sugar. Randolph had to apply the profits from his 1831 and 1832 crop to satisfy the debts to Brownson. As a result, Randolph had to write him for instructions on when to ship his sugar to New Orleans, which factors with whom

⁴⁴ St. Martin Parish Estates, *Estate of Mrs. Isaac Randolph*, No. 624; St. Martin Parish Mortgages, Book C, Page 259, Act 2328; Upton and Jennings, *Civil Code*, 39, 40, 49-50, 52, 498-499. These articles include 267, 269, 338, 354, 3282, and 3285 of the *Civil Code*. In civil law a tutor manages the estate of a minor.

⁴⁵ *Estate of Mrs. Isaac Randolph*; Settlement, *John Brownson v. Isaac Randolph*, No. 1647; Accounts of Isaac Randolph and children to John Brownson, in *Thomas Randolph et al v. John F. Miller*.

to deal, and where to deposit any money made from the sales. Worried that a misstep might hurt their agreement, Randolph repeatedly expressed his desire to remain in close communication with Brownson in the midst of all of these transactions. Whatever independence Randolph once had in arranging his business dealings was now lost. Though he was undoubtedly anxious to get his affairs straightened, there was a touch of subservience in Randolph's letters as he requested more assistance from Brownson. In his appeal for help prior to the seizure of property in 1832, Randolph concluded that "[t]his favaur [sic] with others you have rendered me shall live wile [sic] I exist." Brownson nevertheless filed suit in October 1831 to secure his reimbursement from the June agreement and received a judgment in his favor by default a week later.⁴⁶

As interest accumulated on the debt, proceeds from Randolph's crop in 1831 and 1832 did not reduce the principal appreciably—he still owed Brownson more than \$9000 in early 1833. Selling the plantation was the easiest way to relieve his financial burden, and the action by Brownson in the fall of 1831 might have encouraged him to actively seek a buyer. As he approached putting the plantation on the market, associates of Randolph still thought well of his judgment regardless of his pecuniary adversity. Eastin recalled that he was not “a man who could be easily imposed upon in business transactions . . . [and] he appeared to be sufficiently careful in protecting his interest.” Parish judge Paul Briant concurred, stating that “he was an intelligent man, capable of

⁴⁶ Accounts Isaac Randolph to John Brownson; Isaac Randolph, New Town, to John Brownson, Franklin, 5 April 1832; Isaac Randolph, Lake, to John Brownson, St. Martinsville, 17 February 1833; Isaac Randolph, Lake, to John Brownson, St. Martinsville, July 1832, all in *Thomas Randolph et als v. John F. Miller*; *John Brownson v. Isaac Randolph*, No. 1647. For his subservient attitude, it is possible that Randolph was simply an emotional individual. On witness in another suit recalled that he once wanted to purchase a barrel of whiskey from a boarder at McCall's plantation. When he learned that it was already sold, a dispute arose and he destroyed the barrel. Testimony of John Fitzgerald in St. Martin Parish Probate Court, *Edward Dorr v. Jesse McCall's Heirs*, No. 1.

taking care of his interest in business transactions.” Randolph would need such dexterity in negotiations with a seasoned businessman like Miller.⁴⁷

The purchase of the island took nearly two years to complete. In January 1832 Randolph informed Brownson that he had sold the plantation for \$15,000, but did not name the purchaser in his letter. He just expressed his intention to meet with Brownson when the purchaser returned to New Iberia to discuss the matter further. Randolph spoke prematurely about completing the sale. Testimony in the later suit by Randolph’s heirs confirms that Miller was the buyer, but that sum represented an original offer. The parties apparently could not consummate the sale at that time, and a delay of more than a year ensued.⁴⁸

By May 1833 negotiations between Miller and Randolph resumed. Randolph’s asking price at that time may have amounted to \$21,139, based on the valuations of an inventory in the case file of the property under discussion. It consisted of his land, house, sugar mill, slave cabins, livestock, plantation implements, and a sailboat. The inventory also included ten slaves (five adults and five children) that Miller wanted to purchase and provided fascinating detail on their talents and value. For example, Jenny was a “first rate” house servant, described as a spinner, weaver, tailor, and sugar maker, while Charlotte earned the same label as a seamstress, weaver, and nurse. In addition, both possessed good character and had adjusted to the local climate, qualities prized by

⁴⁷ Accounts Isaac Randolph to John Brownson, testimony of Ransom Eastin and Paul Briant in *Thomas Randolph et als v. John F. Miller; John Brownson v. Isaac Randolph*, No. 1647. Randolph applied \$444.92 from the 1831 crop and \$710.98 from the 1832 crop to reduce the debt.

⁴⁸ Testimony of Joshua Baker; Isaac Randolph, New Town, to John Brownson, St. Martinsville, 14 January 1832, in *Thomas Randolph et als v. John F. Miller*.

planters. This assessor therefore added 20% for each of those qualities, bringing the value of each from \$700 to \$1008.⁴⁹

In a written proposal Miller offered Randolph \$20,000 for the inventoried property, \$5000 in cash, one-third of the balance paid in one year, another third in two years, and the last third in three years. As part of the agreement, Randolph would repair the sugar mill and make any additional repairs to get the plantation ready for that fall's sugar harvest and grinding season. Miller agreed to employ "hands" of Randolph at the rate of ten dollars a month until November at his discretion, in all likelihood the slaves on the plantation that Miller would not purchase. He also insisted that the purchase include not only Randolph's land but also the undeveloped half of the island owned by the Prevost family.⁵⁰

Though he erred in the negotiations by overlooking a few slave children in making his offer, the result pleased Miller. He did admit to John C. Marsh that though the offer was "not as much as perhaps he [Randolph] might wish." But he thought "it is a great sum & the payment good." But necessity also played a role in Randolph's acceptance of the proposal, and the chances were good at this time that Miller would pay his notes reliably. Randolph also attempted to purchase the Prevost half of the island at this time in accordance with the proposal. Later in May, Miller indicated to Marsh that Randolph should end his effort even though he was "extremely anxious to become sole

⁴⁹ John F. Miller, New Orleans (?), to John C. Marsh, New Iberia (?), 3 May 1833, in *Thomas Randolph et als v. John F. Miller*. The house and cabins were worth just \$500, supporting the claims mentioned earlier of Randolph's modest establishment on the island. But the brick sugarhouse, sugar mill, corn mill, and kettles were worth a more respectable \$3600. The livestock included merino sheep.

⁵⁰ John F. Miller to Isaac Randolph, no date, in *Thomas Randolph et als v. John F. Miller*.

owner of the island.” Miller wanted Prevost to lower his demand, and by the end of the year, he owned the entire island.⁵¹

Miller was scrupulous in his task, insisting that Randolph provide a clear list of everything that he purchased. But his most pressing concern was securing a clear title to the property he purchased. His proposal to Randolph insisted that the title must be free from any “embarrassments.” Miller already planned to use the plantation to secure the purchase of bank stock, and to guarantee the success of the transaction, it must not have any mortgages on it.⁵²

For further assurance of an unencumbered estate, Miller called upon Brownson. Up to this time the attorney played no part in the sale despite his heavy interest in Randolph’s affairs. Rather than a simple transfer of the plantation’s title directly from Randolph to him, Miller requested that Brownson have the property seized in accordance with the judgment in his suits against Randolph in 1829 and 1831. The lawyer would purchase the property in the sheriff’s sale and then sell it to him. Miller preferred this maneuver in order to ensure the elimination of the tacit mortgage on the property from Randolph’s tutorship. Otherwise, as attorney Joshua Baker recalled, Miller “would not

⁵¹ John F. Miller, New Orleans (?), to John C. Marsh, New Iberia, no date, and John F. Miller, New Orleans, to John C. Marsh, New Iberia (?), 24 May 1833, in *Thomas Randolph et als v. John F. Miller*. Due to an outbreak of cholera among his slaves, Miller remained in New Orleans by the end of May. It is not certain whether Miller made his proposal to Randolph in person in St. Martin parish or through the mail.

⁵² John F. Miller, New Orleans (?), to John C. Marsh, New Iberia (?), 3 May 1833; John F. Miller to Isaac Randolph; John F. Miller, New Orleans (?), to John C. Marsh, New Iberia, no date; John F. Miller, New Orleans, to John C. Marsh, New Iberia (?), 24 May 1833, in *Thomas Randolph et als v. John F. Miller*. The next chapter will have a full discussion of Miller’s use of his Attakapas holdings to secure bank stock and loans.

have accepted the sale from Randolph.” On May 7, 1833, the court issued a writ of *feri facias*, and the sheriff seized the property three days later.⁵³

With Brownson convalescing in the North during the summer of 1833, Baker, Brownson’s law partner and parish judge, acted as his agent and oversaw the sheriff’s sale. On June 15, 1833, the sale began at ten in the morning at Randolph’s residence on the island. When finished, Baker had acquired all of the land, buildings, improvements, and the slave community of twenty-three men, women, and children for \$11,626. After Baker deducted all of the debts to Brownson with interest from that sum, Randolph received a balance of in cash of \$114.67. Baker then settled some of the outstanding debts immediately. Two of his deceased wife’s siblings finally received their portions of their father’s estate, thus averting further suits against Randolph.⁵⁴

The sheriff’s sale was just a formality in the bargaining between Miller and Randolph; the transaction was still incomplete. Negotiations continued during the latter part of June amid a deadly outbreak of cholera in the region. The wife of prominent New Iberia planter reported that there were very few people in town except the slaves, but that few included Randolph, attempting to finalize the sale in trying circumstances. The stress had an effect on him. In a letter to Baker, he detailed his knowledge of the dead and dying around St. Martinsville and urgently requested the agent’s presence to expedite

⁵³ *John Brownson v. Isaac Randolph*, No. 1647; Testimony of Joshua Baker, *Thomas Randolph et als v. John F. Miller*.

⁵⁴ Testimony of Joshua Baker; John C. Marsh, New Iberia, to Joshua Baker, near Franklin, 13 June 1833, in *Thomas Randolph et als v. John F. Miller; John Brownson v. Isaac Randolph*, No. 1647; St. Martin Parish Sheriff’s Book, Vol. 1, Page 13, Act 10; St. Martin Parish Conveyances, Vol. 8, Page 168, Acts 7385 and 7386. Randolph had acquired four more adult slaves but lost one at least adult male since the inventory taken after his wife’s death. These acquisitions were not recorded in St. Martin parish. Though the owner of three plantations, Baker, a graduate of West Point, was a Unionist during the Civil War and briefly served as governor of the state during Reconstruction. Joseph G. Dawson, III, *The Louisiana Governors: From Iberville to Edwards* (Baton Rouge: Louisiana State University Press, 1990), 161-164.

the affair. He pleaded, “I hope in gods [sic] name you will come up . . . My fears and the trouble that I have experienced tels [sic] me to urge this matter to an end.” Fearing for his health, he desired quick action lest “misfortune [sic] will intervene in [sic] place us in difficulty.” Assuring Baker that conditions in New Iberia were still safe, he informed him that Marsh had authority to act for Miller and Judge Briant could come at “a moments [sic] warning” to notarize the agreement. Miller might even appear by that weekend to sign the papers in person.⁵⁵

Although it is not certain that Miller and Randolph finalized their May agreement then, they continued to bargain for ten additional slaves included in the sheriff’s sale but not in the earlier deal. On July 10, after riding through the night to Franklin, Randolph dispatched a note to Baker in which his exasperation with Miller finally showed. With his counterpart desperate to sell, Miller realized that he had the upper hand in their negotiations and pressed his advantage, a trait that he no doubt honed in his years of commerce in New Orleans. Randolph complained that “[m]y confidence in him is limited—he will take all advantages in his power I am certain [sic].” What particularly incensed Randolph was Miller’s insistence that he was the owner of “\$1000 dollars [sic] worth of property which I have not sold to him.” This “property” was possibly a slave that Miller thought was part of the earlier May agreement. To prove his point, Randolph asked Baker to gather all of his papers concerning the sale before Miller arrived in Franklin by steamboat around noon that day. Randolph also indicated the necessity of traveling to New Orleans to finalize the deal, probably in regard to the financing of the

⁵⁵ Mary C. Weeks, New Iberia, to David Weeks, New York, 26 June 1833, in the David Weeks Papers; Isaac Randolph, New Iberia, to Joshua Baker, Franklin, 26 June 1833, in *Thomas Randolph et als v. John F. Miller*. The most prominent casualty of the cholera outbreak in the region, according to the Weeks letter, was St. Mary planter Levi Foster.

sale. He asserted, “I am determined to go to N. O. [sic] with Miller and there remain untill [sic] all is complet [sic] or die in the attempt.” Sometime that day, Baker officially conveyed the ten slaves to Miller for \$4000.⁵⁶

Despite Randolph’s reference to the presence of parish judge and notary Briant to complete the bargain in June, it was a private transaction and no public record of it exists. It is therefore not clear if the terms they finally agreed on were the ones that Miller proposed in May. When Brownson and Miller recorded their part of the sale in St. Martin Parish in October, the stated price Miller paid Brownson for all of the property that Baker bought at the sheriff’s sale was \$19,500. Hence the attorney would have made a profit of \$7874 for his trouble. But there is a disparity between the official record and the details of the transaction. Instead of the entire amount recorded in the October conveyance, Brownson only received his amount for the debts and interest of his settlements with Randolph. Baker recalled that none of the notes that Miller used to purchase the property ever passed through the hands of Brownson. John Linton, a prominent factor in New Orleans, handled the notes that Miller used in the sale. The notes that Baker administered in the transaction, after various discounts, amounted to \$17,282.98.⁵⁷

In later years, as Miller expanded his holdings in the Attakapas, Randolph’s fortunes continued to wane as he moved around the South looking for a new start. Less than a year after the sale, Randolph was in Princess Anne County, Maryland. His health

⁵⁶ Isaac Randolph, Franklin, to Joshua Baker, Franklin, 10 July 1833, and Isaac Randolph, New Iberia, to Joshua Baker, Franklin, 25 July 1833, in *Thomas Randolph et als v. John F. Miller*; St. Mary Parish Conveyances, Vol. D, Page 66, Act 1844.

⁵⁷ St. Martin Parish Conveyances, Vol. 8, Page 236, Act 7451; Decision, Testimony of Joshua Baker, Statement of Mathew Nimmo, 28 August 1833, in *Thomas Randolph et als v. John F. Miller*. The slaves conveyed on July 10 in St. Mary were also included in the October transaction recorded in St. Martin.

restored, he expressed relief that the sale of his plantation was over, commenting that he was “sertain [sic] I was fortunate in my sale to Miller.” Randolph was in Maryland to price slaves with the intention of planting once more, this time in cotton. Though optimistic about his prospects, his inability to afford postage for his letter to New Iberia planter David Weeks did not bode well for him.⁵⁸

Instead of a return to planting, his next occupation was further down on the hierarchy of antebellum economic pursuits—slave trader. Randolph used the proceeds from the sale as capital to buy slaves in Maryland to sell in New Orleans. Miller in fact bought two slaves from him in July 1835 for \$1300, showing that there were no hard feelings between them after the sale of the plantation. But Randolph’s prospects did not improve. In 1835 he was in Missouri, where his eldest son later resided. By 1837 he had returned to Louisiana and died in New Orleans sometime in 1839 or 1840. Living in a seedy part of the city with his two youngest children, one acquaintance remembered him as “very poor.”⁵⁹

Since their father died destitute, the financial circumstances of the three Randolph children were obviously depressed. Randolph owed them two sums from the settlement of their mother’s estate in 1831, \$816.84 from the estate of her parents and \$4144.86 ½ from one half of the community. It is not certain who cared for the children living with Randolph at the time of his death, but no one in the family saw to the administration of their estate. In 1848, to recover the money due them with interest from the community and their mother’s separate estate, two Randolph children and the heirs of the third sued

⁵⁸ Isaac Randolph, Princess Anne, to David Weeks, New Iberia, 10 March 1834, in David Weeks Papers. It is possible that Randolph hoped that Weeks would commission him to buy slave in Maryland. He did offer to sell slaves to Baker.

⁵⁹ Testimony of Joshua Baker; Answers of Joseph Webber; Act of Sale, Isaac Randolph to John F. Miller, 29 July 1835, in *Thomas Randolph et als v. John F. Miller*.

Miller, now owner of the lands and slaves of their father. They based their claim on the privileged and tacit mortgages placed on the property to ensure their inheritance of their mother's estate, which they argued were still effective. To satisfy their demands, they asked the court to have Miller's plantation and slaves seized and sold.⁶⁰

In his answer Miller denied all of the plaintiff's allegations, and he insisted that Brownson also defend the suit as warrantor in the sale in 1833. This was somewhat disingenuous on Miller's part. Though Miller designed Brownson's involvement in the sale as a means to nullify such mortgages claimed by the plaintiffs, the attorney was nevertheless a passive participant in the negotiations, and he certainly thought that he was not liable for any of the plaintiffs' demands. Now living in Brooklyn, Brownson emptied his files of his correspondence relating to the sale and entered them in evidence in an effort to prove that he was not legally responsible as warrantor in the transaction. Baker's later testimony in the action stressed Brownson's lack of participation in the sale and the inability for him to be warrantor. Despite Miller's contention that he was warrantor in the sale, Brownson did offer several points in his answer to assist in Miller's defense, which were adopted in an amended answer.⁶¹

In his decision filed in April 1849, Judge Cornelius Voorhies found the position of Miller and Brownson more persuasive and rejected the claim of the Randolph heirs. Voorhies stressed that under Louisiana law it was a settled principle that plaintiffs in hypothecary actions must bring their suits "strictly within the rules which govern such

⁶⁰ Petition, in *Thomas Randolph et als v. John F. Miller*. At the time of the suit, Thomas Randolph resided in Shelby County, Missouri. Susan Randolph was unmarried and living in Livingston Parish, Louisiana. The wife and children of Jacob F. Randolph were also living in Livingston Parish. The plaintiffs asserted that their father used their mother's estate around 1823.

⁶¹ Answer of John F. Miller, Answer of John Brownson, Testimony of Joshua Baker, Amended Answer of John F. Miller, in *Thomas Randolph et als v. John F. Miller*.

actions.”⁶² In order to sustain such a hypothecary action, it was necessary for the person bringing the action to legally establish or liquidate their claim. Of the points offered by Brownson and adopted by Miller, the judge singled out the administration of Isaac Randolph estate after his death as an impediment to the plaintiffs’ right of action. Brownson contended that the plaintiffs’ claim had never been legally liquidated by a judgment against Randolph, their tutor, or through an accounting of the administration of the tutorship. Voorhies concurred. A tutor, in this instance, could establish such a legal claim through an accounting of the tutorship, which the *Civil Code* required a tutor to do at the expiration of a tutorship. When Randolph died, it was the obligation of other members of the family to appoint a new tutor for his still minor children.⁶³

The responsibility of naming a new tutor and giving an account of the tutorship fell to the nearest family. Though not singled out by the judge, Eliza McCall’s brother Milledge, under-tutor for the Randolph children, was the family member who most likely should have intervened to salvage their legal claim. But since their relations did not adhere to these legal formalities, Voorhies asserted that they bore the responsibility for any damages suffered by the plaintiffs, not Miller. Though the plaintiffs indicated that an appeal to the state supreme court was forthcoming, they never filed it and never recovered their inheritance.⁶⁴

⁶² In civil law a hypothecary action is a lawsuit to enforce a creditor’s claim regarding a hypothec, or a mortgage on property given to a creditor to secure a debt.

⁶³ Decision, Answer of John Brownson, in *Thomas Randolph et als v. John F. Miller*; Upton and Jennings, *Civil Code*, 51, Article 350. In civil law a tacit hypothecation is a lien or mortgage that is created by operation of law and without the parties’ express agreement, and a hypothecary action is a suit to enforce this claim. Among the other points made by Brownson and noted by Voorhies, Isaac Randolph and Jacob Randolph had sold four slaves in the late 1830s, including the two sold to Miller in 1835. Therefore the plaintiffs should have proceeded against that property as well.

⁶⁴ Decision and Notice from the clerk of the Louisiana State Supreme Court, in *Thomas Randolph et als v. John F. Miller*; Upton and Jennings, *Civil Code*, 43. In Article 292 of the *Code*, relations who fail

The dire financial straits faced by Randolph and his children by the end of the 1830s contributed to their inability to follow the provisions of state law regarding the administration of estates. Though debt and poor harvests contributed to the reversal of his fortunes, the lawyers and the law also contributed to his ultimate failure. When Miller encountered financial trouble in the coming years, he utilized bankruptcy laws and engaged in shrewd legal maneuvering to shield his estate from creditors. Federal bankruptcy law did not exist to help Randolph, and his inability to acquire better terms from Brownson led to the eventual sale of his plantation. Though Miller survived the threat posed by the Randolph heirs to his enjoyment of his island estate, litigation over land and water rights posed a constant menace to the smooth operations of his Attakapas domain.

to appoint a tutor are legally responsible for damages that the minor might suffer. An under-tutor is appointed to represent the minors in case their interest conflicts with the tutor.

CHAPTER 2: LAND AND LABOR LITIGATION IN THE ATTAKAPAS

After Miller purchased the island plantation from Randolph, he and Jonas Marsh settled into the business of sugar planting. In the operation of their sugar estates, litigation was a constant part of doing business. Two categories of litigation occupied the attention of Miller and Marsh, either separately or as partners in Marsh & Co. The first category was a series of lawsuits regarding land claims and waterway rights. The second category included suits that concerned the operation of their plantation and other investments.

Though antebellum planters were, in Gavin Wright's phrase, labor lords as opposed to landlords, litigation in the Attakapas over land holdings occupied a larger portion of a planter's time in court than cases involving slaves. Since Attakapas planters bought the most of their slaves at the markets in New Orleans, legal action took place in the courts of that city if a problem arose over the sale of a slave. Disputes over property, however, particularly in light of problematic land titles granted during the colonial era, were frequent occurrences in the local courts. The cultivation of sugar cane placed a premium on the availability of suitable land. Whereas cotton planters had seemingly endless land to exploit as they moved across the Old Southwest in the early nineteenth century, weather limited sugar cultivation to the southern part of Louisiana, and Attakapas planters in particular encountered the topographical limits of swamp and marsh. Therefore, any legal threat to a planter's ability to cultivate his property placed

his sugar investments in jeopardy; one could not easily engage in this type of agriculture anywhere else in the South.¹

Of the thirteen property suits that involved Miller and his partner Jonas Marsh, together or separately, I will concentrate on four that originated in district court and reached settlement on appeal by the state supreme court. Each suit focused on a particular aspect of Louisiana law regarding land and waterway rights. The first involved on the application of federal preemption rights in Louisiana. The second concerned the appropriation of public lands and an ensuing dispute over fencing and grazing rights. A third involved passage rights across the lands of a neighboring landowner. The fourth concerned waterway rights and the obstruction of waterways in the construction of causeways and dams. The courts relied on extensive testimony from the litigants and witnesses in the course of the suits, and this “local knowledge” provides fascinating insight into antebellum customs about land use in this region. In addition, I will also examine a fifth case that involved Miller in federal court over a claim to his plantation in New Iberia that made him a minor participant in the most notable legal saga in antebellum Louisiana.²

These property disputes draw attention to the possibility of class and ethnic tensions between Miller and his neighbors. Tensions between yeomen Acadian farmers and Anglo or Creole planters have been a persistent theme in the historiography of

¹ Gavin Wright, *Old South, New South: Revolutions in the Southern Economy since the Civil War* (Baton Rouge: Louisiana State University Press, 1986); for contested property claims in Louisiana, see Malcolm J. Rohrbough, *The Land Office Business: The Settlement and Administration of American Public Lands, 1789-1837* (Belmont, CA: Wadsworth Publishing Company, 1990), 130.

² The cases are as follows: District Court St. Martin Parish, *Jonas Marsh and John F. Miller v. Baumel Gonsoulin*, No. 2171, 16 La. 84; *John F. Miller v. Delphi Lelou*, No. 2483, 19 La. 331; *Jean Segre Darby v. John F. Miller et als.*, No. 4186, 6 La. Ann. 645; District Court St. Mary Parish, *John F. Miller v. Thomas H. Thompson*, No. 3742, 3 La. Ann. 567. On the concept of “local knowledge,” see Clifford Geertz, *Local Knowledge* (New York: Basic Books, 1986).

southern Louisiana. In general, these interpretations posit that the Acadians settled on the best lands alongside waterways like the Bayou Teche soon after their arrival in Louisiana in the late 1700s, only to be forced onto marginal lands as wealthier Anglo and Creole planters arrived during the sugar boom in the early 1800s. A recent study of landholding patterns in the Attakapas asserts that Louisiana's community property laws (that shaped the division of Randolph's property) had an even greater effect on the declining economic fortunes as the Acadians. Family property became divided into increasingly smaller pieces with each generation, thus limiting the profitability of the land for the owners. In three of the four district court cases examined, Miller faced less prosperous Acadians or native Creoles. Though tensions were high in these instances, a general pattern of ethnic and class antagonism between Miller and these neighbors is not clear. Miller's social circle in the Attakapas consisted of other Anglo elites, but the bitterest case of those examined here involved Miller and another Anglo planter.³

Miller was usually successful in these property cases, whether decided by a judge or a jury in district court. His suit regarding preemption rights, however, did not fare well. Though ultimately decided by the state Supreme Court, this, the first property case that Miller pursued in the Attakapas, derived from a federal antebellum land law. Though special preemption laws had been enacted previously, Congress passed the first general preemption act in 1830 in response to pervasive squatting by settlers on western lands. The preemption act gave settlers a preferential right to purchase the land they

³ For the class/ethnic tension argument, see for example Malcolm Comeaux, "Louisiana's Acadians: The Environmental Impact," in Glenn R. Conrad, ed., *The Cajuns: Essays on their History and Culture*, 3rd ed. (Lafayette: Center for Louisiana Studies, 1983), 109-123. For the revisionist argument, see Glenn R. Conrad, *Land Records of the Attakapas District: Volume 1, The Attakapas Domesday Book—Land Grants, Claims and Confirmations in the Attakapas District, 1764-1826* (Lafayette: The Center for Louisiana Studies, 1990), ix-xxvii.

occupied from the federal government at a reasonable price. In the first such act, settlers had the opportunity to buy up to 160 acres of land at \$1.25 per acre. The act expired after only one year, and public pressure forced Congress to pass additional preemption acts throughout the 1830s and 1840s. Each new act added requirements or made changes to the provisions of the 1830 law. The suit that embroiled Miller demonstrated the confusion that characterized the administration of the preemption laws and the conflicting stipulations that emerged from the various acts.⁴

Poor squatters were not the only ones to benefit from the preemption acts. In June 1836 Miller and Marsh exercised their right to purchase the back concession of the Fausse Pointe plantation that they acquired at an estate sale in April of that year. Their claim originated from a provision in the 1832 preemption law in which owners of land fronting waterways had a preference in the purchase of vacant tracts of land either adjacent or in the rear of their property if the vacant tract did not surpass the area of the front tract. Marsh and Miller made their application at the regional state land office in Opelousas, paid the price for the concession, and received their receipt and title to the tract. However, neighboring farmer Baumel Gonsoulin had already claimed a portion of this back concession, improved it, and refused to abandon his right to the property. Marsh and Miller filed suit in April 1837 to force Gonsoulin to give up the tract, tear down his fences and improvements, and pay \$1000 in damages.⁵

In his answer Gonsoulin averred that he was the lawful owner of 160 acres of the tract in accordance with the 1830 preemption act. Under that act, a settler on a vacant

⁴ Rohrbough, *The Land Office Business*, 161-176; Paul W. Gates, *History of Public Land Law Development* (Washington, D. C.: Public Land Law Review Commission, 1968), 219-247.

⁵ Petition and Supreme Court decision, in *Marsh and Miller v. Gonsoulin*; St. Martin Parish Estates, *Succession of Elmire Broussard, wife of Jean Julien Rousseau*, No. 732.

tract of public land had to demonstrate that he had settled and improved that tract prior to 1829. Witnesses affirmed the defendant's dogged determination to establish his own farm in the Attakapas wilderness. Gonsoulin began his improvement of the land in 1828, working by day and sleeping at his sister's at night. By the next year he resided on the property and grew cotton, corn, and cane.⁶

In May 1831, following the dictates of the 1830 preemption law, he applied to purchase the tract at the state land office, whose officers endorsed his application and allowed him to buy the tract. The land office refused to accept Gonsoulin's payment at that time, however, because their instructions stipulated that they could not accept any payments until the property had been surveyed and the township plats returned to their office. Gonsoulin was not alone. A lack of land office personnel and a strong demand for preemptions led to delays that plagued the administration of the preemption laws throughout the southern and western United States. In particular, there was a shortage of adequate surveys of western lands, and Congress compounded the problem by not appropriating money for new surveys in 1830. Despite their knowledge of his actions to gain legal title to the tract, Gonsoulin asserted that the plaintiffs determined to remove him from his land.⁷

Despite the strenuous attempt by Marsh and Miller to secure their back concession, both the district court and later the state supreme court ruled in favor of Gonsoulin. Though the plaintiffs averred that the expiration of the 1830 act ended the defendant's claim to the property, the district court judge pointed out that the law did not

⁶ Answer of defendant and testimony of L. Gonsoulin and L. Neusolin (?), in *Marsh and Miller v. Gonsoulin*; Rohrbough, *The Land Office Business*, 165.

⁷ Answer of defendant and Supreme Court decision, in *Marsh and Miller v. Gonsoulin*; Rohrbough, *The Land Office Business*, 166-169; Gates, *History of Public Land Law Development*, 226.

state when payment under the act should be made except in the case of lands offered for public sale. The law gave settlers the right to both surveyed and unsurveyed land, so the judge concluded that Gonsoulin's actions to secure his title entitled him to the land regardless of later preemption acts.⁸

The state supreme court affirmed the district court decision on the appeal of Marsh and Miller in 1840. The court remarked that Gonsoulin complied with all the stipulations of the law in his attempt to purchase the tract, but the federal government failed in its duty to survey the land and return the plat to the land office. The defendant should not be made to suffer for the failure of the government of the United States to meet its obligations under the law. Moreover, as the 1832 act authorized landowners to purchase "vacant" land adjoining their property, the court observed that the defendant already occupied the land claimed by the plaintiffs. Though Miller prevailed in other property disputes, the decision in his suit against the yeoman Acadian demonstrated that the power of planters in the legal system was not unassailable.⁹

Another dispute on the trembling prairie, this time centering on public lands and private enclosures, revealed further tensions between the planter and his neighbors of modest means. In stocking his herd, Miller purchased several head of "blooded" cattle, animals more valuable than the ordinary cattle that grazed the local prairies. To take good care of them and to limit their contact with the "country" cattle, Miller enclosed a

⁸ District court decision, in *Marsh and Miller v. Gonsoulin*. District court judge Henry Noyce handed down his decision in the suit against Baumel Gonsoulin on May 7, 1840. On that day two other cases involving Miller and Marsh against other members of the Gonsoulin family over the same tract of land were settled. In 1838 Marsh and Miller filed suit against Luzincourt Gonsoulin for cutting down trees on the property. In 1839 they filed suit against Joseph Gonsoulin over the same issue as the suit against Baumel. The suit against Luzincourt was settled for the sum of \$50 paid to the plaintiffs. The suit against Joseph was dismissed on motion of counsel at the cost of the defendant. District Court St. Martin Parish, *Jonas Marsh and John F. Miller v. Luzincourt Gonsoulin*, No. 2310, and *Jonas Marsh and John F. Miller v. Joseph Gonsoulin*, No. 2348.

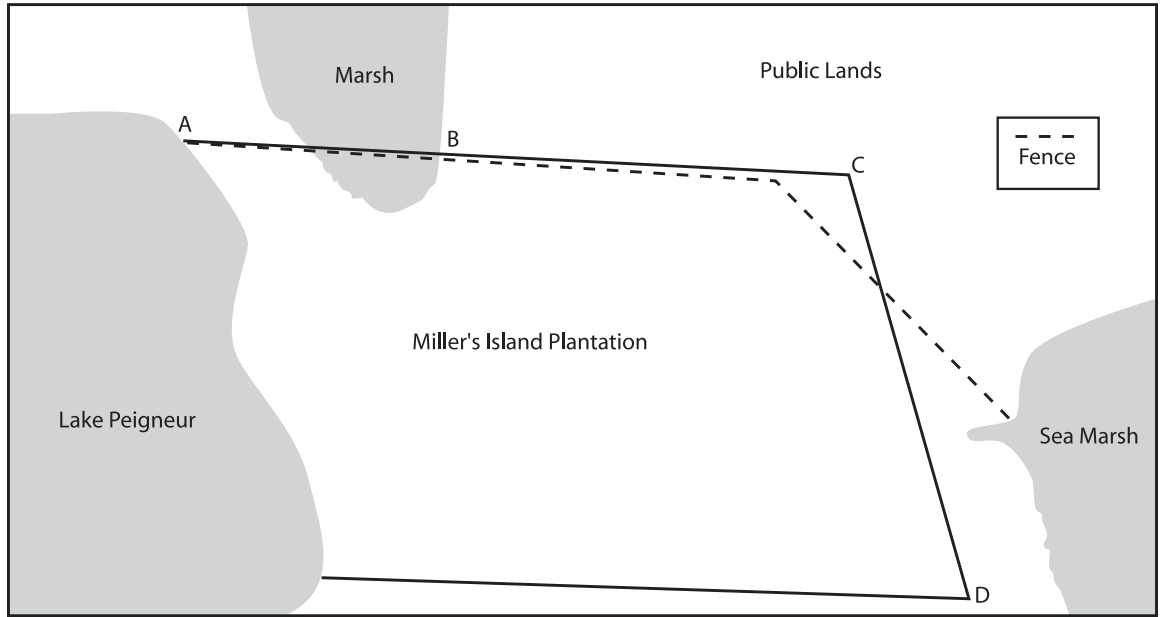
⁹ Supreme Court decision, *Marsh and Miller v. Gonsoulin*.

meadow with a fence in August 1837. The fence line ran largely along the northeastern side of the Miller's Island property, from Lake Peigneur to the eastern corner of his boundary, then ranged southeastward to a tract of nearly impenetrable sea marsh. With the fence in place, Miller's cattle could graze on the prairie adjacent to his plantation, described by one neighbor as "the best pasturage in the region;" but the barrier of fence and adjacent marshes prevented his herd from wandering too far from his sight. Miller constructed his new pasture, however, entirely on land in the public domain. This appropriation of public land for his exclusive use became the point of contention in *Miller v. Lelou*.¹⁰

In constructing his fence, Miller relied on the assistance of his neighbor Delphi Lelou. Lelou, four years earlier, had entered into an agreement with Miller to secure the right of way for his causeway and road. Lelou showed Miller how best to enclose the largest amount of land and how to use *pieux* efficiently, or fencing stakes, in the construction of the fence. The fence was likely a horizontal rail fence, or *pieux traverse*, that usually provided a barrier four to five feet in height. Miller designed the fence to "cut off the whole country," not only to cut off that rich quarter from the rest of the trembling prairie but also to sever his neighbors' customary grazing rights on that pasture. Lelou, however, believed that in exchange for his assistance to Miller in the building of the fence, he earned the right to still graze his cattle there. This was a right that Miller was reluctant to grant.¹¹

¹⁰ Supreme Court decision, Testimony of John Shaw and Nicholas Armand Broussard, in *John F. Miller v. Delphi Lelou*. Other legal records show Lelou's first name as Delphin, but I will use the spelling used in this case. The state supreme court decision mistakenly spells his last name Lelen.

¹¹ Supreme Court Decision, Testimony of Norbert LeBlanc, in *John F. Miller v. Delphi Lelou*; John B. Rehder, *Delta Sugar: Louisiana's Vanishing Plantation Landscape* (Baltimore: Johns Hopkins University Press, 1999), 156-157.



Survey, John F. Miller v. Delphi Lelou

As he had wintered his cattle on that prairie before the construction of the fence, Lelou persisted in passing his herd through the pasture enclosed by Miller's fence. Since an indirect route to the pasture was a nine-mile trail around the marsh and the gates in the fence could not handle the traffic of cattle, Lelou found that the removal of a section of the fence was the most efficient way to lead his herd onto the pasture. Lelou always put the fence back after his cattle passed through, and he always complied with Miller's requests to withdraw his herd from the prairie. Sometime during the winter of 1839-1840, though, Lelou decided not to heed Miller's request that he move his cattle.¹²

When he failed to comply, Lelou alleged, Miller ordered his overseer and his slaves to drive off Lelou's eighty-one head of cattle grazing on the enclosed pasture. In doing so, the overseer and slaves sent dogs upon the cattle and "beat & whipped" them, causing the loss and destruction of twenty-five of them. Miller's overseer, however, contended that there were only sixteen to eighteen animals in the enclosure and averred that he did not harass or beat them in driving them out of the pasture. Other witnesses minimized the number of cattle removed from the pasture and the damages to the herd that Lelou claimed.¹³

Frustrated over this latest trespass on his pasture, Miller filed suit against Lelou in February 1840, asking to court to order Lelou to desist from trespassing on the enclosure and seeking \$2000 in damages for cattle that escaped when Lelou removed the fence. In his answer, Lelou countered that the prairie consisted entirely of public lands, implying that Miller had no claim for exclusive possession. Lelou also demanded \$500 in compensation for the loss of his cattle during their removal from the pasture and prayed

¹² Testimony of Norbert LeBlanc and Santiago Segura, in *John F. Miller v. Delphi Lelou*.

¹³ Answer of defendant; Testimony of John Shaw, Drouzin (?) LeBlanc, and Norbert LeBlanc, in *John F. Miller v. Delphi Lelou*.

for a jury to hear the case. The court heard the suit in November of that year. Even though Lelou's fellow Acadians comprised the jury, their verdict favored Miller. But perhaps reasoning that no damages occurred or that any loss of cattle evened out, the jury awarded the planter only one dollar in damages. Though the law favored Miller, the Acadians did not.¹⁴

Lelou appealed to the verdict to the state Supreme Court. In its opinion, the court, citing an earlier ruling that only the federal government could disturb a person's possession and improvement of public lands if no private claim existed, affirmed the judgment in district court. The court showed no tolerance of Lelou's tactics, condemning his removal of the fences. Remarking that Lelou aided in the building of the fence and therefore knew that such an improvement would result in his exclusion from the land, the court thought his complaint ungracious. Though the extension of Miller's fence onto public lands violated the spirit of federal land law, the court recognized the pervasiveness of such actions throughout the state: "the lenient spirit in which it [public lands] has been administered, has, we may say, universally tolerated it [exclusive possession of public lands]." As a result, the court enabled Miller to keep his fence and his pasture on public land in tact. If the federal government wanted its lands left fallow, it would have to provide some means of enforcement.¹⁵

Rights-of-way were often essential to the success of a plantation. Some tracts of land owned by planters, not only agricultural tracts but also woodlands that provided fuel for sugar mills, were inaccessible by waterway or road. To gain access, easements

¹⁴ Petition, answer of defendant, and verdict, in *John F. Miller v. Delphi Lelou*.

¹⁵ Supreme Court decision, *John F. Miller v. Delphi Lelou*. Though Lelou only owed Miller one dollar, he was responsible for the court costs as loser in the case. By 1842 the costs totaled over \$250, over half due to the parish surveyor for his survey of the fence line. A reversal of the verdict by the supreme court would have saved Lelou this considerable expense.

