Legal Practice and Pragmatics in the Law: The 1821 Trials of John Reed, "Fugitive Slave"

JOHN REED, A PERSON OF COLOR, had come to Pennsylvania from Maryland, representing himself as a free man, some two or three years before the events that led to his being tried for two murders. To the reporters who publicized his case in the Chester County *Village Record*, "It appeared sufficiently clear" that Reed was the child of the slave Maria, who had been a queen in her native Africa.[1] Between twenty-seven and thirty years old in 1820, married, and with one child, he lived in Kennett Township, where he worked odd jobs in the neighborhood.[2] Reed's life in Chester County was marked by anxiety; he rarely went unarmed and frequently expressed his fear of kidnappers who, he claimed, had previously tried to enslave him. As his neighbors would soon discover, his fears were not unwarranted. Samuel Griffith, a slave owner from Maryland, claimed ownership of Reed and considered him a runaway. Reed, it was later discovered, could not demonstrate his free status, as he could show "no proof of manumission."[3] On the night of December 14, 1820, Griffith, supported by a posse of three—his overseer, Peter Shipley, and two men identified as Miner and Pearson—attempted to seize Reed from his Kennett Township home in the dark of night. Griffith and Shipley were fatally wounded in the attack, succumbing shortly afterward.

[1] *West Chester (PA) Village Record*, Nov. 21, 1821, 3. In an earlier account, Reed's mother was referred to as Muria. *West Chester (PA) Village Record*, May 16, 1821, 3.

[2] According to Reed's deposition of February 2, 1821, before the Chester County Court of Oyer and Terminer, he was thirty years old at the time of the events in 1820. According to the testimony of Luke Griffith, nephew of Reed's presumed master, Samuel Griffith, in a November 14, 1821, document before the Chester County court, Reed was born in April 1794 and thus would have been twenty-seven years old in 1820. John Reed affidavit, for the trial for the murder of Griffith, filed before Justice of the Peace Joshua Taylor, Feb. 2, 1821; Luke Griffith's claim to John Reed, Slave, certified by President Judge Isaac Darlington, Chester County Court of Quarter Sessions, Nov. 14, 1821, both Chester County Archives and Records Services, West Chester, PA.

[3] *West Chester (PA) Village Record*, Nov. 21, 1821, 3.

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Relying upon Reed's "own story," the *Village Record* described the night of the attack. Reed's "wife was from home"; unable to sleep, he heard someone outside the house, then a rapping on the door. In response to Reed's inquiry, someone at the door announced that he had authority to search for stolen goods. Reed told them he had no stolen goods, but if they would wait until morning, they could search. When the men outside began to force the door, Reed rolled a barrel against it and threatened to kill them if they entered. The door was pushed off its hinges, and as Reed heard "the click of a pistol cocking" he cried out a second warning: "It is life for life." One of the group, damning the "negro" and exclaiming that Reed was bluffing, urged Shipley to rush him. Reed shot the first person who entered, knocking the second to his knees with a club; when the intruder rose up, Reed struck once or twice more.[4]

Two indictments, one for the murder of Griffith, the next for the murder of Shipley, spell out in exacting detail the crimes of which Reed was accused. Reed had, on the fourteenth of December 1820, discharged a gun "of the value of five dollars" filled with "gunpowder and diverse leaden shot," which he held against the left part of Griffith's body with both hands, mortally wounding him. The shot inflicted on Griffith a wound in the belly, four inches deep and one inch wide, of which he died the day after the attack.[5] Reed had assaulted Shipley "with a certain large stick of no value," holding it in his right hand and hitting Shipley several times "in and upon the back part of the head, the forehead and temples." On Shipley's body there was observed "one mortal wound of the length of three inches, and of the depth of one inch," on the back of his head and a second wound one inch long and a half-inch deep on his forehead. Shipley endured "several mortal bruises" of which he died on December 21, having languished for seven days.[6] The *Village Record* report claimed that Shipley had had enough strength after the attack to carry Griffith into Reed's house and lay him on Reed's bed—where neighbors found him dead the next morning—before staggering to the house of a neighbor, Mrs. Harvey, where he pleaded to be let in and died himself. The two other men in Griffith's party had fled. Following the attempted seizure, Reed had grabbed his gun and run to tell a neighbor "that the kidnappers had attacked his house; that he had killed two, and asked for more powder, as he was afraid they would pursue

