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THE EMPLOYMENT OF NEGROES AS SOLDIERS IN THE CONFEDERATE ARMY

The problem of arming the slaves was of far greater concern to the South, than to the North. It was fraught with momentous consequences to both sections, but pregnant with an influence, subtle yet powerful, which would affect directly the ultimate future of the Confederate Government. The very existence of the Confederacy depended upon the ability of the South to control the slave population. At the outbreak of the Civil War great fear as to servile insurrection was aroused in the South and more restrictive measures were enacted.[1]

Most of the Negro population was living in the area under rebellion, and in many cases the slaves outnumbered the whites. To arm these slaves would mean the lighting of a torch which, in the burning, might spread a flame throughout the slave kingdom. If the Negro in the midst of oppression had been in possession of the facts regarding the war, whether the slaves would have remained consciously faithful would have been a perplexing question.[2]

[1] Davis, *The Civil War and Reconstruction in Florida*, p. 220.

[2] For summary of such legislation to prevent this, see J. C. Hurd, *The Law of Freedom and Bondage in the United States*, Vol. II. In Florida, 1827, a law was enacted to prevent trading with Negroes. In 1828, death was declared the penalty for inciting insurrection among the slaves and in 1840 there

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THE LEGAL STATUS OF FREE NEGROES AND SLAVES IN TENNESSEE

In 1790, the free colored population of Tennessee was 361, while the slave numbered 3,417.[1] In 1787, three years previous, Davidson County, which then, as now, comprised the most important and thickly settled part of the Cumberland Valley, had a population of 105 Negroes between the ages of 1 and 60.[2] Nashville was just a rough community in the wilderness with a few settlers from the older districts of the East, living in several hewed and framed log-houses and twenty or more rough cabins. The census of 1790 gives Davidson County 677 Negroes, a figure which compared with the 3,778 Negroes in the entire State at that enumeration, means that this frontier region had already grown important enough to draw to it nearly one-fifth of the Negro population of the commonwealth. In 1800, there were in the State 13,893 Negroes, of whom 3,104, or nearly one fourth, were in Davidson County. Thereafter, although the ratio between the county and State did not increase in favor of the county, still it kept up so that by 1850 Davidson had the largest Negro population of any county in the State. During the decade 1850–60 Shelby County, containing the important center, Memphis, gained the ascendency in number of Negro inhabitants, which it has since that time maintained. The likely cause of this shifting was the steady growth of cotton-raising districts and their rapid expansion toward the West and South. A general intimidation of the Negroes of Nashville and vicinity occurred in 1856, probably having some influence on the decline of population for that period in question. This cause, however, is not sufficient to explain the constant

[1] Compendium, U. S. Census (1870), pp. 13–15.

[2] The *Nashville American*, "City of Nashville" booklet, p. 20.

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superiority of numbers in the Southwestern Tennessee region thereafter.

As slavery expanded from this small territory into all parts of the State, the attitude of the people of the Commonwealth with respect to the nation and slavery at various times may be shown. After Tennessee had been ceded to the United States in 1790 by North Carolina, she had a most unusual method of throwing off her territorial government for nearly three months in 1796, and existed in absolute independence for that period before being admitted into statehood by the Federal Government.[3] Nevertheless in the period of the Civil War this State was the last to secede and the first to comply with the terms of readmission. With respect to slavery the early attitude of Tennessee toward the national government was peculiar. The cession act of North Carolina provided: "That no regulation made or to be made by Congress shall tend to emancipate slaves."[4] Probably because of this fact Lincoln did not mention Tennessee in the Emancipation Proclamation.

Yet Tennessee did have a strong anti-slavery sentiment, beginning with the outspoken protest of some of the King's Mountain heroes, also expressing itself in the work of many petitioners to the State legislature in the period 1800–1820. Then in 1834, in the State constitutional convention of that year, the anti-slavery feeling developed to proportions little appreciable at the present day, since we know the general opposition to such feeling and sentiment. Any antagonism to a so strongly fixed social convention then meant unusual courage in the midst of a majority of persons of adverse opinion.