(permissive entry) were necessary across adjoining property. The *Civil Code* explicitly granted such a right of passage to the landowner of an enclosed tract. The passage, though, must take the shortest route to the nearest public road, and an indemnity must be given to the owner of the land the passage crosses. The specifications of the location of the passage across that property and the compensation given to its owner sometimes evolved into disputes that came before the courts. One such case involved Miller in 1847.¹⁶

After the dissolution of his partnership with Jonas Marsh and his emergence from bankruptcy, Miller enlarged his Attakapas holdings by purchasing several tracts of land at estate sales in the late 1840s and early 1850s. Also included in this flurry of land acquisitions was a tract bought in 1846 of nearly 489 acres of public land east of the Bayou Teche in neighboring St. Mary parish. This wooded tract was located behind lands owned by St. Mary planter Thomas H. Thompson. Irregular in its dimensions, the bulk of the tract was eighty arpents from the Teche, or in the rear of Thompson's double concession. But a slice of this property cut between Thompson's double concession to the back of his front concession, or just forty arpents from the Teche. This section was surrounded on three sides by land owned by Thompson.¹⁷

Miller lacked access to his new tract from the public road alongside the Teche, so he asked attorney Thomas C. Nicholls to meet with Thompson and to try to obtain "an amicable arrangement." Nicholls undertook this meeting with Thompson in order to

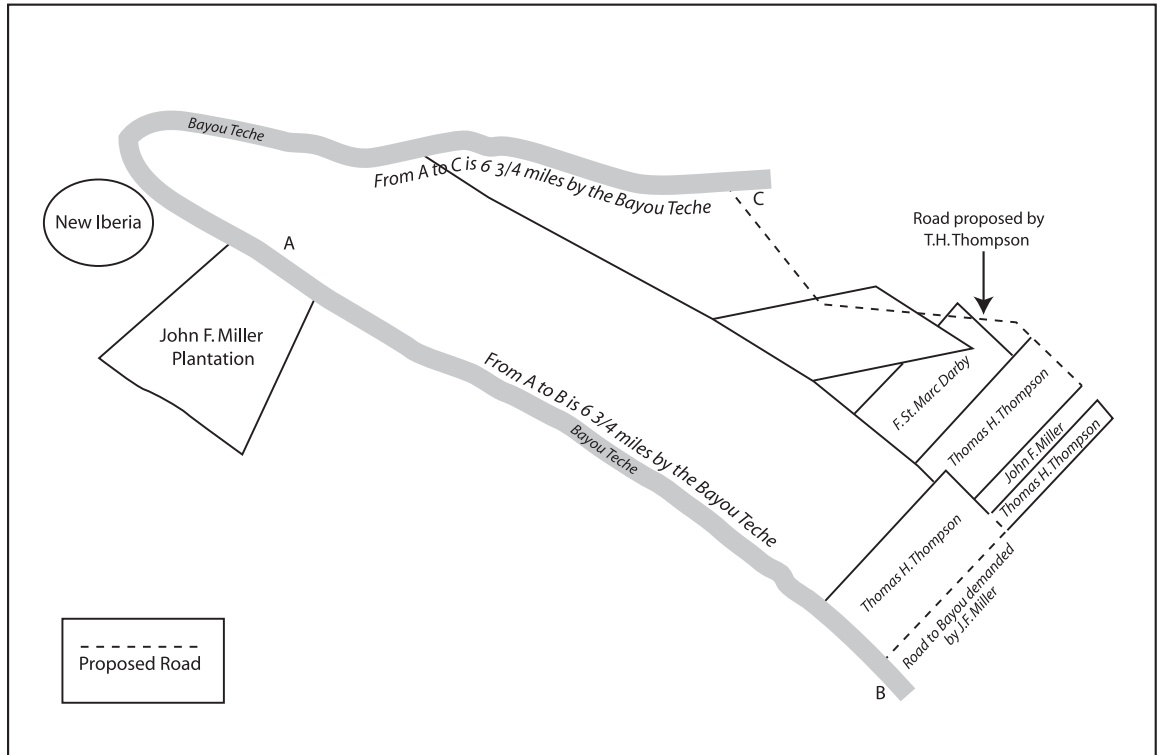
¹⁶ Wheelock S. Upton and Needler R. Jennings, *Civil Code of the State of Louisiana* (New Orleans: E. Johns & Co., 1838), 104-105, Articles 695-704. A similar suit involved Jonas Marsh. See District Court St. Martin Parish, *Jonas Marsh v. Robert Dugan*, No. 3920.

¹⁷ St. Martin Parish Mortgages, Book L, Page 193, Act 4629; Book N, Page 58, Act 5210; Book N, Page 431, Act 5489; Book O, Page 108, Act 559; Book P, Page 61, Act 5904; St. Mary Parish Conveyances, Vol. D, Page 14, Act 7891; Land Office Certificate and Survey Map, *John F. Miller v. Thomas H. Thompson*.

prevent a suit. It is clear that Miller contemplated litigation to secure his easement before discussions began. Miller offered Thompson, through Nicholls, two propositions. First, he would pay him whatever two arbiters would consider a fair price for the passage. Secondly, if that proposition did not appease him, then he would exchange his slice of double concession land for one of Thompson's tracts alongside the Teche and pay the difference in value between the two tracts. Instead, Thompson rejected both propositions and remained unresponsive when two other intermediaries presented a written demand from Miller a week or two after Nicholls' parley failed. Thompson perhaps eyed the property for himself and his intransigence revealed bitter feelings over Miller's purchase of the land. He told Nicholls that Miller "acted in an unfriendly manner towards him in taking up this land." Miller filed suit three days after Thompson rejected the written offer.¹⁸

Thompson contended that the location of the passage proposed by Miller would do great damage to him and that the suit was "malicious." He furthermore requested in his answer damages of \$10,000 if the court found for the plaintiff. At issue was the location of the right-of-way. Miller followed the dictates of the *Civil Code* in requesting the most direct passage from his land to the public road. His passage, sixty feet in width, would only traverse Thompson's land, following the edges of his front concession, and intersect the public road a point $6\frac{3}{4}$ miles below the Teche from his New Iberia plantation. Thompson argued for another route, one along a ridge across the back portions of tracts owned by two other planters. Much longer than the passage proposed

¹⁸ John F. Miller to Thomas H. Thompson, 23 May 1847; Petition; Testimony of Thomas C. Nicholls, George White, and J. D. Kinton, in *John F. Miller v. Thomas H. Thompson*.



Survey, John F. Miller v. Thomas H. Thompson

by Miller, it would nevertheless intersect the public road 6 $\frac{3}{4}$ miles above the New Iberia plantation, owing to a large bend in the bayou at that town.¹⁹

Notwithstanding any personal animosity that may have existed between them, Thompson had valid complaints about Miller's proposed route. The topography of Louisiana's sugar country featured broad natural levees alongside the banks of major waterways like the Teche, the back slopes of which gradually descended into marsh and swamp. It was upon these natural levees that planters grew their cane and built their homes. Since standing water caused great harm to sugar cane, planters built networks of ditches and used the slope of the levees allow water to drain from their sugar fields.²⁰

Though the slope of the natural levees varied according to the location of a plantation, defense witnesses affirmed that the back part of Thompson's front concession was particularly low and prone to poor drainage. One witness testified that "in the driest times his Horse [sic] has bog'd [sic] to his knees" at the corner where Miller wanted to begin his road. During heavy rains, water from his front concession drained into a basin at that point before flowing through his back concession and into adjacent swamp. A road along the back line of his front concession would have to be elevated by at least a foot to make it passable. Even at that height it would impede the drainage of water and thus flood Thompson's sugar fields. A surveyor confirmed that Thompson only cultivated the front half of his front concession due to the low elevation of his property. In addition, the building of Miller's road would force Thompson to remove his fences in its path and dig new ditches. These witnesses thought that only the building of a canal to

¹⁹ Answer of Thomas H. Thompson; Survey; Testimony of J. D. Kinton, A. L. Fields, and Abner D. Miner, in *John F. Miller v. Thomas H. Thompson*. The length of the passage proposed by Miller was about a mile and a half while the route proposed by Thompson was 3 $\frac{3}{4}$ miles.

²⁰ Rehder, *Delta Sugar*, 13-17, 160-161.

facilitate drainage from the front concession or the construction of a bridge on the proposed roadway could prevent flooding of the property. On the other hand, a road along the ridge suggested by Thompson would follow existing paths, be more convenient, and cause less disruption.²¹

Thompson prayed in his answer for the cause to be heard by a jury, perhaps hoping for a favorable hearing from the local residents of his parish. Instead, on September 29, 1847, the jury found for Miller, granting him essentially the right of passage he favored for \$460 in compensation to Thompson. The judge fixed the width of the road at thirty feet. Thompson immediately appealed to the state supreme court. Before the court, Thompson stressed the availability of the alternative route among his points, while Miller asked for a reduction in the damages he had to pay. The court dismissed Thompson's claims, citing the *Civil Code's* provisions that passages should take the shortest distance to the public road and the problems Miller would face in securing the rights-of-way from the landowners over whose land the alternate route would traverse. The court also thought the route chosen by the jury and the amount of compensation fair, thus dismissing Miller's request. But it is not certain that Miller built the road that the courts awarded. In 1850 he purchased at a judicial sale a tract fronting the Teche that lay next to Thompson's property, possibly providing Miller with a passageway that bypassed his neighbor's cane fields.²²

²¹ Testimony of Opta Darby, Francis D. Richardson, D. D. Richardson, Henry Penn, and A. L. Fields, in *John F. Miller v. Thomas H. Thompson*. D. D. Richardson called the land the plantation "one of the lowest in the parish." Called back to the stand, surveyor A. L. Fields testified that the route proposed by Thompson was also low lying and would need extensive levee work to be of use. The existing path on the ridge was "very much cut up."

²² Answer of Thomas H. Thompson; Verdict and Decision, in *John F. Miller v. Thomas H. Thompson*; Minute Book, District Court St. Mary Parish. The composition of the jury in this case and the one that heard Miller's suit against Lelou demonstrated an interesting ethnic division between the neighboring parishes. Whereas all the members of the St. Martin jury in the latter case were Acadian or

As Miller secured access to this back tract in St. Mary parish, his primary route to his Miller's Island plantation became the subject of a lawsuit. As discussed previously, in 1833 he had purchased a tract alongside Bayou Petit Anse in order to build a causeway across the bayou and entered into agreements with Delphi Lelou and other neighbors for rights-of-way and upkeep of the road. Miller was not the only planter who built such causeways across the bayou. In lieu of public improvements, planters constructed these private roads and bridges to provide access to fields and to facilitate travel to nearby towns. Seventeen years after Miller built his causeway, Jean Segre Darby, a planter on the upper reaches of Bayou Petit Anse, filed a suit against Miller and the owners of two other causeways, Rosemond Broussard and David Hayes, regarding these structures. In his petition, Darby claimed that these causeways below his land impeded the flow of the bayou during heavy rains, causing water in the bayou to flood his cotton fields. By way of this suit, Miller's legal saga entered the realm of riparian law and, though not for the first time, touched on the relationship between antebellum Louisiana law and internal improvements.²³

With the neighborhood's waterways in their natural state, Darby averred his plantation occupied ground high enough that flooding was not a major threat. Bayou Petit Anse served as the "natural drain" for the entire area, its waters eventually flowing into Vermillion Bay and the Gulf of Mexico. Though marshes surrounded his property,

Latin in ethnicity, ten of the twelve jurors in the Thompson suit heard in St. Mary were Anglo. The route that the jury granted to Miller was technically not the most direct route, but it caused the least disruption to Thompson and it corresponded to Miller's original proposal to Thompson.

²³ St. Martin Parish Mortgages, Book E, Page 80, Act 2725; Agreement and Petition, in *Jean Segre Darby v. John F. Miller et als*. Darby was not the only landowner along Bayou Petit Anse who claimed that the causeways caused flooding on his lands. Francisco Segura filed suit against Miller, Broussard, and Hayes the same day, but the court dismissed the suit on his motion after the state supreme court decision in *Darby*. District Court St. Martin Parish, *Francisco Segura v. John F. Miller et als*, No. 4187.

water from them naturally streamed into small gullies, then into a large coulee that flowed into the bayou. Water overflowed the banks of these channels and covered adjacent marshes and low areas during heavy rains, but this natural drainage system operated efficiently enough to keep his property dry.²⁴

Darby considered the erection of the three causeways below his property an “artificial impediment” to the “natural” course of area’s waterways. The causeways built by the defendants were part of the levee system that planters constructed to protect their lands from floods. Akin to dams, they included openings of various sizes to allow the flow of the bayou through. Miller’s causeway was part of a levee 693 feet in length by fourteen feet in width. His causeway contained three openings to let the bayou’s current pass, each opening traversed by a bridge. Darby asserted that the openings of all three causeways were insufficient to allow the natural channel of the bayou to flow through and upset the functioning of the natural drainage during heavy rains. Since water did not draw off quickly enough, the overflow from the low marshes intruded upon his lands, which were otherwise safe from flooding.²⁵

Darby brought his suit in August 1850 after inundations hindered his ability to cultivate his plantation the previous spring and caused the loss of a large portion of his cotton and corn. But despite his knowledge of the area’s waterways, Darby’s experience in planting along Bayou Petit Anse was limited. That spring was his first year of cultivation along the bayou. Still, Darby asked the court to force Miller and the others to raze their causeways and remove all of their materials to ensure the unobstructed flow of

²⁴ Petition, in *Jean Segre Darby v. John F. Miller et als.*

²⁵ Petition and testimony of Abner D. Miner, in *Jean Segre Darby v. John F. Miller et als.* Darby estimated Broussard’s causeway at 685 feet in length by eighteen feet wide and Hayes’s causeway at 1044 feet in length by eighteen feet wide. Broussard’s causeway contained three openings, Hayes’s two.

the bayou. In addition, he prayed for \$3000 as compensation for damages incurred from the floods brought about by the causeways and for a writ of *distringas* to be issued against the defendants. To support his claim, Darby utilized the *Civil Code*'s provisions concerning the private use of waterways. Article 656 barred a proprietor from raising a dam to prevent the flow of a body of water, and Article 657 precluded a landowner from altering the natural channel of a waterway that traversed his property.²⁶

In their answer, the defendants averred that the causeways did not obstruct the natural drainage of the area or prevent water in the bayou from flowing in its natural channels. Moreover, the openings in the causeways were sufficient to allow the flow of water through. In addition, since Miller had built his causeway seventeen years earlier and the other two were at least eleven years old, the defendants asserted that Darby had no a right to press his action. Although not referred to in their answer, the defendants were no doubt aware that Darby built two such causeways across the bayou at his plantation. He maintained his bridges while asking the court to take down theirs.²⁷

In suits over property claims, the district court commissioned the parish surveyor to investigate and make a survey of the property in question, and this evidence played a vital role in determining the outcome of a case. In this suit, surveyor Abner D. Miner reported to Darby's plantation on the morning of March 6, 1851, to start his investigation and survey of the causeways, currents, and surrounding topography. Beginning at the coulee that drained the marshes adjoining Darby's property, Miner walked along Bayou

²⁶ Petition, in *Jean Segre Darby v. John F. Miller et als.*; Upton and Jennings, *Civil Code*, 98-99, Articles 656 and 657. A writ of *distringas* orders a sheriff to distrain a defendant's property in order to compel him to perform an obligation.

²⁷ Answer of defendants, testimony of Abner D. Miner, and decision of state supreme court, in *Jean Segre Darby v. John F. Miller et als.* In civil law, prescription is essentially the equivalent of a statute of limitations.

Petit Anse, measuring the length of the causeways and the size of the openings, recording the strength and direction of the current at various points, noting significant features of the adjacent lands. For example, Miner measured the bridges across the openings of Miller's causeway eighty-nine, fifteen, and nine and a half feet, with the bridges averaging thirty-three inches above the water.²⁸

As he followed the bayou to its end at the sea marsh near Petit Anse Island, the surveyor also drew attention to its obstructions, some natural, but some probably caused by agricultural development. He described the bayou as "choked up" with timber, fallen trees, and other debris at various places, and noted the growth of vegetation that clogged the flow of water near the openings and in adjacent gullies. At Broussard's causeway, Miner found an obstruction under that bridge twenty feet in length, extending from the waterline to within five inches of its sills. These details proved significant when the state supreme court heard the appeal.²⁹

In his decision filed in April 1851, Judge Voorhies ruled in favor of the defendants, remarking that the plaintiff failed "to make out his case certain." Voorhies noted that Darby's land was very low and subject to overflows before the erection of the causeways. Testimony on whether the causeways caused what the plaintiff claimed was equivocal. Some witnesses believed that water took longer to drain from Darby's land after the construction of the causeways; others believed that the causeways made little or no difference. But Voorhies stressed that all witnesses affirmed that water did not rise

²⁸ Testimony of Abner D. Miner, in *Jean Segre Darby v. John F. Miller et als.*

²⁹ Minutes of the court and testimony of Abner D. Miner, in *Jean Segre Darby v. John F. Miller et als.* The details of Miner's survey come from his testimony in the case. Unfortunately, a copy of the sketch he made in the case could not be found.

higher after the construction of the causeways than before, and he minimized the effect of the causeways on the flow of the bayou during the flood.³⁰

To the question of what benefit that Darby might derive from the removal of the causeways, the judge concluded that any benefit would be meager and cited others causes for the bayou's floods. Darby's property would still be low and prone to overflows. The spring in which the plaintiff tried to cultivate his land was unusually rainy, and his plantation was not the only one in the region that encountered flooding. Obstructions in the bayou and at its mouth sometimes hindered its flow, and winds from the south sometimes pushed water from the bay into its channel. Ultimately, Voorhies thought that the remedy sought by the plaintiff, the destruction of structures crucial to the agricultural development of that locale, was too drastic and did not correspond to the facts presented in the case.³¹

Darby appealed the decision of the district court, and the state Supreme Court gave him a partial victory in its decision in September. The court concentrated on the obstructions noted by Miner and other witnesses in the openings of the causeways and in the gullies running through the defendants' land. Observing that the plaintiff had a right to have those impediments removed, it reversed the district court decision. Although the causeways remained, Darby could press for the removal of the obstructions and have the channel of the bayou restored to its original depth.³²

But the significance of the decision came in the court's consideration of the article of the *Civil Code* that Darby based his action upon. In the creation of the antebellum market economy, historian Morton Horwitz has noted, tensions between economic

³⁰ District court decision, in *Jean Segre Darby v. John F. Miller et als.*

³¹ District court decision, in *Jean Segre Darby v. John F. Miller et als.*

³² Supreme court decision, in *Jean Segre Darby v. John F. Miller et als.*

development and private property rights were most evident in legal battles over riparian rights. Like the common law rules that supported a traditional, pre-capitalist economy, the prohibition of the damming of waterways in Article 656 was evidence of a protection of the common good against an individual monopoly of a resource vital to all persons in a community. The Supreme Court rejected such an interpretation in its decision and limited the application of the article. As the provision derived from the French code, the court observed, it originated where lands had long been cultivated and appropriate drains established. Louisiana, on the other hand, still had large areas of unimproved lands, and Darby's claim under the article, if sustained, would hinder the reclamation and improvement of the state's wetlands. The court even suggested that the legislature did not intend to make the article permanent when they included it in the *Code*. The removal of the impediments in this case was a suitable application of the article; but the court stressed that the application of the article "should never be extended so far as to inflict an injury without object, besides retarding materially the improvement of the country." Through this reading of the *Code*, the court supported one sort of economic progress, or at least agricultural development.³³

Miller's litigation over property claims was not limited to Louisiana district court. In August 1845 he received a summons from a U. S. marshal to appear in federal court in New Orleans the following month in a suit regarding the "Coxe" tract he purchased six years earlier. Thus began Miller's peripheral involvement in one of the most celebrated legal battles in nineteenth century America, the Myra Clark Gaines case. The Gaines

³³ Supreme court decision, in *Jean Segre Darby v. John F. Miller et als.*; Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977), 34. For a recent analysis of riparian rights and economic development in the antebellum South, see Tom Downey, "Riparian Rights and Manufacturing in Antebellum South Carolina: William Gregg and the Origins of the 'Industrial Mind,'" *The Journal of Southern History* 65 (February 1999): 77-108.

case demonstrated what ambits of complexity antebellum litigation over property claims could attain, and to understand the frustration of Miller and others in having to repeatedly defend their once secure property titles in court, it is necessary to discuss its background in some detail.³⁴

In its time, the case was the most famous to originate from Louisiana courts. It was actually a series of suits initiated by Myra to establish her claim to the estate of her father, Daniel Clark. The melodramatic aspects of this legal saga attracted much attention in both the local and national press. But more striking was the duration of her fight and the scope of these suits. Begun in 1834, litigation over her claims did not end until 1891, six years after her death. The state Supreme Court of Louisiana heard appeals on main and collateral issues arising from the litigation five times; the United States Supreme Court seventeen times. Gaines's lawyers even filed over two hundred suits in Confederate courts. Her remarkable persistence was no doubt exasperating to the defendants in the litigation like Miller.³⁵

Daniel Clark's commercial success during the late colonial and territorial eras was unparalleled among the immigrants, who, like Miller, journeyed to New Orleans to make their fortunes. Born in Ireland, Clark came to the city in 1787 to assist an uncle in his successful mercantile firm. Soon Clark developed a talent for political and commercial intrigue during the last years of Spanish dominion over the territory, using his connections to achieve favorable terms from Spanish officials in evading trade

³⁴ Summons issued 4 August 1845 in *Edward P. Gaines and Myra Clark Gaines, his wife v. Reuben Carnel et al.*, United States Circuit Court, Fifth Circuit District of Louisiana, No. 1408. To distinguish her from her father and her husband, I will call her by her first name, Myra.

³⁵ Elizabeth Urban Alexander, *Notorious Woman: The Celebrated Case of Myra Clark Gaines* (Baton Rouge: Louisiana State University Press, 2001), 1-4, 230. This account of Daniel Clark and the Myra Clark Gaines case derives from Alexander's monograph. Alexander does not discuss Myra's suits on property outside the city of New Orleans, so Miller's involvement in the litigation is not mentioned.

regulations. Clark secured rights of deposit in New Orleans for American traders and speculators shipping goods down the Mississippi River and acted as intermediary in disputes between them and Spanish officials. His influence led to lucrative trading relations between his firm and merchants in Philadelphia seeking access to the New Orleans market and to a partnership with one of these merchants, Daniel W. Coxe. Appointed to the post of vice-consul in 1801, Clark advised the Jefferson administration of Spanish intentions in Louisiana during the negotiations that led to the Louisiana Purchase. Though passed over by Jefferson for the position of territorial governor, Clark retained much power in the city, often using it in battles with the man who was appointed governor, William C. C. Claiborne.³⁶

Clark's business ventures and property acquisitions made him perhaps the wealthiest man in territorial New Orleans. But his intentions for his estate after his death in 1813 became shrouded in mystery. Born in 1804 or 1805, Myra was the offspring of a relationship Clark had with a young Creole woman, but despite the assertions of members of her mother's family, it is probable that her parents did not marry. Nevertheless, witnesses also testified that Clark changed his will on his deathbed to make young Myra essentially his heir and legatee to his considerable estate. This second deathbed will disappeared, however, and the probate court recognized Clark's original will instead. Under the terms of that will, Richard Relf and Beverly Chew, business associates of Clark and as powerful as he in the city's commercial world, became executors of the estate in the name of Clark's mother. Suspicions regarding their administration of the estate and the possible destruction of the second will fueled Myra's resolve to fight for her legacy. Raised in the North by a friend of Clark's, Myra eventually learned about her

³⁶ Alexander, *Notorious Woman*, 63-127.

true identity when she came of age, and encouraged by her first husband, she returned to New Orleans to press her claim to her father's estate, filing her first suit in 1834.³⁷

The most valuable property in Clark's estate included a large number of urban lots in New Orleans, and Myra's suits focused on their recovery. But amid Clark's rampant property speculations, he purchased the "Coxe" tract outside New Iberia from heirs of Jean-Baptiste McCarty in 1810. It consisted of twenty arpents fronting the west side of the Teche and six arpents on fronting the opposite side of the bayou. During Chew and Relf's administration of Clark's estate, Clark's business partner Daniel Coxe acquired the tract as part payment for a debt due to his father-in-law. Coxe then sold the property to Miller for \$10,700 in 1839. Elderly and living in Philadelphia, Coxe may have been anxious to sell the property as Myra began her suits.³⁸

In her suit to recover property outside the city of New Orleans, Myra sued not only Miller but also forty-one other purchasers and heirs of tracts of land in Rapides and St. Landry parishes in central and southern Louisiana. To combat this suit, Miller engaged in a legal strategy of ignoring Myra's attempt to gain possession of land to which he believed he had clear title. The answers of the other defendants stressed that their property was purchased in good faith without any knowledge that the title to the land was faulty. Miller, though, through his solicitor John Claiborne, filed a motion in October 1845 requesting further time to answer the bill of complaint. By July 1846

³⁷ Alexander, *Notorious Woman*, 1-62. The petition in Myra's second suit against Miller estimated the value of her father's entire estate at one million dollars. Alexander, though, cites a figure of \$35 million by 1861. That amount included the development of the urban property in Clark's estate. Alexander, *Notorious Woman*, 4. The establishment of Myra as the legitimate child of Clark was important to her cause. If the courts did not accept the second deathbed will, then she could recover 4/5^{ths} of Clark's estate as his forced heir under Louisiana inheritance law. See Alexander, *Notorious Woman*, 173-175.

³⁸ Iberia Parish Conveyances, Vol. 1, Page 23, Act 11; St. Martin Parish Conveyances, Vol. 11, Page 344, Act 8514; Nolan B. Harmon, Jr., *The Famous Case of Myra Clark Gaines* (Baton Rouge: Louisiana State University Press, 1946), 295; Conrad, *New Iberia*, 48-51.

Miller still had not filed his answer. The court therefore ordered the allegations in the bill of complaint confessed by Miller and another defendant, and his participation in this suit essentially came to an end without any loss of the property or compensation given to the plaintiffs.³⁹

In 1849 Myra initiated a second suit to recover the Coxe tract, naming Miller, Chew, and Relf as defendants. Not only did she seek possession of the tract, but she also asked in her petition for the profits and revenues that Miller derived from his ownership of it. Again, after the plaintiff filed her bill of complaint, the suit withered away. Miller did not file an answer to her bill. In July 1850 the minute book of the U. S. Circuit Court in New Orleans recorded a motion by the solicitor for the defendant that this suit and two other suits by Myra were not to be submitted for trial or decision. This second attempt also reached a dead end.⁴⁰

Resolution regarding the true ownership of the Coxe tract did not occur until after the Civil War. In 1866 Myra launched yet another suit in federal court to recover ownership, this time suing Cordelia Lewis, Miller's niece and the sole heir of his estate. After Cordelia and her husband received their summons to appear in court in February 1867, the court record reveals nothing more about the suit. Finally, in 1868, both sides decided to settle the matter. For \$2000, the Lewises acquired an undisputed title to land bought nearly thirty years earlier.⁴¹

³⁹ *Edward P. Gaines and Myra Clark Gaines, his wife v. Reuben Carnel et als*; July 1846 rules, Records of Orders, Equity Records, United States Circuit Court, Fifth Circuit District of Louisiana, page 16. The petition of Myra's later suit against Miller's niece stated that Miller answered the petition in suit no. 1408, but his answers were not located in the case file.

⁴⁰ *E. P. Gaines and wife v. Relf, Chew, and John F. Miller*, United States Circuit Court, Eastern District of Louisiana, No. 1820; Minute Book, United States Circuit Court, New Orleans, 29 January 1850.

⁴¹ *Iberia Parish Conveyances*, Vol. 1, Page 23, Act 11; *Myra Clark Gaines v. J. Lloyd Lewis and Cordelia Lewis, his wife*, United States Circuit Court, Fifth Circuit and District of Louisiana, No. 5057.

While property suits remained one persistent threat, both Miller and Jonas Marsh also encountered disputes that arose in the operations of their agricultural enterprises that local courts had to resolve. Miller regarded these routine quarrels as part of the cost of doing business, and there was little difference between these types of suits he contested in the Attakapas and those he engaged in urban commerce in New Orleans. Four types of disputes embroiled Miller and Marsh in the Attakapas. First, they became involved in quarrels with their white operatives on their plantations over matters like salary and debt. Secondly, disagreements emerged over the shipping of produce and supplies that sometimes came before the courts. Thirdly, the Attakapas offered opportunities for investments beyond agriculture, and litigation occurred regarding Miller's part ownership of another sawmill and steamboats. Finally, Miller and Marsh became embroiled in a suit with the local government over the payment of taxes that demonstrated the consequences of delinquency for those owning capital invested in slaves.

Suits involving Miller and Jonas tell much about the overseers and free white workmen who contributed to the functioning of large sugar enterprises. Sugar plantations employed more white laborers than any other agricultural unit in the antebellum South. On sugar plantations the most important white employee in autumn was often not the overseer, but the sugar maker whose skill during the refining process could determine the success or failure of the plantation's fortunes for that year. An antebellum sugar maker had to know the precise moment to attempt the "strike" in the refining process, the moment when the boiling cane juice began to crystallize and had to be transferred to cooling vats. Inexperience in managing this process could be costly to the planter. For the 1842 season, Marsh & Co. employed Andrew Singleton as its sugar maker and paid

him \$221 in February 1843 for his services. In addition, as planters invested in more sophisticated refining machinery later in the antebellum era, they often hired engineers during the grinding season to keep the machines in good working order.⁴²

The receipts and ledgers offered into evidence in the dissolution of Marsh & Co. reveal the network of white operatives around New Iberia that contributed to the functioning of Jonas and Miller's plantations. One of the most important tasks of local carpenters and coopers was the construction of the hogsheads to store a plantation's sugar. The standard rate was one dollar per hogshead. John French made 165 for Marsh & Co. in 1840, 140 along with a water cask in 1838; Thomas Johnston made 166 in 1841. Other payments went to local blacksmiths, to a mason for brickwork on the sugar mill, and to a mechanic for repair of an oven. John Clayton received \$237.50 for nine and a half months of unspecified work at \$25 per month, minus advances. Lawsuits also emerged over debts owed to these white laborers. A note given to John Mitcheltree for work done in fashioning *pieux* boards and a debt to French for making sugar hogsheads became part of the mass of litigation surrounding Miller's bankruptcy and the dissolution of Marsh & Co. Hired workers were not always local free whites, though. Clerk of court Ransom Eastin received \$45 for work done by his "Mulatto carpenter Charles" in 1837.⁴³

Outside the sugarhouse and apart from grinding season, the overseer was still the most important white employee on the sugar estates, and suits involving overseers

⁴² William Kauffman Scarborough, *The Overseer: Plantation Management in the Old South*, 2nd ed. (Athens: The University of Georgia Press, 1984), 35; J. Carlyle Sitterson, "Hired Labor on Sugar Plantations of the Ante-Bellum South," *The Journal of Southern History* 14 (May 1948): 200-201; Glenn R. Conrad and Ray F. Lucas, *White Gold: A Brief History of the Louisiana Sugar Industry, 1795-1995* (Lafayette: The Center of Louisiana Studies, 1995), 20-21; J. Carlyle Sitterson, *Sugar Country: The Cane Sugar Industry in the South, 1753-1950* (Lexington: University of Kentucky Press, 1953), 142-143.

⁴³District Court St. Martin Parish, *Mary E. Fenn v. Jonas Marsh*, No. 3382; *John French v. Jonas Marsh and John F. Miller and Turner, syndics*, No. 3421. The receipts and ledgers, including the payment to Singleton, are in District Court St. Martin Parish, *Joachim Kohn and John F. Miller v. Jonas Marsh*, No. 2799. See also Sitterson, "Hired Labor on Sugar Plantations of the Ante-Bellum South," 192, 200-205.

reveal much about their contracts and compensation with Marsh and Miller. In April 1839 Charles Hester sued Miller and Marsh for \$200 for services as overseer from January to February of that year. Hester's brief tenure as overseer suggests that he might have been hired on a trial basis, a practice prevalent on sugar plantations. The court dismissed the suit on his motion, suggesting that he had reached some settlement with his employers.⁴⁴

In his 1842 suit against Miller and Canby, John Shaw claimed \$1200 for work as overseer and stock manager on Miller's Island in 1840. Shaw's claim was large, but such a salary was commensurate with the pay of overseers on large sugar estates during this time. His problem in recovering his debt was timing. Miller had already made a voluntary surrender of property to his creditors, and in his answer, he indicated that Shaw's claim was part of the distribution schedule of claims against his insolvent estate. Co-defendant Canby denied all responsibility for the debt because Shaw's employment on Miller's Island ended before her purchase of the plantation in December 1840. In May 1843 the court declared it a nonsuit when Shaw failed to prosecute the matter.⁴⁵

One suit revealed both the seamier aspects of the overseer's routine as well as the bonds of labor between the overseer and the master. Jonas Marsh employed George W. Smith as overseer of his Fausse Pointe plantation in 1844. In October Smith's term ended abruptly, forcing him to leave the plantation and seek work elsewhere. Smith sued Marsh the following month, claiming that Marsh terminated his employment without cause and refused to pay him for his work for that year. Smith petitioned the court for the

⁴⁴District Court St. Martin Parish, *Charles M. Hester v. Jonas Marsh and John F. Miller*, No. 2395; Scarborough, *The Overseer*, 24.

⁴⁵ District Court St. Martin Parish, *John Shaw v. John F. Miller and Sarah Canby*, No. 2963; Sitterson, "Hired Labor on Sugar Plantations of the Ante-Bellum South," 198. Shaw testified for Miller in his suit against Delphi Lelou.

\$200 in wages owed and a privilege on Marsh's sugar crop to secure payment. Since Marsh was preparing to ship his sugar, Smith asked for with a writ of sequestration to prevent Marsh from shipping that year's sugar until his demand were satisfied. The day before Christmas, the sheriff seized ten hogsheads of sugar, and Jonas Marsh produced a bond of \$300 with his brother John C. Marsh as security to keep the sugar in his possession. Though the Fausse Pointe plantation was smaller than Orange Island, and therefore the responsibilities of the overseer less, Smith's salary does seem paltry compared to Shaw's. As the case later revealed, perhaps his low salary correlated with his abilities.⁴⁶

The court did not resolve the suit quickly. After an attempt to set aside the writ of sequestration in 1845, nothing more was filed until Jonas Marsh submitted his answer to Smith's petition in July 1847. Marsh denied the allegations in the petition, maintaining that Smith left on his own accord. But in a startling accusation, Marsh asserted that Smith infected several of his female slaves with venereal disease. Furthermore, Marsh averred that he suffered financial losses because these slaves were unable to work and that Smith could not perform his duties as overseer efficiently because of his infection.⁴⁷

The number of incidents of venereal disease in the antebellum slave community is difficult to ascertain. Doctors often confused venereal disease with the yaws, the latter caused by a spirochete related to syphilis. Eugene D. Genovese discounts widespread outbreaks of venereal disease in the slave quarters, believing that venereal disease was seldom involved in more than one or two cases. If anything, he argues that venereal disease was more of a problem for poor whites. On the other hand, Todd Savitt, in his

⁴⁶ District Court St. Martin Parish, *George W. Smith v. Jonas Marsh*, No. 3682, 7 November 1844.

⁴⁷ *George W. Smith v. Jonas Marsh*. In the draft of the court's decision, the word gonorrhoea is scratched out, and venereal disease is written above.

study of medicine and slavery in Virginia, thinks that venereal disease became more prevalent among slaves by the nineteenth century, devastating them and providing problems for masters who wanted to keep the disease in check. Overseers, who traveled more widely than slaves and sometimes engaged in sexual relations with females under their charge, were perhaps more important in the introduction of venereal disease on plantations than the slaves themselves. Marsh believed that Smith was responsible for an outbreak that affected more than one or two slaves, but plantation accounts from the late 1830s include receipts for medication to treat venereal disease. Such diseases were apparently prevalent on his plantation long before Smith's service began.⁴⁸

The court once again refused to set aside the writ of sequestration in July 1847, and the case finally went to trial in January 1848. Unfortunately, much of the testimony presented in the trial is missing. Existing testimony reveals that Jonas Marsh's neighbors rallied to his defense. Witness Drozin Broussard was a frequent visitor to Marsh's plantation and thought that Smith discharged his duties "well and attentively." But he also affirmed that Marsh told him that fall during the cane harvest that Smith was "sickly," had a venereal disease, and "poisoned his quarter" with it. As a result, Marsh had no intention to keep him as overseer for the following season. Witness John Reynolds recalled that he had met Smith on the way to New Iberia, and the overseer mentioned either that he quit Jonas's service or was about to do so. Dr. Henry Stubinger testified that Smith told him he needed rest and that he had written to someone in St.

⁴⁸ Todd Savitt, *Medicine and Slavery: The Diseases and Health Care of Blacks in Antebellum Virginia* (Urbana: University of Illinois Press, 1978), 73-74, 77-79; Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1974), 459-460; Scarborough, *The Overseer*, 75-77. An 1837-38 account of Marsh & Miller with Dr. Benoni Neale included the purchase of \$2 "gonorrhoea mixture for Negroes" on July 25, September 6, and October 27, 1838. There is also an 1841 bill from Dr. S. F. R. Abbey, a son-in-law of Jonas, in which he charged to Marsh & Co. \$50 curing a slave who may have had syphilis (the description of the ailment is difficult to make out). *Joachim Kohn and John F. Miller v. Jonas Marsh*.

Mary parish seeking work. Unfortunately, anything that the doctor may have revealed about the venereal disease among Marsh's slaves is not present in the case file.⁴⁹

Ultimately, Jonas Marsh benefited from having the *Civil Code* and judicial precedent on his side as well when the court handed a judgment in favor of Jonas on February 7, 1848.⁵⁰ In the decision Judge John H. Overton cited articles 2719, 2720, and 2721 of the Civil Code, which govern the hiring of servants and workers. These articles essentially made labor contracts inviolable for both employers and workers, reflecting the inflexibility of the labor market in antebellum Louisiana. Articles 2719 and 2720 prevented employers from dismissing laborers before the expiration of their contracts and forced them to pay the full salaries of laborers that were dismissed without good cause. These articles, however, also severely hampered the ability of hired workers to leave their jobs. Article 2719 stated that laborers hired on plantations or in manufacturing “have not the right of leaving the person who has hired them.” If a laborer left before the expiration of his contract without good cause, then article 2721 stated that he “shall then forfeit all the wages that may be due to him” and “be compelled to repay all the money he has received, either as due for his wages, or in advance thereof . . .” Though overseers customarily received their contracted pay at the end of the year, they often drew advances from their employers during the year, so any demand for repayment was potentially onerous.⁵¹

The burden that these articles of the *Civil Code* placed on workers is best illustrated by the state Supreme Court's 1837 decision in *Hays v. Marsh*, cited by

⁴⁹ *George W. Smith v. Jonas Marsh*.

⁵⁰ Minute Book, District Court St. Martin Parish, Vol. 3, 7 February 1848. The copy of the decision in the case file is apparently misdated and could be a draft copy. It shows that Judge Overton read and signed the decision on 7 February 1847.

⁵¹ Upton and Jennings, *Civil Code*, 417-418; Scarborough, *The Overseer*, 28.

Overton, which ruled that these articles also applied to overseers. In this opinion, the court stated that overseers controlled “the agricultural interests of the country” and that “great and remediless mischief would ensue” if they left their employers “in time of their greatest need.” Interestingly, the defendant in this precedent setting case was probably Jonas’s brother, John C. Marsh. Overseer Hays left the employment of John Marsh in September 1833 with apparently a good cause. His wife fell ill, and Hays believed that the plantation was too unhealthy for his wife and family to stay there. So he removed his family from the plantation and remained with his ailing wife instead of returning. Hays’ counsel also argued that the article 2719 applied to daily laborers, not overseers who signed annual contracts. In his attempt to secure salary owed to him, Hays only asked for the salary earned in the eight and a half months he was on the plantation, not for the entire contracted sum. Instead, the court decided in favor of Marsh, declaring that family sickness was “no excuse for a breach of . . . performance.” So Hays received nothing for his labor.⁵²

In his decision, Overton singled out Reynolds’ and Stubinger’s statements to conclude that Smith did not leave Jonas Marsh’s employ with “good & just causes.” Therefore, Smith forfeited all wages and had to repay any monies or advances received from Jonas.⁵³ Considering what happened in *Hays v. Marsh*, it is difficult to know what a court would deem to be a good and just cause in breaking a labor contract. Certainly the *Hays* decision and Overton’s use of the words like “abandonment” to describe Smith’s departure indicates that the reciprocal bonds of obligation central to the paternal ideal in

⁵² *Hays v. Marsh*, 11 La. 370.

⁵³ *George W. Smith v. Jonas Marsh*.

the antebellum South might encompass hired white labor on the plantation in addition to family and slaves.