[4] Ibid.
[5] Grand inquest indictment, Jan. 30, 1821 (Griffith case), Chester County Archives and Records Services.
[6] Grand inquest indictment, Jan. 31, 1821 (Shipley case), Chester County Archives and Records Services.

him." Reed made no attempt to escape and was soon arrested. Evidence collected at Reed's house included Reed's club and the barrel, as well as "two pistols, loaded, one of them cocked, a whip, and a pair of gloves . . . at the door." Shipley's pockets contained a pair of handcuffs and a rope; a third pistol was found on Griffith's person.[7] John Reed was tried in two separate trials in May and November 1821, in Chester County criminal court in West Chester, Pennsylvania, for the murders of his alleged master and his master's overseer. The first trial ended in acquittal, the second in conviction—for manslaughter rather than the original charge of murder.[8]

The Reed trials illustrate how Pennsylvania abolitionists used legal procedures to move the law toward a position that would produce equal protection for fugitive slaves and, in the process, make violent slave revolts and mob actions less likely as the use of the law and government action displaced acts of private interest in disputes over slavery. Use of legal procedures represented a step toward making a substantive change in equal rights law. In the Reed trials this tactic offered the accused the opportunity to assert his claim to be treated as a free man and an equal with any other person under the law. John Reed's two trials and the subsequent proceeding initiated by Griffith's family to reclaim him as a slave provide an opportunity to examine the prevailing fugitive slave and antikidnapping laws and to consider the federal-state conflict that arose when these laws diverged. A little-studied event, the John Reed case also presents an opportunity to examine legal practice almost two hundred years ago.[9]

This paper argues that Pennsylvania's treatment of runaways and kidnapped blacks was less confrontational, as David G. Smith contends, than

[7] *West Chester (PA) Village Record*, Nov. 21, 1821, 3.

[8] Commonwealth v. John Reed, Alias Thomas, 1821; and jury verdict, Nov. 14, 1821, both Chester County Court of Oyer and Terminer records, Chester County Archives and Records Services.

[9] Unfortunately, there was no trial report, and evidence of the judges' instructions to the jury was preserved only in a truncated form in newspaper accounts. Reed did, however, provide four affidavits (one for the Griffith trial and three for the Shipley trial) sworn and signed with his mark before three different officials. Other surviving documents include grand inquest indictments, subpoenas, jury challenge lists, witness lists, court dockets, trial strategy, and the verdicts of Reed's two trials. The officials were two justices of the peace—Joshua Taylor and John —and a proxy. See Edward Needles, *An Historical Memoir of the Pennsylvania Society for Promoting the Abolition of Slavery; The Relief of Free Negroes Unlawfully Held in Bondage, and for Improving the Condition of the African Race: Compiled from the Minutes of the Society and Other Official Documents* (Philadelphia, 1848), 73–74; "What Right Had a Fugitive Slave of Self-Defence Against His Master?" *Pennsylvania Magazine of History and Biography* 13 (1889): 106–9; William R. Leslie, "The Pennsylvania Fugitive Slave Act of 1826," *Journal of Southern History* 18 (1952): 434–35; Joseph S. Kennedy, "Ex-Slave Was Tried for Killing Two Would-Be Captors, *Philadelphia Inquirer,* Feb. 20, 2005; Rob Lukens, "History's People: The Murder Trials of Kennett's John Reed," *West Chester (PA) Daily Local News*, Feb. 21, 2013.

that of more northern states. As Richard S. Newman holds, Pennsylvania abolitionists took a pragmatic approach in their antislavery legal activities that used equal protection arguments to push the state to support equal treatment under the law for all residents. Those protections—among the earliest offered to blacks, enslaved and free—began in the last two decades of the eighteenth century to set the stage for the work of a more aggressive group of abolitionists in the 1830s and thereafter. Pennsylvania legislation in 1820, 1826, and 1847 progressed in a more radical direction, suggesting that by the 1820s the course of Pennsylvania slave law had changed from one that negotiated federal and state law to one that defended personal liberty laws and the state's right to assert such laws.[10]

This shift in the course of state law occurred in the context of several converging trends, among them a growing antislavery movement, the Second Great Awakening (a religious revival movement that lasted from 1800 to the 1830s), late-eighteenth-century sentimental literature, and developments in print culture that produced narratives and pamphlets featuring the brutality of slavery, encouraging readers to identify with the suffering of slaves and advancing the idea that slavery was a sin that the nation would pay for in divine retribution.[11] Raising questions about the injustices visited on slaves and challenging white stereotypes about blacks, the court of public opinion gave notice to the courts that human law was expected to recognize and uphold natural laws of equality; in courtrooms these expectations were transmitted into adversarial arguments intended to persuade juries to uphold equal treatment for blacks and whites.[12] Taking antislavery issues to the public would provoke confrontations with white groups that generated resentment.[13] Still, social and political backwash like that which attended legislative petitions and the 1819–22 debate over the