The burning question of human rights for the black inhabitants of the State still became more ardent as the years passed, and the signs of its greater intensity were clearly seen in the Anti-Slavery Convention which met in London in 1843. The chronicle of proceedings contains a speech

[3] Garrett and Goodpasture, *History of Tennessee*, pp. 249 sqq.
[4] *Ibid.*, pp. 245–246.

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of Joshua Leavitt of Boston, who made the interesting statement that "The people of East Tennessee, a race of hardy mountaineers, find their interests so little regarded by the dominant slave-holders of other parts of the state that they are taking measures to become a separate state. They are holding anti-slavery meetings, and meetings of political associations with great freedom, discussing their questions, rousing up the people and showing how slavery curses them, in order to bring them to the point of action."[5] At this time it was well known that both Tennessee and Kentucky were "exporting slaves largely."[6]

In 1820, Elihu Embree,[7] at Jonesboro, Tennessee, the county seat of Washington County, in the far eastern section, began to publish *The Emancipator,* an abolition journal. Later, there came from this same county a man who easily became the leader of anti-slavery sentiment in the Constitutional Convention of 1834 at Nashville, Matthew Stephenson. It may have been that as a young man Stephenson was fired with the zeal of Embree. The period of Embree's activity was also one of large interest in the North and South in behalf of emancipation. In this same year the Missouri Compromise was passed in the national legislature. The concessions made both by pro-slavery and anti-slavery adherents at this time show the relative strength of the two forces and the remarkable fact is that there could be such near-equality of fighting strength on both sides.[8] Tennessee seems to have had an epitome of this national situation within her borders. Not only the zealous work of Embree indicates this, but the general feeling of the people of eastern Tennessee toward slavery. It is interesting here to point out that *The Emancipator* was the first abolition journal in the United States.[9]

The outcome of this anti-slavery feeling in Tennessee

[5] *Proceedings of the Anti-Slavery Convention,* London, 1843.
[6] *Ibid.,* p. 300.
[7] See paper of E. E. Hoss, Tenn. Hist. Soc., Nashville.
[8] Greely, Horace, *The American Conflict,* p. 79, New York, 1864.
[9] *Journal of The Constitutional Convention,* State of Tennessee, 1834.

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was that when the State Constitutional Convention met at Nashville in 1834 to consider important changes in the Constitution of 1796, there was such an outburst of sentiment against slavery that it was only with considerable resistance of the pro-slavery convention delegates that the State did not abolish it by providing for the gradual emancipation of slaves over a period of twenty years, when all should have been emancipated.[10] So significant is the public opinion of that time in Tennessee history, and so well calculated to give large insight into the Negro's condition then in the State, that it will hardly be amiss in this paper to enter into a somewhat detailed discussion of the work of the convention, and the sentiments there displayed.

The legal enactments of the slave code of Tennessee prior to 1834 will give us the right perspective here. One of the earliest enactments of the commonwealth was the absolute denial to slaves of the right to own property. Property held by them, such as horses, cattle, or anything of personal value was to be sold and one half of the proceeds given to the informer, the other half to the county.[11] Another law forbade the slave to go about armed unless he was the huntsman of the plantation. Small penalties were provided.[12] Still another made it unlawful for slaves to sell "any article whatever without permission from owner or overseer." The penalty for breaking this law was a maximum of "39 lashes on his, her, or their bare backs."[13] Many other matters were rigidly prescribed in the early statutes, chiefly concerning the slave's right to go or not to go from place to place, and to conduct himself under certain circumstances. Among slaves perjury was punished by mutilation and whipping. The brutality of the former was all the more disgusting because defended by law.[14] The slaying of a black or mulatto slave, however, was actually

[10] *Journal of Constitutional Convention*, 1834.
[11] Haywood and Cobb, *Statute Laws of Tenn.*, 1779, Ch. 5.
[12] *Ibid.*, 1741, Ch. 21.
[13] *Ibid.*, 1788, Ch. 7.
[14] *Ibid.*, 1799, Ch. 9.