Another quarrel with an employee of the Marsh & Co., though, possibly caused greater harm to Jonas Marsh's fortunes. On April 16, 1839, Marsh filed suit in district court against Andrew Hamilton, the clerk and bookkeeper of Marsh & Co. Marsh averred the Hamilton slandered him by charging that he defrauded the estate of his former business partner and brother-in-law Nathan Morse of large sums of money. Obviously, the allegations of someone with such intimate knowledge of the company finances carried weight in the community. To counter this attack on his reputation, Marsh demanded in court \$10,000 for defamation of his character. Isaac E. Morse, Nathan's son and Jonas's nephew, filed the petition, perhaps demonstrating familial solidarity in this matter. The sheriff left a copy of the citation at the home of parish surveyor Abner Miner in New Iberia, where Hamilton resided while in town. There the suit rested until November 1840, when the court dismissed the suit on the motion of the plaintiff. Hamilton had perhaps left the parish in the wake of the filing of the suit, but certainly by 1840 he was dead. But possible evidence of animosity between Jonas and the company clerk resurfaced a few years later, when the dissolution of the partnership brought forth accounts that were not to Marsh's liking.⁵⁴

Like in his sawmill enterprise in New Orleans, disputes arose in the operation of a plantation over the purchase and delivery of goods that went before the courts. In April 1854 Miller contracted with William B. Adams for the purchase and delivery of a variety of lumber for use on his plantations, including pieux boards, hogshead staves, and barrel staves. Adams was a lumber middleman along the Teche, as a witness stated that Miller

⁵⁴ District Court St. Martin Parish, *Jonas Marsh v. Andrew Hamilton*, No. 2394.

and Adams were “running lumber” as partners and even had Miller’s slaves involved in “Boating [sic] lumber.” Adams deposited the materials Miller ordered along the banks of the Bayou Teche at a place called Fish Island for Miller’s overseer to pick up.

But unattended deliveries by the side of the bayou were not always secure. By the time that the overseer arrived, Isaac M. Leakey had taken the 10,000 barrel staves. Miller sued Leakey for the return of the staves or \$200 in compensation. In his defense Leakey asserted that he too purchased a load of lumber from Adams and the shipment included staves that were in his possession. The only witness who testified in the case merely muddled the story. He claimed that Adams told him that all the barrel staves delivered to Fish Island belonged to Leakey; but men who had worked for Adams previously hauled them off. It was these staves that Miller later claimed. The court decided in Miller’s favor but awarded him only half of what he requested.⁵⁵

Another purchase and delivery case involved the shipment of the sugar harvest, crucial for the success of any plantation enterprise, and provides clues about the marketing of Marsh & Co.’s sugar. Attakapas planters often took advantage of the navigability of the Teche by ocean-going schooners to send their sugar directly to merchants along the eastern seaboard, thus avoiding sugar middlemen in the New Orleans market. Though longer sea voyages made for higher insurance rates, freight charges by schooner to New York were only double or triple the cost of sending sugar directly to New Orleans. Marketing directly to the eastern seaboard did not entirely eliminate the role of New Orleans factors in sugar transactions because Teche planters bought most of their plantation supplies from them. Business relations with merchants in

⁵⁵ District Court St. Martin Parish, *John F. Miller v. Isaac M. Leakey*, No. 4563. Testimony of Elisha Crowson. By the time the court rendered a decision in the case, Leakey was dead, and Miller had to collect from his executor, David Berwick. Pieux boards are wooden stakes often used in fencing.

different cities, however, provided the planters leverage in finding the best price for their sugar.⁵⁶

On March 11, 1837, Jonas Marsh delivered a number of hogsheads of sugar to Captain Emery of the schooner *Faust* for transport to the port of New York, on consignment to merchant Henry Leverich. As this case originated in St. Mary Parish, Marsh & Co. probably transported part of the previous year's sugar by steamer to Franklin for shipment to New York, though ocean-going schooners could navigate the Teche as far as New Iberia. As the sugar was loaded on to the *Faust*, one of the hogsheads was lost, and Marsh sued the captain for \$80 as compensation for his negligence. Judge Seth Lewis issued an order for the sheriff to detain Emery in order for him to provide security before his schooner departed Louisiana, and two days after Marsh filed his petition, Marsh & Co. received a draft of \$80 in the name of Leverich.⁵⁷

The steamboats that plied the Teche presented Miller with opportunities for investment. Miller was not alone in seeking to diversify his business interests to include the transportation network vital to the success of the region's plantations. As early as 1818, planters in the Attakapas realized that economic advantages of steamboats to transport their goods to market in New Orleans. To facilitate steamboat service along the Teche, several planters petitioned the state legislature to organize steamboat companies and provided the capital for the purchase and operation of the boats.⁵⁸

Miller owned an interest in two steamboats, the *Arabian* and the *Logansport*. Built in Pittsburgh in 1834 and boasting "fine accommodations," the *Arabian* had a

⁵⁶ Merl E. Reed, "Footnote to the Coastwise Trade—Some Teche Planters and their Atlantic Factors," *Louisiana History* 8 (Spring 1967): 191-197.

⁵⁷ District Court St. Mary Parish, *Jonas Marsh v. Joseph Emery*, No. 1970, 7 March 1837.

⁵⁸ Carl A. Brasseaux, "New Iberia's Steamboat Days," in Glenn Conrad, ed., *New Iberia: Essays on the Town and Its People* (Lafayette, LA: Center for Louisiana Studies, 1986), 264-268.

displacement of ninety-seven tons and provided service between the Attakapas and New Orleans until its abandonment in 1843. Miller owned the *Arabian* in partnership with John B. Murphy. In October 1840 William Hudson of St. Mary parish sued Miller, Murphy, and the *Arabian*'s captain N. B. Cook for \$357 for wood cut to fuel the steamer. The following month the court decided the case in the plaintiff's favor and ordered the sheriff to seize and sell the boat to satisfy the debt. No further details on this suit are found in the case file.⁵⁹

The *Logansport* met a fate common to steamboats plying the sometimes shallow, snag-filled waters in the region. The sheriff of St. Mary seized the steamer and offered it for sale to satisfy two judgments against Miller's partners in this investment, Cook and Knight. Miller and Joachim Kohn, as syndics, or administrators of Miller's bankrupt estate, filed suit against the sheriff in order to have them declared owners of an undivided half of the steamboat and therefore the recipients of one half of the proceeds of the sale. The steamer had run aground, however, and the sale brought just \$97 for salvage.⁶⁰

In February 1840 Miller advanced to John DeHart, captain and part owner of the steamboat *Tomochichi*, a draft for \$1500 to pay for new boilers for the steamer. In exchange, DeHart agreed to credit Miller in freight charges to New Orleans for the amount of the draft. The execution of this arrangement did not go smoothly. After running up \$600 in freight charges, Miller wrote DeHart on February 28th complaining that he was "treated badly" by another captain of the steamboat who refused to take any more of his freight. Reminding DeHart that their agreement stipulated that the money

⁵⁹ Carl A. Brasseaux, "Steamboats in the Bayou Country," unpublished manuscript, 2002; District Court St. Martin Parish, *William Hudson v. the Steamboat Arabian (John B. Murphy, John F. Miller, and N. B. Cook)*, No. 2609, 8 October 1840.

⁶⁰ District Court St. Mary Parish, *Joachim Kohn and John F. Miller, syndics v. G. P. Briant, sheriff et al*, No. 2673, 10 July 1841.

advanced should be returned immediately if “the Boat [sic] was taken out of the trade,” Miller, “in immediate want” of the money, demanded the balance of \$900. A month later Miller filed a petition in district court in St. Mary parish for repayment of the entire draft.⁶¹

DeHart responded that he was not personally responsible for the debt even though it was drawn in his name. Instead, he asserted that Miller knew that all seven joint owners of the *Tomochichi* were liable together for the draft. DeHart claimed that he acted as agent for the owners of the steamer, though he did not sign the draft as agent. Therefore, Miller could only recover a seventh of the debt from him as one of the seven owners of the steamer, subtracting \$800 for credited freight charges. Furthermore, by refusing to ship any more freight on the steamer even though he was ready to comply, DeHart charged that Miller had reneged on his part of the contract. The captain’s argument did not sway the court. After the death of DeHart and the transferal of the case to probate court, Miller recovered \$900 from his estate in 1843.⁶²

Buoyed by his success in sawmilling in New Orleans, Miller entered into partnership in a steam sawmill with John B. Murphy, a large sugar planter of in neighboring St. Mary parish. Miller bought his half interest in the mill from P. H. Lefevre for \$6500 in 1839.⁶³ The sawmill was located at Chicot Pass, a place deep in the nearby Atchafalaya River basin and accessible only by water. The sawmill was perhaps the one visited by Oxford University professor Charles Daubeny during his journey in the

⁶¹ John F. Miller to John DeHart, 28 February 1840, in Probate Court St. Mary Parish, *John F. Miller v. John DeHart*, No. 128, 28 March 1840.

⁶² Answer of defendant 18 April 1840 and 8 October 1840, decision 16 January 1843, *John F. Miller v. John DeHart*. The court rendered a judgment of default against DeHart in April 1840. After Miller’s bankruptcy, his syndic Joachim Kohn revived the suit, which was transferred to probate court in the April 1842 term. Minute Book, District Court St. Mary Parish, 165, 235, and 262.

⁶³ St. Martin Parish Conveyances, Vol. 12, Page 18, Act 8646. Miller paid \$500 cash and subscribed two notes for \$3000.

company from New Orleans through the swamp to Alexander Porter's plantation along the Teche.⁶⁴ Only a bare description exists in the conveyance record the sawmill. In addition to the steam sawmill, the property at the Lake Chicot site included a corn mill, a pump, smith's tools, carpenter's tools, chains, saws, iron in the smith's shop, a cypress armoire, oxen, carts, and skiffs. Miller and Murphy also bought, for \$5500, a pre-emption right for the 149 24/100 acres that their mill occupied.⁶⁵

The fate of Miller's interest in the sawmill showed how antebellum planters and businessmen used their available resources to sidestep the loss of their investments. As he encountered financial difficulties by the 1840s, Miller used such strategies in asset shuffling to protect his plantations. In June 1841 Robert McMillan, the sawmill clerk, purchased Miller's share in the mill for \$2000 at a syndic's sale in the wake of his bankruptcy. A month later, McMillan sold the sawmill interest to Sarah Canby, Miller's mother, and she assumed payment of the notes he gave at the public sale. In February 1843 Miller then bought his interest back from his mother for the same sum, paying her \$666.66 1/6 to her and becoming indebted to the syndics for the balance.⁶⁶

In the course of their partnership in the mill, Miller and Murphy initiated five suits in district court and parish courts in St. Mary and St. Martin parishes to recover debts for notes drawn for, among other things, lumber, building materials, and even saw

⁶⁴ Charles Daubeny, *Journal of a Tour through the United States and in Canada, made during the years, 1837-38* (Oxford: T. Combe, 1843), 142-143; Wendell Holmes Stephenson, *Alexander Porter: Whig Planter of Old Louisiana* (Baton Rouge: Louisiana State University Press, 1934), 118-120. If this was the mill, his visit occurred before Miller's investment. At the time of the visit, Porter, a former justice of the Louisiana Supreme Court, had recently ended his tenure as a U. S. Senator. Daubeny recounted that the proprietor (or perhaps the resident manager) of the mill prepared only one bed for both travelers, whereby Porter implored him to prepare separate beds. Porter later added that he had become use to sharing available beds with strangers as a young lawyer riding the circuit courts in the region.

⁶⁵ St. Mary Parish Conveyances, Vol. 11, Page 40, Act 5229; District Court St. Martin Parish, *Titan Kimball & M. Singer, administrators v. Emelius W. Fuller & Nathaniel P. Millard*, No. 4503, 13 La. Ann. 602; St. Martin Parish Conveyances, Vol. 13, Page 101, Act 9049.

⁶⁶ St. Martin Parish conveyances, Vol. 13, Page 101, Act 9049; Vol. 13, Page 119, Act 9063; Vol. 14, Page 99, Act 10169.

parts used in another nearby steam sawmill.⁶⁷ By accident or design, another suit showed that Miller's nearly one hundred year old mother possessed the dexterity, like her son, to use a firm's accounts to her personal advantage. R. H. Hinds, operator of the barge *Colorado*, sued Canby in 1843 for \$238.25, the cost of transporting 37,500 feet of lumber from the Chicot pass sawmill to New Iberia in 1841, along with casks of molasses and a stove. In her answer, Canby insinuated that the mill bore responsibility for the debt to Hinds, not her. She denied that she had agreed to pay freight on the shipment or that she was liable for the debt because Miller and Murphy contracted and employed the plaintiff, before her purchase of her son's interest in the sawmill. Both Murphy and McMillan, however, testified that the shipment made by Hinds was a personal delivery to Canby, not for the firm of Murphy and Miller. In May 1844 the court rendered a judgment of nonsuit on the motion of the plaintiff's attorney, suggesting that a settlement had been reached.⁶⁸

The tensions evident in Miller's relationship with Hayward Peirce, his partner in the New Orleans sawmill, emerged in his association with new partner in the Chicot sawmill, Hector Pritchard. Pritchard hailed from Lawrence County, Ohio, and bought Murphy's share of the mill in May 1842 for \$4500.⁶⁹ Pritchard also apparently managed the mill or was more of a hands-on owner than Miller at this time. On December 23, 1843, Miller sued Pritchard for the sum of \$4000. Miller claimed that he and his mother placed good faith in Pritchard's management, sending him several valuable slaves to

⁶⁷ District Court St. Mary Parish, *Murphy & Miller v. John C. Gordy*, No. 2760, 20 September 1841; *Murphy & Miller v. Dough & Sanders*, No. 2436, 2 September 1840; *Murphy & Miller v. James S. Grout*, No. 3254, 26 September 1843; Parish Court St. Mary Parish, *Murphy & Miller v. Raymond Bernard*, No. 1169, 28 December 1841; District Court St. Martin Parish, *John F. Miller and John B. Murphy v. Pierre Vasseur*, No. 2537, 13 April 1840.

⁶⁸ District Court St. Martin Parish, *R. H. Hinds v. Sarah Canby*, No. 3412, 7 October 1843.

⁶⁹ St. Mary Parish conveyances, Vol. 11, Page 40, Act 5229.

work there and expending large sums of money for him to repair the mill and put it in good working order. At the remote sawmill, out of Miller's view, Pritchard evaded "the compliance of his repeated promises without consulting" him and appropriated and sold large amounts of lumber for his benefit, not the partnership's. Miller asked the court to issue an injunction against Pritchard to stop him from continuing to operate the sawmill for his own profit until he satisfied his debt. If the injunction were not given, Miller alleged that the mill might be "greatly injured" or destroyed by fire, a mill with improvements that Miller estimated at \$10,000.⁷⁰

Whether Miller really believed that Pritchard would destroy the mill is probably unlikely, but the ploy seemed to have worked. Miller and Pritchard reached an agreement on the fate of their partnership in the sawmill and the unpleasantness apparent in the petition ebbed. Six days later, after the district judge ordered the sheriff to seize the property to prevent Pritchard from continuing to expropriate the profits of the mill, Miller's attorney entered a motion to dismiss the suit at his costs. Later, Miller signed a note authorizing the sheriff to release the property and restore possession of it to Pritchard, and the former partners agreed to share the court costs after the dismissal of the suit. On January 12th of the following year Miller sold his share of the mill to Pritchard for \$4900. With other financial and legal matters plaguing him from his bankruptcy, perhaps Miller had lost his interest in the operations of his Attakapas sawmill and yielded to Pritchard.⁷¹

⁷⁰ District Court St. Martin Parish, *John F. Miller v. Hector Pritchard*, No. 3494, 23 December 1843.

⁷¹ *John F. Miller v. Hector Pritchard*; St. Martin conveyances, Vol. 14, Page 360, Act 10425. The terms of the sale: Miller was to receive \$1500 by June 1844, the balance of \$3400 in high quality lumber delivered in June 1844 and January 1845 to New Iberia or any place Miller designated. Pritchard seems to have been conspiring to sell shares in the mill to other partners before he bought out Miller. He later sold his entire interest in the sawmill in 1847 for \$12000. See *Kimball & Singer v. Fuller & Millard*.

Miller and Jonas Marsh also had to contend with local government in the operation of their sugar enterprises. In 1837, Abner D. Miner, acting as deputy collector of state and parish taxes, seized a slave named Jack from the Fausse Pointe plantation, and the sheriff offered the slave for sale for delinquent taxes on July 28th of that year. Miller and Marsh averred that the sheriff gave them insufficient notice and the claim of back taxes was demanded illegally. Moreover, Miner, who the plaintiffs depict as “pretending” or “styling himself” as deputy tax collector, was wrong in removing a slave when there was other personal property on the plantation available for seizure. Even so, Miller and Marsh were willing to put up a bond in order for Jack to remain on the plantation. In addition, they contended that the assessment of taxes on the plantation was made contrary to the law. Finally, they prayed for an injunction to stop the sale of the slave. The court issued an injunction against Sheriff George Briant and Miner the same day, and Marsh subscribed a bond of \$500 with his lawyer Isaac E. Morse as security to pay damages if the injunction had been wrongfully sued out.⁷²

In response filed in October, the defendants claimed that they were not bound to answer the petition, but in the event the court overruled their contention, they cited their account of the matter. The parish tax assessors put the tax rolls for 1836 in the hands of the sheriff, and he proceeded to collect taxes in the parish according to law. Prior to this, the assessors gave notice in the local papers that anyone who had complaints about their assessment had thirty days to make their opposition known. After the thirty days, the assessment could not be reduced or altered. Therefore, the plaintiffs have no recourse to

⁷² District Court St. Martin Parish, *Jonas Marsh et al v. George P. Briant et als*, No. 2198, 26 July 1837, 9 Rob. 7. The petitioners also asked the court to appoint an officer to serve the sheriff with the injunction. At the time there was no coroner for the parish, another official who could serve an order to the sheriff, and they claimed that the sheriff would refuse service of the injunction under such circumstances.

complain or oppose the assessment or collection of their taxes or inquire into proceedings that may have occurred before sheriff received the rolls. Moreover, Miller and Marsh had sufficient notice concerning the tax rolls and the collection of their taxes, and the seizure of their property to satisfy their due taxes was legal. In addition to praying for the injunction to be lifted and the sale to proceed, the defendants argued that the plaintiffs should pay 10% interest and 20% damages on the amount of their taxes in accordance with a law passed in 1831.⁷³

The resolution of this suit was noticeably slow. The court renewed the injunction in April of 1838, and there was nothing more on the suit in the case file until the district court handed down its decision in May 1843. The judge ruled in favor of Briant and Miner, dissolved the injunction, and allowed them to proceed with the collection of taxes, presumably for the taxes of 1836. Since the partnership of Marsh and Miller had been dissolved, Jonas Marsh assumed the appeal of the district court decision to the state Supreme Court on circuit in Opelousas. In a decision handed down in the September 1844 term, the court dismissed the appeal, citing that the matter in dispute was the amount of the taxes, not the value of the slave. The amount of tax under dispute was \$275.02, and such a sum fell short of the \$300 minimum needed under law to sustain an appeal to the state's highest court.⁷⁴

The individual at the center of this dispute was the slave Jack, and the existing case file gives nothing more about his situation. Presumably, the sheriff returned him or allowed for his return to the Fausse Pointe plantation after the court issued the injunction. In an inventory of the property of Marsh & Co. taken in 1841, an eighteen-year-old slave

⁷³ Answer of defendants, *Jonas Marsh et al v. George P. Briant et als.*

⁷⁴ *Jonas Marsh v. George P. Briant*, 9 Rob. 7.

named Jack is listed and valued at \$800. In the ensuing sale to divide the partnership property, Marsh purchased Jack for \$740, and he remained on the Fausse Pointe plantation.⁷⁵

The sale in which Marsh allowed Jack to remain in the Fausse Pointe slave community was a product of the wreckage that ensued in the wake of Miller's financial collapse in the late 1830s. The legal skills necessary to navigate failure will be discussed in the next chapter, but this section demonstrated that lawyers and courts occupied a considerable part of a planter's attention in the operation of a large agricultural enterprise. Miller initiated and confronted legal challenges in a variety of areas as owner and master of his Attakapas plantations. The Randolph heirs presented a threat under Louisiana inheritance laws, while he encountered litigants like Lelou and Thompson pressing cases in disputes over property. Suits involving overseers and steamers, for example, were always a possibility in the day-to-day operations of a large sugar plantation. Largely successful in these cases, Miller and his lawyers revealed much legal skill before the bar in the Attakapas, but his real test came with financial failure that began with the construction of a wharf.

⁷⁵ Act of Notaries, St. Martin Parish, Vol. 7, Act 200 ½; Partition sale, 7 March 1843, in District Court St. Martin Parish, *Joachim Kohn & other, syndics v. Jonas Marsh*, No. 2799.

CHAPTER 3: SAWMILLS AND BATTURES

Commerce was the economic lifeblood of antebellum New Orleans, and the commercial core of the city was its riverfront. Because New Orleans was below sea level, a levee along the riverfront for about four miles protected the city from the waters of the Mississippi River. The levee also served as the stage upon which much of the trade of the interior of the United States passed, “the market place of the wealth of the west.” It was not simply in the trade of the southern staples of cotton, sugar, and tobacco that merchants and factors performed their roles of buying, selling, and bargaining. During the year a visitor could find a staggering variety of goods—coal and corn, wheat and whiskey, hides and hams, fruit and flour—on the riverfront. By the 1830s New Orleans was in the midst of period of explosive economic growth and had surpassed New York City as the leading export center of the nation.¹

Travelers approaching New Orleans by river first noticed the “forest” of masts of ships docked at the levee, sometimes in rows three or four deep. While strolling in the city, a person could not escape the sight of moored vessels. The low elevation of the streets gave the ships a towering presence, and one felt “prompted to move aside to let them pass.” An array of craft delivered and received their cargoes along the levee—frigates plying the coastal trade, foreign schooners bound for Europe or Mexico, flatboats

¹ Lester B. Shippe, ed., *Bishop Whipple’s Southern Diary, 1843-1844* (Minneapolis: The University of Minnesota Press, 1937), 95; James E. Winston, “Notes on the Economic History of New Orleans, 1803-1836,” *The Mississippi Valley Historical Review* 11 (September 1924): 206-208; Joseph G. Tregle, Jr., *Louisiana in the Age of Jackson: A Clash of Cultures and Personalities* (Baton Rouge: Louisiana State University Press, 1999), 16-17.

from the Midwest, scores of steamboats, and even mundane boats like pirogues and skiffs.

With their ability to journey against the river's current, steamboats transformed river travel by the 1830s. These rulers of the Mississippi River were a constant sight at the port. Considered floating palaces by some, another observer described them as "built in the most fantastic manner and painted in the most gaudy colors." By the middle of the antebellum era, steamboats made over one thousand arrivals to the port, sailing vessels made nearly twice that many, and keelboats even more.²

As they disembarked along the riverfront, visitors witnessed a spectacle of products and people that made a lasting impression. Near the end of the antebellum era, one visitor marveled: "This Levee is the grandest quay in the world. Tyre nor Carthage, Alexandria nor Genoa, those aforetime imperial metropolises of merchant princes, boasted no quay like the Levee of New Orleans." From late autumn to early spring, cotton and sugar arrived for shipment to foreign and domestic markets, and the levee became a beehive of activity. Ships came and went, longshoremen loaded and unloaded the vessels, and drays carried the cargos to their immediate destination, whether to the steam cotton presses, to storage, or to another ship. Workers with unique tasks inhabited this area, such as the screwmen who used large jackscrews to tightly pack bales of cotton into

² Charles Augustus Murray, *Travels in North America during the years 1834, 1835, & 1836*, Vol. 2 (London: Richard Bentley, 1839), 185; Joseph Holt Ingraham, *The Southwest. By a Yankee*. Vol. 1 (New York: Harper & Brothers, 1835), 85; James S. Buckingham, *Slave States of America*, Vol. 1 (London: Fisher, Son, & Co., 1842), 325; Charles Olliffe, *American Scenes: Eighteen Months in the New World* (Painesville, OH: Lake Erie College Studies, 1964), 25; Joseph Holt Ingraham, ed., *The Sunny South; or, The Southerner at Home* (Philadelphia: G. G. Evans, Publisher, 1860), 341-343; Robert C. Reinders, *End of an Era: New Orleans, 1850-1860* (New Orleans: Pelican Publishing Company, 1964), 35, 40; Tregle, *Louisiana in the Age of Jackson*, 16; Ari Kelman, "A River and Its City: Critical Episodes in the Environmental History of New Orleans," Ph.D. dissertation, Brown University, 1998, 78-81. For a detailed account of work routines along the riverfront during the postbellum era, see Eric Arnesen, *Waterfront Workers of New Orleans: Race, Class, and Politics, 1863-1923* (New York: Oxford University Press, 1991).

the holds of ships. In the meantime, merchants and speculators, auctioneers and clerks all haggled over the prices of these commodities. In all, one traveler thought of the scene as “a ceaseless maelstrom of motion.”³

The people collected on the levee provided much of its show, many engaged in work, but some just there to pass the time. Described as “the most amusing motley assemblage that can be exhibited in any town on earth,” it was also microcosm of American society in the frontier west. Members of all classes and sections of the nation encountered one another there, and they had to cooperate to make the levee economy work. Not only were there rich merchants and poor mechanics, planters and slaves, free blacks and Choctaws, Yankee captains and European sailors, but one also found “old men and young men, hoosiers, pukes, buckeyes, crackers, greenies, busters and other varieties of civilization . . . in all the eccentricities of their individual character.” As the same visitor concluded, “. . . he who has not seen the New Orleans levee has not seen all of this great country.”⁴

Amid this mix of people, fights erupted easily, and visitors noted the high rates of violence in the city. But the clashes and tensions that shaped the character of the riverfront did not always occur on the levee in view of travelers. Instead, the courtroom and the halls of local government became the forums for the resolution of the most important of these disputes. Conflicts over ownership of the riverfront, between public rights and private property, and regarding the power of local government over the levee

³ Ingraham, ed., *The Sunny South*, 338, 344; Reinders, *End of an Era*, 33-34; Buckingham, *Slave States of America*, 325-326; Shippe, *Bishop Whipple's Southern Diary*, 95-96.

⁴ Kelman, “A River and its City,” 82-83; Murray, *Travels in North America*, 189; Shippe, *Bishop Whipple's Southern Diary*, 95-96, 96-97; Benjamin Henry Boneval Latrobe, *Impressions Respecting New Orleans: Diary & Sketches, 1818-1820*, Samuel Wilson, Jr., ed. (New York: Columbia University Press, 1951), 21-22. For more on the democratic possibilities of public places such as those in New Orleans, see Mary Ryan, *Civic Wars: Democracy and Public Life in the American City during the Nineteenth Century* (Berkeley: University of California Press, 1997).

all occupied the attention of judges and councilmen, as well as the myriad of litigants. The legal contests not only revealed the ethnic antagonisms and social strains of a rapidly growing city, but also affected the course of the economic development of the city.⁵

For merchants and businessmen caught in the middle of these quarrels, the outcome could mean prosperity or ruin, and perhaps no entrepreneur suffered greater setbacks than John F. Miller. Though the depression in the wake of the Panic of 1837 found him overextended in his property speculations and mortgages, the trigger for his difficulties was the effective shutdown of his sawmill with the construction of wharfs by one of the city's municipalities in 1836. Five years later, he faced the prospect of bankruptcy. Everything that he worked for since his arrival in Louisiana in 1808 was in jeopardy. This chapter will chart the origins of Miller's financial fall and explore the tension between public economic development and private property rights in the antebellum South through his litigation over the wharfs.

Historians have long recognized the importance of riparian laws, the laws regarding the banks of rivers and streams, in the development of the antebellum market economy. These studies have placed disputes regarding waterway rights in the context of the debate amongst historians on the transition in America from a largely precapitalist economic system to a market-based one. Centering on rural areas, these accounts concentrate on the conflicts that pitted rural farmers and fishermen against upstart manufacturers and mill owners. The erection of milldams by these entrepreneurs on rivers and creeks disrupted traditional rights and local customs. The dams blocked the flow of traffic on these streams, prevented migratory fish from reaching their spawning

⁵ For crime and violence in New Orleans, see Buckingham, *Slaves States of America*, 351-353. My discussion of the issues surrounding the development of the riverfront of New Orleans is indebted to Kelman's dissertation.

grounds, and even caused upriver lands to flood. Uneasy about the effect of the market on their lives, the farmers and fishermen protested these violations of their traditional rights, but courts and legislatures ultimately sided with the manufacturers and mill owners. Their rulings and statutes created a new legal standard that facilitated the growth of the market economy.⁶

Another power employed by state and local governments and ratified by the courts to facilitate the growth of the market economy was eminent domain. This legal doctrine allowed the state to seized private land for the rights of way for roads, canals, and railroads. In the early nineteenth century, a majority of states did not have statutes or constitutional provisions that called for the compensation for the owners of the property that the state appropriated. As the century progressed, legislatures passed more laws that granted compensation for property owners, but the limits and size of the awards remained a contentious issue before the courts.⁷

Miller's legal battle with the municipality allows for an examination of the role of eminent domain in the antebellum economy from a new angle. Neither Miller nor the city officials opposed economic development or commerce, and the dispute took place in an urban setting. The issues instead hinged on the right of the municipality to build public works to promote commerce that interfered with Miller's right to conduct his

⁶ See especially Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977), 34-62. For other examinations of the tensions concerning riparian rights in colonial and antebellum America, see for example Gary Kulik, "Dams, Fish, and Farmers: Defense of Public Rights in Eighteenth-Century Rhode Island," in Steven Hahn and Jonathan Prude, eds., *The Countryside in the Age of Capitalist Transformation: Essays in the Social History of Rural America* (Chapel Hill: University of North Carolina Press, 1985), 25-50; Harry L. Watson, "'The Common Rights of Mankind': Subsistence, Shad, and Commerce in the Early Republican South," *The Journal of American History* 83 (June 1996): 13-43; Tom Downey, "Riparian Rights and Manufacturing in Antebellum South Carolina: William Gregg and the Origins of the 'Industrial Mind,'" *The Journal of Southern History* 65 (February 1999): 77-108. For a summary of the debate regarding the transition to a market economy, see for example Allan Kulikoff, "The Transition to Capitalism in Rural America," *William and Mary Quarterly* 46 (January 1989): 120-144.

⁷ Horwitz, *The Transformation of American Law*, 63-66.

business at the sawmill. It was Miller the entrepreneur who insisted on his customary rights, in this instance his ability to land rafts of logs on the banks of the river and transport them across the levee to his mill without any interference or impediment. Ironically, the effort by the community to further the economic growth that allowed Miller to flourish led to his financial demise. As the power of the municipality to build the wharfs was established, another issue arose in the litigation over just compensation for Miller's loss. In order to understand the context and the implications of this litigation, though, it is necessary to first discuss earlier legal fights over the riverfront and the friction between competing white ethnic groups for economic and political hegemony in antebellum New Orleans.

Miller's suit over the construction of the wharf was part of series of antebellum cases regarding ownership and use of the New Orleans riverfront. The hydrology of the Mississippi River as it rolled around a crescent-shaped bend at the city complicated these matters. As the water rushed through the bend, it deposited sediment along the banks adjoining what became the American quarter of the city, or the Faubourg St. Mary, upriver from the old quarter. During periods of high water, this bed of sediment remained covered, but in seasons of low water, the exposed bed formed a muddy beach, known as the batture. The citizens of New Orleans found many uses for the batture. In addition to its role as an anchorage, ordinary citizens as well as shippers used it for temporary storage, and others used it as a valuable source of landfill. When Jean Gravier, a property owner in the Faubourg St. Mary, asserted a claim over the batture in 1803 and

attempted to deny free access to the public, his effort produced one of the celebrated legal battles of the early republic.⁸

The central figure in the ensuing batture controversy was Edward Livingston. A member of the powerful Livingston family of New York, he possessed one of the finest minds in nineteenth century American law. After an embezzlement scandal marred his tenure as the federal attorney and mayor of New York City, a disgraced Livingston arrived in Louisiana in 1804, determined to recover his wealth and clear the claim that the federal government held against him. Focused exclusively on his own best interests, the attorney quickly realized the great value of Gravier's claim to the batture. In the course of representing Gravier, Livingston acquired the lion's share of the original claim, and his fight to establish its legitimacy lasted nearly two decades.⁹

Once Gravier tried to improve the batture, the city council of New Orleans stopped him by declaring the batture public property. Livingston, as Gravier's attorney, filed suit, and in 1807, scored a victory when the Superior Court of the Territory of Orleans confirmed Gravier's title to the batture. Livingston immediately began work to extend the levee and reclaim from the river his newly acquired portion of the batture. However, mobs outraged by the judicial decision descended upon the riverfront whenever Livingston's workers assembled and prevented them from making any improvements. Fearful of violence, Governor William Claiborne asked President Thomas Jefferson to

⁸ Kelman, "A River and Its City," 17-18, 23; John A. Lovett, "Comment: Batture, Ordinary High Water, and the Louisiana Levee Servitude," *Tulane Law Review* 69 (December 1994): 561-572; George Dargo, *Jefferson's Louisiana: Politics and the Clash of Legal Traditions* (Cambridge: Harvard University Press, 1975), 74-75. The term batture probably derives from the French verb *battre*, or to beat. It describes the beating of the water against the shore. See Lovett, "Comment," 568.

⁹ For accounts of the batture controversy, see Dargo, *Jefferson's Louisiana*, 74-101, and Kelman, "A River and Its City," 24-59. For a characterization of Livingston, see Tregle, *Louisiana in the Age of Jackson*, 116-124. Livingston's brother Robert and James Monroe negotiated the treaty that secured the Louisiana Purchase for the United States.

intercede. The President obliged, and the U. S. Marshal in New Orleans seized the batture and evicted Livingston's crews.¹⁰

Litigation over the batture had just begun, and legal complexities and political implications are difficult to summarize. Legally, the arguments essentially hinged on the applicability of French and Spanish riparian law to Gravier's claim to the batture. Politically, the batture controversy had broader repercussions. Jefferson took an active interest in the dispute, motivated in part by an animosity toward Livingston stemming from the embezzlement scandal and the attorney's association with Aaron Burr. But he also had an ideological motivation as well. As the most recent account of the batture saga points out, free navigation of the Mississippi River was essential for western commerce and became a political principle for his Republican party, inspiring the purchase of Louisiana in 1803. Livingston's attempt to appropriate the batture, in Jefferson's eyes, violated that doctrine and encroached upon the public good.¹¹

Accordingly, the battle over the batture also revealed an implicit tension over the best approach to develop the riverfront. Livingston was familiar with New York City's efforts to develop its port through private ownership of the riverfront, and he believed that a similar strategy would benefit New Orleans. Lawyers representing the city, on the other hand, viewed the riverfront and the batture as "a gift from nature" that should be accessible to all citizens. Instead, they argued that maintaining a public riverfront was the best course for commercial progress. This tension between the public good and private rights appeared once more in Miller's suit against the municipality.¹²

¹⁰ Kelman, "A River and Its City," 18-30.

¹¹ Kelman, "A River and Its City," 30-51; Dargo, *Jefferson's Louisiana*, 75-101.

¹² Kelman, "A River and Its City," 39-44.

In 1810 Livingston resumed his efforts to secure his claim to the batture by filing suit against the Marshal to recover the property seized and against Jefferson for damages. Though successful in District Court against the Marshal, Livingston's action against Jefferson proved fruitless, thanks in large measure to the former President's machinations to get a political ally appointed to the federal bench that heard the suit. Despite his victory in District Court, the city continued to block Livingston, eventually forcing the attorney to capitulate and settle in 1820.¹³

Owing in part to the furor over Livingston's attempt to develop the batture, the city of New Orleans maintained a *laissez-faire* approach toward regulating and improving the riverfront. It did not pass a major ordinance regulating the port until late 1816. As a result, the levee sorely lacked the infrastructure needed to handle the massive increase in steamboat traffic that occurred by the 1820s and 30s. Recalling his arrival in New Orleans in 1821, merchant and property developer Samuel Jarvis Peters described the riverfront as "without a wharf in its whole extent." Interestingly, this expansion in steamboat traffic along the Mississippi River emerged in the wake of the failure in 1817 of Livingston and his law partner John Randolph Grymes to sustain in New Orleans federal court the steamboat monopoly of Robert Fulton and Livingston's brother Robert on the western rivers against a challenge from Henry Shreve. As city officials finally began to contemplate the construction of wharfs and other improvements to better handle the increase in river commerce, they had to confront a new ethnic dynamic in city that proved impossible to navigate.¹⁴

¹³ Dargo, *Jefferson's Louisiana*, 95-101; Kelman, "A River and Its City," 51-59.

¹⁴ Kelman, "A River and Its City," 60-94; George C. H. Kernion, "Samuel Jarvis Peters," *Publications of the Louisiana Historical Society* 7 (1913-1914): 69.

By 1836 the city that Miller arrived in twenty-eight years earlier had witnessed a significant alteration in its ethnic composition. As early as the territorial period, assertive American settlers like Miller arrived in Louisiana to seek new opportunities in commerce, in agriculture, and in professions like law. What was once a trickle rapidly increased once the state entered the union, and by 1830s, the Anglo population had wrested economic control of the city away from native Creoles and other French émigrés. In particular, the French Creoles, the descendants of the colonial settlers, felt this change in their position in the city acutely. The consequences of the ethnic tensions that emerged between these two groups ultimately had an effect on the fate of Miller's sawmill.¹⁵

Though both Anglos and Creoles occupied all sections of the city, Canal Street became the traditional dividing line between the American section of the Faubourg St. Mary and the Creole-dominated Vieux Carré, today's French Quarter. The lines separating the two groups were cultural as well as geographical. Creoles characterized the Yankee newcomers as greedy, puritanical, and unsophisticated, and by doing so, contributed to the later creation of myths of Creole gentility. The Anglos, on the other hand, thought of the Latin natives as lazy, backward, and decadent. Of course, there were

¹⁵ Joseph G. Tregle, Jr., "Early New Orleans Society: A Reappraisal," *The Journal of Southern History* 18 (February 1952): 20-29; Joseph G. Tregle, Jr., "Creoles and Americans," in Arnold R. Hirsch and Joseph Logsdon, eds., *Creole New Orleans: Race and Americanization* (Baton Rouge: Louisiana State University Press, 1992), 131-163. In this usage of the word Creole, I do refer to white descendants of French colonists. The term "creole" has a controversial etymology. Post-bellum Louisiana writers created a myth of Creole gentility that appropriated the word to mean exclusively persons of white persons of Latin ancestry. Professor Tregle has demonstrated through his work that the word was generally synonymous with "native" in its antebellum usage. Thus persons of African descent born in Louisiana were called Creoles as well as persons of French stock. The modifying phrase "of color" was not used in the antebellum era. See Tregle, "Creoles and Americans," 137-141; and Joseph G. Tregle, Jr., "On that Word 'Creole' Again: A Note," *Louisiana History* 23 (1982): 193-198. The other important alteration of the ethnic composition of New Orleans in the 1830s involved slaves and free people of color. Persons of African ancestry had formed the majority of its populace, even as late as the mid-1830s. Due to the influx of white Americans and immigrants, this had changed by the 1840 census. See Tregle, "Early New Orleans Society," 32-33; and Richard C. Wade, *Slavery in the Cities: The South 1820-1860* (New York: Oxford University Press, 1964), 17-18, 326.