[10] David G. Smith, *On the Edge of Freedom: The Fugitive Slave Issue in South Central Pennsylvania, 1820–1870* (New York, 2013), 9; Richard S. Newman, *The Transformation of American Abolitionism: Fighting Slavery in the Early Republic* (Chapel Hill, NC, 2001), 39–59, 60–85; Christopher Densmore, "Seeking Freedom in the Courts: The Work of the Pennsylvania Society for Promoting the Abolition of Slavery, and for the Relief of Free Negroes Unlawfully Held in Bondage, and for Improving the Condition of the African Race, 1775–1865," *Pennsylvania Legacies* 5, no. 2 (2005): 18; Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780–1861* (1974; repr. Union, NJ, 1993), 221.

[11] Newman, *Transformation of American Abolitionism*, 92–99; see David Howard-Pitney, *The Afro-American Jeremiad: Appeals for Justice in America* (Philadelphia, 1990).

[12] Jeannine Marie De Lombard, *Slavery on Trial: Law, Abolitionism, and Print Culture* (Chapel Hill, NC, 2007), 7, 13–18; see Joanna Brooks, "The Early American Public Sphere and the Emergence of a Black Print Counterpublic," *William and Mary Quarterly*, 3rd ser., 62 (2005): 67–92.

[13] Shane White, "It Was a Proud Day: African Americans, Festivals, and Parades in the North, 1741–1834," *Journal of American History* 81 (1994): 33–34.

Missouri Compromise would make the courts an even more critical venue for assuring fugitives and slaves equal treatment under the law.[14] The legal capacity of blacks became central to their emancipation, and the courts became critical sites in achieving equal rights.

State of the Law

At the time of Reed's trials, the relevant federal and state law included Pennsylvania's Gradual Abolition of Slavery Act of 1780 and its 1788 amendment; the federal Fugitive Slave Act of 1793 (the enforcement mechanism for Article 4, section 2 of the US Constitution, 1787); Pennsylvania case law; and the Pennsylvania Act to Prevent Kidnapping of 1820.[15] The choice of venue and the legal treatment of slaves and free blacks in Pennsylvania, either in its courts, before justices of the peace and aldermen, or before selected judges and recorders, depended upon whether federal or state laws were applied.

The Gradual Abolition Act of 1780 freed slaves and their issue over time (sections 3 and 4), acknowledged slave owners' reclamation rights, and prohibited the sheltering of runaways (section 11). It required the registration of Pennsylvania's slaves (section 5), presumed the freedom of those not registered (section 10), and freed out-of-state slaves who overstayed a six-month limit (section 10). In addition, it provided that, whether free or enslaved, blacks should be tried and punished "in like manner" as other inhabitants of the state (section 7) and that a 1705 statute that had established courts without juries "for the Trial of Negroes" be abolished (section 14).[16] The 1788 amendment to the act prohibited and fined the act of taking by force and transporting outside the commonwealth "any negro or mulatto . . . with the design and intention of selling and disposing of, or of causing to be sold, or of keeping and detaining, or of causing to be kept and detained, such negro or mulatto as a slave or servant" (section 7).[17]

[14] Newman, *Transformation of American Abolitionism*, 45–50.

[15] An Act for the Gradual Abolition of Slavery, 1780, and Amendment to the 1780 Gradual Abolition Act, in John Purdon, ed., *Digest of the Laws of Pennsylvania* . . . (Philadelphia, 1818), 480, 482; Fugitive Slave Act of 1793, in 3 Annals of Cong. 1414–15 (1793); An Act to Prevent Kidnapping, 1820, in *Laws of the Commonwealth of Pennsylvania from the Fourteenth Day of October, One Thousand Seven Hundred*, vol. 17 (Philadelphia, 1822), 285–88.

[16] Frank M. Eastman, *Courts and Lawyers of Pennsylvania: A History, 1623–1923* (New York, 1922), 173–74; G. S. Rowe, *Embattled Bench: The Pennsylvania Supreme Court and the Forging of a Democratic Society, 1684–1809* (Newark, DE, 1994), 172.