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deemed murder and made punishable with death. It has not yet been ascertained, as far as the writer knows, whether any white citizen of Tennessee was ever indicted under the provision of this law. We do have a case of a famous old slave-holder in a community not far from Nashville being tied to his gate post and severely whipped by his neighbors, because of his brutal murder of one of his slaves.[15]

In the early laws the "hiring of one's own time," for a slave, was expressly forbidden. This practice was that of the master's allowing a slave to purchase his time for a certain amount of money, usually paid per annum. The law forbidding it was later rather generally evaded, although we cannot be sure of the evasion during the years 1796–1834. But during the later decades of the period under discussion, especially from 1840–60, there is absolute agreement among the testimonies of ex-slaves that evasion was the rule and not the exception. Various forms of this law were later enacted, but the penalties were usually light, and it may have been this fact together with the case of evasion that caused the disregard of it to become general. An ex-slave of Wilson County explains that the usual method of evasion was the declaration of the employer of the slave that he had hired the slave from the slave's master. Sometimes the owner would pretend to keep the wages of the slave, but really was holding them at the slave's disposal. In this way numbers of slaves bought themselves.

There were other laws affecting masters in regard to their treatment of their slaves and privileges of the latter. One provided that if the slave should steal food or clothing because ill-fed or destitute of apparel, the master should pay for the stolen property.[16] By the provisions of another, slaves were allowed to give testimony in trials of

[15] R. T. Q., Jr., State Archives, Capitol Library, Tennessee.

[16] This is most natural, of course, but is inserted to emphasize the absolute quality of ownership, for the master was held responsible for the deed just as if he himself had committed it, and the slaves were morally irresponsible. But for other breaches of social good conduct the slave was the direct victim of the penalty, thus at once being slave and man, property and human being.

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other slaves; the jurors, however, had to be "housekeepers" and "owners of slaves."[17] The beating or abuse of a slave without sufficient cause (no indication given as to what were the limits of "sufficient cause") was an indictable offence, and the person committing a crime of this sort was liable to the same penalties as for the commission of a similar offense on the body of a white person.[18]

Various laws of the early codes, 1813, 1819, 1829, restricting the slave from selling or vending articles under conditions apart from desire or knowledge of his owner are all evidence of his complete subjection by law to the will of his master, even in the smallest things and affairs of personal life, and disposal of belongings. Great care was taken to state specifically in these early laws that there should be no sale of liquor or any intoxicant to slaves.[19]

The provisions concerning larger questions of a slave's activity and privilege are all interesting, and it will be of value to regard, first of all, that for bringing slaves into the State. Slaves were not to be brought into Tennessee unless for use, or procured by descent, devise, or marriage.[20] This enactment was made in 1826, and prepared the way for far more severe measures later. The idea of all legislation of this nature argues clearly the discouragement of slavery as a prevailing institution, by means of preventing fresh importations for sale. Tennessee was not to be, if it could be prevented, a slave market, like Mississippi.

A citizen holding slaves might petition the county court and emancipate a slave. Bond and security were required of the owner, and the slave thus set at liberty became free to go where he chose provided that, if he became a pauper, he should be brought to the county in which he had been set free, and there taken care of at public expense.[21] But occasionally there would arise a situation which required

[17] *Statute Laws of Tenn.*, 1819, Chap. 35.
[18] Acts, 2d Session Gen. Assembly (Knoxville), 1809.
[19] *Statute Laws*, 1813, Chap. 135.
[20] *Ibid.*, 1826, Ch. 22, Sec. 1.
[21] *Ibid.*, 1801, Ch. 27, Sec. 1.

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special enactment of the legislature as in the instance of one, Pompey Daniels, a slave, who died before the emancipation of his two children, Jeremiah and Julius, whom he had purchased. This required a special act of the legislature, as there seems to have been no law covering such a case.[22] Years before, in 1801, there was enacted a law, giving power of emancipation to the owner, as we have just seen before, but not to any slave who might essay to deliver another from bondage.[23]

Once free, the Negro's status was rather precarious in some respects. He was required to have papers filled out by the clerk of the county in which he lived, specifying personal details and information intended to identify the person thoroughly. He must without fail have these emancipation records with him at any time and place in order to prove his freedom. In 1831 a law was passed which made it obligatory for the slave to leave upon his emancipation, and persons intending to emancipate their slaves were then compelled to give bond for their speedy removal.[24] Another clause of the same law stipulates that free Negroes should not be allowed to enter the State.[25] Fine and imprisonment were specified as penalties for remaining in the State as long as twenty days. This was a reaction from the provisions of State laws of 1825 when free colored persons immigrating into the State might have papers of freedom registered there, when proof of their absolute freedom had been made. Before the enactment of 1831, the increase of free Negroes was not so actively discouraged by the State, and many having their residence there, the laws concerning this class were quite as important and nearly as well detailed as the provisions of the slave code.