Creoles who pursued wealth, and there were Americans who succumbed to the local *joie de vie*, often by marrying a Creole belle. But there was much evidence to support the familiar caricatures. Due in part to their disdain for education and the cultural baggage from colonialism, the Creoles quickly proved unequal to the Americans in a number of areas, whether in law, in politics, or in commerce.¹⁶

In the cultural gumbo of a port city like New Orleans, however, a simple binary division of ethnic background was not possible. Émigrés from France and Santo Domingo arrived in Louisiana during the late eighteenth and early nineteenth centuries. Though often forced to leave due to political and social upheaval in their native lands, they arrived in Louisiana seeking new opportunities for wealth and advancement, motivations quite similar to the Anglos. Educated and astute, these “foreign French” led the fight against American hegemony in antebellum New Orleans, not the Creoles. Local American politicians and merchants respected and loathed them because of their skill. Both the foreign French and the Anglos, though, did agree on the crudity and ignorance of the Creoles. The Creoles in turn bristled at the superior attitude of their Gallic cousins, but depended on them for political leadership.¹⁷

In addition, since New Orleans was second only to New York City as a port of entry to antebellum America, immigrants from Germany and Ireland began to settle in the city during the 1820s and 1830s. Their numbers would increase in the following decade until nearly half of the residents of New Orleans were foreign-born in the 1850s, with a

¹⁶ Tregle, “Early New Orleans Society,” 20-29; Tregle, “Creoles and Americans,” 131-163. Important politicians in antebellum New Orleans like Edward Livingston, John Slidell, and Judah Benjamin solidified their ties to the French by marriages to the daughters of Creoles or French émigrés.

¹⁷ Tregle, “Early New Orleans Society,” 29-31; Tregle, “Creoles and Americans,” 153. See also Paul F. Lachance, “The Foreign French,” in Arnold R. Hirsch and Joseph Logsdon, eds., *Creole New Orleans: Race and Americanization* (Baton Rouge: Louisiana State University Press, 1992), 101-130.

quarter of the population German or Irish. The lawyers involved in the legal battle over Miller's sawmill illustrated the ethnic complexity of antebellum New Orleans and the talent of these émigrés. Miller's attorneys included Christian Roselius, who came to Louisiana from Germany as a redemptioner, a type of indentured servant. His other attorney, Pierre Soulé, and the opposing attorney, Étienne Mazureau, both emigrated from France, but the former escaped the restored Bourbons while the latter was a refugee from the reign of Napoleon.¹⁸

These ethnic tensions translated into partisan politics. Aware of the threat posed by Americans and immigrants, the French faction first tried to protect their power with the state's first constitution of 1812, engineered in part by foreign French Mazureau and Louis Moreau Lislet, a compiler of the state's *Civil Code*. Its suffrage restrictions favored established owners of real property from the Creole class, not young American clerks who lived in boardinghouses or merchants with liquid wealth. Representation in the legislature under the constitution favored the southern part of the state, where the French were in the majority. The mechanisms of electing the governor aided the chances of French candidates, and throughout the antebellum era, the state regularly alternated between French and Anglo governors. A cumbersome amendment process guaranteed the constitution's staying power until 1845.¹⁹

Nevertheless, the efforts of the French could not offset the numbers of Americans who poured into the city by the 1830s. The American sector of the Faubourg St. Mary

¹⁸ Tregle, "Early New Orleans Society," 32; Tregle, "Creoles and Americans," 163-167. For background on Soulé and Mazureau, see Tregle, *Louisiana in the Age of Jackson*, 32-33, 112, 109-110. For background on immigration to antebellum Louisiana, see Fredrick Marcel Spletstoser, "Backdoor to the Land of Plenty: New Orleans as an Immigrant Port, 1820-1860," (Ph.D. dissertation, Louisiana State University, 1978).

¹⁹ Joseph G. Tregle, Jr., "Political Reinforcement of Ethnic Dominance in Louisiana, 1812-1845," in Lucius F. Ellsworth, ed., *The Americanization of the Gulf Coast, 1803-1850* (Pensacola, FL: Historic Pensacola Preservation Board, 1972), 78-87.

became synonymous with the commercial quarter of the city, and the Anglos gained a plurality of the population there by 1830. It was then that ethnic rivalry intersected with commercial development along the riverfront. Tensions between the French-dominated city government and the American populace increased as the city council took a larger role in regulating the riverfront in the 1820s. Then the batture once again became the center of controversy. By mid-1830s, accumulations of silt had extended the batture further from the levee, so ships arriving at the American faubourg could not reach the wharf built there in 1831. To remedy this obstacle in their commercial affairs, American politicians and merchants petitioned the city to extend the wharf. For the Creoles, however, these problems with the batture represented an opportunity to extinguish the American stranglehold over the city's commercial life.²⁰

The conflict over the proposed improvements came to a boil in 1835. Samuel Jarvis Peters led the fight in favor of the wharf extension proposal, and the awareness in local newspapers of the need of an improved wharf to facilitate the city's commerce provided momentum to the cause. The Creoles on the city council, however, were unmoved and prevented the city government from taking action. City officials supported their position by using the same rhetoric of free access to the batture that they employed against Livingston. Already upset that their section did not receive its share of public works from their municipal taxes, many in the American community clamored for the secession of the Faubourg St. Mary from the rest of the city. With their positions irreconcilable, a measure to divide the city along ethnic lines found support from both

²⁰ Kelman, "A River and Its City," 94-101; Kernion, "Samuel Jarvis Peters," 75-76.

sides. In early 1836, the state legislature passed by a wide margin a bill that divided the city into three semiautonomous municipalities.²¹

Under this new plan of civic organization, the city of New Orleans still maintained a single mayor and police force, and it preserved jurisdiction on matters that crossed municipal lines. But power now resided in the municipalities, as each acquired its own corporate rights. Therefore, the council and officials of each municipality controlled its finances, passed its own laws, and possessed the right to build public works. Each municipality could also sue and be sued. Under the new map of city, the French First Municipality corresponded with the old section of the city. Located above the river from the First Municipality, the Second Municipality encompassed the American-dominated Faubourg St. Mary, with the major thoroughfare of Canal Street as the dividing line. The Third Municipality was located below the First Municipality, with Esplanade Avenue forming the boundary. This unique but unwieldy arrangement lasted until 1852.²²

While the First Municipality remained the heart of Creole New Orleans, and the Second the same for the Americans, the Third Municipality, which included the Faubourgs Marigny, Clouet, and Montreuil, was something of a mystery. Its populace was a mix of ethnicities, making it perhaps the most exotic part of the most exotic city in the antebellum South. Though nominally Creole, these faubourgs below Esplanade was home to German immigrants, free persons of color, and a variety of people of Hispanic origin—Spanish, Portuguese, and Mexican. One writer remembered that in the Faubourg Marigny, “people of the Saxon or Celtic race were few and far between,” while a visitor

²¹ Kelman, “A River and Its City,” 94-101; Kernion, “Samuel Jarvis Peters,” 75-77; Tregle, “Creoles and Americans,” 155.

²² Tregle, “Creoles and Americans,” 155-156; Reinders, *End of an Era*, 51.

reported that locals called the municipality “the Spanish part of the city.” Under this new civic organization, Miller’s sawmill in Clouet and Montreuil was now part of the Third Municipality.²³

Once the city divided, the three municipalities immediately engaged in a fierce rivalry for commercial development. Even the First and Third Municipalities could not resist the emergence of discord despite their social similarities. One factor exacerbating this tension was the anger of influential Creole businessman and developer Bernard Marigny, who was upset with the city’s failure to extend the wharfs in front of the Vieux Carré to include his namesake faubourg, the Faubourg Marigny. As the poorest and least developed part of the city, the Third Municipality had to undertake an aggressive program of public works to keep up with its rival municipalities in economic growth. Since the most crucial spur to commercial progress in New Orleans revolved around the riverfront, officials quickly made plans to build wharfs along the municipality’s levee. Unfortunately for Miller, the location chosen for the new wharfs was across the levee from his sawmill.²⁴

The sawmill had been the anchor of Miller’s financial success. As the city of New Orleans doubled its population during the 1830s, the sawmill helped provide the lumber necessary to sustain the city’s building boom. The lumber that the sawmill furnished included scantling and “sawed timber,” products that were in great demand by 1836 and commanded high prices. As the construction trade prospered in the city, the

²³ Tregle, “Early New Orleans Society,” 32; Tregle, “Creoles and Americans,” 164; Tregle, *Louisiana in the Age of Jackson*, 15; Ingraham, *The Southwest*, 90; Henry Castellanos, *New Orleans As It Was* (reprint, Baton Rouge: Louisiana State University Press, 1978), 155; Shippe, *Bishop Whipple’s Southern Diary*, 110. The term faubourg is synonymous with suburb.

²⁴ Reinders, *End of an Era*, 62; Kelman, 101-105; Winston, “Notes,” 204. For more on Marigny, see Tregle, *Louisiana in the Age of Jackson*, 113-114.

sawmill increased in value, as reflected in the cost to enter into business with Miller. After the bitter dissolution of the original partnership with Hayward Peirce in the early 1820s, Miller's new partner was Frederick Beckmann, who purchased a half share in the mill for \$20,000 in 1829. Less than three years later, Miller bought the share back from Beckmann for \$30,000, then sold that half share plus a half interest in thirteen slaves to James H. Shepherd for \$41,105 within the week. By 1836, Miller's concern encompassed three steam mills at its site, each estimated to be worth \$30,000 a piece, and engaged a workforce of eighty-five slaves, valued between \$84,000 and \$88,000. In the fiscal year ending on August 31, 1836, the partnership brought in \$88,178.26 of net profit to Miller and Shepherd.²⁵

Passing knowledge of the layout of the sawmill in relation to the riverfront is important for understanding the contours of the dispute. According to one witness, the batture in front of the levee at the sawmill measured about thirty feet from the banks of the river during periods of low water, but another stated that the banks were almost perpendicular to the river when the water was high. The distance from the banks of the river to the sawmill was about ninety-six feet. Within that distance, the riverfront included a forty-foot wide public road that ran in front of the sawmill known as Levee Road. The levee itself was approximately fifty-six feet in width between the road and the riverbank, and a towpath ran along its center. The property that contained the sawmill was about 300 feet in length, occupying the whole front portion of the block abutting the public road between Piety and Desire Streets. That measurement also included a corner

²⁵ Winston, "Notes," 201; Orleans Parish Conveyances, Vol. 6, Page 276; Vol. 9, Page 725; Vol. 11, Page 2; Testimony of Hamilton Hall and Lawrence Robertson, in *James H. Shepherd and John F. Miller v. The Third Municipality of the City of New Orleans*, #4133, Supreme Court of Louisiana Collection, University of New Orleans, 6 Rob. 349 (1844). Sawmill in this usage includes collectively all three steam mills that Miller constructed on the site over the course of his operations there.

lot across Desire Street, also fronting the public road. The dividing line between the Faubourgs Clouet and Montreuil ran through the middle of the mill yard.²⁶

Miller purchased the land upon which he built his mills in two separate notarial acts. He bought the half of the block with the corner of the Levee Road and Piety in 1811, five years before construction on the sawmill began. Miller and Beckmann then acquired the rest of the property during the public sale of the Montreuil estate in 1830. Miller not only owned the property that fronted the public road. Both acts explicitly stated that the property he purchased extended to the river's edge. Therefore, Miller technically owned the section of the levee and riverfront that passed through his property. In the course of the litigation over the wharf, the exact nature of his ownership of the levee and riverfront became the crucial issue for the courts to decide.²⁷

Miller made his first alteration to his riverfront landscape during the construction of the sawmill in 1816. In a petition to the New Orleans city council, he outlined his plan to raise the public road in front of the sawmill to a level equal to that of the crest of the levee. By eliminating the backward slope of the levee, the plan allowed for easier transport of his timber and other cargo from the river to the mill. In addition, to provide water to cool his steam engines, Miller also constructed a "wooden conductor" from the river through the levee and elevated road to his mill. The council quickly approved his

²⁶ Testimony of Lawrence Robertson and John C. O'Grady; notarial acts; and plans, in *James H. Shepherd and John F. Miller v. Municipality No. 3 of the city of New Orleans*, First Judicial District Court, Docket No. 13638, New Orleans Public Library; testimony of Lawrence Robertson, in *Shepherd and Miller v. the Third Municipality*.

²⁷ Notarial acts and plaintiffs' brief, in *Shepherd and Miller v. the Third Municipality*. Ownership under civil law is practically an absolute right. As one civil law scholar describes it, "The absolute character of the right of ownership is qualified only by the rule that an owner must not abuse his rights or allow his property to create a nuisance for the rest of the community." As a result, "No other jurisdiction in the United States envisages individual property rights more uncompromisingly." Shael Herman, *The Louisiana Civil Code: A European Legacy for the United States* (New Orleans: Louisiana Bar Foundation, 1993), 47.

request, an action that Miller later used in court to establish his claim to his riparian rights.²⁸

In the course of operating his lumber enterprise, Miller used the riverfront adjacent to his mill as though it was his private property. Since his first work on the levee and public road in 1816, he continued to maintain them within his boundary, spending nearly \$10,000 on embankments and improvements. The sawmill also utilized the levee as a storage area. One witness affirmed in 1837 that the area between the river and the public road had been covered the sawmill's timber, planks, and shingles for more than ten years. Miller even built two small sheds there, one for the manufacture of shingles and the other for a horse.²⁹

But his most important right regarding the riverfront involved the landing of rafts of logs along the banks of the river and their transport across the levee and public road to the mill. Miller and his employees stored rafts of raw timber along the banks of the Mississippi River near Carrollton, upriver from the city. When the mill needed the timber, workers rafted the logs down the river and moored them to the riverbank in front of the mill. Sometimes the logs remained there for short periods of time, but workers (or most likely slaves) in due course transported the logs to the mill. Despite the alteration of the public road in 1816, Miller's workers still had to cross it while carrying the logs. To better facilitate this stage of transport, Miller made another major capital improvement to his mill in 1833, constructing a bridge from the river's edge to mill yard that crossed

²⁸ Petition to the mayor and city council; resolution of the *conseil de ville*, 16 November 1816, in *Shepherd and Miller v. the Third Municipality*.

²⁹ Estimate, in *Shepherd and Miller v. the Third Municipality*; testimony of Joseph Pilié, in *Shepherd and Miller v. Municipality No. 3*, 1st JDC.

Levee Road. He again sought and received approval for the project from the city council.³⁰

In June 1836 the council of the Third Municipality passed a resolution authorizing the construction of three wharfs in front of Miller's sawmill. As they would project fifty feet into the Mississippi River, the wharfs would block his access to the banks of the river and prevent the hauling of logs to the mill. Moreover, their construction entailed the destruction of his improvements to the riverfront, such as his bridge to the mill. The success of Miller's enterprise was in jeopardy. His clerk affirmed that the business held large contracts for finished lumber, and the customers would hold them responsible for the failure to deliver.³¹

Work on the wharfs began soon after the resolution passed, and Miller's attorneys filed a petition in Parish Court on June 17 seeking an injunction to force the municipality to stop construction. Interestingly, the lawyers never claimed that Miller owned the levee and riverfront in front of his sawmill. Instead, the petition asserted that the firm long had "undisturbed possession and enjoyment" of the riverfront. To establish Miller's riparian rights, the attorneys relied on the resolutions of the city council that allowed him to make improvements on the sawmill site in 1816 and later to construct his bridge as an explicit grant of his right to land his rafts of logs along the levee. Since the construction of the wharfs had already cost Miller and Shepherd \$5000 in losses, they asked for that amount in compensation in the petition. The lawyers also demanded an indemnity of \$200,000

³⁰ Plaintiffs' petition; resolution of the *conseil de ville*, 18 September 1833; testimony of Hamilton Hall, Lawrence Robertson, and Jonathan Alston, in *Shepherd and Miller v. the Third Municipality*. The bridge cost \$1300, and builder Jonathan Alston declared it "solid in its construction." Carrollton, an independent town in the 1830s, was later incorporated into New Orleans. Its location corresponded with today's Carrollton Avenue in New Orleans.

³¹ Plaintiffs' petition; testimony of Hamilton Hall and Lawrence Robertson; resolution of the municipal council, 1 June 1836, in *Shepherd and Miller v. the Third Municipality*.

from the municipality to cover the loss of the plaintiffs' enterprise if the court did not make the injunction perpetual and allowed construction to continue. Finally, because state law allowed a litigant to ask for a jury to hear his cause, Miller and Shepherd prayed for a jury trial in this dispute. Judge Charles Maurian issued the injunction the following day.³²

In an answer filed on August 10, attorney for the municipality Étienne Mazureau made several points that remained central to the defense's position regarding their powers over the riverfront. First, the municipality had jurisdiction over the banks of the river. Therefore it could build wharfs or other improvements that benefited the community at large. Secondly, under state law the public at large possessed a right of using the banks of navigable rivers that could not be abrogated. As a result, no individual could have exclusive use the banks of rivers. Finally, the municipality maintained that the city of New Orleans never authorized Miller to build his sawmill nor granted him exclusive rights to banks of the river. However, if the resolutions of the city council allowing him to make his improvements did grant him a right that impaired the public's access to the riverfront, the municipality reserved the right to use its power under the new civic organization of the city to repeal such ordinances. Though the Mazureau recognized that Miller's property did extend to the river, the municipality never wavered in its position that its power took precedence over any private ownership of the levee and riverbank.³³

Relations between the plaintiffs and the municipality deteriorated during the late summer and fall of 1836. In late July, the municipal council passed an ordinance that forbade the mooring of rafts in front of the sawmill and authorized officials to set adrift

³² Plaintiffs' petition, in *Shepherd and Miller v. the Third Municipality*. In addition to Roselius and Soulé, Miller and Shepherd's team of lawyers included Isaac E. Preston.

³³ Answer, in *Shepherd and Miller v. the Third Municipality*.

any that had been moored. It also instructed the contractor to continue work on the wharfs despite the injunction issued in the dispute. Roselius then petitioned the court to issue another injunction against the municipality in the wake of these actions by the municipal officials, asserting that the original injunction was not issued according to the order of the court. Nevertheless, sometime in the midst of this dispute, an officer on orders from the municipality did cut Miller's rafts moored before his sawmill and set them adrift in the river.³⁴

Miller and Shepherd attempted to compromise with the municipal council in October 1836. At the outset of their petition, they affirmed their support for "the forward progress of improvements" in the municipality. To do their part to enhance local commerce, the sawmill proprietors offered to tear down the oldest of the three mills on the sawmill site, located near the corner of Piety and Levee Road. As Miller was also a builder and contractor by this time, he and his partner proposed the construction of sixteen three-story brick buildings in its place to attract business to the municipality, with the promise of more if the leases could be secured. They also offered to make improvements on the levee and pave the road opposite the mill. In exchange, Miller and Shepherd simply wanted the municipal council to allow them to maintain their two remaining mills in the sawmill complex for a period of years to be agreed to by both parties. Despite the considerable offer, the council rejected the proposal.³⁵

³⁴ Writ of injunction, 17 June 1836; supplemental petition, 24 August 1836; writ of injunction, 24 August 1836; testimony of Lawrence Robertson, in *Shepherd and Miller v. the Third Municipality*. It is unclear exactly when the officer cut the rafts. In December 1836 Maurian dissolved the injunctions on a motion from Mazureau with the posting of a bond by the municipality. The attempt by the plaintiffs' attorneys to have the interlocutory judgment set aside failed, they then filed an appeal to the state Supreme Court. It was possible that the rafts were cut then. See Order on the minutes, 10 December 1836; petition of appeal, 7 January 1836.

³⁵ Petition to the city council of the Third Municipality; resolution of the council, 12 October 1836, in *Shepherd and Miller v. the Third Municipality*.

The court empanelled a jury to hear the case on February 3, 1837, and testimony and arguments ended after three days on February 8. Before the jury retired to deliberate, it received a lengthy charge of the court from Judge Maurian, which instructed the jury on various points of law in the *Civil Code*. The main issue for the jury to decide was whether the municipality was within its rights to tear down Miller and Shepherd's improvements on the levee and build the wharfs, or did the municipality infringe upon the plaintiffs' right to property. But in the articles and points the judge instructed the jury to consider, Maurian betrayed a preference for the defense. One charge stated that any authorization the city council may have made to an individual to build improvements on the levee was contrary to *Code's* provisions that prevented an individual from obstructing public access to the levee. A municipal corporation could consequently destroy such works at any time. Other points stressed the right of the municipality to build works to facilitate commerce and regulate to banks of the river. Maurian also instructed the jury to pay careful attention to the distinction between right of property and right of use. Though the plaintiffs may have owned the banks of the river in front of their property, they did not have exclusive use to this public area.³⁶

Not surprisingly, the plaintiffs offered a bill of exception, asserting that the charge was adverse to their rights. Though the case file does not include the arguments presented by the attorneys, Roselius and company likely stressed the sanctity of plaintiffs' property rights and usage rights of the levee against the power of the local government to interfere with these rights without compensation. Such arguments resonated with some members of the jury despite the charge that clearly favored the

³⁶ Charge of the court, 8 February 1838, in *Shepherd and Miller v. the Third Municipality*.

defense. After deliberating through the evening, the jury appeared in court the following day to report that they could not reach a decision in the suit.³⁷

Though the outcome of the trial in Parish Court was not conclusive, the Third Municipality regarded the hung jury as a green light to continue work on the wharf, and another act in the battle between Miller and the municipality began. Miller must have been aware that the municipality would resume work on the levee the day after the trial. To save his property and improvements on the levee from destruction at the hands of the municipal workers, Miller ordered his employees to erect an enclosure around them. Beginning late in the afternoon on February 9 and working through the evening, they fenced in an area 120 feet in circumference out of 220 feet originally staked off. By noon on the following day, municipal workers had pulled down the fence. Miller's workers complied with an order to remove the timber stored on the levee, and the municipality ordered the removal of the two sheds as well. Municipal workers then began the removal of earth from the site. Miller petitioned for another injunction against the municipality, this time in District Court, to prevent it from continuing acts of trespass by tearing down the fence and destroying his works on the levee. Miller also asked for \$5,000 in damages. The court granted the injunction that day.³⁸

The injunction did not dissuade municipal officials. In its answer, the municipality denied Miller's allegations, but also asserted that it was a lawful exercise of its corporate rights if true. By late May Roselius entered a motion in court alleging that the municipality continued to violate the injunction, and the court considered the

³⁷ Bill of exceptions, 8 February 1838; order on the minutes, 9 February 1838, in *Shepherd and Miller v. the Third Municipality*.

³⁸ Petition, 15 February 1837; testimony of Lawrence Robertson, John O'Grady, and Joseph Pilie, in *Shepherd and Miller v. Municipality No. 3*, 1st JDC.

plaintiffs' complaint in a hearing in early June. Nothing more happened in the matter in District Court until March 1838, when both parties agreed to a continuance in hopes of a compromise in the matter. But by this time, the cost to Miller was substantial, and his only hope was to secure compensation from the municipality for his loss.³⁹

Miller and his partner carried on with their case in Parish Court, but before a second jury could hear the suit, James H. Shepherd died. This tragedy did not alter the course of the second trial as his brother Rezin D. Shepherd then became party to the suit. The court empanelled a new jury to consider the suit on November 13, 1838. After hearing the evidence, the jury began their deliberations two days later and returned after a brief interval with a judgment in favor of Miller for the sum of \$56,000.⁴⁰

The judgment did not satisfy either side. Despite the victory and partial compensation for the loss of his business, Miller's attorneys once again filed a bill of exception regarding the charge to the jury given by Judge Maurian. In the bill, Roselius insisted that the charge should have stated that individuals were entitled to indemnification if they suffered "great damages" in the exercise of the public right to regulate the banks of the river. The day after the jury handed down its decision, the municipality filed a motion for a new trial. After hearing the arguments for a new trial on December 1, the court recessed to consider the motion.⁴¹

On March 25, 1839, the court rendered its decision on the motion for a new trial.

It was a devastating blow for Miller—the court granted a new trial in the case. In his

³⁹ Answer of defendants, 19 May 1837; motion, 30 May 1837; continuance, 28 March 1838, in *Shepherd and Miller v. Municipality No. 3*, 1st JDC.

⁴⁰ Order on the minutes, 23 June 1838, and order on the minutes, 15 November 1838, in *Shepherd and Miller v. the Third Municipality*. For more on Shepherd's disputed estate and the association of the Shepherds with New Orleans merchant and philanthropist Judah Touro, see Bertram Wallace Korn, *The Early Jews of New Orleans* (Waltham, Mass: American Jewish Historical Society, 1969), 84-85, 290-291.

⁴¹ Bill of exception, 15 November 1838; order on the minutes, 16 November 1838; order, 1 December 1838, in *Shepherd and Miller v. the Third Municipality*.

opinion, Judge Maurian declared that the judgment awarded by the jury was contrary to the evidence in the case. The judge explained that the delay in handing down his ruling on the motion was not due to any doubt on its merits. Instead, he hoped that in the meantime Miller and the municipality could come to an amicable settlement of the dispute. Maurian expressed his reluctance in ruling on the matter, commenting that his decision “cannot fail to extend the duration of the controversy.” Nevertheless, while he acknowledged that Miller suffered a great loss with the erection of the wharf, the important question was whether the municipality was in its legal rights to do so. If it was in their legal rights, then it did not have to offer the plaintiff compensation for his loss. The judge stated that he had no doubt that the municipality was in its legal rights, a position that he admitted shaped his charge to the jury. Therefore, he could not approve a verdict that awarded damages in the case.⁴²

With the judgment in the second trial voided, a third trial in the suit began on April 28, 1840. Realizing that the Parish Court would overrule any jury award, Miller’s attorneys saw that their only hope for a favorable judgment would come from the state Supreme Court. Attorneys for both sides reached an agreement to have the Supreme Court hear the case on the evidence and assess damages if the justices found in favor of the plaintiffs. Both sides waived their right for a jury, and in a formality, Maurian immediately decided in favor of the municipality for the reasons stated in his ruling granting a new trial. Miller’s attorneys then filed their appeal.⁴³

In a brief before the Supreme Court of Louisiana, Roselius outlined the main points for the appeal of the plaintiff. First, he argued that the municipality destroyed

⁴² Opinion of the court, 25 March 1839, in *Shepherd and Miller v. the Third Municipality*.

⁴³ Judgment, agreement, and petition for appeal, 28 April 1840, in *Shepherd and Miller v. the Third Municipality*.

Miller's property and private rights for public purposes without compensation. Secondly, he asserted that the lower court improperly ordered a new trial and reversed the judgment of the jury. As the Supreme Court had the authority to assess damages in the case, Roselius asked for a judgment totaling the jury's award plus interest, or \$60,000. He nevertheless indicated that damages and losses of Miller and Shepherd actually approached nearly twice that amount.⁴⁴

In a second brief, Miller's attorneys elaborated their position through a barrage of arguments that they hoped would sway the Supreme Court. Once more they stressed the "equitable principle of indemnification" if an individual or other body destroyed a person's property or infringed upon another's rights. Such a principle, the brief asserted, existed "independent of any provision of the law." The municipality instead rejected all propositions for the plaintiffs to settle the matter. For support from the *Civil Code*, the attorneys cited Article 446, which granted the right to unload vessels and deposit goods along the banks of rivers. From this article, the lawyers inferred an endorsement of the right to land rafts of logs. They also argued that such a right was also part of the "fundamental law" that made the river a free and continuous highway and gave the public access to its banks.⁴⁵

But the attorneys also emphasized the plaintiffs' established usage of the levee to press their case. Miller and Shepherd owned the soil along the banks of the river in front of their property and always maintained their section of the levee. Since there was ample space for others on the levee for all public uses, there was no justification for the disturbance the plaintiffs' use of the levee. But it was that particular section of the levee

⁴⁴ Point and authorities of Plaintiffs, in *Shepherd and Miller v. the Third Municipality*.

⁴⁵ Brief, in *Shepherd and Miller v. the Third Municipality*.

where the wharf was erected that was vital to the operations of the sawmill. In a disjointed but key passage of the brief, the attorneys stressed the importance of that section of the riverfront because they “landed and loaded there every thing [sic] . . . used or sold.” Therefore, the injury suffered by the plaintiffs’ when deprived of that access point was great. Others, on the contrary, could land things anywhere on the levee with “equal convenience.”⁴⁶

The brief also stressed the social cost for the neighborhood that the closure of the sawmill invited, when “the hurry of business was succeeded by stillness.” More animated on this point, it suggested that Miller’s sawmill was a beacon of the traditional work ethic to the municipality, attracting productive workers in the building trades to the area. Though overlooking the fact that slaves performed much the actual labor in the mill, the attorneys claimed that “grog shops for sailors” would replace the dynamism of industry in the faubourg thanks to its closure. Plus, there was no guarantee that the intended expansion of commerce for the municipality would happen with the construction of the wharfs. As a result, by shutting down an already productive enterprise, the municipality in fact undercut the very economic growth that it hoped to foster.⁴⁷

None of these arguments swayed the Supreme Court, however, as Chief Justice François-Xavier Martin rendered the court’s decision in January 1844. In their rejection of Miller’s claim, the court demonstrated its support of the arguments of the Third Municipality and Judge Maurian. It declared that the street and banks of a river were *loci*

⁴⁶ Brief, in *Shepherd and Miller v. the Third Municipality*.

⁴⁷ Brief, *Shepherd and Miller v. the Third Municipality*. Unlike the first brief, the second did not name a single author. Perhaps the more animated but disjointed parts of the brief suggest the work of the fiery Pierre Soulé instead of the more erudite Roselius.

publici, the civil law term for a public place, and municipal authorities were bound to ensure that no one obstructed the public's access to these places. However, the erection of wharfs by the municipality to benefit the public good by facilitating commerce was "a legitimate exercise of power." In fact, Martin went as far as stating that a municipality was in "compliance with its duty" to build such improvements.⁴⁸

The court rejected Miller's argument that the municipality could not impede his use of the banks of the river by adding the qualification that no one could obstruct the use of the banks "while there is, close by the part which they occupy, a sufficient space left for others." The court observed that the wharfs fronted only part of the property that the sawmill occupied and concluded that Miller still had access to the levee. However, it ignored the fact that the wharfs did obstruct the crucial point of access for Miller—the place where he constructed the passage to haul the logs across the levee and the road to the mill. In regard to the improvements that Miller made on the levee to ease the transport of logs, the court recognized that while the municipality could tolerate such works that did not interfere with the public's enjoyment of the levee, it could tear them down at any time. In what was perhaps a final rebuke to Miller's contentions, the court declared: "No one has a right to a permanent occupancy of the banks of a river."⁴⁹

With its decision, the Supreme Court confirmed the position that the city and municipalities of New Orleans maintained since the controversy with Edward Livingston over the batture. The riverfront was unquestionably a public domain, and public, not

⁴⁸ Decision, *Shepherd and Miller v. the Third Municipality*, 6 Rob. 349 (1844). The court's position regarding economic development was again evident in Jean Segre Darby's dispute with Miller that I discussed in the previous chapter. In that case, the court refused to order the destruction of Miller's causeway leading to his Orange Island plantation because Darby alleged that it and other causeways in the area caused his land to flood during heavy rains. Instead, the court regarded the provision in the *Civil Code* that prohibited the damming of streams as contrary to the need to improve wetlands for agricultural development. See *Jean Segre Darby v. John F. Miller et als*, 6 La. Ann. 645.

⁴⁹ Decision, *Shepherd and Miller v. the Third Municipality*, 6 Rob. 349 (1844).

private, control of the riverfront better ensured commercial growth. The decision also granted municipal bodies broad power to promote commerce in public areas like the levee. How they used this power was another matter. As it turned out, the admonition by Miller's attorneys about the unintended consequences of economic progress was close to the mark.

Ultimately, the rivalry between the municipalities for commercial preeminence was a competition in which the outcome was never in doubt. Even before the division of the city into separate municipalities, the Faubourg St. Mary surpassed the other two municipalities in wealth, and once free of the Creole-dominated city council, continued to boom at the expense of the Latin faubourgs. By 1852 ethnic animosity died down, and political leaders fashioned the reunification of New Orleans under one municipal government. The new city government, though, was one in which the power of the American faction could not be ignored. By the eve of the Civil War, the Faubourg St. Mary and newer American faubourgs incorporated into the city during the 1840s and 1850s held nearly two-thirds of the taxable wealth of the city. The Creoles were left with a nostalgia that only intensified after the Civil War.⁵⁰

Despite the construction of the wharfs that brought about Miller's financial ruin in New Orleans, the promise of commercial development for the Third Municipality never materialized. One observer in the late 1840s described a part of lower New Orleans that bordered the former Third Municipality as a place "where poverty and vice run races with want and passion." By 1844 Miller probably realized that his effort to seek compensation from the Third Municipality for the closure of his sawmill would fail. His attention had

⁵⁰ Tregle, "Creoles and Americans," 158-160; Reinders, *End of an Era*, 52-54. For Creole nostalgia, see Tregle, "Creoles and Americans," 171-185.

since focused on saving his Attakapas plantations from the effects of depression. But his survival depended on his deft manipulation of bankruptcy law, which is the subject of the next chapter.⁵¹

⁵¹ Tregle, "Creoles and Americans," 158-159; A. Oakey Hall, *The Manhattener in New Orleans* (reprint, Baton Rouge: Louisiana State University Press, 1976), 102.

CHAPTER 4: SURVIVING BANKRUPTCY

In April 1836 one New Orleans newspaper wondered, “When did such fever of speculation madden the brains of the whole community?” Indeed, a person could have asked the same question in almost every corner of the United States in the middle of that decade. As much of the nation slowly and tentatively embraced an economy tied to distant and impersonal market forces during the antebellum era, inventors and entrepreneurs not only profited from rates of astonishing economic growth that spawned speculative enthusiasms, but they also encountered a series of devastating depressions. This cycle of boom and bust erupted with particular intensity during the 1830s and early 1840s, when a period of remarkable expansion gave way to a severe downturn in the wake of financial panics in 1837 and 1839. Once thriving merchants, entrepreneurs, and planters suddenly found themselves in financial distress and scrambled to save their livelihoods in an insecure economic environment. Since these crises hit New Orleans early and with force, men active in commerce and agriculture like John F. Miller had to explore every avenue available to protect the fortunes that sustained their standing in society. As strategies for pecuniary survival varied, Miller and his business associates provide an excellent case study of such maneuvers.¹

¹ James E. Winston, “Notes on the Economic History of New Orleans, 1803-1836,” *The Mississippi Valley Historical Review* 11 (September 1924): 216. For the rise of the market during the 1820s and 1830s, see Charles Sellers, *The Market Revolution: Jacksonian American, 1815-1846* (New York: Oxford University Press, 1991). For an overview of the debates over the rise of the market economy, see for example, Allan Kulikoff, “The Transition to Capitalism in Rural America,” *William and Mary Quarterly* 46 (January 1989): 120-144. For overviews on the history of bankruptcy and bankruptcy law in the United States, see Charles Warren, *Bankruptcy in United States History* (reprint, New York: Da Capo Press, 1972); Peter J. Coleman, *Debtors and Creditors in America: Insolvency, Imprisonment for*

Scholars have overlooked the social and economic consequences of bankruptcy and the operation of state and federal bankruptcy laws in the largely plantation-based economy of the antebellum South. The historiography of the antebellum South has no equivalent to Edward J. Balleisen's recent monograph on the effect of bankruptcy on the business culture of the antebellum North. In the antebellum Louisiana, though, where the commercial realm of New Orleans closely interacted with the large-scale plantation agriculture of the hinterlands, the number of bankruptcies filed under state and federal bankruptcy law in the late 1830s and early 1840s suggests that the prospect of insolvency was a significant menace to any merchant or planter.²

In this chapter, I examine three episodes of pecuniary difficulty involving Miller and his circle and show how the process of state and federal bankruptcy law influenced the resolution of their troubles. First, Miller's associate John Henry Holland took a common approach in the antebellum era in dealing with financial problems—he fled to Texas. His creditors responded by engineering a forced surrender of his assets under Louisiana bankruptcy law. I then explore how creditors managed the estates of insolvents under state law and the disputes that sometimes arose from the administration. Miller, faced with his own insolvency, did not abscond, but chose to protect his assets through state and federal bankruptcy law. I untangle his efforts to forestall his creditors

Debt and Bankruptcy, 1607-1900 (Madison: The State Historical Society of Wisconsin, 1974); Charles Jordan Tabb, "The History of the Bankruptcy Laws in the United States," *American Bankruptcy Institute Law Review* 5 (Spring 1995): 5-51; Vern Countryman, "A History of American Bankruptcy Law," *Commercial Law Journal* 81 (1976): 26-32.

² For bankruptcies in antebellum Louisiana, see Raleigh A. Suarez, "Bargains, Bills, and Bankruptcies: Business Activity in Rural Antebellum Louisiana," *Louisiana History* 7 (Summer 1966): 189-206. Edward J. Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill: University of North Carolina Press, 2001). To illustrate the prevalence of bankruptcy in antebellum Louisiana, the filings for bankruptcy protection under the 1841 federal bankruptcy act in New Orleans surpassed the number of filings in New York City. There were 503 filings in United States District Court for the Southern District of New York under the act, which Balleisen utilized in his research for his monograph. In federal district court in New Orleans, there were 763 filings under the act.

and show how they enveloped business associates like Jonas Marsh. In my final example, the hapless Marsh fell short in his dealings with Miller when Marsh & Co., their sugar and rum distilling partnership in the Attakapas, dissolved in the wake of Miller's bankruptcy. As a result, Marsh had to rely largely on legal maneuverings involving members of his family to protect his interests from creditors.

The themes that emerge from the travails of Miller and his associates with insolvency and bankruptcy law suggest comparison between the experience of failure in the antebellum South and the more capitalistic North. Commercial and agricultural enterprises functioned in a precarious legal and economic environment during the antebellum era. To secure his fortunes, Miller vigorously pursued legal protection of his assets and engaged in legal tactics that stretched the spirit of these laws to their limits. If the southern code of honor included provisions regarding complete disclosure of assets, then, Miller and other gentlemen set them aside when convenient. In addition, innovations in antebellum bankruptcy law that allowed for the voluntary surrender of property shaped the character of financial failure in both regions and proved beneficial to insolvents. These rules also facilitated economic development by permitting failed entrepreneurs to return quickly to commercial activities, or planting activities for southern insolvents like Miller. Finally, in a parallel to business culture of the antebellum North, family relations performed an important function in guaranteeing the survival of Marsh and Miller's enterprises, even if it involved providing assistance to evade creditors.³

³ For southern codes of honor, see Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982). For voluntary bankruptcy and fresh starts for insolvents, see, Warren, *Bankruptcy in United States History*, 60-64; Tabb, "The History of Bankruptcy in the United States," 17-18; Balleisen, *Navigating Failure*, 165-201. For familial ties in business, see

It is through family members and neighbors that Miller and Marsh used the formalities of the law to protect their assets. Wives, mothers, and other family members could function as informal safe deposit boxes for assets. As long as the property was in the name of the family member, it was beyond the reach of creditors, even though administration of the property remained with Marsh or Miller. Family therefore provided an escape from the full rigors of the law. Asset protections could also involve neighbors. As sheriff sales needed an assessment of the property to be sold, accommodating assessors, who were often neighbors, could provide a low estimate of the property. Other neighbors could refrain from bidding on the property for sale, thus allowing family members to offer a minimum bid and retain possession of the property.