[17] See Gary B. Nash and Jean R. Soderlund, *Freedom by Degrees: Emancipation in Pennsylvania and Its Aftermath* (New York, 1991); Beverly C. Tomek, *Colonization and Its Discontents: Emancipation, Emigration, and Antislavery in Antebellum Pennsylvania* (New York, 2011).

Federal process, laid out in the 1793 Fugitive Slave Act, allowed for a summary procedure in which the slave owner or his agent was "empowered" to take a fugitive before a judge or magistrate and there to provide ex parte proof of ownership. No provision was made for the captured party to offer proof to the contrary, for a habeas writ, for a trial (with or without jury), or for the right to appeal. The duty of a judge or magistrate was to grant a certificate of removal to take the slave out of the state "upon proof to the satisfaction of such Judge or magistrate, either by oral testimony or affidavit . . . that the person so seized . . . [does] owe service or labor to the person claiming him"; the affidavit was to be certified by a magistrate of the state from which the slave had fled. The term "empowered," as opposed to "required," would be loosely interpreted to excuse slave owners from availing themselves of the process provided, but the federal act made it the duty of the executive authority of the state to which the fugitive fled to act on behalf of reclamation. However, the act did not provide a penalty for state authorities that did not do so, nor did it authorize state officials to investigate alleged slave owner's claims. Parties who interfered with the process of reclamation could be fined, and slave owners could sue for both financial and physical injuries that resulted from such interference.[18] In practical terms, as a result, private self-help superseded state authority, and federal authority, where utilized, trumped both state law and the personal liberty rights of the person seized.

In the process of navigating between state and federal statutes, Pennsylvania case law was informed by the work of abolitionists, like those in the Pennsylvania Abolition Society (PAS), who pursued court cases and legislation to ensure that the provisions of the Fugitive Slave Act of 1793 would not be easily applied. The PAS worked case by case to extend to slaves and fugitives the rights that others would deny them and to challenge courts to redress their grievances. Recognizing that fugitive slaves, to whom principles of federal comity applied, would not receive the same protections as kidnap victims, who fell under state law, PAS lawyers "used local readings of the law," as Richard Newman puts it, "to counteract slaveholders' national power."[19] Focusing on loopholes and fortuitous

[18] Paul Finkelman, "The Kidnapping of John Davis and the Adoption of the Fugitive Slave Law of 1793," *Journal of Southern History* 56 (1990): 419–20; Morris, *Free Men All*, 19–23; Morgan Cloud, "Quakers, Slaves, and the Founders: Profiling to Save the Union," *Mississippi Law Journal* 73 (2003): 401–3.

[19] Richard Newman, "'Lucky to be born in Pennsylvania': Free Soil, Fugitive Slaves and the Making of Pennsylvania's Anti-Slavery Borderland," *Slavery and Abolition: A Journal of Slave and Post-Slave Studies* 32 (2011): 417, 428, DOI: 10.1080/0144039X.2011.588478.

technicalities involving such things as warrants and evidence, and arguing "compelling facts" and principles of "equity, tolerance, and justice," PAS members were willing to make out-of-court settlements (such as sales and indentures to move slaves out of slavery) and generally hoped to impose so many legal obstacles in pursuing a case that slave owners would eventually give up.[20] One PAS lawyer, William Lewis, advised the fugitive he represented in *Pirate v. Dalby* to file his case as a free man.[21] Following Lewis's logic, the presumption of freedom would give cover to Pennsylvania courts both to grant slaves a trial under state law and to argue that unregistered African Americans and out-of-state slaves who stayed in the state beyond six months were free, thus enabling the freeing of large numbers of slaves. Reinforcing the strategy, a fortuitous finding in Pennsylvania case law, *Commonwealth ex rel. Johnson, a Negro v. Holloway* (1817), held that the fugitive slave clause of the Constitution, Article 4, section 2, could not be read "so as to exempt slaves from the penal laws of any state in which they may happen to be." The court's rationale was that neither the Constitution nor any state law "exempts them from punishment in all criminal cases." To deliver the slave to his master was no less than to "withdraw him from the prosecution," which the court found it could not do.[22]

Not only was the status of slaves under Pennsylvania law aided by case law, but there was also promising case law for their progeny that implicated a liberty right. In *Respublica v. Negro Betsey* (1789), which freed the children of an unregistered slave, Justice Bryan's concurrence expressed his opinion that he "would not wish to press an argument against liberty" on the basis of a section (section 10 of the Gradual Abolition Act) that he found "inaccurate and insensible" and "of so obscure a kind."[23] In an 1815 case, *"Kitty" v. Chittier*, the PAS found no precedents to bind over children who, having been born in Pennsylvania, had never fled from a slaveholding state.[24] As one of six counselors who consulted on the case, John Reed advised, "It

[20] Carol Wilson, "'The Thought of Slavery Is Death to a Free Man'," *Mid-American Review* 74 (1992): 117; Newman, *Transformation of American Abolitionism*, 6–63; Newman, "Lucky to be born in Pennsylvania," 422.