Among the early laws is one exacting a penalty of $500

[22] *Acts of Gen. Assembly* (Tenn.), 1822, Ch. 102.
[23] Cf. 1 and 2.
[24] *Statute Laws*, 1831, Ch. 102, Sec. 2.
[25] *Ibid.*, Sec. 2.

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fine for selling a "free person of color."[26] A free person imported and sold as a slave under the law might recover double the price of his sale from the seller, who might be held until he should give bond.[27] This marks a high degree of feeling of justice toward the freeman, and yet it is worthy of notice that this was not always adequate to obtaining actual justice. Record is given of three young colored men, seamen and free, "carried to Mobile and New Orleans in the steamer *New Castle* and taken ashore by the captain to the city prison on pretext of getting hemp for the vessel, but really taken by the captain to the city prison as his slaves and sold by the jailor to three persons who carried them into Tennessee."[28] It is further stated that these unfortunates remained in slavery. One, however, was freed by the diligent work of the Friends, who had agents in the South busy gathering information concerning slavery, and planning means of combating it.

The free person of color was exempted from military duty and from the payment of a poll-tax. In accordance with an amendment to the Public Works act of 1804, he was expected to give service on public roads and highways just as other citizens.[29] It is doubtful whether any freeman of color voted under the constitution of 1796, but it seems to have been possible. The new constitution of 1834 restricted the right of voting to "free men who should be competent witnesses against a white man in a court of justice." In the courts free Negroes were legal witnesses in certain cases among their own people, but might themselves be testified against by slaves, even, if the defendants were only freedmen.[30] Otherwise slaves were not allowed to be witnesses against free men of color. Writs of error were granted to both freemen and slaves.

There were numerous small observances regarding the

[26] *Statute Laws*, 1826, Ch. 22, Sec. 6.
[27] *Ibid.*, 1741, Ch. 24, Sec. 23.
[28] *Proceedings of the Anti-Slavery Convention*, London, 1843.
[29] *Acts of the Gen. Assembly, Tennessee*, 1821, Chap. 26.
[30] *Statute Laws, Tenn.*, Chap. 6, Sec. 2. Laws of 1787.

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personal conduct of freemen. Life was at best for them a strange and circumscribed affair. They were "neither bond nor free," and probably suffered more from the provisions of the law and their ambiguous position than did their slave brothers. "The freeman was not to entertain any slave over night in his home, or on the Sabbath." A small fine was the penalty.[31] Intermarriage of free persons and slaves without consent of the master of the slave was strictly forbidden. Breach of this law, also, was punishable by fine. There were penalties for whites and free Negroes alike for being in "unlawful assembly" with slaves. The word "unlawful" here seems to have had a special judicial meaning, signifying primarily for the purpose of instigating rebellion or insurrection. A law providing for voluntary enslavement of a free person of color, to any person whom he might choose, introduces a most interesting situation which probably indicates that there were more than a few free Negroes who preferred slavery to the condition of a creature living in a sort of limbo between freedom and bondage.

By an act of the legislature in 1819, encouragement was given to European immigrants to come into the State, with the idea that they would become home builders and land-tillers, and make good citizens. The colored population already had a general reputation for thrift, but the sentiment of racial sympathy in the white population just then favored more the immigrant. For a period the tide of public opinion was on this side, and it was considered best for the Negro to be taken in charge by the Tennessee Colonization Society. The State appropriated $10 for every black man removed from the State, an expense finally sanctioned by a law of 1833.[32]

Two years prior to the year of the Tennessee Constitutional Convention of 1834, Virginia in her State Legislature, had witnessed an exciting scene of debate on the question

[31] *Statute Laws, Tenn.*, Chap. 6, Sec. 2, Laws of 1787.
[32] *Ibid.*, 1833, Chap. 4, Sec. 1.