But before Miller faced the collapse of his financial ventures, he profited from the heady economic atmosphere of the mid-1830s. International market forces provided much of the stimulus for the era's economic boom. Several superb harvests in the early 1830s stimulated the growth of the British economy, and its textile industry expanded production to keep up with consumer demand for cotton cloth. Cotton prices jumped from eleven cents per pound in 1834 to sixteen cents in 1835. As prices increased, British creditors granted generous terms in loans to merchants and planters to expand production. Planters rushed to settle new land across the South and make their fortunes in cotton. Since planters and farmers could secure inexpensive credit to finance their land purchases at government or private auctions, widespread land speculation emerged. Attorney and humorist Joseph G. Baldwin vividly captured and strongly condemned the

Naomi R. Lamoreaux, *Insider Lending: Banks, Personal Connections, and Economic Development in Industrial New England* (New York: Cambridge University Press, 1994); Naomi R. Lamoreaux, "Banks, Kinship, and Economic Development: The New England Case," *Journal of Economic History* 46 (1986): 647-67; Balleisen, *Navigating Failure*, 73-75, 95-96, 195-196.

irrational exuberance of the times in his account of the cotton boom on the frontier of Alabama and Mississippi. The era, he observed, was one of “credit without capital, and enterprise without honesty” in which “swindling was raised to the dignity of the fine arts.”⁴

The international demand for southern cotton was not the only reason for the economic boom during the decade. China reduced its imports of silver from Mexico as a result of its increasing consumption of British opium. This surplus of silver instead entered into circulation in the American economy, spurring economic growth but also contributing to a rise in inflation. In addition to stimulating cotton production, abundant British capital also poured into bonds that financed numerous canal and railroad projects throughout the nation. Furthermore, the pattern of land speculation that plagued the southern cotton frontier also hit states in the Old Northwest as settlers flooded the region after the completion of the Erie Canal. To finance all of these public works projects and to extend credit for land sales, legislatures chartered 347 new banks from 1830 to 1837. The inflow of specie, lax regulation, and confidence in future returns in turn led these new banks to expand available credit, sometimes quite recklessly, all of which added fuel to the economic surge.⁵

⁴ Peter Temin, *The Jacksonian Economy* (New York: W. W. Norton & Company, 1969), 91-112; Balleisen, *Navigating Failure*, 33; Reginald Charles McGrane, *The Panic of 1837: Some Financial Problems of the Jacksonian Era* (reprint, New York: Russell & Russell, 1965), 5, 43-69; Malcolm J. Rohrbough, *The Land Office Business: The Settlement and Administration of American Public Lands, 1789-1837* (Belmont, CA: Wadsworth Publishing Company, 1990), 177-198; Joseph G. Baldwin, *The Flush Times of Alabama and Mississippi: A Series of Sketches* (reprint, Baton Rouge: Louisiana State University Press, 1987), 81, 85. On the general nature of economic booms and ensuing crashes, see Charles P. Kindleberger, *Manias, Panics, and Crashes: A History of Financial Crises* (New York: Basic Books, 1989). I derive this discussion of the boom and bust of the 1830s mainly from Temin’s work. Temin stressed the importance of international market forces and monetary supply, unlike traditional accounts, which concentrated on domestic issues such as the effect of President Andrew Jackson’s war on the Second Bank of the United States.

⁵ Temin, *The Jacksonian Economy*, 78-91; Balleisen, *Navigating Failure*, 33-34; Rohrbough, *The Land Office Business*, 177-198; McGrane, *The Panic of 1837*, 13, 1-42. For the proliferation of public

It would be an understatement to say that Louisiana was not immune to the economic boom and its speculative enthusiasms. New Orleans witnessed an astonishing rate of growth during the 1830s, as its population more than doubled between 1830 and 1840, making it the fourth largest city in the United States. Speculation in urban real estate consequently soared as the city developed new faubourgs and pushed its boundaries up the Mississippi River. Newspapers estimated that rents were fifty percent higher in 1836 than the previous year, and one tract of land worth \$50,000 before the mania fetched ten times as much at its height. Despite the city's low water table and marshy soil, speculators put buildings where "swamps, snakes, and lizards flourished" just a short time before.⁶

Economically, the decade was a golden time of prosperity. The port of New Orleans surpassed the port of New York as the nation's leading export center. The value of the freight arriving at the port by 1840 equaled \$50 million, more than double the worth of port receipts just fifteen years earlier. As in other parts of the nation, investors and politicians devised ill-fated canal and railroad schemes to facilitate the market and enrich themselves in the process. The state not only experienced an increase in cotton production like the rest of the South during the decade, but it also witnessed a veritable sugar rush after the passage of a new tariff on imported sugar in 1828. To provide the necessary capital to facilitate these ventures, the state chartered fourteen banks between 1831 and 1837, and total bank capital leaped from \$9 million to \$46 million in the same

improvement projects like canals, see for example Harry N. Scheiber, *Ohio Canal Era: A Case Study of Government and the Economy, 1820-1861* (Athens, OH: The Ohio University Press, 1987).

⁶ Winston, "Notes," 201, 221-222; Meloncy C. Soniat, "The Faubourgs Forming the Upper Section of the City of New Orleans," *The Louisiana Historical Quarterly* 20 (January 1937): 192-211. In 1830 the population of the city stood at 46,310. In 1840 it stood at 102,193, just 120 persons behind Baltimore for third place.

period. For an aggressive entrepreneur like John F. Miller, the opportunities to augment his wealth were vast.⁷

Miller reached the zenith of his commercial fortunes in 1836. His sawmill below the old quarter of the city in the Faubourgs Clouet and Montreuil provided lumber for the city's building boom, earning a net profit of over \$88,000 for Miller and partner James H. Shepherd that fiscal year. With other partners, he reaped the rewards in speculating on lots in the new faubourgs. Miller also profited from his foray into the construction trade during the decade, which included his building of a row of commercial and residential buildings in the Faubourg St. Mary, the prosperous American quarter of antebellum New Orleans. In the Attakapas, his plantation investments expanded, as he bought out the Morse interest of the sugar plantation and distillery in New Iberia and purchased with Jonas Marsh the Fausse Pointe plantation and the Ballow tract.⁸

But as seen in recent times, speculative booms crumble into spectacular busts. The same international market factors that produced the economic surge also created the ensuing decline. Mediocre harvests struck Great Britain in 1835 and 1836, reducing the demand for textiles and weakening the once robust market for American cotton. By

⁷ Winston, "Notes," 208, *passim*; George D. Green, *Finance and Economic Development in the Old South: Louisiana Banking, 1804-1861* (Stanford: Stanford University Press, 1972), 22-23, 25; Ari Kelman, "A River and its City: Critical Episodes in the Environmental History of New Orleans," (Ph. D. dissertation, Brown University, 1998), 82; Joseph G. Tregle, Jr., *Louisiana in the Age of Jackson: A Clash of Cultures and Personalities* (Baton Rouge: Louisiana State University Press, 1999), 17; J. Carlyle Sitterson, *Sugar Country: The Cane Sugar Industry in the South, 1753-1950* (Lexington: University of Kentucky Press, 1953), 27. See also Merl E. Reed, "Boom or Bust—Louisiana's Economy during the 1830s," in Thomas A. Becnel, ed., *The Louisiana Purchase Bicentennial Series in Louisiana History—Vol. XVI, Agricultural and Economic Development in Louisiana* (Lafayette, LA: Center for Louisiana Studies, 1997), 8-21. For canal and railroad ventures, see Thomas A. Becnel, *The Barrows of Louisiana and the Barataria and Lafourche Canal: The Transportation Revolution in Louisiana, 1829-1925* (Baton Rouge: Louisiana State University Press, 1989), and Merl E. Reed, *New Orleans and the Railroads: The Struggle for Commercial Empire, 1830-1860* (Baton Rouge: Louisiana State University Press, 1966).

⁸ For the profits of the sawmill, see the testimony of Hamilton Hall, in *James H. Shepherd and John F. Miller v. the Third Municipality of the City of New Orleans*, #4133, Supreme Court of Louisiana Collection, University of New Orleans, 6 Rob. 349 (1844). For a summary of his planting investments, see the chapter on Miller in the Attakapas. For Miller's speculations in urban property, see the first chapter.

April 1837 the price of cotton dropped thirty percent from its average the year before. At the same time, the Bank of England, worried about the outflow of specie (gold and silver) from its coffers, raised its discount rate for loans. British firms involved in the American trade could no longer offer generous terms of credit and pressed their American partners for repayment. Merchants and factors with outstanding debts secured by now cheaper cotton found themselves in a bind. The blight of failure first hit southern firms in the spring of 1837, then spread to New York brokerages and merchant houses. As credit tightened in American commercial centers, customers demanded specie instead of paper bills from banks. Though they were obligated to redeem paper banknotes with hard currency, most banks had put into circulation too many banknotes during the economic boom, however, and they lacked of reserves of gold and silver to handle the ensuing rush to redeem their notes. Banks had to suspend payments in specie, and the Panic of 1837 had begun in earnest.⁹

Yet this panic proved short in duration. By the end of 1837 the price of cotton began to rebound, and banks resumed payments in specie. In 1838 the Bank of England reduced its discount rate and shipped gold to New York to bolster specie reserves. American firms reaped the rewards of easy credit once again. In addition, British investors bought bonds to facilitate state public works projects, and the resumption of these railroad and canal ventures sparked economic growth.¹⁰

But the recovery was fleeting. Another bad British harvest in 1838 caused the same chain of events to happen in 1839 that occurred two years before. The Bank of England raised its rates again to counter the outflow of specie that purchased foreign

⁹ Temin, *The Jacksonian Economy*, 136-147; Balleisen, *Navigating Failure*, 34-35.

¹⁰ Temin, *The Jacksonian Economy*, 148-155; Balleisen, *Navigating Failure*, 37-38.

grain, and credit markets tightened once more. British textile manufacturers cut their demand for cotton as the bumper 1839 harvest came to market, sending the price plummeting. Although fewer banks suspended specie payments during the second panic and economic productivity proved solid in the following years, no quick recovery was in the offing like two years before. Instead, the American economy encountered a severe deflation throughout the early 1840s due in part to a scarcity of gold and silver, and this restriction of the money supply caused prices to fall by more than forty percent from 1839 to 1843.¹¹

The economic collapse in the late 1830s and early 1840s that followed the panics was one of the most severe in American history. Few parts of the nation were untouched. As British investors stopped buying bonds over concerns about American economic prospects, various public projects came to a halt. In 1841 and 1842 nine states defaulted on bonds issued in the 1830s; three others and a territory repudiated a portion of their government debt. In April 1837, soon after the onset of the first panic, New York City papers reported the failure of ninety-three mercantile firms and brokerages with debts totaling over \$60 million. Railroad investment in 1843 was two-thirds of what it had been in 1838, and the value of railroad stocks was halved. The urban real estate boom fizzled in places like New York City. The laboring classes suffered greatly. By the end of 1837, reports estimated the number of unemployed at 50,000 in New York City, while other accounts asserted that ninety percent of the factories in the eastern states were idle.

¹¹ Temin, *The Jacksonian Economy*, 148-171; Balleisen, *Navigating Failure*, 38-39.

Of the few things that prospered during this period, the publication of jeremiads condemning the excesses of the boom became quite popular.¹²

As the South's primary cotton market, New Orleans was the first place to experience the consequences of the fluctuations of cotton prices and changes in the credit markets that caused the economic crises of the time. One of the triggers for the 1837 crisis was the failure of the New Orleans cotton factorage Herman, Briggs & Co. The firm's collapse started a ripple effect, spreading the panic to east coast when its major creditor, the leading New York brokerage firm Joseph & Co., failed as a result. Other New Orleans firms quickly joined Herman, Briggs & Co. in insolvency. By April 1837 a report asserted that "the commercial community of New Orleans is altogether in a complete state of bankruptcy or suspension," and the pecuniary carnage continued during the remainder of the year. In all, according to one account, creditors filed 2800 suits against debtors in Orleans Parish alone between March and December of 1837. Like the rest of the nation, the state's economy experienced a rebound in 1838, only to face a long and severe economic slump after the 1839 panic. The state defaulted on its bonds in 1842 and did not emerge from its difficulties until 1845.¹³

For planters like Miller and Jonas Marsh, two interrelated problems stood out during this prolonged downturn—low prices for their commodities and difficulties in meeting their financial obligations. First, reductions in the sugar tariff and good Cuban crops caused the price of sugar to decline precipitously from 1839 to 1842, exacerbating

¹² Temin, *The Jacksonian Economy*, 120, 154-155, 162, 166; Balleisen, *Navigating Failure*, 36-39; Samuel Reznick, "The Social History of an American Depression, 1837-1843," *The American Historical Review* 40 (July 1935): 662-687.

¹³ Balleisen, *Navigating Failure*, 35; Temin, *The Jacksonian Economy*, 141, 143, 154; McGrane, *The Panic of 1837*, 118-120; Reed, "Louisiana's Economy during the 1830s," 16-17; John Smith Kendall, *History of New Orleans*, Vol. 1 (Chicago: The Lewis Publishing Company, 1922), 143.

the problems of planters suffering from poor cotton prices. A St. Martinsville merchant testified in the suit over the dissolution of Marsh & Co. that he purchased locally produced sugar at 5 ¼ per pound in 1839, 3 ½ per pound in 1840. Another witness in the case affirmed that the local price of molasses dropped from 14 to 15 cents a gallon in 1837 to 10 cents a gallon in 1840. With shipping costs from the Attakapas factored in, the price of sugar on the New Orleans market fetched four cents a pound in 1841. As the profitability of sugar plantations depended upon sugar prices above the range of three to four cents per pound, Miller and Marsh would have probably concurred with the assessment of historian J. Carlyle Sitterson that the state's sugar industry was in "dire financial straits" during this time.¹⁴

With prices low for both sugar and cotton, Miller's decision in the late 1830s to diversify his agricultural production by growing cotton at his Miller's Island plantation did not pay off. But low commodity prices did not only mean diminished profits for large planters like Miller and Marsh. As they incurred heavy debts during the expansion of their holdings during the boom of the mid-1830s, they now faced the prospect of honoring their obligations with meager resources. To understand their predicament, a brief discussion regarding the antebellum credit system and the financing of southern plantations is in order.

Contrary to some of the jeremiads published when the speculative bubble burst, debt was not necessarily evidence of moral failing or even personal profligacy. Instead, it was a pervasive element in the antebellum economy and indicative of how it functioned.

¹⁴ Sitterson, *Sugar Country*, 170-172, 176, 177; Richard J. Follett, "The Sugar Masters: Slavery, Economic Development, and Modernization on Louisiana Sugar Plantations, 1820-1860," Ph.D. dissertation, Louisiana State University, 1997), 83; Testimony of Laurent Tertron and Lewis (?) DeBlanc, in District Court St. Martin Parish, *Joachim Kohn and John F. Miller, joint syndics of the creditors of John F. Miller and of Jonas Marsh & Co. v. Jonas Marsh*, No. 2799.

Notwithstanding the influx of Mexican silver into circulation during the 1830s, the American economy basically lacked adequate amounts of specie needed to keep up with its rapid expansion until the California gold rush of the late 1840s. As a result, all of those involved in the antebellum economy, from urban mercantile firms and large sugar planters to small itinerant traders and yeomen farmers, depended upon the antebellum credit system, defined as “an intricate tangle of obligations that extended throughout the country, financing production, distribution, and consumption of the nation’s goods and services.”¹⁵

The antebellum credit system rested on a foundation of paper and promises. With hard money scarce, a web of credit and debt enmeshed all participants in the economy. For example, large mercantile firms and brokerages devised complex credit arrangements with leading English firms such as Baring Brothers for the necessary capital to conduct their enterprises. Wholesalers in the Midwest and South bought goods on credit from city merchants with the intention of payment once their inventories were sold. Rural storekeepers diligently recorded purchases made by local farmers throughout the year with the expectation of settling accounts with the harvest. Financial instruments such as promissory notes, bills of exchange, and banknotes secured these transactions, and this

¹⁵ Balleisen, *Navigating Failure*, 27. For more on the functioning of the antebellum credit system in both the northern and southern United States, see for example, Robert Greenhalgh Albion, *The Rise of New York Port, 1815-1869* (New York: Charles Scribner’s Sons, 1939), 260-286; Alfred D. Chandler, Jr., *The Visible Hand: The Managerial Revolution in American Business* (Cambridge: The Belknap Press of Harvard University Press, 1977), 28-36; Lewis E. Atherton, *The Southern Country Store, 1800-1860* (Baton Rouge: Louisiana State University Press, 1949), 113-144; Lewis E. Atherton, *The Frontier Merchant in Mid-America* (Columbia: University of Missouri Press, 1971), 115-153; Paul W. Gates, *The Farmer’s Age: Agriculture, 1815-1860* (New York: Holt, Rinehart and Winston, 1960), 398-420; Harold D. Woodman, *King Cotton and His Retainers: Financing and Marketing the Cotton Crop of the South, 1800-1925* (reprint, Columbia: University of South Carolina Press, 1990), 3-195.

commercial paper circulated throughout the economy, augmenting if not replacing specie as the basis for the country's money supply.¹⁶

For southern planters, the credit system facilitated the marketing of commercial crops and ensured the purchase of goods need for the functioning of plantations. The figure usually responsible for a planter's access to credit was the factor. Factors were urban merchants or agents of mercantile firms who received a planter's cotton or other commercial crop on consignment, sold the commodity on the local market, and then arranged for its transport. But the factor's role was not finished once the cotton was on a ship bound for New York or London. Not only did the factor buy necessary supplies for planters once the crop was sold, but during the year he often acted a planter's personal banker, making advances and purchases to be deducted from proceeds of the sale of the harvest. Planters also received loans from their factors with their harvests serving as collateral. Factors often secured their transactions with promissory notes, but planters also issued these notes on their own accord in making local purchases. Due after intervals of a few months or a few years, promissory notes were negotiable, or transferable from holder to holder, thus they often served the same function as paper currency in local economies.¹⁷

Planters like Miller also secured credit through loans from banks. Louisiana banks played a crucial role in establishing New Orleans as the major commercial center

¹⁶ Balleisen, *Navigating Failure*, 27-33; Albion, *The Rise of New York Port*, 283-286.

¹⁷ Woodman, *King Cotton and His Retainers*, 8-43; Richard Holcombe Kilbourne, Jr., *Louisiana Commercial Law: The Antebellum Period* (Baton Rouge: The Paul M. Hebert Law Center Publications Institute, 1980), 108-156; Richard Holcombe Kilbourne, Jr., *Debt, Investment, Slaves: Credit Relations in East Feliciana Parish, Louisiana, 1825-1885* (Tuscaloosa: The University of Alabama Press, 1995), 1-74. For more on the market for commercial paper in antebellum Louisiana, see Richard Holcombe Kilbourne, Jr., "The Business of Arbitrating Exchange Rates and Its Influence on Louisiana's Early Law of Bills and Notes," in Vernon Valentine Palmer, ed., *Louisiana: Microcosm of a Mixed Jurisdiction* (Durham, NC: Carolina Academic Press, 1999), 163-180.

of the antebellum South by handling the large amounts of commercial paper used in commodity transactions in the city. On the eve of the Panic of 1837, Louisiana ranked third in the nation in the total capitalization of its banks. Banks also served a necessary role in agricultural financing in the state. Because of the high capital costs incurred in their enterprises, sugar planters relied on the larger resources that banks possessed instead of factors to secure the money for the purchase of their land, sugar mills, and slaves.¹⁸

Eager for expanded credit sources as the sugar boom of the 1820s took off, sugar planters believed that merchants and factors monopolized available credit in New Orleans and that existing banks were too restrictive with their lending policies. Their clamor compelled the legislature to charter a new type of financial institution, the property bank, to cater to the planters' demand for credit. The first was the Consolidated Association of the Planters of Louisiana, created in 1827. Property banks offered planters a way to secure credit that bypassed factors and merchant banks in New Orleans through mortgages on plantations. In exchange for the mortgages, planters received shares of stock in the banks. Stock in the Consolidated Association was worth \$500 per share; later property banks valued their stock at \$100 per share. The mortgages served as collateral for bonds that the banks would sell to foreign and domestic investors to build a specie reserve. Planters could then borrow from the bank using their shares as security, though the most that they could borrow was fifty percent of the value of each share they owned.¹⁹

¹⁸ Sitterson, *Sugar Country*, 199-204; Follett, "Sugar Masters," 180-183; Green, *Finance and Economic Development in the Old South*, 20-21, 28-32; Kilbourne, "The Business of Arbitrating Exchange Rates," 166.

¹⁹ Sitterson, *Sugar Country*, 199-200; Woodman, *King Cotton and His Retainers*, 99; Green, *Finance and Economic Development in the Old South*, 21-25; Petition, District Court St. Martin Parish, *Citizen's Bank of Louisiana v. John F. Miller*, No. 3152.

Buoyed by the success of the Consolidated Association, the state chartered two more property banks in the 1830s, the Union Bank of Louisiana and the Citizens Bank of Louisiana. Chartered in 1832 with a capitalization of \$7 million, the Union Bank was the largest (in terms of capitalization) state-chartered bank in United States at the time. That honor was short-lived, however, as the legislature chartered the Citizens Bank the following year with a capitalization of \$12 million. The creation of both institutions tied them closely to state politics as the state issued and guaranteed bonds to assure their success. With such a large supply of credit to loan to planters, both of these property banks served a vital role in the expansion of state agriculture during in the 1830s, and in his effort to obtain financing for his sugar operations, Miller carried on extensive dealings with both of these banks.²⁰

The desire for abundant credit on the part of Miller and other planters came at a significant human cost, however. The most valuable property that a planter possessed to secure his mortgages was neither his land nor his sugar mill—it was his slaves. Southern planters, as economic historian Gavin Wright has observed, were “laborlords,” not landlords. Since planters invested a preponderance of their wealth in the purchase of slaves to provide labor for their plantations, slaves were their most valuable assets. Slaves not only served as crucial part of the security in the mortgages that planters offered to the banks in their stock subscriptions, but also functioned as the collateral in most plantation credit arrangements. The value of slaves as assets was not simply due to the capital invested in them. Owing to the active market for slaves in the antebellum South, a planter’s slaves represented his most liquid form of capital. As Richard H.

²⁰ Green, *Finance and Economic Development in the Old South*, 24-31, 109-110; Larry Schweikart, *Banking in the American South: from the Age of Jackson to Reconstruction* (Baton Rouge: Louisiana State University Press, 1987), 138-139.

Kilbourne discovered in his analysis of credit arrangements in East Feliciana Parish, Louisiana, mortgages with slaves as collateral posed fewer risks for planters compared to loans secured by the sluggish values of land.²¹

Although the fertile sugar-producing land in the Attakapas was worth more than the cotton land of the Felicianas, Miller still had to utilize his slave community as security in his purchase of Union and Citizens Bank stock because his subscriptions were considerable. Miller took advantage of all of his primary sugar plantations in the Attakapas in his stock acquisitions. His New Iberia plantation and its twenty-nine slaves supported the purchase of 320 shares of Citizens Bank stock. The adjacent Coxe tract and its twenty-five slaves backed the purchase of 362 shares of Union Bank stock. Finally, his valuable Miller's Island plantation and its fifty-two slaves facilitated the acquisition of 473 shares of Citizens Bank stock. In all, the three plantations and 106 slaves enabled Miller to acquire 1,155 shares of banks stock, allowing him to secure loans totaling \$57,750.²²

Soon after Miller completed his credit arrangements with the property banks, the Panic of 1837 plunged Louisiana banks into a state of crisis. Not only did low commodity prices make it difficult for him to repay his loans, but his main creditors also found themselves in precarious financial straits. In early 1837 the state's banks had

²¹ Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (reprint, Baton Rouge: Louisiana State University Press, 1996), 18, 17-33; Kilbourne, *Debt, Investment, Slaves*, 49-74. See also, Thomas D. Morris, " 'Society is not marked by punctuality in the payment of debts': The Chattel Mortgages of Slaves," in David J. Bodenhamer and James W. Ely, Jr., eds., *Ambivalent Legacy: A Legal History of the South* (Jackson: University Press of Mississippi, 1984), 147-170. For more on the market for slaves in the antebellum South, see Michael Tadman, *Speculators and Slaves: Masters, Traders, and Slaves in the Old South* (Madison: University of Wisconsin Press, 1989).

²² St. Martin Parish Conveyances, Book 12, Page 54, Act 8680; Book 12, Page 56, Act 8681; Book 12, Page 337, Act 8914; Book 14, Page 97, Act 10168. The slaves mortgaged to secure the bank stock did not always comprise the entire slave community at their plantations. Slaves born or purchased after Miller acquired the bank stock did not become part of the mortgages. The bank and Miller did replace slaves that were originally mortgaged with others, perhaps due to a sale or poor health that decreased their value. See St. Martin Parish Conveyances, Book 12, Page 359, Act 8931.

outstanding loans totaling \$43,341,904, in addition to their lack of available specie to cover the redemption of banknotes in circulation. Credit pressures brought on by the panic forced twelve of the sixteen banks operating in the state to suspend specie payments in the spring of 1837. Although the banking industry experienced a brief recovery in 1838, the second credit crisis two years later forced all banks in the state to suspend specie payments.²³

Their financial situation remained dire by the early 1840s, as half of the sixteen financial institutions chartered in the state confronted liquidation. The two most significant failures were Miller's primary creditors, the Citizens and the Union banks, the former in 1842 and the later in 1844. Full recovery for Louisiana banking awaited better economic conditions by the mid-1840s and the passage sweeping banking reform act by the state legislature in 1842 that mandated the level of specie reserves for the state's banks. Until then, the banks insisted upon the repayment of outstanding loans from financially strapped planters and used the courts to press the collection of debts. As a result, Miller had to thwart a series of suits from the Citizens Bank in order to protect his Attakapas holdings after his collapse.²⁴

For planters and businessmen in the state who faced pecuniary distress, Louisiana offered a means to resolve their problems that was not readily available in other states—state bankruptcy protection. As Miller dealt not only with faltering commodity prices, obdurate debts, and the burdensome failure of his sawmill discussed in the last chapter,

²³ Stephen A. Caldwell, *A Banking History of Louisiana* (Baton Rouge: Louisiana State University Press, 1935), 55, 61-70; Reed, "Boom or Bust," 16-17; Green, *Finance and Economic Development in the Old South*, 22-23. In addition to the outstanding loans, Louisiana banks in 1837 circulated \$7,558,465 in notes, had \$7,096,456 in individual deposits, and held only \$2,729,983 in specie. Caldwell, *A Banking History of Louisiana*, 55.

²⁴ Caldwell, *A Banking History of Louisiana*, 61-70; Green, *Finance and Economic Development in the Old South*, 118-127; Reed, "Boom or Bust," 16-17.

bankruptcy law was the remedy that he elected to pursue. He first filed for protection under Louisiana law in early 1841, but then moved his case to federal district court in New Orleans the following year after Congress passed the Bankruptcy Act of 1841. As bankruptcy law was a notable illustration of the tensions that existed between federal and state power in antebellum legal culture, Miller's efforts provide an excellent opportunity to examine the process of both state and federal bankruptcy law in the case of one individual.

Though the Constitution granted Congress the power to establish a uniform bankruptcy system, it was a power that Congress was hesitant to exercise during the nineteenth century. When Miller faced the prospect of bankruptcy in 1841, there had been only one experiment with federal bankruptcy legislation, the Bankruptcy Act of 1800. For debtors, this act had limited utility. Influenced by earlier English bankruptcy laws, this act applied only to merchants and did not allow debtors to initiate proceedings. Popular dissatisfaction compelled Congress to repeal the act after just three years of operation. Instead, bankruptcy and insolvency laws, if they existed at all, fell under the domain of state law.²⁵

The constitutionality of such laws enacted by states was uncertain, however. Questions remained on whether bankruptcy was really a federal matter as opposed to a state concern, and whether state bankruptcy laws violated the constitutional prohibition against the impairment of contracts. Then, in 1819, the Supreme Court issued decisions in two cases, *Sturges v. Crowninshield* and *McMillan v. McNeil*, that struck down two state bankruptcy laws, and the question of whether states could enact bankruptcy laws

²⁵ Warren, *Bankruptcy in United States History*, 18-22; Tabb, "The History of the Bankruptcy Laws in the United States," 12-16; Coleman, *Debtors and Creditors in America*, 16-30; John C. McCoid, II, "The Origins of Voluntary Bankruptcy," *Bankruptcy Developments Journal* 5 (1988): 387.

became clouded. Coming at the same time as the Panic of 1819, the *Sturges* decision caused much dismay as states tried to alleviate the difficulties brought on by the ensuing economic downturn but hesitated to pass bankruptcy legislation due to its doubtful constitutionality. It was not until eight years later, in *Ogden v. Sanders*, that the Court clarified the subject and sanctioned a New York bankruptcy law.²⁶

Though the Supreme Court belatedly decided that state bankruptcy laws were constitutional, the diversity of existing state bankruptcy and insolvency legislation provided headaches for those conducting business across state lines. For example, the most important provision of any bankruptcy law for the debtor was the discharge. Once the insolvent received a discharge from the court after the completion of bankruptcy proceedings, he no longer was responsible for the debts he had previously contracted, and his creditors could no longer try to collect on the discharged debts. But states did not always include discharge provisions in their bankruptcy laws. The reasons for the reluctance of states to embrace discharges ranged from concerns over its constitutionality, particularly after the *Sturges* decision, to the belief that discharges harkened a lenient attitude toward debtors. In any case, while bankruptcy laws in New York, North Carolina, South Carolina, and Maryland granted discharges to insolvents, the neighboring states of New Jersey, Pennsylvania, Virginia, Delaware, and Georgia did not.²⁷

States with major commercial centers had a greater interest in bankruptcy protection, and Louisiana, like New York, proved more accommodating to insolvents when compared to most states in the antebellum era. The law in antebellum Louisiana

²⁶ Tabb, "The History of the Bankruptcy Law in the United States," 12-16; Coleman, *Debtors and Creditors in America*, 16-36; Warren, *Bankruptcy in United States History*, 24-26, 49-51.

²⁷ Balleisen, *Navigating Failure*, 103-104; David A. Skeel, Jr., *Debt's Dominion: A History of Bankruptcy Law in America* (Princeton: Princeton University Press, 2001), 6; Coleman, *Debtors and Creditors in America*, 103-104, 159-161, 213, 269-286, 276.

regarding insolvents also owed much to the state's civil law heritage. The Digest of 1808, the first systematic compilation of laws in force in what was then the Territory of Orleans, preserved insolvency rules from the Spanish law. Yet the Digest's provisions on bankruptcy remained sketchy, so the legislature passed its first insolvents laws in 1805 that drew heavily on Spanish precedents. That act was soon supplanted by the Insolvents Act of 1808, which concentrated on resolving the plight of debtors confined to prison, a common fate of pecuniary delinquents from the colonial period until the antebellum era. Significantly, the act included provisions for an imprisoned debtor to receive a complete discharge of his obligations if he submitted to the court a schedule of his assets and debts and if the court and two-thirds of his creditors approved the application for discharge.²⁸ Louisiana's penchant for debtor relief was evident again in a new bankruptcy law passed by the legislature in 1817. This new act allowed debtors who were not in prison to initiate an action in court for relief of their obligations. Like discharge provisions, this voluntary approach to bankruptcy favored debtors and was not prevalent in antebellum

²⁸ Richard Holcombe Kilbourne, Jr., *A History of the Louisiana Civil Code: The Formative Years, 1803-1839* (Baton Rouge: The Paul M. Hebert Law Center Publications Institute, 1987), 46-47, 106; "An Act for the relief of insolvent debtors in actual custody, and for establishing prison bounds for the public jail, and for other purposes," *Acts Passed at the First Session of the Second Legislature of the Territory of Orleans* (New Orleans: Bradford and Anderson, Printers, 1808), 50-75. Owing to English legal precedent, there was a distinction between bankruptcy and insolvency, but the distinction ceased in American law in the nineteenth century. The main distinction between bankruptcy and insolvency law was that in bankruptcy law, the creditors initiated the action against debtor, usually a merchant, while the aim of insolvents' law involved protection of the debtor. See "Bankruptcy and Insolvency: The History of the Law of Bankruptcy," *Hunts' Merchants' Magazine* 52 (February 1865): 100-106 and Tabb, "The History of the Bankruptcy Law in the United States," 12. In *Sturges v. Crowninshield*, Chief Justice John Marshall declared, "Insolvent laws operate at the instance of an imprisoned debtor; bankruptcy laws at the instance of a creditor." Quoted in McCoid, "The Origins of Voluntary Bankruptcy," 379. But in 1830, a leading American legal journal declared, "there is no distinction, in principle, between a bankrupt and an insolvent law." See "Bankrupt and Insolvent Laws," *American Jurist and Law Magazine* 3 (April 1830): 214-215. It was the discharge provision of the Louisiana's 1808 insolvents act that the United States Supreme Court ruled unconstitutional in *McMillan v. McNeil*. Despite this decision by the federal court, the Louisiana state Supreme Court maintained in its 1823 decisions in *Blanque's Syndic v. Beale's Executors* and *Ray v. Cannon* that discharges were still legal under Louisiana law. The court argued that the discharge provision derived from Spanish laws in force prior to the cession of Louisiana to the United States and that the Constitution of the United States did not repeal such laws in force prior to the cession. *McMillan v. McNeil* (1819) 4 Wheaton 209-213; Kilbourne, *A History of the Louisiana Civil Code*, 82-83.

bankruptcy law. In the federal 1800 bankruptcy act, only creditors could initiate an action, and such a rule remained in many state laws. When Connecticut, for example, passed its *first* general bankruptcy statute in 1853, only creditors had the power to force an action.²⁹

Miller and his attorney Christian Roselius chose voluntary bankruptcy under the 1817 act to resolve his financial distress. An individual initiated bankruptcy proceedings under the 1817 act by submitting a petition to a judge for a surrender of his estate to his creditors. In the petition, he described his financial situation and why he could not meet his obligations. The petitioner also included a schedule of his losses, the amounts owed to creditors, and a complete accounting of his property, with the exception of personal appurtenances or tools of his trade. If the judge was satisfied with the petition and the schedule of losses, debts, and assets, he then ordered a meeting of petitioner's creditors and stayed all pending legal actions against the debtor.³⁰

At the next stage of the bankruptcy process, both the insolvent and his creditors encountered the most ubiquitous official in civil law systems, the notary. In civil law, the notary was an important public official with much experience and training, and important legal activities, such as marriage contracts, sales of immovable property, and estates inventories, required authentication by a notary. Under the 1817 bankruptcy law, the notary officiated the meeting of the creditors of the insolvent, made a record of the

²⁹ “An act relative to the voluntary surrender of property, and to the mode of proceedings, as well for the direction, as for the disposal of debtors’ estates, and for other purposes,” *Acts Passed at the First Session of the Third Legislature of the State of Louisiana* (New Orleans: J. C. De St. Romes, state printer, 1817), 126-145; Coleman, *Debtors and Creditors in America*, 84; Kilbourne, *A History of the Louisiana Civil Code*, 106; McCoid, “The Origins of Voluntary Bankruptcy,” 367-371.

³⁰ “An act relative to the voluntary surrender of property,” *Acts*, 126-130.

proceedings for submission to the court, and held the account books in his office if the insolvent was a merchant or shopkeeper.³¹

The meeting of the creditors usually took place in the office of the notary. Every creditor certified that his claim on the debtor's estate was true and legitimate. Next, they chose an administrator of the insolvent's surrendered property, known as the syndic in civil law. If they did not unanimously agree on the syndic, then the person favored by a majority of the creditors received the position. After the creditors appointed the syndic and accepted the surrender of the insolvent's property, the creditors sent a copy of the deliberations, or *procès-verbal*, to the court for homologation, or approval in civil law terminology, by the judge. If there was no opposition to the surrender or no evidence of fraud, the debtor received a full discharge from his obligations.³²

The debtor's estate was now in the hands of the syndic, who gained broad powers in its management. Considering the responsibilities of the position, the other creditors had to carefully consider the trustworthiness of the individual in their number to carry out his duties. The syndic petitioned the court to have the insolvent's property sold at public auction, and he controlled the distribution of the proceeds of the sale to the creditors. If necessary, the syndic could sue to recover any debts due to the estate, but if the estate faced a suit, the syndic was responsible for the defense. Though the statute was vague on the cessation of his duties, the syndic was obligated to submit a tableau to the court showing his distribution of the debtor's assets, and if there was no opposition, the court

³¹ George Dargo, *Jefferson's Louisiana: Politics and the Clash of Legal Traditions* (Cambridge: Harvard University Press, 1975), 15; "An act relative to the voluntary surrender of property," *Acts*, 128-130. For more on the role of notaries under Louisiana law, see Edgar Grima, "The Notarial System of Louisiana," *Louisiana Historical Quarterly* 10 (January 1927): 76-81. For an innovative look at the role that notaries play in recording important transactions in people's lives in civil law systems, see Donna Merwick, *Death of a Notary: Conquest and Change in Colonial New York* (Ithaca: Cornell University Press, 1999).

³² "An act relative to the voluntary surrender of property," *Acts*, 132-138.

homologated the tableau. For his work, the law allowed for the syndic to receive a five percent commission from the monies collected from the estate. However, since his administration of the estate could remain hidden from the other creditors until he submitted the final tableau to the court, the syndic could abuse his power over the distribution of the estate's assets by placing his claims above the others.³³

As bankruptcy filings mounted during the late 1830s and early 1840s, planters and businessmen became familiar with the operation of Louisiana insolvents laws. Either they had to surrender their property to their creditors to stave off lawsuits, or they were creditors who sought recompense and brought a legal action against a debtor. Miller experienced both situations. Before he filed for bankruptcy protection, he had to deal with the pecuniary "wreckage" left in the failure of his business associate John Henry Holland. The administration of Holland's bankrupt estate provides an example of how the legal rituals of the creditors' meeting, asset auction, and the distribution the estate's proceeds carried forth. But problems also arose during the administration, and Miller's actions as the syndic of Holland's estate raised questions about his impartiality while entrusted with such a responsibility.³⁴

John Henry Holland was a well-known figure in antebellum New Orleans. A native of Connecticut, Holland moved to New Orleans at the age of fifteen in 1801. In an active public career, he practiced law, served as sheriff of Orleans Parish, and briefly ran for mayor of the city in 1834. Holland was one of the leading Masons in the state, and as

³³ "An act relative to the voluntary surrender of property," *Acts*, 138-144.

³⁴ The term "wreckage" has two meanings in this use. Not only do I mean the financial remnants left after the collapse of Holland's ventures and speculations, but the word "wrecking" also had a particular meaning in the parlance of nineteenth century bankruptcy. Those involved in the "wrecking" of bankrupt estates were legitimate businessmen and eager opportunists who tried to cash in during the bankruptcy process usually by purchasing at auction then reselling for a profit the property of bankrupts. See Balleisen, *Navigating Failure*, 135-162.

an indication of his stature in the city, he gave the welcoming address to the Marquis de Lafayette during his notable 1825 visit to the city. Like many men of his position in antebellum New Orleans society, he participated in the frenzy of property speculation in the 1830s. Holland along with a partner made a sizable speculative foray with the purchase at a public auction of 104 lots of land in neighboring Jefferson Parish in for \$25,020. This property formed the bulk of his estate and later became the focus of attention for his creditors.³⁵

Despite his social status, Holland was not immune from the sting of financial embarrassment after the Panic of 1837. In 1839 he absconded to Texas, the principal antebellum refuge for those on the run, where he practiced law and chartered the first Masonic lodges in that state during the following decade. His business associates in New Orleans, on the other hand, were stuck with sundry notes and debts from their former esteemed colleague, and they desired recompense.³⁶

Fortunately for them, the state had made provisions for the involuntary surrender of a debtor's estate. Undeterred by the U. S. Supreme Court's ruling in *McMillan v. McNeil*, the state legislature passed in 1826 a supplement to the 1817 state bankruptcy statute. Included in its provisions, three or more creditors could petition a court for the forced surrender of the property of a merchant or trader who absconds or "conceals himself" to avoid payment. In April 1839 four of Holland's creditors filed suit against him in District Court in New Orleans. Upon receipt of the petition, Judge Alexander M. Buchanan issued a writ of sequestration to the sheriff of Orleans Parish to seize the

³⁵ Joseph G. Tregle, Jr., *Louisiana in the Age of Jackson: A Clash of Cultures and Personalities* (Baton Rouge: Louisiana State University Press, 1999), 129, 281, 284; Glenn Conrad, ed., *A Dictionary of Louisiana Biography, Volume 1* (Lafayette, LA: Center for Louisiana Studies, 1988), 408; Notarial act, 14 July 1836, in *Duplessis v. Holland*.