[21] Pirate, alias Belt v. Dalby, 1 U.S. 167 (1786); 1 Dall. 167 (Pa. 1786); Jean M. Hansen, "William Lewis: His Influences on Early American Law, as a Philadelphia Lawyer, Republican Assemblyman, and Federalist Leader" (PhD diss., University of North Colorado, 1999), 61; Esther Ann McFarland, *William Lewis, Esquire: Enlightened Statesman, Profound Lawyer, and Useful Citizen* (Darby, PA, 2012), 21.

[22] Commonwealth ex rel. Johnson v. Holloway, 3 Serg. & Rawle 4 (Pa. 1817).

[23] 1 U.S. 469 (1789); 1 Dall. 469 (Pa. 1786); G. S. Rowe, *Thomas McKean: The Shaping of an American Republicanism* (Boulder, CO, 1978), 232–33.

[24] Cases before Michael Rappele, box 4A (microfilm reel 24), Pennsylvania Abolition Society Papers, Historical Society of Pennsylvania (hereafter cited as PAS Papers).

should be doubtful, as such a construction would interfere with personal liberty, the inclination would be against the extension of the Constitution to the case." On these grounds, the three children involved in the case were freed. The Pennsylvania Supreme Court in *Commonwealth v. Holloway* (1816) subsequently decided that servitude as a result of the slavery of the mother was extinguished in the Gradual Abolition Act, section 3, and that the 1793 Fugitive Slave Act applied only to the absconding slave, not to children conceived and born within the state.[25]

In the process of maneuvering around legal holes in case law, PAS lawyers hoped that using the law and politics would, over time, undercut the stability of slavery as an institution and lead to its demise through gradualist tactics. Their efforts would thus embed change structurally and incorporate it legally through legislative petitions and court cases.[26] The PAS's tactics were successful to the extent that in *Commonwealth v. Lambert Smyth*, ca. 1805–16, the organization itself became a subject of inquiry. The court's decision supported slave owners from other states who "take their slaves home especially when the negro has acted under the direction of the Abolition Society or any of its members." The members to whom the decision referred were abolitionist sympathizers trained to intervene in slave rendition and careful not to violate the law.[27] An army of legal workers interviewed possible deponents, visited courthouses to discover legal papers, helped identify fugitive slaves and kidnapped blacks, and served writs to produce slaves before officials. One among them, PAS member William Kirk, who wrote to Blakey Sharpless in 1825, intended "to attend to all cases that may come under my notice and see that the requisitions of the law are strictly fulfilled." He questioned Sharpless regarding the circumstances under which a master could seize his slave under federal or state law, the master's right to enter a house "not in the tenure of a slave without the knowledge or express consent of the owner without or with a warrant," how and by whom a warrant could be served, whether others than the occupant of a house could prosecute an entry, and whether others

[25] Commonwealth v. Holloway, 2 Serg. & Rawle 305 (Pa. 1816).

[26] Newman, *Transformation of American Abolitionism*, 23, 26–27, 29, 33, 38.

[27] Commonwealth v. Lambert Smyth [ca. 1805–16], ser. 4, Manumissions, Indentures & Other Legal Papers, box 4A, file "Cases in Which Slaves Were Awarded Freedom" (microfilm reel 24), PAS Papers; Richard Newman, "The PAS and American Abolitionism: A Century of Activism from the American Revolutionary Era to the Civil War," 1–10, Historical Society of Pennsylvania, http://hsp.org/sites/default/files/legacy_files/migrated/newmanpasessay.pdf; see Richard Newman, "The Pennsylvania Abolition Society: Restoring a Group to Glory," *Pennsylvania Legacies* 5, no. 2 (2005): 6–10.

than the master could "make such forcible entry?" Importantly, he asked whether a slave had "the same right of self defence against unknown persons entering his house in disguise or by surprize which is held by other citizens of this state—& How must the master make proof either of his own or his slaves identity & by whom in either case must it be attested?"[28] Responding to such inquiries, the PAS pursued the practical tasks of turning black men and women into legal subjects and giving them a proper defense with limited resources and personnel.