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of slavery. In the District of Columbia, also, there was sent to Congress in the session of 1827–28 a petition requesting the "prospective abolition" of slavery in that district, and the repeal of certain laws authorizing the sale of runaways. Similarly in Tennessee the outbreak of anti-slavery sentiment, long fostered in the eastern part of the State, came into the Convention of 1834. The few details presented here concerning the convention show conclusively that there was a strong, even violent opposition to human slavery in the State. Certain representatives of counties from East Tennessee were conspicuous for their protest against the system, and maintained their convictions despite the failure to win their point at that time.

Many memorialists in the State had addressed the legislature on the question of emancipation both pro and con prior to the convention, and finally, in the convention, on June 18, Wm. Blount of Montgomery County, Northern Tennessee, offered a memorial that on the subject of slavery the General Assembly should have no power or authority to pass laws for the emancipation of slaves without the consent of their owners or without paying their owners.[33] The memorial further prayed that, the legislature should not discourage the foreign immigration into the State and that certain laws providing for the owners of slaves to emancipate them should be made with the restriction that beforehand such manumitted persons should be assuredly prevented from becoming a charge to any county.

There were presented other memorials respecting the slave population at this time. Hess, of Gibson and Dyer counties, wanted no emancipation of slaves except by individual disposition of their masters as the latter saw fit, or at least never unless the price of the slave was paid, provided the master did not freely give manumission, and the good of the State seemed to demand the liberation of the slave. But memorials of a different sentiment also were coming in. On May 26, McNeal presented a memorial of

[33] *Tenn. Constitutional Convention Journal*, 1834.

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sundry citizens of McMinn County, asking for the emancipation of slaves in Tennessee, and on the same date, Senter of Rhea County also brought a petition from "sundry citizens" of his district asking for emancipation.[34] On the 28th, a memorial was given by Stephenson of Washington County from citizens unhesitatingly favoring emancipation. It was read and tabled.

On May 30, Stephenson introduced a resolution to have a committee of thirteen, one from each congressional district "appointed to take in consideration the propriety of designating some period from which slavery shall not be tolerated in this state, and that all memorials on that subject that have or may be presented to the convention be referred to said committee to consider and report thereon."[35] This resolution passed without trouble.

Stephenson was conspicuous for adherence to emancipation principles. It will be observed that he came from Washington County, in the far eastern portion of the State, the region already famous for its declaration of enmity toward slavery within Tennessee borders especially. An article in the *Knoxville Register* of the year 1831, just a few years prior to this Nashville Convention, denounces slavery in no uncertain terms, but also grows bitter at the thought of free men of color even remaining in the State. "Shall Tennessee" it asks, "be made the receptacle of the vicious and desperate slave as well as the depraved and corrupting free man of color?"[36]

But while a great number of those of East Tennessee probably wanted the abolition of slavery in order to rid the State of all people of color, there were those who through their delegates expressed their opinions otherwise in this convention, as has been intimated in the three memorials from "sundry citizens" of Washington and McMinn and Rhea Counties. Finally, the report of the Committee of Thirteen was given by John A. McKinney, of Hawkins

[34] *Tenn. Constitutional Convention Journal*, pp. 31–40.
[35] *Ibid.*, p. 53.
[36] *Southern Statesman* (clipping from *Knoxville Register*, Oct., 1831).

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County. It will be noted as an exception to the rule that this representative of an eastern county did not vigorously stand for the emancipation of the slave, but in his report spoke at length to attempt the justification of the system prevailing at that time in the State. Some of the most interesting points of his argument are: that slavery is an evil, but hard to remove, that the physiognomy of the slave is the great barrier to successful adjustment socially as far as white citizens think and feel, that the condition of the free man of color is tragic, that beset with temptations, and denied his oath in a court of justice, he is unable to have wrongs of whites against him redressed, that any interference with slavery at this time would cause a speedy removal of Tennessee population since slave-owners would seek other States with their slaves, and that if Tennessee should free all her slaves, there would be a greater concentration of all the slaves of the United States, giving slaves more advantage in case of uprising.