³⁶ Petition, in *Duplessis v. Holland*; Conrad, *A Dictionary of Louisiana Biography*, 408.

property of Holland, the former sheriff. The judge also ordered the meeting of Holland's creditors in order for them to establish their claims against the insolvent and chose a syndic, who would then administer the debtor's estate in compliance with the rules regarding the voluntary surrender of property.³⁷

According to law, two newspapers in the city published a notice of the meeting of the creditors three times in both English and French. At ten in the morning on May 27, 1839, Holland's creditors assembled in the office of notary William Young Lewis, and the ritual of dispensing with the former sheriff's failure began. Before witnesses and assisted by an attorney, Holland's friends and former business associates took turns affirming their choice for syndic as Lewis kept the *procès-verbal*.³⁸

Though it was not the principal aim of the meeting, the proceedings did serve as a means for the creditors to declare on the record the amount of money that Holland owed each of them. The first to appear before Lewis was William F. C. Duplessis, who declared that Holland owed him \$500 by a promissory note and cast his vote for Sampson Bloseman for syndic. Ten more creditors then appeared to cast their votes by the time Lewis closed the proceedings at 6:30 that evening. The claims against Holland totaled \$18,219.62, running the gamut of financial devices, from notes and bills to loans and endorsements. The creditors named Miller as the syndic by a six to five vote over Bloseman. Miller declared that Holland owed him \$1040 in promissory notes and voted

³⁷ "An Act supplementary to an act entitled 'An act relative to the voluntary surrender of property, and to the mode of proceeding, as well for the direction, as for the disposal of debtors' estates, and for other purposes,'" *Act Passed at the Second Session of the Seventh Legislature of the State of Louisiana* (New Orleans: James M. Bradford, State Printer, 1826), 140; Petition, 23 April 1839, and order, 23 April 1839, in *W. F. C. Duplessis and others v. John Henry Holland*, #4780, Supreme Court of Louisiana Collection, University of New Orleans, (unreported).

³⁸ *Procès-verbal*, 12 May 1839, in *Duplessis v. Holland*.

for himself as syndic. As it turned out, his desire to become syndic was not an altruistic gesture on his part.³⁹

The court appointed another notary to represent Holland in his absence, and the notary swore that the proceedings were conducted according to law. Signed by Lewis and two witnesses, Roselius then sent the *procès-verbal* and a petition to the court to confirm Miller as syndic. But the proceedings did not go on without a hitch. As one creditor cast his vote for Miller, he also declared his opposition to the action initiated by the other creditors on the grounds that Holland was neither a merchant nor a trader, as the section of the law regarding forced surrenders stipulated. In the petition, though, Roselius stated that no opposition had been filed in the ten days since the proceedings. Nothing more came of the protest, and two weeks later Judge Buchanan homologated the proceedings and confirmed Miller as syndic.⁴⁰

When Holland's creditors selected Miller as the syndic of Holland's estate, they assumed that Miller would represent the interests of the creditors as a whole in his administration. In fact, as part of the agreement among Holland's creditors, Miller did not have to post a bond to ensure his good performance as syndic. Nevertheless, his management of Holland's estate left many questions about his intentions. Miller demonstrated that he was primarily interested in protecting his own interest in Holland's failure. As the attorney for one of the other creditors of Holland described in a later brief, Miller "did nothing whatever with the valuable property of the Insolvent [Holland],

³⁹ *Procès-verbal*, 12 May 1839, in *Duplessis v. Holland*.

⁴⁰ Petition for confirmation as syndic, 12 (?) June 1839; *procès-verbal*, 29 May 1839; order confirming syndic, 12 June 1839, in *Duplessis v. Holland*.

unless to neglect the interest of the creditors, and sell sufficient of it [sic] to pay his own claims.⁴¹

A principal task of a syndic involved the sale at auction of the insolvent's property in order to recover for the creditors at least a portion of the sums owed to them. In Miller's first major act as syndic, he arranged the sale of Holland's Jefferson Parish property. But even this task exhibited poor management on his part. In his petition to the court to gain authorization to make the sale, he failed to correctly state the terms of credit for the sale as agreed upon by the creditors, thus forcing him to submit an amended petition. When the sale took place on October 8, 1840, at the St. Louis Exchange in New Orleans, Miller offered only an undivided half interest in seventy lots of Holland's land. The sale brought in a meager \$2250. But that amount proved fleeting. The purchasers of the lots failed to meet the terms of the sale, so the court later annulled that sale and authorized another two years later.⁴²

Miller did not submit his account of his management of Holland's estate until forced to do so by the court in 1852. By that time, it had been ten years since Miller was syndic, as Holland's other creditors had replaced him as syndic as a result of his bankruptcy filing. The tableau of distribution that Miller belatedly gave to the court revealed that he earned just \$1403.20 for his fellow creditors during his tenure as syndic. The assets that Miller sold included two of Holland's slaves. In the distribution of the proceeds of these sales, Miller took care of the debt that Holland owed him, amounting to

⁴¹*Procès-verbal*, 29 May 1839; Appellant's brief, in *Duplessis v. Holland*.

⁴² Petition for sale, 27 February 1840; petition for modification, 13 July 1840; sale, 8 October 1840; petition for confirmation of syndic, 23 April 1842, in *Duplessis v. Holland*.

\$1040. After he deducted other expenses, he left just \$209.70 to be divided among the other creditors!⁴³

In the 1817 bankruptcy act, there was no rule that prevented the syndic from satisfying his claims at the expense of the other creditors. But the other creditors had no official way of determining the performance of the syndic in the administration of the debtor's assets until the syndic submitted his accounts to the court. Certainly Miller's actions as syndic took advantage of the trust the other creditors placed in him to administer the estate in their collective interests.

As thirteen years had elapsed since the suit against Holland was first filed, most of creditors would have long since given up hope of recovering any portion of the monies that Holland owed to them. But three creditors were still attentive, and they immediately filed an opposition to the tableau submitted by Miller and the successor as syndic, James Ogilvie. However, owing to the lack of success of Miller's sale of Holland's valuable property in Jefferson Parish, the creditors instead decided to concentrate their opposition on frauds that they alleged occurred during Ogilvie's sale of the property and dropped their protest of Miller's tableau. Their complaint reached the state Supreme Court in 1857, eighteen years after the action for the forced surrender of Holland's property began. Though the court ordered changes to Ogilvie's account, they absolved him of the charge of fraud in his tenure as syndic.⁴⁴

In 1840, Miller's preoccupation with his own claim against Holland's estate was a result of the financial pressures he faced at the time. The combination of low sugar and

⁴³ Tableau of distribution, 20 April 1852; Opposition of Fellows et al., 28 April 1852, in *Duplessis v. Holland*.

⁴⁴ Tableau of distribution, 20 April 1852; opposition of Fellows et al., 28 April 1852; appellant's brief; opinion and decree, 2 February 1857, in *Duplessis v. Holland*.

cotton prices, heavy debt, and the failure of his lucrative sawmill in New Orleans created for him a pecuniary predicament greater than the one that caused his friend Holland to flee to Texas. As his primary investment in New Orleans no longer operated, Miller concentrated his efforts to keep his planting interests in the Attakapas afloat. Since the quickest way for planters to raise needed cash was the sale of slaves, their most liquid asset, Miller's sale in May 1840 demonstrated the depth of his financial problems at the time. As recorded in the St. Martin Parish conveyances on May 30, he sold twenty-five slaves in twelve separate transactions to individuals in St. Martin and neighboring parishes, though all of the sales may not have occur on that day. Though the total value of the sales brought in \$17,435, only \$530.66 of that sum was cash up front, the balance made up of promissory notes due in the following two years. Miller did keep immediate families together in this mass sale, but it is difficult to know what community bonds the sale tore apart.⁴⁵

Another strategy the Miller employed to save his plantations involved his mother, Sarah Canby. In common law jurisdictions, where women ceased to have control over their separate property when married, the legal creation of separate estates for wives became more common during the antebellum period. A wife's separate estate protected her property from creditors if her husband encountered financial difficulties, but clever husbands undoubtedly realized that a separate estate was a safe place to shelter other assets as well. Since Miller remained a bachelor all of his life, he did not have a wife to shelter property under Louisiana's community property laws that preserved the wife's

⁴⁵ St. Martin Parish Conveyances, Book 12, Pages 199-214, Acts 8798-8809. On the liquidity of slave assets, see Kilbourne, *Debt, Investment, and Slaves*, 50-56.

dotal property and protected her share of the marital property. Instead, he used a variation of this strategy, with his mother in the place of a wife.⁴⁶

It is not certain when Canby arrived in Louisiana, but New Orleans conveyances show that she represented her son's interests at times when he was not present in the city. Shortly after Miller purchased his plantations in the Attakapas, Canby moved there from New Orleans, and her son built a small house for her adjoining his New Iberia plantation. Considering her prior association with her son's business activities, it is likely that she helped keep an eye on Miller's plantations while he still spent much of his time in New Orleans during the late 1830s. What was most remarkable about her was her longevity. When she settled in the Attakapas, she was about ninety years old, and she lived to the age of 107, passing away in 1851.⁴⁷

Miller's property exchanges with his mother began in 1839. In November of that year, he sold to her the New Iberia plantation and the adjoining Coxe tract along with fifty-four slaves, the New Iberia distillery, and stock in the Citizens and Union banks for a total sum of \$113,000. Miller received \$23,290 as an initial payment and the rest in various notes, but since it is uncertain whether Canby had any independent sources of capital, this and later transactions was in all likelihood accomplished with Miller's own money. Less than a year later, Canby sold back to her son the New Iberia plantation and distillery minus the slave community, but Miller later leased the distillery back to his mother for \$400 a year. Then, on December 14, 1840, Miller sold to her his valuable

⁴⁶ For separate estates in antebellum common law, see Suzanne Lebsack, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860* (New York: W. W. Norton & Company, 1984), 54-86. In civil law terminology, dotal property was property that a woman brings to a marriage.

⁴⁷ Glenn R. Conrad, *New Iberia: Essays on the Town and Its People* (Lafayette: Center for Louisiana Studies, 1986), 54-55. Canby's tombstone shows that she died on October 10, 1851, aged 107 years, 9 months, and 16 days.

Miller's Island plantation along with its community of fifty-two slaves and 473 shares of Citizens Bank stock for a mere \$60,000, though Canby assumed payment of loan from the bank as well as four other promissory notes that Miller used the plantation for security. For good measure, Miller received power of attorney to conduct all of his mother's business affairs by March 1841.⁴⁸

The timing of the sale of Miller's Island was particularly questionable because on February 15, 1841, Roselius filed Miller's petition for a voluntary surrender of his property to his creditors in the First Judicial District Court in New Orleans. As the plantation was now in the name of Canby, Miller did not have to declare it on the tableau of assets that he had to submit to the court as part of the bankruptcy process. Such an action had legal repercussions if pursued by his creditors. The 1817 bankruptcy act defined fraudulent bankrupts as those who concealed or transferred property with the intention of keeping it from creditors. Those found guilty of fraud could not benefit for protection of the bankruptcy law and could face prosecution for perjury. Another section of the act barred an insolvent of the benefits of the act if he sold any of his property within three months of the filing to give an unjust preference to one or more creditors over the others. Miller's actions prior to the filing of his petition would not only plague him but also beleaguer his estate after his death.⁴⁹

In the petition Miller cited the "great losses" he had incurred over the previous four years and the "depreciation in the value of real property" as the reasons for the

⁴⁸ St. Martin Parish Conveyances, Book 12, Page 54, Act 8680; Book 12, Page 56, Act 8681; Book 12, Page 298, Act 8882; Book 12, Page 337, Act 8914; Book 12, Page 361, Act 8932; Book 12, Page 355, Act 8928; Book 12, Page 396, Act 8961.

⁴⁹ Petition, 15 February 1841, in First Judicial District Court (New Orleans), *John F. Miller v. His Creditors and the Creditors of Jonas Marsh & Co.*, No. 19968; "An act relative to the voluntary surrender of property," *Acts*, 136.

action to surrender his property to his creditors. Miller also referred to debts he owed to the firm of Marsh & Co. as a factor in his financial situation. In addition to his prayer for a stay of pending actions against him and for his creditors to grant him a discharge, Miller requested a creditors' meeting as soon as possible.⁵⁰

The meeting took place before notary and friend Carlile Pollock in March 1841, and the assembled creditors selected both Miller and Joachim Kohn as syndics. Although Miller's selection as the syndic of his own insolvent estate had the potential for a conflict of interest, it was not contrary to the law. As Miller now had his mother's power of attorney and she claimed to be a creditor of her son, he represented her at the meeting and cast his vote for himself and Kohn. Born in Bohemia, Kohn arrived in Louisiana in 1819 to assist his older brother Samuel in his lucrative financial and commercial ventures in the state. Quickly becoming an important figure in New Orleans business circles, Kohn embarked on mercantile ventures on his own and served on the boards of two banks, a railroad, and an insurance company in the 1830s. Kohn was the New Orleans factor for Miller's plantations in the 1830s, but he had known Miller since 1822 and was a regular visitor to Miller's home in the city.⁵¹

By April Judge Buchanan homologated the tableau of debts and losses, confirmed him and Kohn as syndics, and authorized the syndics to sell his property to compensate his creditors. The tableau that Miller that submitted to the court revealed the extent of his credit arrangements and demonstrated the staggering amount of debt that one sugar

⁵⁰ Petition, 15 February 1841, in *John F. Miller v. His Creditors*.

⁵¹ Petition, 15 February 1841; *Procès-verbal*, 11 July 1843, in *John F. Miller v. His Creditors*; Bertram Wallace Korn, *The Early Jews of New Orleans* (Waltham, MA: American Jewish Historical Society, 1969), 122-125; Testimony of Joachim Kohn, in *Sally Miller v. Louis Belmonti*, No. 5623, 11 Rob. 339 (1845), The Supreme Court of Louisiana Collection, University of New Orleans. Kohn testified that he was born in Germany, though Korn's research shows that the family hailed from the village of Hareth in Bohemia. According to Korn, Kohn served on more boards than any other Jewish businessman in New Orleans during his time.

planter and businessman accrued in running his enterprises. Miller listed his total liabilities at \$154,311.52, owed to seventy-three individuals, firms, banks, and legal officers. His liabilities encompassed promissory notes, book accounts, sundry bills, and legal fees. Among his debts were a series of notes drawn on thirteen different banks in the city of New Orleans. He owed money not only to his mother but also Caroline Dumois, a free woman of color. His credit arrangements involved not only merchants in New Orleans like Joachim Kohn, but also firms in New York and Norfolk. Miller was responsible for notes totaling \$29,000 from various property purchases in New Orleans and its vicinity. Included among his obligations were \$1286.88 to his lawyer Christian Roselius for his fees and \$250 to Edward Gottschalk for bookkeeping. Moreover, Miller was responsible for an additional \$112,480.30 in endorsements of other promissory notes, primarily for New Orleans builder William Brand.⁵²

Miller estimated his losses in the previous four years at \$197,200. About forty percent of these losses came from the failure of his sawmill and losses on the depreciation of the property. Another forty percent Miller listed merely as “interest paid.” His most dubious loss, however, was his claim that he lost \$30,000 in the sale of his Miller’s Island plantation. As this sale to his mother sheltered the plantation from his creditors, his claim of a “loss” on the sale was either very shrewd or quite brazen. Miller

⁵² Order, 14 April 1841; Tableau, 15 February 1841, in *John F. Miller v. His Creditors*. Gottschalk immigrated to New Orleans from London in the 1820s and worked as a wholesaler and commission broker. Bankrupt in 1830, he probably engaged in bookkeeping while recovering from his financial difficulties. His son was Louis Moreau Gottschalk, considered the greatest American-born composer in the antebellum era. See Kohn, *The Early Jews of New Orleans*, 174-176. Brand was a noted architect and builder in antebellum New Orleans. His relationship with Miller undoubtedly stemmed from their mutual activities in the city’s building trade. See for example, Benjamin Henry Boneval Latrobe, *Impressions Respecting New Orleans: Diary & Sketches, 1818-1820*, Samuel Wilson, Jr., ed. (New York: Columbia University Press, 1951), 34, 71, 98.

also claimed an additional \$12,000 in the destruction of his previous year's cotton crop of about 300 bales to worms.⁵³

Balanced against his liabilities and losses were assets that Miller estimated at \$172,073.53. Significantly, this list of assets omitted his Miller's Island, New Iberia, and Coxe tract plantations, now owned by Canby. Instead, he recorded the two plantations near New Iberia that he owned with Jonas Marsh in the partnership of Marsh & Co. After deducting over \$25,000 in various debts owed by the firm, Miller's half of the plantations and their seventy slaves amounted to \$36,583.19. Miller's other properties near New Iberia included the distillery, valued at \$20,000, and his half interest in the Lake Chicot sawmill, valued at \$16,000. In addition, Miller valued his half of his lease of a lot in the Faubourg St. Mary with eight brick buildings that he constructed at \$21,000 and other lots of land that he owned in the city and its vicinity at \$37,000. Of the individuals who owed him money, Miller not only cited Holland but also his brother-in-law Nathan Wheeler, who owed him \$5711.82.⁵⁴

Much of the litigation that occurred after Miller filed his bankruptcy petition centered in St. Martin Parish, where he embarked on a lengthy and complicated process to dissolve his partnership with Jonas Marsh. By late 1839 outstanding debts and low sugar prices contributed to the firm's difficulties in meeting its obligations. In October of that year and in April 1840 Marsh and Miller faced two lawsuits seeking more than \$3300 in unpaid promissory notes. One of the notes had been unpaid since May of 1837. In November 1840 the judge ruled in favor of the plaintiffs, and the sheriff seized 101

⁵³ Tableau, 15 February 1841, in *John F. Miller v. His Creditors*.

⁵⁴ Tableau, 15 February 1841, in *John F. Miller v. His Creditors*. Miller exaggerated the value of the Lake Chicot sawmill in his appraisal. He purchased his half interest in the mill from P. H. Lefevre for \$6500 in 1839 and sold it to Hector Pritchard for just \$4900 in 1844. See Chapter Attakapas and St. Martin Parish Conveyances, Book 12, Page 18, Act 8646, and Book 14, Page 360, Act 10425.

hogsheads of sugar from the Fausse Pointe plantation. By February Marsh had come up with the money to pay the judgments in the suits with interest, and the sheriff's sale of the seized sugar was averted.⁵⁵

A more complex suit over the firm's debts pertained to the acquisition of the Ballow tract in 1836. Marsh and Miller agreed to purchase the property for \$10,603, but they failed to pay four promissory notes that came due in April of 1839 and 1840. The vendor of the property, Joseph Thomas, filed a suit in April 1840 seeking payment on four promissory notes, totaling \$6000.⁵⁶

Though ultimately unsuccessful, the dogged defense of the suit by Marsh and Miller showed the variety of legal prevarications employed in antebellum courts. In their answer to Thomas's petition, the defendants neatly sidestepped the matter of their delinquent payment. In addition to asserting that the property was actually smaller than what they agreed to buy in the original transaction, Miller and Marsh pulled out the stops by also alleging that Thomas was a bigamist. Since Thomas inherited the property after the death of his granddaughter by marriage, Emily Ballow, the defense averred that his bigamy made his marriage to Emily's grandmother null and void. Therefore, Thomas had no legal right to sell the property that the uncles of the deceased should have inherited. The defendants prayed that the sale of the Ballow tract be annulled and the

⁵⁵ District Court St. Martin Parish, *Jotham H. Bedell v. Jonas Marsh and John F. Miller*, No. 2462, and *Granville C. Laughlin v. Jonas Marsh and John F. Miller*, No. 2523.

⁵⁶ St. Martin Parish Conveyances, Book 10, Page 48, Act 8013; Petition, 15 April 1841, in District Court St. Martin Parish, *Joseph Thomas v. Jonas Marsh and John F. Miller*, No. 2549, 2 La. Ann. 353, and No. 270, Supreme Court of Louisiana Collection, University of New Orleans. Miller executed two of the notes for \$1500 each with Marsh's endorsement, payable at the Union Bank branch in St. Martinsville. Marsh also executed two notes for the same amount and terms with Miller's endorsement.

notes sued upon cancelled, and also asked to be confirmed as owners of the tract and for a judgment in reconvention for \$5000.⁵⁷

Owing to the protracted dissolution of Marsh & Co., the court did not render a decision in the suit until 1845. The legal strategy of Marsh and Miller proved futile, and the district court judge actually set the final judgment at \$6000 for each defendant plus interest. As the judge shifted Miller's share of the judgment to his syndics in his action against his creditors in district court in New Orleans, Marsh was left to appeal his share of the judgment to avoid paying this sizeable sum. Before the state Supreme Court, his lawyers tried to have the district court judgment reversed by arguing that the cashier at the bank and the notary improperly carried out the protest of the notes for nonpayment and that the notice of the protest was sent to the wrong post office. The court rejected both arguments and cited in particular the testimony of Miller in the suit, in which Miller stated both he and Marsh received their protests and Marsh told him that they needed to make arrangements for payment. Due to Marsh's financial difficulties, Thomas had to return to district court in once more in 1849 to demand payment. Since by this time Marsh owned no property, Thomas now focused on recovering his overdue money from Marsh's brother, John C. Marsh, who secured Jonas Marsh's appeal bond to the state Supreme Court. In March 1850 the district court found for Thomas again, and he finally received his payment.⁵⁸

Long before the suit between Thomas and Marsh was resolved, though, the partnership of Marsh and Miller had been dissolved, and the personal relationship between the men also dissolved into rancor and enmity. Less than two months after

⁵⁷ Answer, in *Thomas v. Marsh and Miller*. Reconvention is the civil law term for counterclaim.

⁵⁸ District court decision, 8 November 1845; Appellant's brief; Supreme Court decision, March 1847; petition, 24 September 1849; District court decision, 23 March 1850, in *Thomas v. Marsh and Miller*.

Miller filed for bankruptcy, he and Kohn as syndics for his insolvent estate petitioned the district court in St. Martin Parish for the separation of the property owned jointly by Marsh and Miller in the partnership of Jonas Marsh & Co. Miller and Kohn asked the court for a public sale to facilitate the separation, and they would apply Miller's share of the proceeds of the sale in satisfying the claims of his creditors. They also averred that Marsh had never given a clear account of the earnings generated by the partnership from its sugar crops. As a result, a settlement of the accounts of the partnership would yield "a large sum of money" to the syndics. In his tableau of assets, Miller estimated the total value of the partnership property at \$73,166.38, encompassing both the Fausse Pointe plantation and the Ballow tract, along with seventy-one slaves, livestock, and equipment. Therefore, he and Kohn considered his share in the partition of the partnership a considerable benefit to the creditors.⁵⁹

Marsh, however, considered Miller's action to divide the partnership a threat to his livelihood. Miller, who split his time between New Orleans, Miller's Island, and his New Iberia plantation, was the silent partner in the firm of Jonas Marsh & Co. Active management of the plantations fell to Marsh, who lived at the Fausse Pointe plantation, also known as Marshfield, with his family. Marsh was an involved manager of the estates. One white cooper testified that Marsh ran the Fausse Pointe plantation without an overseer while he worked there in 1842. Notwithstanding Miller's financial stake in the partnership, Marsh thought of the plantations as *his* business and home. A public sale

⁵⁹ Petition, 3 April 1841, in District Court St. Martin Parish, *Joachim Kohn and John F. Miller, joint syndics of the creditors of John F. Miller and of Jonas Marsh & Co., v. Jonas Marsh*, No. 2799, 3 Rob. 48; Tableau, 15 February 1841, in *John F. Miller v. His Creditors*.

would force Marsh to come up with scarce capital to keep the plantations, slaves, livestock, and equipment in tact.⁶⁰

In October Marsh submitted his answer to Miller's petition to the court. In it, he maintained that no separation of the partnership property could take place until he and Miller settled all outstanding accounts and debts. Moreover, Marsh suggested that the amounts invested in the firm by the partners would complicate the partitioning of the property. He claimed that he was indebted to the partnership for \$62,000 and that Miller was indebted for \$73,000. In addition, he asserted that Miller still owed him a sum of \$8389.76 from his purchase of Marsh's share of the New Iberia plantation and distillery. Marsh continued to insist that the partition could not take place until a settlement of all accounts and debts throughout the case.⁶¹

Since the state's *Civil Code* mandated that an inventory of property precede any judicial sale, the court ordered such an inventory of the property of Jonas Marsh & Co. on the same day that Marsh submitted his answer to the syndic's petition. On November 3, 1838, notary Pierre Briant arrived at the Fausse Pointe plantation with two neighbors who would act as appraisers. As they traversed the plantation assessing the value of the property, Marsh closely observed the appraisals. Out of the seventy-four lots in the inventory, Marsh entered eight objections to the values set by the appraisers on livestock and crops. The appraisers set the total value of the property at \$71,951. The inventory

⁶⁰ Petition, 3 April 1841; Testimony of Charles Gauthier, Thomas Johnson, and Isaac E. Morse, in *Kohn and Miller v. Marsh*, No. 2799.

⁶¹ Answer of defendant, 28 October 1841, in *Kohn and Miller v. Marsh*, No. 2799.

listed sixty-seven slaves, not the seventy-one that Miller claimed in his tableau, and their collective value equaled \$33,160.⁶²

Soon after the inventory, tensions between Miller and Marsh increased. Nine days later, in the middle of the sugar harvest, Miller and Kohn petitioned the court for a writ of sequestration on the sugar that Marsh had produced at the Fausse Pointe plantation. As Miller own half of all sugar produced at the plantation, the syndics averred that Marsh could not sell or dispose of that year's crop without Miller's approval. Since Marsh was ready to ship the sugar out of the jurisdiction of the court, the syndics prayed for the writ and insisted that the court serve the petition on him in person, so he "may not plead ignorance." The sheriff reported the seizure of Marsh's entire production of 45 ½ hogsheads and two barrels of sugar, 10 coolers of sugar and molasses, and about 2000 gallons of molasses. Though Marsh posted a \$10,000 bond the next day with his brother John C. as security to keep possession of the sugar and molasses, this interruption of the harvest so vital to the success of the plantation undoubtedly drove Marsh to distraction.⁶³

Although the court had received the inventory, it still had to decide the best way to divide the property of Marsh & Co. Though the syndics in their petition requested a public sale to liquidate the firm's assets to facilitate the division, the court also considered a division in kind, in which Marsh and Miller would simply divide the property and slaves between themselves. The court appointed two neighbors as experts

⁶² Wheelock S. Upton and Needler R. Jennings, *Civil Code of the State of Louisiana* (New Orleans: E. Johns & Co., 1838), Article 1247, 190; Order, 28 October 1841, and inventory, 3 November 1841, in *Kohn and Miller v. Marsh*, No. 2799. The inventory included two runaways among the 67 listed, and no value was given for them.

⁶³ Petition for sequestration, 12 November 1841; order to sheriff, 12 November 1841; bond, 13 November 1841, in *Kohn and Miller v. Marsh*.

to decide if a partition in kind was possible “without inconvenience, loss, or a diminution of value.” Already acquainted with the plantations, they reported that a partition in kind was impracticable. Instead, they recommended a partition by licitation, or an auction of the property, but, interestingly, suggested that a partition by auction would be “more safe and advantageous” in regard to the slaves. Despite the hardship that public sales caused slaves in the antebellum South, this suggestion about the benefits of an auction for the slaves did have merit in one regard. A division in kind guaranteed that half, or half the value, of the Fausse Pointe slave community would have been separated if Miller and Marsh did not work out some arrangement. A public sale, however, left Marsh with an opportunity to keep the community together if he had sufficient funds to buy back the slaves.⁶⁴

With the report of the experts filed and in agreement with their request in their petition, the syndics entered motions for the court to rescind the order appointing the experts, to hear evidence by witnesses on the impracticality of a division in kind, and to order a public auction to partition the property. Marsh immediately filed objections to these motions, again stressing the need for a settlement of the firm’s accounts and that the court could not rescind the order appointing the experts without consent of both parties. Judge George Rogers King overruled the defense’s objections, however, and allowed the motions to prevail. He then affirmed the findings of the experts and ordered a public sale to partition the property of Marsh & Co. But the judge ordered that notes given for payment in the sale should remain deposited at the Union Bank branch in St. Martinsville until the settlement of the firm’s accounts. Marsh quickly filed an appeal of King’s decision and interlocutory judgments to the state Supreme Court, claiming that a public

⁶⁴ Report, 28 April 1842, in *Kohn and Miller v. Marsh*.

sale before a settling of the partnership accounts and debts would cause “irreparable injury” to him.⁶⁵

The Supreme Court rejected Marsh’s appeal in a decision that September. The court concluded that the rescission of the order appointing the experts did not harm the defendant’s legal rights and that the motion by the syndics to hear other evidence to prove their position was proper. The district judge had other ways to determine the facts regarding the feasibility of a public auction of the firm’s property, not only through the report of the experts. As far as Marsh’s contention concerning the settlement of the firm’s accounts and debts, the court thought his argument was “ingeniously and strenuously urged” and gave it careful consideration. But in the end the court rejected Marsh’s position and allowed the sale to go forth. Instead, it deemed the liquidation and division of the firm’s assets through the public sale as a necessary part of the process of settling their accounts and debts. Before any auditor determined whether there was a balance in the favor of either partner, the assets of the firm had to be sold and converted into a monetary value. But the court also affirmed that the syndics and Marsh could not divide the proceeds of the sale until they reached their settlement.⁶⁶

On March 7, 1843, the public sale to partition the property of Marsh & Co. took place at the Fausse Pointe plantation, presided over by a parish judge. At the end of the day, the sale raised just \$38,955, well below the inventoried value of \$71,951. Marsh paid a little over \$23,000 to basically buy back a portion of the property from which he made his living. Marsh bought all of the tracts of land offered in the sale, except for a

⁶⁵ Motion, 2 May 1842; motion, 2 May 1842; decision, 3 May 1842; petition of defendant, 3 May 1842, in *Kohn and Miller v. Marsh*. An interlocutory judgment is a judgment regarding a preliminary or subordinate point or plea, but does not decide the case. See *Black’s Law Dictionary*, abridged 7th edition. The judge set the appeal bond, secured by John C. Marsh, at the considerable sum of \$54,000.

⁶⁶ Supreme Court decision, September 1842, in *Kohn and Miller v. Marsh*, 3 Rob. 48.

tract of woodland adjudicated officially to Sarah Canby, but it essentially became the property of Miller. Marsh purchased his home, the Fausse Pointe plantation, for just \$8125, a little more than half of its inventoried value. However, he could not afford to keep the firm's slave community together, however, and its dismemberment belied the suggestion of the experts. Marsh secured twenty-five of the sixty-two slaves offered in the auction, but nine other bidders, mostly from neighboring farms and plantations, gained the remaining thirty-seven. Four of the slaves, including one runaway put up in the sale, became the property of Canby and Miller.⁶⁷

As the sale to partition the assets of Jonas Marsh & Co. proceeded, the problem of settling the firm's accounts was still unresolved. In October 1841 the court named two experts and one umpire to begin work on the settlement, but by March 1843 there is no record in the case file of any action taken by that panel. On the day of the partition sale, a plan emerged from discussions among Miller, Jonas Marsh, Miller's lawyer Cornelius Voorhies, Marsh's lawyer Thomas H. Lewis, and John C. Marsh. A resolution of this matter had taken on some urgency, as the proceeds from the sale would stay in escrow at the bank until it was completed. The key participants in the plan were the lawyers, who took on the role of auditors of the firm's accounts.⁶⁸

According to the proposal, Miller and Marsh would submit all of the firm's accounts and their individual claims to Voorhies and Lewis, who would then wade through all of the account books and documents to arrive at a fair settlement. The attorneys would not engage each other in an adversarial manner during this undertaking. Instead, in the words of Lewis, he and Voorhies would "act between them as men seeking

⁶⁷ Sale, 7 March 1843, in *Kohn and Miller v. Marsh*.

⁶⁸ Order, 28 October 1841; Testimony of Thomas H. Lewis, in *Kohn and Miller v. Marsh*.

earnestly what was honest and right between the parties” and work “as Judge [sic] to do equity between them.” Miller and Marsh agreed to abide by whatever sums that Lewis and Voorhies determined. Lewis expressed some reservations about the proposition, but nevertheless he agreed to become one of the arbiters of the firm’s accounts after some persuasion. As gentlemen, all sides gave verbal approval to the plan. But Lewis’s reservations were prescient, and a formal written agreement might have proved useful.⁶⁹

Lewis journeyed to St. Martinsville in June 1841 for the sole purpose of settling the accounts of Marsh & Co. The task he agreed to perform proved more complicated than he anticipated, but it is one that provides a revealing look at the more mundane work that rural antebellum lawyers encountered during the course of their practice. With professional accountants nonexistent in rural places like the Attakapas, lawyers, as professionals with necessary skill and training, presumably carried out such assignments with some regularity.⁷⁰

Upon his arrival at Voorhies’s law office, he found not only Marsh and Miller, but also all of the firm’s books, papers, and vouchers that probably stretched back to the founding of the partnership. Lewis and Voorhies began on a Monday morning and worked “diligently” until the weekend, sometimes by candlelight. As it became a “most troublesome” investigation, the attorneys remained cloistered in the office with the doors

⁶⁹ Testimony of Lewis, in *Kohn and Miller v. Marsh*. Lewis, an attorney from Opelousas, was not someone to trifle with. In his noted slave narrative, Solomon Northrup recalled an incident in which Lewis and his brother-in-law came to a plantation near Northrup’s in order to negotiate a sale with the planter there. In the course of the meeting, the men exchanged words and drew guns. The incident resulted in the death of the brother-in-law and the wounding of the planter. See Solomon Northrup, *Twelve Years a Slave*, Sue Eakin and Joseph Logsdon, eds. (Baton Rouge: Louisiana State University Press, 1968), 155-156.

⁷⁰ Testimony of Lewis, in *Kohn and Miller v. Marsh*.

closed to prevent interruptions from clients of Voorhies who came to visit. At the end of each day, they collected the books and papers and stored them in the office's safe.⁷¹

The disputants likely provided the most distraction to the arbiters. While Miller stopped showing up at the office after the first two or three days, Marsh made the short trip to St. Martinsville from his Fausse Pointe plantation every day even though he had already explained his claims in detail to Lewis. Tensions were on the rise between the former partners. The attorneys called either one into the office at times, perhaps as they waited in an anteroom, to clarify a particular claim or account. But Lewis insisted that they would not come in at the same time for fear of quarrels. Much was at stake. A person with an office next door to Voorhies conversed with Marsh and Miller during the proceedings. He recalled, "Each seemed to speak as [though] they [sic] expected a large balance in his favor."⁷²

Determining the firm's liabilities from the individual accounts and claims of Marsh and Miller was the crucial matter for Voorhies and Lewis to resolve. During their deliberations, the attorneys admitted all claims that the partners agreed on and those that they disputed. They then examined and assessed each account in dispute. Though they viewed themselves as "amicable compounders," they nevertheless could not resist acting on the behalf of their clients at times. Voorhies pressed some claims for Miller during the sessions that were ultimately rejected, and Lewis did the same for Marsh. They admitted some plantation expenses that did not have sufficient legal proof but seemed reasonable in their judgment. For example, they took into consideration Marsh's claim for services as overseer for the firm, and Miller's claim for board of Marsh and his family

⁷¹ Testimony of Lewis, in *Kohn and Miller v. Marsh*.

⁷² Testimony of Lewis; (?) Heard, in *Kohn and Miller v. Marsh*.

at the Fausse Pointe plantation. The attorneys were thorough in their duty, even visiting local banks to inspect accounts of the firm and each partner to verify the purpose of certain promissory notes. On the insistence of Marsh, the arbiters examined witnesses as well. Whenever they admitted a claim against either Marsh or Miller, they recorded it in a ledger, and at the conclusion of their inquiry, they tallied the amounts for and against each partner to arrive at a balance.⁷³

By June 24, 1843, Voorhies and Lewis had finished their task, and they signed and submitted their statement of the settled accounts of Marsh & Co. to the district court. After examining all of Marsh and Miller's claims and balancing the debts and accounts, they determined that Marsh owed Miller and Kohn the sum of \$5,985.13. Though Marsh never complained during the proceedings to Voorhies's office neighbor, he expressed "some disappointment" with the results to his attorney Lewis. As the months progressed, though, his anger over the settlement apparently simmered, and the final resolution of the case remained protracted.⁷⁴

Once eager for the settlement of accounts to begin, Marsh now employed various legal tactics to overturn or at least postpone the implementation of the final settlement. As suits for other debts overwhelmed him, immediate payment to his estranged partner was problematical, even if it was not unpleasant. In October 1843 Voorhies entered a motion for the defendants to show cause why the report of the amicable compounders should not be homologated and made the judgment of the court. Six months later, Marsh, now represented by different attorneys, responded to the motion and averred that the court should reject the report of the Voorhies and Lewis. The reasons offered were

⁷³ Testimony of Lewis; settlement of accounts, 24 June 1843, in *Kohn and Miller v. Marsh*.

⁷⁴ Testimony of Lewis and Heard; settlement of accounts, 24 June 1843, in *Kohn and Miller v. Marsh*.

largely technical. He asserted that the arbiters did not take an oath as required by law, did not inform him when the proceedings would begin, acted without evidence and ex parte, and did not draw up their report in a formal and legal style. Considering that Lewis and another witness later affirmed that Marsh journeyed to Voorhies's office during every day of their proceedings, his complaint about his ignorance of the commencement of the arbiters' work was particularly dubious. Since Lewis was Marsh's attorney at the time, the allegation that he and Voorhies worked just for the benefit of Miller was suspect as well.⁷⁵

As the court proceeded to trial on the issue of approving the settlement of the accounts, Marsh elaborated further on his objections to the work of Voorhies and Lewis. He asserted that the attorneys did not examine all of the accounts, notes, receipts, and vouchers given and received by him and Miller during their partnership. Marsh also insisted that the court should have settled any accounts that the attorneys could not agree upon. Their report, however, did not specify which or explain why certain accounts were allowed or rejected. Marsh maintained that the attorneys did not do a thorough job with the accounts, and their inaccuracies cost him a considerable amount of money. He recalled informing Lewis after the lawyers finished their work that they made "a mistake of over forty thousand dollars."⁷⁶

Ultimately, Marsh did not prevail. After hearing evidence in October 1844, Judge Henry Boyce found for the syndics the following month and homologated the settlement of devised by Lewis and Voorhies. The judge also ordered Marsh to pay the syndics the balance of \$5985.13. On the same day Marsh's attorney entered into the record that

⁷⁵ Motion, 24 October 1843; answer of defendant, 19 April 1844, in *Kohn and Miller v. Marsh*. Ex parte means for the benefit of only one of the parties. *Black's Law Dictionary*, abridged 7th edition.

⁷⁶ Answer, 25 April 1844; answers to interrogatories, 25 April 1844, in *Kohn and Miller v. Marsh*.

Marsh agreed with the amount of the settlement and consented to the homologation of the report of the arbiters.⁷⁷

Despite Marsh's acceptance of the settlement of the firm's accounts, other legal battles continued to erupt and ebb over the dissolution of Marsh & Co. Joachim Kohn and his firm of Kohn, Daron & Co. filed suit in February 1842 to recover over a debt \$8500 for advances and provisions for the plantations of Marsh & Co. Interestingly, the defendants in the suit also included Kohn, acting in his capacity as syndic. The state Supreme Court affirmed the district court judgment that held Miller liable for most of the sum. As Marsh's financial situation remained bleak, he could not honor the promissory notes he gave for the property he purchased at the partition sale. Miller and new syndic Samuel H. Turner filed two suits against Marsh and his brother in 1845 to recover over \$14,000 of these delinquent notes. The district court ultimately found for the plaintiffs in both actions. For good measure, Canby also sued Marsh in 1845 over a fence stemming from an agreement regarding the transfer of land on the Ballow tract after the partition sale. The court later dismissed the suit at her costs.⁷⁸

Marsh made one last effort to forestall these actions. In his answer to one of the suits over the notes and in a separate action against Miller and Turner, Marsh prayed for the court to annul the decision in the settlement of the accounts and to set it aside. In language that cast aspersion on Miller's integrity as a planter and businessman, he alleged

⁷⁷ Decision, 2 November 1844; agreement, 2 November 1844, in *Kohn and Miller v. Marsh*.