By the 1820s, slaves in Pennsylvania were largely emancipated.[29] Their changing legal status and the presumption that they were free unless proved otherwise was the antithesis of their condition in Maryland, where they were liable, even if freed, to be re-enslaved as a result of a criminal conviction, indebtedness, or a manumission gone bad (for estate debts upon the death of a master, a change of mind by heirs, or an unrecorded agreement between master and slave).[30] Such reverse emancipation meant that the boundary between free and slave was permeable. Maryland would have brought a fugitive to Pennsylvania back into a system of slave courts and plantation justice in which jury trials, even when recommended to prove a fugitive's status, exercised what James D. Rice calls "racial discipline."[31] Blacks were presumed to be slaves, and jurors tended to find for the slave owner less because of the law than as a statement of support for community standards regarding slavery and race. As Barbara Jeanne Fields expresses it, emancipated blacks "simply ceased to be slaves of a single owner and became slaves of the state as a whole."[32]

It was in such a context that the Pennsylvania Act to Prevent Kidnapping of 1820 became, as William Leslie puts it, the first state law "to prohibit state officials from enforcing the national fugitive slave act."[33] The act spoke directly to *Wright v. Deacon* (1819), a case involving a Maryland slave owner, a fugitive with a claim to freedom, and a contest over granting

[28] William Kirk to Blakey Sharpless, Sept. 27, 1825, ser. 2, Correspondence, file "Correspondence, incoming: 1825" (microfilm reel 13), PAS Papers.

[29] Nash and Soderlund, *Freedom by Degrees*, 173.

[30] Barbara Jeanne Fields, *Slavery and Freedom on the Middle Ground: Maryland during the Nineteenth* Century (New Haven, CT, 1985), 36; John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (Oxford, 1999), 190–92.

[31] James D. Rice, "The Criminal Trial before and after the Lawyers: Authority, Law, and Culture in Maryland Jury Trials, 1681–1837," *Journal of Legal History* 40 (1996): 471.

[32] Ariela Julie Gross, *Double Character: Slavery and Mastery in the Antebellum South* (Princeton, NJ, 2000), 38; Fields, *Slavery and Freedom on the Middle Ground*, 78.

[33] Leslie, "Pennsylvania Fugitive Slave Act of 1826," 433.

a certificate of freedom. Ruling in favor of reclamation, the Pennsylvania Supreme Court argued that if the returned slave "really had a right to freedom, that right was not impaired by this ruling; he was placed in just that situation in which he stood before he fled."[34] Wright's only option, as a result, was to prosecute his claim to freedom in a state that presumed his status as a slave. The Pennsylvania legislature was quick to respond with the 1820 antikidnapping law. The discussion before the Pennsylvania legislature explained the sentiment behind the act: "If a man be brought up charged with having stolen a mere sixpence, he is entitled to bail; and on his trial he has an opportunity of being fairly and fully heard. But when the question is slavery or freedom, the miserable victim is scarcely heard, and the wretched magistrate deems it to[o] unimportant even to record." Indeed, the primary hearings of the alderman and justice of the peace courts privileged private prosecution and had a reputation for being corrupt and political.[35]

Critically, the 1820 act's language in section 1 added heavier penalties to prohibit taking by force, asserting that any person who should "by force or violence take and carry away . . . any negro or mulatto" from the commonwealth would be guilty of a felony with a fine of not less than $500 and a sentence of not less than seven years at hard labor. Aimed at those pursuing blacks and their "aiders and abettors," the language of the act protected all blacks, slave and free. Whereas section 3 acknowledged that "a certain act of Congress" had jurisdiction over those "escaping from the service of their masters," it did so in the context of prohibiting Pennsylvania's aldermen and justices of the peace from taking cognizance of the act. It disallowed them from granting certificates of removal on penalty of a "misdemeanor in office" with a fine similar to that for seizing a slave by force and allowed only judges or courts of record jurisdiction to grant removal (section 4). Whether the certificate had to be granted before a seizure or removal from the commonwealth was not specified, nor was it specified whether the seizing and taking away were to be considered one act or two separate acts. Those empowered to grant certificates were required, as a means of preventing random seizures of blacks and of keeping track of those who were seized, to record the name, age, sex, and

[34] Wright v. Deacon, 5 Serg. & Rawle 62 (Pa. 1819).