Since the slave population in 1830 was 142,530, a fair estimate for 1834 would be 150,000, and this host of newly-made freedmen, thought he, would jeopardize the social safety of the white population of Tennessee, and incite the slave inhabitants of adjoining States to sedition. Slavery would not always exist, he believed, but Tennessee could abolish it then without dire results. Colonization was difficult, but possible and practicable.

This report was given on June 19. A few days later a motion was made by a Bedford County delegate to strike out that part of the report referring to the condition of the free man of color as "tragic." This did not prevail. Still later Stephenson in a set speech protested vigorously against the acceptance of the report of the Committee of Thirteen. He declared that the report was "an apology for slavery," and did not show the convention willing to discharge its duty to the memorialists, and to the people whose protests could not there be heard. His principal argument was that the principles guiding this committee

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in its decision were subversive of the principles of true republicanism; that they were also against the principles of the Bible. Since the committee had admitted the evil of slavery, he contended, the failure to find a remedy is unworthy of the representatives of the people of the State. He maintained that there is no soundness in the argument that because of the physical differences, the black man should be deprived of the "common rights of man," and that it is not better to have slavery distributed over a large area of country than to concentrate it, if slavery is an evil, since the spread of any evil cannot be better than its limitation.[37]

As an indirect blow at any possible suffrage right of any persons of color under the new constitution, Marr, delegate from Weakley and Obion, introduced a resolution at this time intended to restrict suffrage permanently and definitely to white males, specifically prohibiting all "mulattoes, negroes, and Indians." This was referred to the committee of the whole, but, oddly enough, failed of adoption.[38] The intermittent debate on the subject of emancipation, led on the one side by Stephenson, and on the other by McKinney, was resumed a few days later when the latter gave an additional report. He stated that the memorials with their signatures had been examined and the names attached to them had numbered 1804 in all. 105 purported to be slave-holders, said he, but by inquiry the committee had ascertained that the aggregate number of slaves in their possession was not greater than 500. He admitted that there were several counties from which memorials had come, but charged that there had been a signing of more than one memorial in some counties by the same persons, so that there was a doubling of names without a proportional increase of individual signers. He depreciated Stephenson's statement that these memorials had come from almost every part of the State as ill-founded; for the sixteen counties of Tennessee which had sent repre-

[37] *Tenn. Constitutional Convention Journal*, 1834, pp. 102–104.
[38] *Ibid.*, pp. 125–126.

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sentatives with memorials favorable to the idea of emancipation were not from widely scattered portions of the State. Only five extended westward beyond the longitude of Chattanooga, and there were none of the more western counties represented. The two sections of the State seemed to bear no hostility toward each other, but decidedly disagreed on the slavery question. The question was largely an economic one with the Tennesseans of the Mississippi Valley. Cotton was coming into greater and greater importance every year. It could, they thought, be most profitably raised by large groups of workmen whose labor was cheap. The slave was the logical person, and they fastened on him the burden.

Lest the impression has been made that the only portion of the State from which the sentiment of an anti-slavery nature came was East Tennessee, it will be well to refer to the vigorous speech of Kincaid, a delegate from Bedford County, who flung a parting reply to the friends and sympathizers of the Committee of Thirteen which had succeeded in thwarting any official action upon the matter proposed by the memorialists.[39] Bedford County, in the central portion of the State, represented both economically and socially a type of citizen different from that of the mountaineer stock. Yet Kincaid fearlessly defended the plain human rights of the colored population in his speech as much as Stephenson had done, and scathingly denounced the Committee of Thirteen for its attitude toward slavery.

The pro-slavery faction, however, successfully contended that the emancipation party had no definite plan for emancipation, as those in Washington County and other districts were divided in their ideas on this subject. There were about thirty memorials besides the one from this county, one half of them asking that all children born in the State after 1835 should be free and that all slaves should be freed in 1855 and sent out of the State. The other half of the memorials favored making the slaves free in 1866 and having them

[39] Journal Const. Conv., *op. cit.*, pp. 214 et seq.