⁷⁸ District Court St. Martin Parish, *Kohn, Daron & Co. v. Jonas Marsh and Joachim Kohn and John F. Miller, syndics*, No. 2948, 5 Rob. 515; *John F. Miller and S. H. Turner, syndics of John F. Miller v. Jonas Marsh and John C. Marsh*, No. 3723; *John F. Miller and S. H. Turner, syndics of John F. Miller v. Jonas Marsh*, No. 3729; *Sarah Canby v. Jonas Marsh*, No. 3778. The firm of Kohn, Daron & Co. filed for bankruptcy protection in 1842 under the federal Bankruptcy Act of 1841. The following year the court called another meeting of Miller's creditors to name a replacement, and Miller and Turner received the position of syndic of Miller's insolvent estate. See *Procès-verbal*, 11 July 1843, in *Miller v. His Creditors*. See also U. S. District Court, *Bankruptcy of Kohn, Daron & Co.*, No. 199.

that Miller knowingly cheated and defrauded him during the settlement. Miller, according to Marsh, presented claims to Voorhies and Lewis for at least three drafts that had already been credited on the books of Marsh & Co. by their now deceased bookkeeper Andrew Hamilton. As a result, these additional claims dramatically skewed the balance of the accounts in Miller's favor. Marsh now asserted that an honest accounting would have yielded to him a balance of \$30,000, which he asked for in his suit from the syndics. In their answer, the syndics averred that Marsh should have brought up these objections in the earlier action and reminded the court that Marsh did consent to the earlier judgment. Marsh must have realized that his legal tactics would once again prove futile, and in February 1848, the court dismissed his suit on a motion from his attorney.⁷⁹

In 1842, while the district court in St. Martinsville considered the best means to dissolve of Marsh & Co., Miller changed in his bankruptcy strategy. In the previous year, owing to popular demand during the economic depression and the political ascendancy of the pro-business Whigs in Washington, Congress narrowly passed the second federal bankruptcy law. Unlike the nation's previous experiment with national bankruptcy law, this new act allowed insolvents to initiate proceedings and to receive a full discharge upon their completion. As the federal bankruptcy law preempted state statutes, Miller moved his action for bankruptcy protection from state court to federal district court in New Orleans.⁸⁰ Roselius filed Miller's petition on July 2, 1842, and a

⁷⁹ Answer of defendant, in *Miller and Turner v. Marsh*; Petition, 7 June 1847; answer, 6 July 1847; decision, 7 February 1848, in District Court St. Martin Parish, *Jonas Marsh v. John F. Miller and S. H. Turner, syndics of Miller*, No. 3926. Though it did not have any bearing on the accounts of the firm, there were apparently tensions between Marsh and Hamilton. As discussed in Chapter Attakapas, Marsh sued him for slander, alleging that Hamilton accused Marsh of defrauding the estate of his business partner and brother-in-law Nathan Morse. See *Jonas Marsh v. Andrew Hamilton*, No. 2394.

⁸⁰ Preemption, in this sense, means that federal bankruptcy law superseded state law.

schedule of his debts and assets. In short order, the court held a hearing on October 31 to consider Miller's petition for a discharge, and Judge Theodore McCaleb granted a discharge to Miller the same day.⁸¹

After Miller received his discharge in federal court, he initiated the process of reacquiring his assets that he sheltered under the name of his mother. By June 1841 Canby possessed all of her son's plantation investments in the Attakapas with the exception of his stake in Marsh & Co. when she bought the New Iberia distillery for \$2600 in a syndic's sale to earn money for Miller's creditors. In February 1843 she sold to Miller the New Iberia plantation, the Coxe tract, the distillery, seventy-two slaves, and 682 shares of Union and Citizens bank stock. Miller assumed a debt of \$34,100 from the banks and agreed to give his mother an annuity of \$1500 for the rest of her life, use of a house at the New Iberia plantation, and the use of six slaves. By December, Miller annulled the sale of the property to his mother. The new arrangement was the same as the one in February, but he assumed an additional \$6350 of debt on the plantation, which included a sum owed to his current New Orleans factor and the payment of a new steam engine and sugar mill. But interestingly, he cut his mother's annuity by \$500 a year! By the end of the month, Canby sold to Miller another twenty-three slaves for the bargain price of \$7560 in cash and Miller's assumption of three promissory notes. Finally, in 1847, the Citizens Bank sued Canby to recover \$24,571.91 in debt on loans secured by

⁸¹ Petition, 2 July 1842; decree of discharge, 31 October 1842, in United States District Court, Eastern District Louisiana, In Bankruptcy, *In the matter of the Bankruptcy of John F. Miller v. His Creditors & the Creditors of Jonas Marsh & Co.*, No. 293. For the passage of the Bankruptcy Act of 1841, see Warren, *Bankruptcy in United States History*, 70-79; Balleisen, *Navigating Failure*, 101-108; Tabb, "The History of the Bankruptcy Laws in the United States," 16-18.

the Miller's Island plantation. At the ensuing public sale, Miller acquired his namesake plantation and its slaves for \$25,250 in cash.⁸²

While Miller deftly used his family relations to shield his assets under state and federal bankruptcy law from the onset of his troubles, Marsh was slow to realize such a strategy. After Marsh secured possession of the Fausse Pointe plantation at the partition sale in March 1843, his mounting debts from Marsh & Co. threatened his enjoyment of property. With little liquid capital, he could not satisfy his creditors, and sheriff sales triggered by the suits would result in the loss of his property needed to sustain his planting activities. Marsh and his family then conspired to keep the plantation and its property within the family, but not in Marsh's name, in order to thwart suits from his creditors. Since Marsh would legally be without property, creditors would have no recourse in seeking payment for their debts. It is an example of another strategy used by antebellum planters to weather financial distress.

Two of Marsh's daughters were married to both partners in one of the leading mercantile firms in New Iberia, John Taylor and John Devalcourt. By 1843, after the death of Taylor, Martha Marsh Taylor resided at the Fausse Pointe plantation with her son. In October, she filed suit in district court against her father, claiming that Jonas Marsh collected money due to the estate of her late husband but failed to give the money to the estate. As tutrix for her minor child, she had an obligation to recover the money for her husband's estate, which she fixed at \$1698.31. On the same day Martha Taylor filed suit, John Devalcourt also initiated an action against Marsh & Co. to recover over

⁸² St. Martin Parish Conveyances, Book 13, Page 99, Act 9048; Book 14, Page 97, Act 10168; Book 14, Page 316, Act 10387; Book 14, Page 317, Act 10388; Book 14, Page 319, Act 10389; Book 14, Page 320, Act 10390; Book 14, Page 338, Act 10405; District Court St. Martin Parish, *Citizens Bank of Louisiana v. Sarah Canby*, No. 3942.

\$3800. Marsh did not contest either suit, and less than a week later, the court handed a judgment for both plaintiffs. The sheriff seized the Fausse Pointe plantation, eleven slaves of its slaves, and some plantation implements, and the court set the sheriff's sale for March 2, 1844. On that day, two neighbors appraised the plantation property at just \$6000, well under the \$8125 Marsh paid at the partition sale nearly a year before. With the value of the slaves and other implements, the total appraisal was \$8777.50. Martha Taylor was the highest bidder for the property at \$5500. She and Devalcourt settled their claims against her father, and she became the legal owner of the property.⁸³

The collusive nature of the sale of the Fausse Pointe plantation did not go unnoticed. In February 1844, Philemon C. Wederstrandt, the father-in-law of Marsh's nephew, sometime attorney, and by then Congressman Isaac E. Morse, filed suit against Marsh in regard to a note given to him by Marsh worth \$400 for the purchase of a sugar mill. Wederstrandt argued that the note gave him a privilege on the mill, and requested that the sheriff seize and sell it to secure his debt. Marsh, on the other hand, maintained that Miller was also liable for the note. After her purchase of the mill in the sheriff's sale in March, Martha Taylor petitioned the court to intervene in the suit, asking the court to recognize her as the owner of the mill free from any privileges. The court rejected her petition and found for the plaintiff. Taylor then filed an appeal to the state Supreme Court.⁸⁴

In the Supreme Court, Taylor had to fend off charges that the sheriff's sale in which she acquired the sugar mill was fraudulent and collusive. In particular, the

⁸³ District Court St. Martin Parish, *Martha Taylor, tutrix, v. Jonas Marsh*, No. 3484; *John Devalcourt et al v. Jonas Marsh, and John F. Miller and Samuel H. Turner, syndics*, No. 3485.

⁸⁴ District Court St. Martin Parish, *Philemon C. Wederstrandt v. Jonas Marsh*, No. 3506, 11 Rob. 533.

plaintiff Wederstrandt cited the assessment of his sugar mill. Originally costing him \$1500 and sold to Marsh for \$400, the appraisers set its value at just \$10 prior to the sale. In their examination of the circumstances surrounding the sale, the Supreme Court found no evidence of fraud or collusion, and the sheriff and the appraisers all acted in good faith. Moreover, the court averred that Wederstrandt did not offer any evidence that the mill was worth more than the appraised value. The court affirmed the judgment against Marsh, viewing his part of the appeal as frivolous, but it reversed the district court's ruling regarding Taylor's intervention and sustained her opposition to Wederstrandt's privilege on the mill.⁸⁵

By 1846, the Fausse Pointe plantation was once more in Jonas Marsh's name. To finally ensure the security of his property, Marsh's wife, Elizabeth Morse, sued her husband for a separation of property. She based her claim on her husband's appropriation of nearly \$7500 from inheritance from her father's estate in New Jersey. As a result, she had a legal claim on the Fausse Pointe plantation and slaves, which Marsh had gradually transferred to her beginning in 1843. In July 1846 the district court granted her request, and she became the sole administrator of the estate, free from any liability of her husband's debts. But she was the owner in name only. In transactions during the 1850s, she conducted the business of the plantation in the presence and with the counsel of her husband.⁸⁶

By the middle of the 1840s, Louisiana and the rest of the nation finally pulled out of the throes of the depression caused by the Panics of 1837 and 1839. Sugar prices recovered, and the states planters once more enjoyed the prosperity of the early 1830s.

⁸⁵ Supreme Court decision, September 1845, in *Wederstrandt v. Marsh*.

⁸⁶ District Court St. Martin Parish, *Elizabeth Morse v. Jonas Marsh*, No. 3803.

But before they experienced success again, planters like Miller and Marsh had to weather many threats to their estates brought on by heavy debt loads and poor sugar prices. To survive, they used the law to their advantage, stretching the spirit of the laws in the process. Miller skillfully protected his investments through state and federal bankruptcy law, but he also sheltered all three of his valuable sugar plantations by placing them in the name of his mother. Marsh did not resort to bankruptcy law, but he engaged in transfers of his plantation to shield his property from seizure in his many suits over his debts. Due to his legal maneuvers, he maintained de facto control of his plantation though legally it was his wife's. Though Miller's reputation in New Orleans business circles and among Attakapas planters withstood his failure and legal ruses, it would suffer just as he was coming out of his difficulties due to one emancipation suit by one of his former slaves.

CHAPTER 5: CONSTRUCTING BRIDGET WILSON

In the spring of 1844, as his financial fortunes began to recover, Miller confronted the most serious challenge to the standing in antebellum society that his success as an entrepreneur and planter provided. A slave that either he or his mother owned from 1822 to 1838 filed a suit for freedom in the First Judicial District Court in New Orleans. Miller knew her as a light-skinned slave named Bridget; the family name of her previous owner was Wilson. Now she claimed that she was actually Salome Muller, a German woman who had been enslaved as a young girl. Of all the suits that involved Miller, this emancipation suit received the most attention, in both the local and national press. As a result, it forced him to defend his reputation in the courts and in the press as tenaciously as he defended his wealth his bankruptcy litigation.¹

The Muller story appeared in different guises and served many purposes in the nineteenth century. Abolitionists used reports of white slavery in the South as cautionary tales about the threat of slavery and slavers to white people in the North, and the Muller case, in their hands, became a closely observed story as it unfolded. Later, escaped slaves William Craft and Ellen Craft cited the Muller trial in their slave narrative as an illustration of the prevalence of white or near-white individuals held in slavery. In the

¹ For previous accounts of the Muller case, see George Washington Cable, *Strange True Stories of Louisiana* (New York: Charles Scribner's Sons, 1890), 145-191; Louis Voss, "Sally Mueller [sic], the German Slave," *Louisiana Historical Quarterly* 12 (July 1929): 447-460; John S. Kendall, "Shadow Over the City," *Louisiana Historical Quarterly* 22 (January 1939): 155-165; Judith Kelleher Schafer, "The Long Arm of the Law: Slavery and the Supreme Court in Antebellum Louisiana, 1809-1862," (Ph.D. dissertation, Tulane University, 1985), 349-352; Ariela J. Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteen-Century South," *The Yale Law Journal* 108 (October 1998): 109-188; Carol Wilson, "Sally Muller, the White Slave," *Louisiana History* 40 (Spring 1999): 133-153.

pioneering antislavery novel *Clotel, or the President's Daughter*, William Wells Brown included a fictionalized Sally Muller in his narrative and turned her into an archetype of the white slave.²

In 1890, George Washington Cable revived the Muller case in his collection, *Strange True Stories of Louisiana* and produced its first carefully researched account. To piece together his account more than forty years after it occurred, Cable made use of the original court record of the case and procured valuable detail from individuals with first-hand knowledge of the case or its actors. His story elaborated on the traditional version of the Muller case as the strange, but true story of a white orphan sold into slavery, discovered incredibly as an adult by relatives, and redeemed from bondage by her attorneys. Romanticized, the essential form of Cable's narrative of the case possessed great staying power. Even more recent examinations of the Muller story do not stray far from Cable's template. The notoriety of Cable's version of the case was such that another anecdote of white slavery in antebellum New Orleans assumed, mistakenly, that Muller must have been the protagonist. Close examination of the contentious litigation over the plaintiff's true identity demonstrates that Cable's more than a century old narrative is due for revision, and that revision puts Miller at the center of the story.³

Rather than a straightforward story of justice regained by an innocent victim of slavery, the legal fight over Muller's suit for emancipation reveals startling complexities.

² William Craft & Ellen Craft, *Running a Thousand Miles for Freedom: The Escape of William and Ellen Craft from Slavery* (Athens: University of Georgia Press, 1999), 4-6; William Wells Brown, *Clotel, or the President's Daughter* (Armonk, NY: M. E. Sharpe, 1996), 87-90. For the use of cases white slavery in abolitionist propaganda, see Carol Wilson and Calvin D. Wilson, "White Slavery: An American Paradox," *Slavery and Abolition* 19 (April 1998): 1-19.

³ Cable, *Strange True Stories of Louisiana*, 145-191; Katherine Kirkwood Scott, "The Case of the Runaway Slave," Typescript, Southern Historical Collection, University of North Carolina, Chapel Hill. The Kirkwood typescript challenges Cable's version of the Muller case, but the facts presented in it are at odds with the legal record. The author likely confused an oral account of an incident of white slave involving her family with the Muller case.

Two of the key issues are racial “performance” in the courtroom and the formulation of antebellum conceptions of “whiteness.” The Muller case allows us to explore these problems. Ariela J. Gross defined the performance of whiteness simply as “[doing] the things a white man or woman did.” For men, this included evidence of voting, jury duty, or militia duty. For women, this meant compliance with traditional standards of white womanhood. Such performances became “the law’s working definition of what it meant to be white” in the antebellum South. But as Walter Johnson recently demonstrated in his study of another Louisiana case in which race of the plaintiff was ambiguous, the courtroom was a forum where attorneys and witnesses constructed a plaintiff’s “blackness” as well. This dichotomy of racial constructions characterized the Muller saga, employed not only by the opposing lawyers in their courtroom tactics, but also in the press as either side tried to secure public support.⁴

Racial performances and constructions form just part of the Muller narrative, however. Litigation between the slave and her former master encompassed four suits heard in state and federal court between 1844 and 1849, instead of the two cited in other accounts.⁵ These additional suits and other evidence heard in public in New Orleans reveal hitherto unexamined themes. Earlier accounts largely ignored Miller’s version of

⁴ Gross, “Litigating Whiteness,” 112, 109-188; Walter Johnson, “The Slave Trader, the White Slave, and the Politics of Racial Determination in the 1850s,” *The Journal of American History* (June 2000): 13-38. For a recent critical essay on the use of whiteness as a means of historical analysis, see Peter Kolchin, “Whiteness Studies: The New History of Race in America,” *The Journal of American History*, (June 2002): 154-173.

⁵ *Miller v. Belmonti*, 11 Rob. 339, No. 5623 (1845) and *Miller v. Miller*, 4 La. Ann. 354, No. 1114 (1849), The Supreme Court of Louisiana Collection, Earl K. Long Library, University of New Orleans; *Sally Muller v. John F. Miller*, First Judicial District Court of Louisiana, No. 23,129, New Orleans Public Library; *Salome Miller v. John F. Miller and Sarah Canby*, U. S. Circuit Court, New Orleans, General Case File No. 1403, National Archives and Records Administration, Ft. Worth, Texas. Though her family name in German was Muller, or Müller, she sued under the English form of her name, Miller, in her emancipation and two later suits. I will employ the name Muller for the plaintiff, primarily to distinguish her from the defendant, John F. Miller. Previous research on the Muller saga only examined the two cases at the Supreme Court of Louisiana Collection at the University of New Orleans.

the case and portrayed him as a one-dimensional figure in the proceedings, the malevolent planter who enslaved the innocent white orphan. His defense, though, provides a singular illustration of how a man of his rank in antebellum southern society responded to such a public assault on his reputation and integrity. Rather than the dueling pitch, he relied on the courts and the press.

Miller's defense also relied on the reputation of his friends and business associates. They took the stand to support his depiction of the plaintiff. Their testimony and the evidence provided by the plaintiff's witnesses suggests a class division in antebellum perceptions of whiteness, or, in the summation in a cryptic notation in the margins of the plaintiff's brief, a divide between the "parlor witnesses" and the "second table" witnesses. But such judgments were sometimes equivocal, and uncertainties regarding the plaintiff's racial identity in the end undermined Miller's case.⁶

Finally, through depositions taken during the litigation, Miller constructed an account of life on the frontier of northern Louisiana in the late 1810s and 1820s that helps resolve the mystery of Salome Muller. Disregarded in other accounts of the Muller saga, this evidence casts doubt on the identity of the plaintiff in the trial. If true, it opens other questions about the agency of women of color in antebellum New Orleans, and gives Miller's most celebrated suit with a twist of irony. Miller spent his entire career using the formalities of the law to secure and protect the wealth he earned in business and planting in antebellum Louisiana. As seen in his litigation over his bankruptcy, these formalities

⁶ Wheelock S. Upton, "Notes, By Plaintiff's Counsel, on the rule for a new trial, in support of said rule, and that the same should be made absolute," 5, in *Miller v. Belmonti*. In his examination of the case *Morrison v. White*, Johnson argues for a tension between juries composed of men of modest means who thought of the plaintiff in the case as white and the courts and legislature who made racial distinctions more rigid in the 1850s and whose conceptions of whiteness did not include the plaintiff. See Johnson, "The Slave Trader, the White Slave, and the Politics of Racial Determination in the 1850s," 13-38.

allowed him to shield his most valuable property from his creditors through its sale to his mother. In the Muller case, Miller's evidence suggests that the plaintiff herself engaged in a legal maneuver, whether through her own initiative or with the aid others, to secure her freedom through use of the same legal formalities that otherwise supported her enslavement.

The probability that the young Salome Muller could become enslaved originated in the peculiar circumstances of her journey to Louisiana. Daniel Muller and his family hailed from the village of Langensulzbach, near Strasbourg in Alsace, and arrived in New Orleans in 1818 as redemptioners, indentured servants who arranged after their arrival the terms of their laboring exchange for the payment of their passage. Fleeing famine and economic hardship in the wake of the Napoleonic Wars, the Mullers and the fellow emigrants in their group faced additional trials during their journey to the United States. Upon their arrival in Amsterdam, the owner of the vessel that was to take them to Philadelphia absconded with their passage money. Embarrassed by the sight of this group of emigrants forced to beg on the streets, the Dutch government arranged transportation with another captain. On account of the unscrupulousness of this captain, inadequate provisions and disease claimed as many as 1200 out of 1800 emigrants during the voyage to America, according to Cable. Among the dead were Salome's mother and infant brother.⁷

It is unknown why the captain decided to sail for New Orleans rather than Philadelphia. Though the main market for German indentured labor in the early

⁷ Robert J. Steinfeld, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350-1870* (Chapel Hill: The University of North Carolina Press, 1991), 198; testimony of Francis Schuber, in *Miller v. Belmonti*; Cable, *Strange True Stories*, 156, 145-156; "The Case of Salome Muller," *The Law Reporter* 8 (September 1845): 193-196; Voss, "Sally Mueller," 449-450.

nineteenth century was Philadelphia, the sale of such laborers in Louisiana was not uncommon before 1820. The Mullers and their fellow emigrants arrived in New Orleans at a time when labor was in demand. Planters had expanded sugar production after the passage of the first sugar tariff in 1816, and the available market for slaves could not handle the demand. In 1820, the price for a prime field hand in the local slave markets was \$875. Prices would not reach those levels again until 1835, when Louisiana experienced its next significant economic boom. Though planters would have their services for a limited amount of time, the comparatively low cost of redemptioners made them attractive.⁸

Although there were drawbacks in the purchase of white indentured labor, planters desperate for workers carefully considered their decision. In the Attakapas, planter John Palfrey wrote in 1818 to his son in New Orleans regarding the arrival of “those Dutchmen,” which included the Muller family. Many of these laborers had just arrived in the region from New Orleans. Based on his observations of other plantations, Palfrey did not believe that these German redemptioners were the answer to the labor problems in the sugar country. They were apt to run away and had difficulty in adjusting to the climate. He even affirmed that he “from motives of humanity be unwilling to expose them to it [the local climate].” Nevertheless, Palfrey thought that he could use one or two on the plantation without risking their health in the sugar fields and instructed

⁸ J. Hanno Deiler, “The System of Redemption in the State of Louisiana,” Louis Voss, trans., *Louisiana Historical Quarterly* 12 (July 1929): 426-447; Laurence J. Kotlikoff, “Quantitative Description of the New Orleans Slave Market, 1804 to 1862,” in Robert William Fogel and Stanley L. Engerman, eds., *Without Consent or Contract: The Rise and Fall of American Slavery. Markets and Production: Technical Papers, Volume I* (New York: W. W. Norton & Company, 1992), 35. For the market for redemptioners in Philadelphia, see Farley Grubb, “Redemptioner Immigration to Pennsylvania: Evidence on Contract Choice and Profitability,” *The Journal of Economic History* 46 (June 1986): 407-418; Farley Grubb, “The Auction of Redemptioner Servants, Philadelphia, 1771-1804: An Economic Analysis,” *The Journal of Economic History* 48 (September 1988): 583-603.

his son to look for a middle-aged man and his family who were experienced in farm work.⁹

Although the Mullers and their fellow immigrants had already paid for their passage to the captain who absconded in Amsterdam, the captain of the vessel who carried them to America sold them as redemptioners in order to recover his expenses. From March to April 1818, a notary oversaw the arrangement of 140 indenture contracts. Daniel Muller arranged an indenture for himself and his three surviving children with a Thomas Grayson of Catahoula Parish in north Louisiana. The German community in New Orleans was outraged at the sight of the auction of those whose passage money had already been paid. Individuals later recalled that they secured the services of attorney John R. Grymes and filed a petition in court to stop the sale of the redemptioners, but no record of this action can be found. One witness to the plight of these immigrants may have been Miller. On March 12, he represented the firm of Holland Sylva Co. in the purchase of a vessel lying in the port. If he inspected the vessel before the purchase, then the possibility exists that he and the Muller family crossed paths on the riverfront during this time.¹⁰

It is possible that the city's Germans dropped their proceedings on account of quick action by the state legislature. By March 20 the state passed an act to reform the

⁹ John Palfrey to Henry Palfrey, 1 April 1818, in the Palfrey Family Papers, Louisiana State University. Though it is uncertain whether Henry Palfrey bought any redemptioners for his father's plantation, a newspaper in New Orleans ran a notice later in the month in which a H. W. Palfrey offered \$40 for the return of four redemptioners that he purchased who had since absconded. He described them as "all young men, well made, and of middle size, and were dressed in Russian sheeting pantaloons and shirts, red waist-coats and boots." Palfrey also offered an additional \$20 for a sailor who enticed them to run away, who ironically had the name John Miller. But this John Miller spoke Dutch, according to the notice (or perhaps German), and little English, hardly fitting the description of John F. Miller, a native of South Carolina. Deiler, "The System of Redemption in the State of Louisiana," 437.

¹⁰ Testimony of Francis Shuber; indenture contract, in *Miller v. Belmonti*; First Judicial District Court (New Orleans), *James Pitot v. John Lynd*, No. 2385 (1818); New Orleans Notarial Archives, Notarial Books of John Lynd, 12 March 1818.

redemptioner system in the state. Perhaps worried that the horrific conditions of their passage and the spectacle of their auction too closely resembled the slave markets, the state enacted legal protections for redemptioners upon their arrival in New Orleans. Once at the port, the governor would appoint two guardians knowledgeable in the language of the immigrants to go aboard their vessel to inquire about the conditions of their passage. If they had been treated inhumanely, then the guardians would report their findings to the U. S. district attorney for Louisiana. The law further declared that these servants were now “under the special care and protection of the constituted authorities of the state,” and local district attorneys had the duty to see that the terms of their contracts were faithfully observed. But any assistance that the act could have provided for the Muller family came too late. During the trip to Grayson’s home, Sally’s father and her other brother died, leaving just herself and her sister Dorothea. The German community in New Orleans lost all contact with the two Muller girls.¹¹

By accident in 1843, a woman who emigrated with the Mullers claimed to have discovered the plaintiff working as a servant in a cabaret in New Orleans. Noticing the resemblance between her and Sally’s long dead mother, the woman brought the slave to cousins of the Muller family in New Orleans. Though Sally could not recall her German origins, her German relatives became convinced that the slave was the lost Salome, not only from the resemblance, but also by the discovery of moles on her inner thigh similar to ones the Muller child had. In January 1844 the plaintiff filed a petition for emancipation, and fearing for her safety, her lawyer obtained a writ that placed her in the

¹¹ “An Act for the relief and protection of persons brought into this State as Redemptioners,” *Acts Passed at the Second Session of the Third Legislature of the State of Louisiana* (New Orleans: J. C. De St. Romes, State Printer, 1818). According to the statute, free persons of color in New Orleans had apparently purchased some of these redemptioners. Therefore, this reform law also readjusted the racial hierarchies in the city by barring free persons of color from hiring white labor in the future.

custody of her German kinfolk. Because an implied warranty accompanied all slave transactions under Louisiana's *Civil Code*, her owner, Louis Belmonti, forced Miller's involvement in the suit as the warrantor in his purchase of the plaintiff from Miller for \$700 in 1838.¹²

The first phase of litigation between Muller and Miller began in June 1844. In the First Judicial District Court in New Orleans, Judge Alexander M. Buchanan ruled in favor of Miller and Belmonti, citing both the possibility that the real Salome Muller could have been still living in north Louisiana and the variance between the presumed age of the plaintiff and the presumed age of Salome Muller. Sally's lawyers appealed to the state Supreme Court. Christian Roselius, her lead attorney and himself a former redemptioner, scored an important victory when the court allowed him to enter Salome's birth certificate, just retrieved from Alsace, into the record. The birth certificate indicated that the Muller child was older than first thought when she emigrated and therefore closer to the presumed age of the plaintiff. On June 21, 1845, Associate Justice Henry Bullard rendered the court's decision that emancipated Sally Muller. Though convinced that the similarities between the plaintiff and the orphan Salome Muller were not coincidental, Bullard also cited the court's precedent in *Adele v. Beauregard*, which assumed the free status of persons of color in Louisiana. Unlike in other slaveholding states, in Louisiana the burden of proof rested upon the slaveholder to establish that a person was a slave, not

¹² "The Case of Salome Muller," 196-98; Petition, 24 January 1844; Answer of Miller, 27 April 1844; testimony of Eve Schuber, in *Miller v. Belmonti*.

for a person of color to prove his or her free status. Miller, in the court's view, failed to prove the plaintiff's servile origins before his purchase of her.¹³

In district court and on appeal, Sally's lawyers and witnesses conceded that Sally may have had a darker complexion than most white people, but her skin color was similar to her parents, and also a product of working outdoors in a tropical climate. Only part of their argument involved physical appearances. In court Sally engaged in a "performance" of her whiteness by adhering to traditional standards of white womanhood. To demonstrate that she resembled whites in bearing and demeanor as opposed to mere physical resemblance, the virtuous Sally appeared neat in court, dressed simply and without jewelry. Ironically, her presentation to the court as a virtuous white woman faintly resembled a practice of New Orleans slavetraders that accentuated the femininity of mixed race women by dressing them with gloves and shawls as they stood for sale.¹⁴

Since the German community in New Orleans was convinced that she was genuine, by German Sally also embodied, in the words of her lawyer Wheelock S. Upton, "the perseverance, the uniform good conduct, the quiet and constant industry" of the city's Germans. In fact, the faith that the Germans had in her authenticity lent a moral power to her cause, since only a true example of white womanhood could give rise to the strong support she received from the public. Her visible moral qualities therefore proved her innate virtue, a virtue only a white woman could have.¹⁵

¹³ *Miller v. Belmonti*; Cable, *Strange True Stories*, 180-191; Judith Kelleher Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1994), 20.

¹⁴ Upton, "Notes," in *Miller v. Belmonti*; Gross, "Litigating Whiteness," 166-168; Johnson, "The Slave Trader, the White Slave, and the Politics of Racial Determination in the 1850s," 19.

¹⁵ Upton, "Notes," in *Miller v. Belmonti*.

The construction of Sally Muller's whiteness was the antithesis to the construction of her "blackness" put forth by Miller and his attorneys. Miller argued that the plaintiff was not the white orphan Salome Muller, but instead a quadroon slave that he purchased in 1822 named Bridget Wilson. The defense depended upon the reputation and judgment of Miller and his witnesses, representing the white elite of antebellum New Orleans, to successfully sway the judge in district court. It brought into the court his and others' impressions of the plaintiff, filtered through conventional ideas of mixed race people in the city. Miller presented his case not only in court but also in the press to counter public sympathy for the plaintiff. After Upton published a celebratory pamphlet in the wake of Sally's emancipation, Miller published a bitter, often sarcastic response that has never been previously examined.¹⁶

In court the defense first challenged the plaintiff's physical whiteness. Miller wrote that one "can find ten quadroons in New-Orleans" who could match the features of the plaintiff, and since she was a house servant, ridiculed the assertion that her dark complexion was the result of working in the fields. Unfortunately for Miller, his own witnesses often undermined his case because they could not infer the plaintiff's race from her skin color with any consistency. One witness testified that he "[could] . . . not tell if she was quadroon or white" while another stated that she was "white as most persons." On the other hand, other witnesses stated unequivocally that she was a "quadroon because she had the colour [sic] of a quadroon" and even claimed that Miller owned slaves who had a lighter complexion than the plaintiff. Such confusion on the part of

¹⁶ Answer of Miller, 27 April 1844, in *Miller v. Belmonti*; John F. Miller, *A Refutation of the Slander and Falsehoods Contained in a Pamphlet, Entitled, Sally Miller* (New Orleans: 1845). For racial ideologies, see Barbara J. Fields, "Race and Ideology in American History," in J. Morgan Kousser and James M. McPherson, eds., *Region, Race and Reconstruction: Essays in Honor of C. Vann Woodward* (New York: Oxford University Press, 1982), 143-177.

Miller's witnesses accentuated the difficulties of racial identification in the unique racial milieu of antebellum New Orleans, where the unequivocal line between black and white dissolved into a gumbo of mulattos, quadroons, octoroons, and griffes.¹⁷

Nevertheless, the confidence of the defense witnesses that the plaintiff was not white rested upon their experiences with slaves and persons of color in New Orleans. Indeed, for Miller's witnesses, the certainty in their judgment of the plaintiff's racial origin reached the level of intuitive perception. Witness Carlile Pollock provided the best example of this thinking. When asked, "what is there in the features of a colored person that designates them to be such?," he replied, "I cannot say. Persons who live in countries where there are many colored persons acquire an instinctive means of judging them that cannot be well explained." Since they interacted with the plaintiff in her condition as a slave, her servile status led them to perceive her accordingly as a mixed race individual. As historian Barbara Fields has observed, "[p]eople are more readily perceived as inferior by nature when they are already seen as oppressed."¹⁸

Antebellum racial theories and southern cultural attitudes also supported the belief in the intuitive perception of race by men like Pollock. Popular and scientific racial views of the period insisted that races manifested innate essences that determined morality and intelligence.¹⁹ Any drop of African blood marked a person with inferior

¹⁷ Miller, *A Refutation*, 14; Testimony of W. Johnson, in Miller, *A Refutation*; John L. Lewis, Emile Johns, and Joachim Kohn, in *Miller v. Belmonti*. See racial categories in antebellum Louisiana, see Frederick Law Olmsted, *A Journey in the Seaboard Slave States in the Years 1853-1854, Vol. II* (New York: G. P. Putnam's Sons, 1904), 231.

¹⁸ Testimony of Carlile Pollock, John L. Lewis, Joachim Kohn, and William Turner, in *Miller v. Belmonti*; Testimony of H. B. Stringer, in Miller, *A Refutation*; Cable, *Strange True Stories*, 177; Barbara Jeanne Fields, "Slavery, Race and Ideology in the United States of America," *New Left Review* (May/June 1990): 106.

¹⁹ George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914* (New York: Harper and Row, 1971), 43-129; Peggy Pascoe, "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America," *The Journal*

morals and intellect, but determining the presence of African blood in a person was problematic.²⁰ Gentlemen in the culture of honor in the antebellum South, though, understood that an individual's outward appearance was a sign of that person's inner character.²¹ Hence, in trials of racial determination, courts stressed the evident "performance" of whiteness as the indication of a litigant's race.²² In their interaction with her, however, Miller's witnesses did not detect in the plaintiff any evidence that she possessed the discernible qualities they associated with whiteness. Upton, in his arguments, would also emphasize the easy manifestation of a person's inherent racial nature. If Sally's demeanor in court and the moral power of her cause verified her whiteness for her attorney and the German community, then her status as a slave proved her blackness for the defense.

Miller and his attorneys next offered a construction of the moral qualities of the plaintiff that contrasted with her performance of white womanhood in court. In order to depict Bridget Wilson as a slave, they relied upon slave stereotypes familiar to white southerners in the court and in the public. Slaveowners used a range of stereotypes to characterize their slaves during their routine interactions and to assure themselves of their power over their human property. Litigants in warranty suits regarding slave property employed such stereotypes to objectify slave behavior and to deny rational motives for their conduct. One such image was the "Jezebel." As described by Deborah Gray White, the Jezebel embodied qualities contrary to traditional standard of white womanhood,

of American History 83 (June 1996): 47-48; George W. Stocking, Jr., *Race, Culture, and Evolution* (Chicago: The University of Chicago Press, 1982), 48.

²⁰ Gross, "Litigating Whiteness," 111-114, 132; Eva Saks, "Representing Miscegenation Law," *Raritan*, (Fall 1988): 39-69.

²¹ Kenneth S. Greenberg, *Honor and Slavery* (Princeton: Princeton University Press, 1996), 3, 7; Bertram Wyatt-Brown, *Southern Honor*, 33-34, 46-48; Gross, "Litigating Whiteness," 156-157.

²² Gross, "Litigating Whiteness," 158-176.

primarily lasciviousness instead of chastity, but also treachery instead of loyalty and coarseness instead of refinement. Miller and his lawyers alluded to this archetype in their construction of the plaintiff in order to counter her “whiteness” posited by Roselius and Upton.²³

Ironically, Sally’s lawyer, Wheelock Upton, provided the best descriptions of the “blackness” of mixed race women of New Orleans. In his words, quadroon women were “idle, reckless and extravagant, . . . fond of dress, of finery and display.” The innate moral character of these women was difficult to obscure. In stressing the plaintiff’s moral influence over the white public, Upton argued that such power was “*as inconsistent with the nature of an African, as it would be with the nature of a Yahoo.*” Upton turned the “blackness” argument on its head to stress that the plaintiff must be an exemplar of white womanhood because she did not possess these qualities that evinced mixed race ancestry.²⁴

As slaveowners imagined themselves as the benevolent but stern patriarchs to their slaves, Miller saw the actions of the plaintiff as an act of betrayal. The defense therefore used the Jezebel image to characterize the former slave in court and in the press and stressed her unfaithfulness to former owner. Miller maintained that the plaintiff, Upton, and her supposed German relations conspired to defraud him by seeking monetary damages for the plaintiff’s servitude. Throughout their testimony, Miller’s witnesses stressed his overindulgence to his slaves, which not only affirmed his attributes as a good

²³ George M. Fredrickson, *The Arrogance of Race: Historical Perspectives on Slavery, Racism, and Social Inequality* (Middletown, CT: Wesleyan University Press, 1988), 206-215; John W. Blasingame, *The Slave Community: Plantation Life in the Antebellum South* (New York: Oxford University Press, 1979), 223-248; Ariela J. Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton: Princeton University Press, 2000), 72-97; Deborah Gray White, *Ar’n’t I a Woman?: Female Slaves in the Plantation South* (New York: W. W. Norton and Company, 1999), 22-46.

²⁴ Upton, “Notes,” in *Miller v. Belmonti*.

master but also accented the disloyalty of the plaintiff. But the statements by his friends and associates did more than cast doubt on the plaintiff's motivations. Accused of enslaving a white person, Miller's qualities as a master and his reputation were also on trial. His witnesses therefore sought to assure the slaveowning community that Miller adhered to their sense of paternalism in the management of his slaves. Though their assertions may seem excessive, an obituary written upon his death in 1857 again stressed his benevolence to his slaves, and he did free at least thirty-three slaves in the 1850s in accordance to his will and his mother's.²⁵

The best example of the plaintiff as Jezebel is found in Sarah Canby's statement. Canby owned Bridget for twelve years, buying her from her son in 1823 and then reselling her to Miller in 1835. Within the plantation households the relationship between a mistress and her slaves was often tense. Slaves tested the authority of the master and tried to carve some measure of autonomy despite their servile status. The relationship between Canby and Bridget affirms such tensions. When Bridget first entered Canby's household, she asserted a large measure of independence by insisting that Canby call her Mary instead of Bridget. Canby readily agreed to her demand in order to avoid confusion with another slave in the household named Bridget. Two years later, Canby refused fourteen-year-old Bridget's request to marry another slave. But since she possessed "an abandoned character," Bridget ignored her mistress's order and gave birth to a son within a year.²⁶

²⁵ Miller, *A Refutation*, 15-17; testimony of George Pollock, Carlile Pollock, John L. Lewis, Charles F. Daunoy, Joachim Kohn, William Turner, in *Miller v. Belmonti*; Gross, *Double Character*, 98-121; Estate inventory of John F. Miller and obituary, in David Weeks Collection, Louisiana State University; St. Martin Parish Probates, Will of Sarah Wessels, No. 932 ½; Herbert E. Sterkx, *The Free Negro in Ante-Bellum Louisiana* (Rutherford, NJ: Fairleigh Dickinson University Press, 1972), 143.

²⁶ Miller, *A Refutation*, 20-21; "The Case of Salome Muller," 195; Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women of the Old South* (Chapel Hill: University of

Bridget's sexual independence, in the eyes of Canby, grew more insatiable as she grew older. She eventually gave birth to three more children by three different fathers. After Miller's purchase of his sugar plantation, Bridget refused to accompany Canby to the Attakapas and received permission to remain in New Orleans. That situation ended when the slave proved too "troublesome" in the service of another person. When she did arrive in the Attakapas, Bridget's relationship with her slave husband soon broke down into constant fighting because she excited "her husband's jealousy by her abandoned conduct." It was then that Canby sent Bridget back to New Orleans after three months. Miller later arranged her sale to Belmonti. In sum, Canby affirmed her lenient treatment of her slaves though, in the case of Bridget, her "wicked career" deserved corporeal punishment.²⁷

Though Canby's statement undermined Sally's construction of herself as a paragon of white womanhood, the plaintiff's promiscuity never became an issue during the trial. Owing to her age (she was ninety-nine in 1844) and the distance from the Attakapas to New Orleans, Canby did not appear in court or even give a deposition. Miller instead published her statement in his pamphlet. Sally's lawyers never addressed the sexual issue directly. Reports just asserted that the plaintiff was a victim of "servile degradation and infamy" during her servitude and that Miller "gave her to one of his colored overseers for a wife." However, during a reception to celebrate Sally's victory, Roselius gave the following in his toast: "[h]er liberation is not all. A new leaf has been turned in the life-book of the freed woman. That leaf is white. See to it that it remains

North Carolina Press, 1988); Wilma King, "The Mistress and Her Maids: White and Black Women in a Louisiana Household, 1858-1868," in Patricia Morton, ed., *Discovering the Women in Slavery: Emancipating Perspectives on the American Past* (Athens: University of Georgia Press, 1996), 82-106.