[35] "Pennsylvania Legislature, House of Representatives, Tuesday, January 15: Kidnapping," *Poulson's American Daily Advertiser*, Jan. 25, 1820; See also Allen Steinberg, "'The Spirit of Litigation': Private Prosecution and Criminal Justice in Nineteenth-Century Philadelphia," *Journal of Social History* 20 (1986): 231–49.

general description of the party sought as well as the evidence provided by and the residences of the witnesses and the claimant.[36] Within the limited aim of improving the granting of certificates of removal, the legislature encouraged evidence taking to heighten the bar for proof of a claim: "What was the evidence adduced? How and by whom proved to be a slave."[37] To the extent that it could do so without violating federal law, Pennsylvania thereby discouraged the pursuit of fugitives who had made their way to the state, denied masters easy access to the assistance of state officials, and demanded greater proof than had previously been required in order to hamper recapture.

The Reed Trials

The first public notice of John Reed's two trials appeared in the West Chester *Village Record*, April 25, 1821. It read:

> The Court which commences in this place, on Monday next, promises to be one of uncommon interest, as the trial of the Black man for killing Mssrs Griffith and Shipley will take place. If the weather is fine, there will doubtless be a large concourse of people assembled.

The paper identified the man who was to be tried as a "Black man" charged with murder, not a slave in flight from a master. "Uncommon interest" in the case was taken for granted, together with the prospect for a great gathering of observers, although the nature of the gathering was unclear. Whether the paper anticipated a mob with intent to liberate the defendant, a riot in favor of abolition, a reaction to a scandalous crime, or simply spectators curious to view a controversial trial was not stated.

On May 16, 1821, the same newspaper covered Reed's trial for Griffith's murder, but omitted the facts in the case "on suggestion, as another trial is to take place," reflecting concern for due process. The paper identified the proceedings as "the great cause of the Commonwealth" for the murder by a black man against his "alleged master," this time noting Reed's putative fugitive slave status and the state's concern for the public peace. The trial

[36] The Pennsylvania Gradual Abolition Act did not record free blacks, which "tleft them unprotected and subject to claims on their liberty." Patricia A. Reid, "Margaret Morgan's Story: A Threshold between Slavery and Freedom, 1820–1842," *Slavery and Abolition: A Journal of Slave and Post-Slave Studies* 33 (2012): 367, DOI: 10.1080/0144039X.2011.606628.

[37] "Pennsylvania Legislature, House of Representatives, Tuesday, January 15: Kidnapping."

would be held in the Chester County Oyer and Terminer Court in West Chester—a criminal court—before a panel comprised of Judge John Ross and his associate justices, who would preside over a twelve-person jury.[38] The indictment read that Reed pleaded a justification defense of not guilty by reason of just cause and threw himself on the mercy of the court. The attorney general accepted the plea as a statement of the issue under common law.[39]

The Trial for Griffith's Murder

On January 27, Justice of the Peace Joshua Taylor certified that "the defendant was charged with shooting Samuel G. Griffith . . . and confessed to the fact." Taylor "therefore committed him [the defendant] to the gaol Dec. 15, 1820." On January 30, the Chester County grand inquest indictment affirmed that the "labourer, otherwise called Thomas," Reed's name in Maryland, "did kill and Murder" Griffith. Nowhere did the indictment, which identified the defendant simply as being "late of the County of Chester," reference fugitive slave or kidnapping laws (which would be substantively addressed in the charges to the two juries); it was instead an indictment for murder, invoking the state's responsibility for maintaining order in breaches of the public peace and "the peace of God." The latter was the particular concern and area of jurisdiction for county criminal courts in Pennsylvania.[40]

The trial was prosecuted as a criminal case for the state by three counsel: Isaac Dutton Barnard, William Alexander Duer, and Attorney General Isaac Darlington. The court appointed four counsel for the indigent defendant: Townsend Haines, William H. Dillingham, Robert Porter, and Joseph Hemphill Jr. In what was common practice in courts of the period, closing arguments before the jury by prosecuting and defending attorneys were alternated, which would have impacted jurors' ability to separate prosecution from defense arguments and, together with the number of defense counsel and the aggregated length of their arguments in the trial for Griffith's murder (nine hours, as opposed to just under seven hours for

[38] *West Chester (PA) Village Record*, Apr. 25 and May 16, 1821.

[39] Grand inquest indictment, Jan. 30, 1821 (Griffith case); Grand inquest indictment, Jan. 31, 1821 (Shipley case).