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colonized. As a matter of fact, Tennessee did emancipate its slaves three years earlier than this date. By the Committee of Thirteen these statements were given to show that there could be no virtue in acting in accord with the wishes of the memorialists, as they were hopelessly divided in their recommendations. The report of the committee was tabled, but the debate was by no means ended. Further detail is not of use to us here save to point out that there was no vote in the matter and that Stephenson bitterly upbraided the convention as a whole, stating that it had not made an effort to answer the prayer of the memorialists. The survey of this prolonged and unprofitable struggle shows how divided were the people of Tennessee on the question of abolishing slavery.[40]

Later in the convention there occurred some incidents which throw light on the situation of the Negro. The Bill of Rights in the amended constitution, sec. 26, provided: "That free white men of this state have a right to keep and bear arms in their own defence."[41] A delegate from Sevier County objected to the word "white" and moved that it be stricken from the record. Another member from Green County moved that the word "citizens" be inserted instead of "free white men," but this was rejected by a vote of 19 to 30, Stephenson and and others from East Tennessee voting with the ayes, and the Committee of Thirteen with others defeating the motion. A resolution was then brought forward by a delegate from Dyer County intended to prohibit the general assembly from having power to pass laws for the emancipation of slaves without consent of owners.[42] Immediately a memorialist sympathizer moved to lay this on the table until January, 1835. His effort was lost, and the resolution passed. Thus was the day completely won for the anti-emancipation faction.

There had been considerable discussion as to the status of free men of color, and although one provision of the con-

[40] *Tennessee Constitutional Journal*, 1834, pp. 126 et seq.
[41] *Ibid.*, pp. 184 et seq.
[42] *Ibid.*, p. 200, p. 209.

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stitution seemed to give the right of suffrage to all free men, yet there was a restriction limiting the privilege of voting to those who were "competent witnesses in a court of justice against a white person."[43] One commentator upon his unusual provision observes that one cannot tell how many Negroes were entitled to vote under this provision.[44] But whatever present-day students may make of this, it was recognized by the members of this convention that the free Negro had no suffrage right, for near the close of the convention there was submitted a resolution providing that since "free men of color were denied suffrage by the constitution," the apportionment of senators and representatives from their respective districts should be based on the white population alone.[45] The revised constitution contains this provision, but with different wording.

The general tendency of the whole body of legal enactments in the period 1834–65 was toward restricting the slave more and more, and at the same time, eliminating the element known as free Negroes. Probably this had an effect upon the percentage of free Negroes in the total population as seen in the years 1820 and 1850. The national percentage for these years in question was in each case six tenths of one per cent.[46] But as the total Negro population increased despite the migration southward from Tennessee, the ratio for Tennessee in 1820 was 3 per cent, and for 1850, 2.4 per cent, a period of greater repression, showing decrease, although very slight.

A general law of 1839 forbade the slave to act as a free person, that is, to hire his own time from his master, or to have merchandisable property and trade therewith.[47] Runaways were to be punished by being made to labor on the streets or alleys of towns, as well as by imprisonment.

[43] Constitution of Tenn., 1834, Art. 3, Sec. 1.

[44] Code of Tenn. '57, '58, Sec. 3809.

[45] Stephenson, *Race Distinctions in American Law*, p. 284. *Tenn. Const. Conv. Journal*, 1834, *op. cit.*, p. 209.

[46] Bureau of the Census, "A Century of Pop. Growth," p. 82. Washington, 1909.

[47] *Acts of Tenn.*, 1846, Chap. 47 (Nicholson).

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Several laws show the tendency to class free Negroes with slaves by stating that all capital offences for slaves were also capital offences for free Negroes.[48] Another plainly provides that all offences made capital in the code of that time for slaves, should also be capital for "free persons of color."[49] Further, "no free person of color might keep a grocery or tippling house" under pain of a heavy fine. It will be seen that the attitude thus was plainly more and more adverse to the free Negro. An act of 1842 had made it possible to amend all laws relating to "free persons of color," and this was freely done.[50]