²⁷ Miller, *A Refutation*, 21-23.

white and unsullied, so that the sorely tried woman who has been lifted up, will sink no more.” Though his statement certainly welcomed Sally back into the bonds of the white community of New Orleans, Roselius’s words also suggested that she could leave her “degradations” in her past and begin a new life of white virtue.²⁸

Though Sally Muller was now a free woman, her new life in the comforts of white womanhood was not free of further litigation. Miller always maintained that *he* was the victim, convinced that the plaintiff conspired with Upton and others to bilk him. In fact, the plaintiff launched two suits for damages against Miller. In February 1844 Upton filed a petition in district court in New Orleans seeking \$10,000 in compensation from Miller for “the wrongful & felonious deprivation of her liberty, for her cruel & unnatural bondage, [and] for the wrongs & outrages which during her whole life she has suffered.” The court suspended that suit pending the outcome of the suit for her freedom.²⁹

Four days after Bullard rendered his decision, Upton filed a petition for Muller in federal circuit court in New Orleans, seeking a total of \$80,000 from both Miller and Canby. The question of just compensation for nearly twenty-five years of servitude is difficult to determine. Upton calculated that the defendants owed the plaintiff \$20,000 for her labor and \$50,000 for deprivation of her freedom and her suffering. Upton also asked for \$10,000 in compensation for her two children remaining in servitude along with their immediate restoration to their mother.³⁰

The potential loss of such a large amount of money forced Miller to strengthen his case. He could no longer rely just on the reputation and judgment of his friends and associates to prevail in court. As preparation began for trial in federal court in the fall of

²⁸ “The Case of Salome Muller,” 200, 198; Voss, “Sally Muller,” 459-460.

²⁹ *Sally Muller v. John F. Miller*.

³⁰ *Salome Miller v. John F. Miller and Sarah Canby*.

1845, Miller received information that corroborated his contentions that the plaintiff was not the real Salome Muller. At his behest, by early January 1846 federal court commissioners served interrogatories on sixteen people in Louisiana, Mississippi, and Alabama. Since Bullard in his decision rebuked Miller for not establishing in court the plaintiff's servitude before 1822, three of these new witnesses confirmed the provenance of Bridget before her sale to Miller. But thirteen other witnesses revealed what happened to young Salome and her sister Dorothea upon their arrival in north Louisiana in 1818 and described the precarious life of two young girls in the trans-Mississippi frontier of the 1820s. The key witness for the defense was Dorothea, and the following account emerged.³¹

The Muller sisters arrived in the Prairie Boeuf region of northeastern Louisiana as orphans, one aged five, the other aged seven, without any knowledge of English. They lived for most of their childhood in the household of John D. Thomasson, a prominent farmer in the area. The Prairie Boeuf was still a frontier region, but recently settled farmers had begun to grow cotton and ship it to the New Orleans market. In addition to cotton farming, the Thomasson clan diversified their endeavors through the ownership of a store and tavern. Their cotton-growing enterprise even compelled them to appear before the state Supreme Court in 1831 to recover a sum owed by a cotton transporter.³²

Though the Thomassons evinced a market outlook not uncommon among prosperous yeomen on the southern frontier, they also betrayed conduct that showed that

³¹ "Intelligence and Miscellany," *The Law Reporter* 8, November 1845, 332-333; Answer, 6 October 1845, in *Salome Miller v. John F. Miller and Sarah Canby*; John Claiborne, W. C. Micou, and G. [sic] R. Grymes, "Brief for Plaintiff," *Miller v. Miller*.

³² Richard Nance Hixon, "The Antebellum History of Richland Parish, Louisiana," (M. A. thesis, Northeast Louisiana University, 1990); Claiborne, "Brief for Plaintiff," 13, in *Miller v. Miller; Thomasson et al. v. Waters*, No. 678, 3 La. 71, The Supreme Court of Louisiana Collection, Earl K. Long Library, University of New Orleans.

the Prairie Boeuf was still not a stable, settled place. Personal disputes in the southern backcountry sometimes dissolved into violent confrontations, and the Thomassons were well acquainted with the use of brutal methods to defend their family's honor. During the 1820s, Thomasson, the family patriarch, stood trial for both assault and battery and manslaughter, while his son James also faced assault and battery charges. In a household prone to such violence, the Muller girls were particularly vulnerable. The level of abuse they suffered alarmed neighbors, who brought a complaint against the Thomassons to a local judge. In answers to his interrogatories, attorney Robert McGuire recalled that "[it] was said that she [Mrs. Thomasson] cut the girls with a large kitchen knife and would stick a flesh fork in them." After neighbors gave testimony to the judge, the Thomassons agreed to give up custody of the Muller girls to another family.³³

By the time the Muller sisters reached adulthood, their given names, Salome and Dorothea, were remnants of their Alscian past. Communication with their foster households was difficult while they were young, so the girls went by the names of Sally and Polly. When the sisters married in 1832, the court recorded Salome's name as Sarah Miller (she married Alexis Hambleton) and Dorothea's name as Mary Miller in her marriage to John Parker. To illustrate the problem in ascertaining their names, Dorothea testified in her original deposition that her given name was actually Salome, but later she remembered otherwise. Her husband was a prosperous, though much older, slaveowning farmer in Union Parish, Louisiana. Hambleton, never successful as a farmer, may have

³³ Claiborne, "Brief for Plaintiff," 13-14, in *Miller v. Miller*; answers of Robert Forbes McGuire, in *Miller v. Miller and Canby*; Ouachita Parish District Court, Minute Book, 20 October 1826, Monroe, LA; James Oakes, *The Ruling Race: A History of American Slaveholders* (New York: W. W. Norton and Company, 1982), 57; Elliot J. Gorn, "'Gouge and Bite, Pull Hair and Scratch': The Social Significance of Fighting in the Southern Backcountry," *American Historical Review* 90 (February 1985): 18-43.

provided for his family by working for Parker. According to her sister, Salome gave birth to two children before dying in the early 1840s.³⁴

Miller's new evidence was apparently sufficient to dissuade "Sally Muller" from continuing her suit for damages. On May 26, 1846, Judge Theodore McCaleb declared the suit for damages against Miller a nonsuit when neither the plaintiff nor Upton appeared in court as summoned after a jury had been called. However, she may have been satisfied with getting her surviving children out of slavery with a writ of *habeas corpus* issued against Miller during the proceedings. Now it was Miller's turn to sue his former slave.³⁵

For a southern slaveholder, nothing was more disgraceful than being taken advantage of by a slave. Yet Miller faced a serious assault on his reputation long before the outcome of the suit for damages. The publicity surrounding the Muller case forced Miller to publish an open letter in two newspapers during the trial in order to defend his character. By December 1845, as he gathered evidence for his defense in the federal suit, Miller launched his counterattack by filing a petition in district court to nullify the decision in *Miller v. Belmonti*. Miller's sense of honor undoubtedly motivated this suit in district court. Though oblivious to the morality of the bondage of black or mixed race people, Miller often lurched into self-pity in his pamphlet at the thought that he could enslave an orphaned white child. But in the end, he remained defiant: "I am now ready.

³⁴ Ouachita Parish, LA, Marriage Record, A-62 and A-70; District Court Union Parish, Succession of John Parker, Farmerville, LA; Answers of Polly Moore, in *Miller v. Miller and Canby*; Claiborne, "Brief for Plaintiff," 7-9, in *Miller v. Miller*.

³⁵ Writ of *Habeas Corpus*, 17 January 1846, in *Miller v. Miller and Canby*; Judgment docket, 26 May 1846, U. S. Circuit Court, New Orleans.

I court further investigation; I dare my enemies to another trial; I pity, and despise them.”³⁶

More was at stake than mere personal honor, though. If abolitionists exploited Sally Muller’s servitude as a warning for the white North, then Miller stressed the larger implications of her emancipation for the slaveholding South. By the 1840s the defense of slavery had replaced the ethnic antagonism between the Americans and the Creoles as the focal point of Louisiana politics. Miller alluded to the specter of abolitionism in his pamphlet, deriding the state Supreme Court as “such sensitive ‘southern men with northern feelings.’” Miller even suggested that the state legislature would have to act to alter the presumption of freedom for persons of color because there were so many of them in Louisiana who could follow the example of Bridget. As historian Peter Charles Hoffer observes, honor in the courtroom included “a plaintiff’s sense that the community itself is imperiled by the defendant’s conduct, and that the plaintiff speaks for the community when he brings his suit in its courts.” For Miller, the suit to satisfy his honor was no longer a reprisal against his former slave. To salvage his name, he transformed his public dishonor into an admonition for all slaveowners in Louisiana.³⁷

Miller’s action to restore his honor was not a success, however. The court did not hear his suit until January 1848, and the jury could not decide on a verdict. The judge did allow Miller to take his case to the state Supreme Court. In May 1849 the court dismissed his appeal. In its opinion, the court ruled that there was no sufficient ground

³⁶ Miller, *A Refutation*, 15, 19; *Miller v. Miller*; *The Daily Picayune* (New Orleans, LA), 31 May 1844; Gross, *Double Character*, 81-84.

³⁷ Miller, *A Refutation*, 13; *National Anti-Slavery Standard* (New York), 31 July 1845; Joseph G. Tregle, Jr., *Louisiana in the Age of Jackson: A Clash of Cultures and Personalities* (Baton Rouge: Louisiana State University Press, 1999), 308-313; Peter Charles Hoffer, “Honor and the Roots of American Litigiousness,” *The American Journal of Legal History* 33 (1989): 315.

for it to nullify a previous decision and, ironically, suggested that he should have sued under rules regarding the rights of property. Notions of southern honor did not impress the court as the basis for the suit. The court vindicated Miller to some extent, though, by noting his evidence cast doubt on the identity of the plaintiff in the first trial. By the time of the court's decision, Miller was nearly seventy, and New Orleans was no longer his primary residence. It is unknown whether his dishonor in the Muller case compelled him to live the remaining eight years of his life in the relative isolation of his plantations in the Attakapas.³⁸

As the principals in the case faded into obscurity, the image of Salome Muller, the White Slave, lived on. Yet this image and its traditional story have obscured the complexities of the case. Antebellum New Orleans was very much a frontier city, attracting large numbers of ambitious men like Miller seeking their fortune while established elites clung to declining power and prestige. In such a fluid society, appearances were important, but identity could be manipulated. In the Muller case, racial identity was contested, subject to contrasting constructions and performances in court.

The struggle over appearances and status did not end in the courtroom. With his image as a southern gentlemen in jeopardy, Miller's actions were not just "the ravings of a very angry man," but also an animated effort to defend his reputation from public scorn.³⁹ The industrious German community rallied to Sally's cause in part because her plight represented their worst fear in a slave society—that a temporary indenture issued upon their arrival could have become permanent servitude. Though the possibility exists that the plaintiff *may* have been white, evidence produced by Miller in pursuance of the

³⁸ Decision, in *Miller v. Miller*.

³⁹ Schafer, "The Long Arm of the Law," 352.

suit in federal court challenges the traditional belief that the plaintiff was genuine. Then the slave Bridget Wilson accomplished the best deception of all—convincing the court and her supporters that she was white and successfully escaping the bonds of slavery.

EPILOGUE: LITIGATION BEFORE AND AFTER DEATH

When Miller entered the seventh decade of his life in 1850, his fortunes had recovered from the failure of his sawmill and ensuing bankruptcy in the preceding decade and a half. Fully divested of all of his property in New Orleans, he now settled in the Attakapas for the balance of his life. Moreover, the furor over the Sally Muller case had finally died down. Although the state Supreme Court did not overturn the decision in *Miller v. Belmonti*, the justices realized that the evidence Miller produced in the federal suit cast doubt on the plaintiff's claim that she was actually Sally Muller and absolved him of deliberately enslaving any white orphans. He even began to acquire additional tracts of land in the Attakapas, and one purchase led to the suit against Thompson discussed in the second chapter to secure a right of way. But a lifetime before the courts of Louisiana did not end free of litigation. Lawsuits followed Miller to deathbed and continued to plague his estate after he passed away.

In the final years of his life, Miller spent more time with his niece Cordelia Wheeler Lewis, who Miller named as his sole heir and legatee. Lewis and her husband John Lloyd Lewis probably resided with Miller at the New Iberia plantation during this time. In 1855, Jonas Marsh's niece Eliza Marsh Robertson recorded in her journal a visit to see Mrs. Lewis (Miller's New Iberia plantation along Bayou Teche was next door to a plantation owned by her father, John C. Marsh). Instead, she found Miller and noted that he was "sitting up" in the parlor. Perhaps her observation was indicative of infirmities suffered by Miller in his old age. Making the best of her visit, she impressed upon Miller

her pet cause—getting an Episcopal minister in New Iberia. Miller subscribed to the fund for a minister, the only evidence I found for his religious proclivities.¹

By the end of 1857, Miller was in declining health, and in November he was on his deathbed. Nevertheless, he had to summon the strength to give answers to interrogatories in an action involving his niece and her husband. While settling his affairs during the decade, Miller made several gifts to Cordelia totaling \$1600, including capital stock in the Levee Steam Cotton Press of New Orleans valued at \$700. John Lloyd Lewis had appropriated \$1100 of his wife's gifts from her uncle for his own use, including \$700 from the sale of the stock. Lewis probably used the money for his own financial ventures that did not prosper and suffered unspecified financial embarrassments as a result.

Cordelia Lewis went to court seeking a separation of property from her husband and compensation for the money that her husband appropriated. Like the legal maneuver undertaken by Jonas and Elizabeth Marsh eleven years before, a separation of property protected Cordelia's property from her husband's creditors, an estate that would become much larger with the death of her uncle. In his home on November 14, Miller gave his answers to a justice of the peace that confirmed the details of Cordelia's petition. Four days later district judge Albert Voorhies decided in favor of Cordelia, allowing her to resume control of her paraphernal property, or in civil law, the property that did not form part of her dowry, without any interference from her husband. The court also ordered

¹ Eliza Anne Marsh Robertson Journal, 7 July 1855, Records of Ante-Bellum Southern Plantations Series, Series J, Part 5, Reel 12.

Lewis to repay the debt with interest. Miller's deposition was his last public action. On December 3, he passed away.²

Though Miller's will is missing from the St. Martin Parish probate file, most of his intentions for his estate can be discerned through correspondence between his executors and an estate inventory. Miller wrote his first olographic will sometime in the late 1840s. In Louisiana, olographic wills, or wills entirely written, dated, and signed by the testator, were legal even without the services of a lawyer or notary. Shortly before his death, he changed the disposition of his property as a consequence, in the words of one of his executors, "of certain occurrences." Miller's changes included a legacy of \$2000 to his godson, the son of his friend and frequent New Orleans notary Carlile Pollock.³

Miller chose as his executors two men with considerable legal experience—John B. Moore and Cornelius Voorhies, both leading members of the local bar. Moore was a judge in St. Mary Parish before his marriage in 1841 to the widow of New Iberia planter David Weeks. Moore then moved into the Weeks plantation and became a neighbor of Miller. Active in Whig politics, Moore was a local political rival of Democrat Isaac E. Morse, Jonas Marsh's nephew and sometime attorney, and served in Congress in the 1840s and early 1850s. Voorhies had entered his fourth year as a state Supreme Court justice in 1857. Before his appointment, he represented Miller in several suits, including

² Petition, 12 November 1857; answers of John F. Miller, 14 November 1857; decision, 18 November 1857, in District Court St. Martin Parish, *Cornelia Decatur Wheeler, wife v. John L. Lewis*, No. 5002; Obituary, 3 December 1857, in the David Weeks Collection, Louisiana State University. There is a letter in the Weeks Collection dated in late November 1857 regarding interrogatories that Miller was to answer in a suit that originated in New Orleans. It is unlikely that Miller gave the answers. W. (?) W. (?) King to J. B. Moore, 27 November 1857, David Weeks Collection.

³ Cornelius Voorhies, New Orleans, to John Moore, New Iberia, 12 December 1857, in the David Weeks Collection; Elizabeth Urban Alexander, *Notorious Woman: The Celebrated Case of Myra Clark Gaines* (Baton Rouge: Louisiana State University Press, 2001), 28; Wheelock S. Upton and Needler R. Jennings, *Civil Code of the State of Louisiana* (New Orleans: E. Johns & Co., 1838), Article 1581, 241-242.

the dissolution of Marsh & Co. As district court judge, Voorhies gave him a favorable judgment eight years earlier in the suit initiated by Isaac Randolph's children regarding their inheritance from the sale of Miller's Island. When Miller asked him to be his executor, Voorhies, eager to assist his friend and former client, responded that it would give him "great pleasure" to perform the task with Moore.⁴

The first task of the executors involved making an inventory of Miller's estate and settling the estate's accounts. The inventory took place on December 21 and 22. The appraisers valued Miller's Island, with its buildings, appurtenances, livestock, crops, and community of 56 slaves, at \$71,459. Miller's plantation and other lands around New Iberia, with its buildings, appurtenances, livestock, crops, and community of 70 slaves, received a value of \$123,855.80. The total value of the inventory was \$195,314.80. Miller died as one of the wealthiest men in the Teche region; his legal manipulations to frustrate his creditors paid off.⁵

Voorhies and Moore faced two immediate problems in administering Miller's estate. The first involved the most enigmatic of all of Miller's business associates, Caroline Dumois, a free woman of color from New Orleans. The ownership of slaves by free persons of color was not unusual in antebellum Louisiana, and Dumois purchased slaves from Miller in the late 1820s. Dumois and Miller still conducted business with regard to slaves at the time of his death, a remarkably durable relationship compared to

⁴ Glenn R. Conrad, ed., *A Dictionary of Louisiana Biography* (Lafayette: The Center for Louisiana Studies, 1988), 578, 816; Cornelius Voorhies, New Orleans, to John Moore, New Iberia, 12 December 1857, in the David Weeks Collection.

⁵ Estate inventory of John F. Miller, 21 and 22 December 1857, David Weeks Collection. The appraisers apparently combined the Coxe tract with Miller's adjoining New Iberia plantation in the inventory. Therefore, he owned two plantations at the time of his death. Though the ages of slaves in legal documents were sometimes inaccurate, it is interesting to note that the inventory listed one of his Miller's Island slaves at 100 years old. A note in the Weeks collection indicated that the executors deducted \$10,473.05 from the appraisal. Some of the deductions concerned sundry debts and losses. See Extract from Inventory of John F. Miller, 22 and 23 December 1857, in the David Weeks Collection.

his partnerships in sawmills and plantations. Seven of the slaves listed in the inventory at the New Iberia plantation were the property of Dumois. Miller leased six of them as laborers for his plantation for \$300 a year; another slave included in the inventory was a young boy owned by Dumois who had come to Miller's plantation to visit his father. Miller owed a balance of \$200 to Dumois for that year's lease, which the estate had to pay. In addition, Miller had entered into an arrangement with Dumois whereby he would purchase the six slaves for \$5000 if he made a good crop that year. In her correspondence with Voorhies, Dumois indicated that she still wanted to carry out the arrangement. Cordelia Lewis completed the deal in March 1858 with the purchase of the six leased slaves plus seven others from Dumois for \$6800.⁶

A second problem for the executors involved seventeen slaves from the New Iberia slave community that Miller emancipated in his will. In addition to granting their freedom, Miller also made provisions for them to receive money from his estate to help them begin their lives as freed people. Unfortunately for the slaves, the Louisiana legislature passed a law in March 1857 that prohibited masters from emancipating their slaves. Evidence of increasing sectional tensions during the era, the act reversed the state's traditional policy that allowed for relatively easy manumissions. An example of Louisiana's previous emancipation procedure occurred after the death of Sarah Canby in 1851. Miller filed a petition the following year in St. Martin Parish district court to manumit thirteen of his mother's domestic slaves in accordance with her will. After Miller's petition received approval from the parish police jury, or parish governing

⁶ Estate inventory of John F. Miller; Cornelius Voorhies, New Orleans, to John Moore, New Iberia, 30 December 1857, in the David Weeks Collection; St. Martin Parish Conveyances, Book 26, Page 65, Act 2724; Book 26, Page 66, Act 2725; St. Martin Parish Mortgages, Book Q, Page 359, Act 6481; Book Q, Page 361, Act 6482. Of the additional seven slaves purchased by Lewis, most were family members of one of the leased slaves.

council, and a published notice of his act engendered no opposition, then district Judge Voorhies readily authorized the manumission of the slaves and allowed them to remain in the state.⁷

In a letter to Moore three weeks after Miller's death, Voorhies recognized that the legislative prohibition of the emancipation of slaves posed problems in carrying out that part of Miller's bequest. He thought that they should first attend to settling the estate's debts and liabilities before they turned their attention to Miller's legacies, which included the monies due to the slaves. The possibility of litigation on the estate also made Voorhies hesitant. Any action the executors took regarding their emancipation could be revealed in court. Therefore, he informed Moore of "the absolute necessity of proceeding step by step" in regards to the matter. Voorhies nevertheless alluded to the possibility of freeing them out of state after the estate was settled.⁸

It is likely that Lewis never granted the slaves their freedom before the arrival of Union troops in the Attakapas. It is also doubtful that they received any legacies from Miller's estate. If they did secure their freedom, it was accomplished surreptitiously and no record can be found. But Voorhies was probably reluctant to facilitate the manumissions in light of one of his last opinions he delivered before his death in 1859. In *Price v. Ray*, he applied the 1857 law retroactively, thereby preventing the emancipation of a female slave and her children even though her owner (and father of her

⁷ Judith Kelleher Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1994), 180-184; Judith Kelleher Schafer, "Forever Free from the Bonds of Slavery": Emancipation in New Orleans, 1855-1857," in Warren M. Billings and Mark F. Fernandez, eds., *A Law Unto Itself?: Essays in the New Louisiana Legal History* (Baton Rouge: Louisiana State University Press, 2001), 141-177; District Court St. Martin Parish, *John F. Miller for manumission*, No. 4387. By 1859, the legislature passed a law that allowed free persons of color to choose a master and enslave themselves. See Schafer, "Forever Free from the Bonds of Slavery," 174-177.

⁸ Cornelius Voorhies, New Orleans, to John Moore, New Iberia, 24 December 1857, in the David Weeks Collection.

children) made his will before the legislature enacted the 1857 law. In a mortgage recorded in December 1859, the slaves that Miller designated for freedom remained the property of Cordelia Lewis.⁹

Unresolved litigation on the estate may have prevented Lewis from granting their freedom if she was inclined to evade the prohibition on emancipations. Voorhies's concerns about litigation on the estate proved prescient. The first case that the estate had to deal with was filed in St. Martin Parish district court a little more than a month before Miller's death. In his petition, William A. Thomas, as executor of the estate of his father, Joseph Thomas, hoped to recover from Miller \$5000 plus interest, which was Miller's share of a judgment handed down in 1845 regarding debts due by Miller and Jonas Marsh from their purchase of the Ballow property.

Since Miller had surrendered his property to his creditors, the court transferred the judgment to district court in New Orleans, where Miller filed his bankruptcy action. To facilitate the recovery of the debt, Joseph Thomas made an agreement with Miller in 1851. Miller agreed to place Thomas's claim on the tableau of distribution from his bankruptcy filing and pay Thomas \$5000 upon the court's homologation, or approval, of the tableau. Miller also agreed to assist Thomas in his efforts to recover portion of his debt due from Jonas and John C. Marsh. For his part, Thomas agreed to transfer to Miller his title to the debt due against the Marshes for \$1000 if he ever collected the debt. In bringing the suit, the plaintiff averred that the debt had yet to be paid. Moreover, his attorney challenged the terms of the agreement. Since the court had already homologated the tableau, it was impossible for Miller to add Thomas's name to it. Miller's executors,

⁹ Cornelius Voorhies, New Orleans, to John Moore, New Iberia, 24 December 1857, in the David Weeks Collection; Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 189-192; St. Martin Parish Mortgages, Book R, Page 194, Act 6873.

however, produced a receipt from Joseph Thomas's attorney that acknowledged the full payment of \$6000. This evidence dissuaded the plaintiff from continuing the action, and Judge Edward Simon, Jr., dismissed the case in May 1860 as a nonsuit.¹⁰

Litigation on the estate began in earnest on September 13, 1858. Attorney Edward Simon, Sr., and his partner filed eight suits in district court on behalf of creditors who were not compensated by the distribution of Miller's assets from his bankruptcy proceedings. The plaintiffs based their suits on the revelation of Miller's acquisition, or really his reacquisition, of his sugar plantations since his bankruptcy. As the estate had ample property, the creditors demanded that their outstanding claims be put on the tableau of debts owed by Miller's estate and for their debts to be finally satisfied. Over the next two years, five more suits were filed against the estate. Together, these thirteen suits wanted a total of \$21,637.92 from the estate plus interest.¹¹

With the filing of these suits, long dormant transactions from Miller's commercial past returned to haunt his estate. Some of the plaintiffs had acquired notes drawn by Miller nearly twenty years before, most certainly at drastic discounts, and hoped to earn a profit if they could redeem the notes at full value. Other plaintiffs sought the payment of

¹⁰ District Court St. Martin Parish, *William A. Thomas v. John F. Miller*, No. 4890. Edward Simon, Jr., studied law under future U. S. Supreme Court Justice Joseph Story, and while a student at Harvard, provided details of life in the Attakapas to Henry Wadsworth Longfellow for his poem *Evangeline*. See Conrad, *A Dictionary of Louisiana Biography*, 743. William Thomas's attorney in the suit was Simon's father, Edward Simon, Sr., a former justice of the state Supreme Court. In testimony later crossed out in the court record, Simon and his law partner would have received ten percent of any money recovered in the suit.

¹¹ The thirteen suits were: District Court St. Martin Parish, *Christian Roselius v. Miller's Testamentary Executors et al*, No. 5099; *J. & D. Fehrman v. Miller's Testamentary Executors et al*, No. 5100; *Alexandre Grant v. Miller's Testamentary Executors et al*, No. 5101; *Blanchard, Eymmer & Co. v. Miller's Testamentary Executors et al*, No. 5102; *Harvey Beach v. Miller's Testamentary Executors et al*, No. 5103, 15 La. Ann. 601; *George W. Lee, admr. v. Miller's Testamentary Executors et al*, No. 5104; *Andrew Oliver v. Miller's Testamentary Executors et al*, No. 5105; *William Henry Fuller v. Miller's Testamentary Executors et al*, No. 5106; *Thomas C. Magoffin v. Miller's Testamentary Executors et al*, No. 5163; *Richard D. Shepherd v. Miller's Testamentary Executors et al*, No. 5168; *Samuel Flower, syndic v. Miller's Testamentary Executors et al*, No. 5266; *Henderson & Gaines v. Miller's Testamentary Executors et al*, No. 5281; *James Stewart v. Miller's Testamentary Executors et al*, No. 5286.

judgments against Miller in New Orleans commercial court during his bad financial times. The first suit filed was on behalf of Miller's attorney Christian Roselius, who represented him during his bankruptcy proceedings and wharf litigation. Roselius demanded a total of \$3086.88, \$1800 from a promissory note drawn by Miller but endorsed by Roselius, and \$1286.88 in unpaid legal fees. Another plaintiff, merchant Andrew Oliver, had persistently sought payment of \$1700 on a note from Miller since 1841, and never trusting him, opposed Miller's appointment as his own syndic during the creditors' meetings in 1841 and 1843.

Only one of these suits, filed on behalf of Harvey Beach, went to trial, and it would determine the success of the others. Beach was one of those who had acquired a note drawn by Miller and brought suit to recover its value. Arguments in court and on appeal focused on whether federal and state bankruptcy law had jurisdiction in the case. Lewis and the executors maintained that Miller's discharge from U. S. District Court upon the completion of proceedings under the 1841 federal bankruptcy act extinguished all claims deriving from Miller's insolvency.¹²

Beach's lawyers, on the other hand, used state bankruptcy law to press their contentions. A provision of the state bankruptcy law of 1817 allowed creditors to seek a new cession of a debtor's property if the debtor's original surrender of his property was insufficient to satisfy all claims against the insolvent estate and the debtor acquired additional property in the future. The attorneys argued that since Miller first surrendered his property under state insolvency law, state law, not federal law, maintained jurisdiction over his insolvent estate. Therefore, the discharge that Miller received from federal

¹² Petition, 13 September 1858; answer, 16 November 1859, in *Beach v. Miller's Testamentary Executors et al.*

district court was null and void. As the creditors had a vested right under state law on future property of the debtor, Beach's lawyers entered into evidence records from the St. Martin Parish conveyances that charted Miller's property maneuvers with Sarah Canby to shelter the plantations from his creditors.¹³

Beach's arguments did not sway Judge Simon in district court and the state Supreme Court on appeal. Both based their decisions on the power given to Congress by the U. S. Constitution to pass uniform bankruptcy laws. In a lengthy judgment (compared to other district court cases involving Miller), Simon decided the question of jurisdiction by ruling that Miller's initial filing under state law could not bar him from seeking relief under the later federal bankruptcy law. Moreover, he viewed Miller's discharge from federal court as "conclusive," and no state court could disregard it. The state Supreme Court was more emphatic regarding the preemptive power of federal courts over state courts in this matter. In its words, "the moment Congress exercised the power, the State laws on the subject became inoperative, were suspended." The court therefore recognized Miller's discharge from federal court as final and ruled that his estate was not liable for debts incurred before the discharge in 1842. Miller's foresight to file for protection under federal law, which was more amenable to debtors than state law, proved more beneficial to his niece than to his interests during his lifetime.¹⁴

Before the suits on Miller's estate were settled, Cordelia Lewis still had to administer Miller's estate. In November 1859, she sold the Miller's Island plantation to

¹³ Petition, 13 September 1858; district court decision, 26 May 1860; state Supreme Court decision, August 1860, in *Beach v. Miller's Testamentary Executors et al.*; "An Act relative to the voluntary surrender of property, and to the mode of proceeding, as well for the direction, as for the disposal of debtors estates, and for other purposes," in *Acts Passed at the First Session of the Third Legislature of the State of Louisiana* (New Orleans: J. C. De St. Romes, State Printer, 1817), 138.

¹⁴ District court decision, 26 May 1860; state Supreme Court decision, August 1860, in *Beach v. Miller's Testamentary Executors et al.*

Faustin Dupuy of Hancock County, Mississippi. It is possible that operating both that plantation and the New Iberia plantation proved too great a burden on her and her husband, or perhaps she needed the money that the sale would bring to help fend off the suits on the estate. It was also a good time to sell. The price for prime male field hands reached its antebellum peak on the New Orleans slave market in 1859 and 1860. The sale price was \$65,000, \$20,000 of which Dupuy paid in cash. The sale included 4,085 superficial acres of land, buildings, the sugarhouse and mill, the bridge over Bayou Petit Anse, and about 1000 head of wild cattle. Lewis reserved the right to use the plantation until the completion of the sugar harvest, and also the right to cultivate forty acres of cane already planted for the following year. Lewis sold only five young adult male slaves from the Miller's Island to Dupuy, however, but each cost \$1800. The new owner probably brought his own slaves to the plantation to provide the balance of the labor force. With the Civil War less than two years away, Dupuy was the victim of poor timing in his foray into sugar planting. Unable to continue the expense of sugar planting after the war without slaves as labor and collateral, Dupuy sold the island to actor Joseph Jefferson for \$28,000 in 1870. Jefferson turned the property into his winter retreat.¹⁵

After the sale of Miller's Island, Lewis moved the balance of the island's slaves to the New Iberia plantation. Most of them are listed in a mortgage Lewis made the following month to secure stock and a loan from the Citizen's Bank. Including the

¹⁵ St. Martin Parish Conveyances, Book 27, Page 498, Act 3599; Iberia Parish Conveyances, Book 2, Page 215, Act 407; Glenn R. Conrad, "Wilderness Paradise: A Glimpse of Jefferson Island and Its Owners for the Past Two Centuries," *Attakapas Gazette* 14 (Summer 1979): 53-63. The average price for prime male field hands in the New Orleans markets in 1859 was \$1431, \$1451 the following year. See Laurence J. Kotlikoff, "Quantitative Description of the New Orleans Slave Market, 1804-1862," in Robert William Fogel and Stanley L. Engerman, eds., *Without Consent or Contract: The Rise and Fall of American Slavery, Markets and Production: Technical Papers, Volume 1* (New York: W. W. Norton & Company, 1992), 35. Other enumerated items at the plantation included in the sale were 50 mares, 20 mules, 10 "stock" horses, 20 "gentle" cows, 20 head of hogs, 16 yokes of oxen, 6 carts, 1 wagon, 10 plows, and 1000 barrels of corn.

purchase of Dumois's slaves, Lewis possessed a community of at least 122 slaves in New Iberia in late 1859. The sale of Miller's Island was only part of the changes she made to her uncle's estate. From 1859 to 1862 Lewis sold three outlying tracts from the estate, mostly woodland, all in the Fausse Pointe area near Jonas Marsh's plantation.¹⁶

By the late 1860s, ruined by the war and emancipation, Cordelia Lewis and her husband could not maintain the expense of sugar cane cultivation. Cordelia's problems were compounded with the death of her husband in 1867, likely one of the victims of a severe yellow fever outbreak. Lewis fortunately had a market for her property as the town of New Iberia expanded after the war. By 1867 she had sold two lots of the New Iberia property along with another tract near Fausse Pointe. Then, despite the upheavals caused by the war, the Citizen's Bank sued Lewis for payment in regards to her stock purchase in 1859. At the ensuing sheriff's sale in 1869, the bank purchased Miller's original New Iberia plantation that he and Jonas Marsh bought from Nathan Morse's estate in 1835, along with a tract on the opposite side of the bayou. The bank quickly sold the property to a property developer. Lewis continued to earn money from her uncle's legacy through the sale of various sections of the remaining part of Miller's estate, the Coxe tract, during the late 1860s and 1870s. The new owners then divided the land into city lots. Cordelia Lewis died in 1883.¹⁷

Two of Miller's antagonists encountered differing fortunes once their associations with Miller ended. Jonas Marsh's prosperity recovered by the 1850s, but his Fausse

¹⁶ St. Martin Parish Mortgages, Book R, Page 194, Act 6873; St. Martin Parish Conveyances, Book 27, Page 156, Act 3204; Book 27, Page 562, Act 3676; Book 29, Page 270, Act 4715.

¹⁷ St. Martin Parish Conveyances, Book 30, Page 428, Act 6229; Book 31, Page 375, Act 6618; Book 31, Page 513, Act 6715; Iberia Parish Sheriff's Book, Book 1, Page 1; Iberia Parish Conveyances, Book 10, Page 466, Act 3387; Glenn R. Conrad, *New Iberia: Essays on the Town and Its People* (Lafayette: Center for Louisiana Studies, 1986), 49-60, 173-181.

Pointe plantation legally remained the property of his wife, Elizabeth Morse. However, in all of her transactions regarding the administration of the property, the conveyance record dutifully noted Marsh's attendance and assistance. Though they continued to live on the property, the Marshes sold the plantation and slaves to their sons John B. and Robert Hamilton Marsh in the early 1850s. The brothers managed the plantation in partnership through the Civil War. Though Jonas Marsh's political views cannot be ascertained, it is possible that he opposed secession despite his ownership of slaves. Both of his sons averred their Unionist sympathies after the war in their unsuccessful attempt before the Southern Claims Commission to collect over \$13,000 for goods, crops, and livestock seized by the Union army at the plantation. Elizabeth Morse Marsh died in July 1876, her husband a little more than thirteen months later.¹⁸

After surviving financial calamity, a plethora of lawsuits, and the intrigues of Miller, Marsh faced the most serious threat to his well-being in 1856—a hurricane. To escape the sweltering summers in New Orleans and along the bayous, urban businessmen and country planters vacationed with their families at resorts on the Gulf coast of Louisiana and Mississippi. The most popular of these resorts was Last Island, located on a barrier island off the coast of Terrebonne Parish. Near Atchafalaya Bay, where the waters of Bayou Teche entered the Gulf of Mexico, its close proximity enhanced its popularity for Attakapas planters and their families. In August 1856, during the peak of

¹⁸ St. Martin Parish Conveyances, Book 20 ½, Page 63, Act 68; Book 21, Page 202, Act 754; Iberia Parish Conveyances, Book 6, Page 128, Act 2046; Iberia Parish Probates, Book 4, Page 424, No. 245; National Archives and Records Administration, RG: 123, US Court of Claims, Cong. Jur. Case File #1175, John B. and Robert H. Marsh, Box 216. The loyalty of Jonas Marsh's family may have been caused by close ties to northern kin they maintained before and after the war. For example, his eldest daughter remained in New Jersey and apparently never resided in Louisiana. Though the Marsh brothers' protestations of loyalty might seem suspect since they made their claims during their attempt to gain compensation from the federal government, Robert Hamilton Marsh did return to the North after the war and died in New York in 1886.

the tourist season, a major hurricane struck the Louisiana coast. The storm surge engulfed the island's hotel and vacation cottages, and some persons survived by clinging to the branches of trees. It was estimated that only 145 out of about 400 persons on the island at the time of the hurricane survived. A newspaper account listed Marsh and one of his daughters among the survivors, though the slave that accompanied them to the island died. The Last Island storm passed into legend, later inspiring Lafcadio Hearn's novella *Chita: A Memory of Last Island*.¹⁹

The later career of Miller's nemesis from the Sally Muller litigation, Wheelock Upton, gave credence to his belief that the attorney was crooked. In 1850 the state of Louisiana charged Upton with falsifying a record in a succession in New Orleans district court. The jury found for the attorney, and the state Supreme Court refused to overturn the case on appeal. It is uncertain what effect this scandal had on his reputation and his legal practice. When Upton died in 1860, his obituary blandly described him as a "prominent member of the bar."²⁰

Miller's unpublished obituary, on the other hand, offered clues to his character. While praising his "amicable and noble qualities that endeared him to a large circle of friends and acquaintances," the author acknowledged he "no doubt had faults." Another letter written soon after his death from a relative of the neighboring Weeks family made clever reference to his passion for horse racing and a veiled one to his personality by commenting: "He has at last run his course and I hope he was a changed man."

Certainly his abundant lawsuits showed a personality that was quarrelsome, and his legal

¹⁹ J. Carlyle Sitterson, *Sugar Country: The Cane Sugar Industry in the South, 1753-1950* (Lexington: University of Kentucky Press, 1953), 82-83; Newspaper clipping, William Palfrey Plantation Diary, Volume 17, Palfrey Family Papers, Louisiana State University.

²⁰ The Supreme Court of Louisiana Collection, *The State v. Upton, Carter, and Hough*, 5 La. Ann. 438, No. 1715; *Daily True Delta* (New Orleans), 23 October 1860.

tactics often demonstrated a determination to secure success that pushed the spirit of the laws to their limits.²¹

But Miller's copious litigation should not be considered an anomaly, or simply the product of his difficult personality. Miller conducted his agricultural and commercial affairs in an insecure economic and social environment, and this situation created a legal culture that invited litigiousness on the part of planters and entrepreneurs. Like an early freeze in November that could ruin a year's sugar harvest, problems with debt, difficulties with estates, and disputes over property claims all could hinder a planter's ability to operate his plantations and possibly cause his financial ruin. Urban businessmen faced their own set of potential problems, such as the inscrutability of local politics and the unintended consequences of city development. Often, the only recourse these men had to protect their interests was through the legal system. These factors accounted in part for Miller's litigiousness in a career that bridged urban commerce and rural agriculture. As a result, capable lawyers and a good knowledge of the law were essential to success in the antebellum economy of Louisiana as sufficient capital and slaves.

²¹ Obituary, 3 December 1857, and Miss Lou Smith, Winchester, to "Doctor," 15 January 1858, in the David Weeks Collection.

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