Free Negroes of "good character," either resident in the State prior to 1836 or having removed to the State before that year, and preferring, in their respective county courts, petitions to remain in the same, might do so, but otherwise must leave the State under severe penalties of imprisonment and hard labor, as provided under the law of 1831, prior to the new constitution. The subjects of this legal provision were to renew this court proceeding every three years, under the same penalty for failing to perform the renewal.[51] The laws of registry of free Negroes were kept in force and made, if anything, more rigid. One provision of these enactments was that there should be in the registration papers specification of any "peculiar physical marks on the person" so registered.[52] This practice, defended by law, is exceedingly interesting to the student who compares it with what has long been common knowledge regarding the practices of slave-buyers in the markets. And here we have a measure of the complete humiliation of the "free person of color," for every free Negro or mulatto residing in any county of the State was compelled to undergo this examination before officers of the county court and be duly registered thereafter as a free person.[53]

[48] Code of 1858, Tenn., Art. IV, Sec. 2725.
[49] *Ibid.*, Sec. 2725.
[50] *Ibid.*, Sec. 2728.
[51] Nicholson, *Acts of Tenn.*, 1846, Chap. 191, Sec. 1.
[52] Code of Tenn., *op. cit.*, Sec. 2714.
[53] *Ibid.*, Sec. 2793–2794. Cf. Statute Laws here.

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As might be expected, the law of 1831 was followed up by enactments strictly requiring the emancipation of slaves, when allowed by the State, to be followed closely by the removal of the freedmen from the State. Also instructions for the transportation of certain Negroes to Africa were given in the same code. Those who had acquired freedom after 1836, or who should do so, together with slaves successfully suing for freedom, also free Negroes unable to give bond for good behavior although having right to reside in the State, were all to be transported to Africa, unless they went elsewhere out of the State, according to provision by law.[54]

The word "mulatto" is found often in the laws of this period, showing that this type was becoming an important factor in the race relations of white and black. As far as is known, there is no way of obtaining even the approximate proportion of white mothers to white fathers, but because of the overwhelming evidence by personal testimony of ex-slaves as to the relations of the masters and overseers of plantations to the slave women, and the corresponding power of the dominant race to prevent, at least in large degree, similar physical marriages between Negroes and the women of their race, we may be said rightly to infer that the proportion of white mothers of colored offspring to white fathers was then, as it has always been, very small. In Maryland, according to Brackett, the child of a white father and a mulatto slave could not give testimony in court against a white person, whereas the child of a white mother and a black man would be disqualified in this regard only during his term of service.[55] "A free mulatto was good evidence," says he, "against a white person."[56] The mulatto of Tennessee had no such social or legal position as either of these cases indicate, although here again personal testimony brings to light notable exceptions of the

[54] *Statute Laws, Tenn.*, 1846, Ch. 191.

[55] Brackett, "The Negro in Maryland," *Johns Hopkins Studies*, Ch. V, p. 191.

[56] *Ibid.*, pp. 191–192.

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social behavior of individuals in certain localities, where this type, that is, the colored offspring of white motherhood, was regarded as a separate class, above the ordinary person of color.[57]

It is likely that in East Tennessee there was considerable prevalence of such amalgamation of African and Scotch-Irish race stocks, with white motherhood.[58] The reasons were largely economic. Many of the whites who came to live in the lower farm lands down from their first holdings on the rocky slopes and unfertile soil, were driven from these more productive lowlands by the rich white land owners who preferred to have large plantations with great numbers of blacks to raise the crops, rather than to rent or sell to small farmers. For these poorer white neighbors there was no recourse but to take to the mountains and to cultivate there the less desirable lands. The life they had to live was necessarily very rough and hard; their principal diet was corn, and often the rocky soil only yielded them that grudgingly and scantily. They frequently came in contact with the slaves, and the latter were known to steal provisions from their masters' storehouses and bring to these hill-country people appetizing additions to their meager provisions. And the slaves were also known to mingle with them in the quilting, husking, barn-raisings, and other rural festivities, being undoubtedly made welcome. It requires no immoderate imagination to state here the likelihood of much racial intermixure, as we know, from testimony, of more than a few specific cases, and we have, in this rather strange way, the account of social intermingling and the secret gifts of the black men who visited these mountain homes.

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[57] Personal Testimony, B. S.; J. P. Q. E.; E. S. M. Nashville, 1912.

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