[40] Grand inquest indictment, Jan. 30, 1821 (Griffith case); Steinberg, "Spirit of Litigation," 241–42.

the prosecution), might well have contributed to the defense's success in the case.[41]

The case's first substantive discussion of the slave issue occurred in an affidavit sworn and signed with Reed's mark before Justice of the Peace Taylor on February 2. The affidavit announced that "it will be attempted to prove on behalf of the prosecution, that [Reed] was the slave of Samuel G. Griffith, the deceased, and that evidence of his freedom will be material upon the trial of the above Indictments." It previewed the defense's case, based upon what "this defendant has been informed and verily believes," offering that by the last will of a former master (who was left unnamed) Reed was left free and for some years "has been entitled to his freedom." From the age of nine he lived with his grandfather, a free man of color, and thereafter, until the age of nineteen, with William Knight of Harford County, Maryland, from whom he "believed that he was to be free at a certain age, some time past." From nineteen until the age of twenty-seven, he lived on the plantation of Samuel Griffith, who "frequently promised his freedom." The account implied that Reed had thereby been enslaved and freed, or promised his freedom, three times and that he had lived as a free man twice: with his grandfather for ten years and for three years after he left the Griffith plantation, when he came to Pennsylvania, "at which time he verily believes, he was a freeman." The manumission that Reed claimed was apparently no more than an ephemeral status, what might be called self-emancipation, a condition dependent upon unrecorded agreements or estate debts, among other obstacles that could have confounded his claim of freedom.[42]

The affidavit proposed to establish Reed's status as a free man "to the satisfaction of the court" if given the time to gather evidence from witnesses and records in Harford County, including members of Knight's family, one Isaac Brown, his own uncles, and both his grandfathers, "who are also freemen." Witness lists before and after this date did not, however, include the names of Isaac Brown, any members of the Knight family using the patronymic "Knight," nor any witnesses using the patronymic "Reed." The

[41] *West Chester (PA) Village Record*, May 16, 1821; John Hill Martin, *Chester (and Its Vicinity,) Delaware County, in Pennsylvania* (Philadelphia, 1877), 470–71, 476.

[42] John Reed affidavit, for the trial for the murder of Griffith, Feb. 2, 1821; Newman "Lucky to be born in Pennsylvania," 428; L. C., *The Slavery Code of the District of Columbia, Together with Notes and Judicial Decisions Explanatory of the Same* (Washington, DC, 1862), section 17. This source includes the Maryland slave code as of 1801. See also V. Maxey, ed., *The Laws of Maryland* (1811), which covers the laws in force in 1809.

affidavit added that Reed had "had no means of procuring the attendance of witnesses on his behalf," a problem common to fugitive slaves, who were largely unlucky in gathering witnesses from their former states of residence—an obstacle that would plague Reed through both trials. Equally important, the affidavit affirmed that "he has had no opportunity to get the proper evidence of [the] character for truth and veracity" for the two accomplices of Griffith and Shipley from the state of Delaware—Richard Pearson and William Miner—"the principal witnesses to be brought against him" and "persons not entitled to credit." The affidavit effectively petitioned the court to allow Reed time to gather evidence "material to his defence, and . . . to procure the attendance of his witnesses." The three-month delay of the trial from the time of Reed's affidavit at the beginning of February until the trial date in May, including a continuance in the trial requested by the prisoner (April 30–May 12), indicated the court's intent to allow Reed the time needed to gather evidence. Indeed, defense efforts to delay Reed's trials, each granted by the court, continued in the second trial—for the killing of Shipley—in the form of four more adjournments.[43] Both trials would take a week to complete.

Finally, the affidavit asserted that Reed "shall be able to prove" that the deceased Griffith and Shipley and their confederates Pearson and Miner were engaged "in such unlawful design" whose intention they had avowed "reportedly, in Maryland and Delaware." Their plan had been "to take the Defendant by force deadly out of the State and to hold him in slavery, without first going before a judge and establishing their right, as required by the Laws of this Commonwealth." Their attack was, by this reading, a crime—a felony, according to the 1820 Act to Prevent Kidnapping—"which ended in their death."[44]

[43] Pearson's name appeared on indictment and trial lists for both trials. Miner's name (sometimes listed as Minner) appeared on indictment and trial lists for the Griffith trial, but only on the indictment list for the Shipley trial. In the Shipley trial, Pearson's name on the list of witness bills taxes indicated that he became the principal witness; Miner's name did not appear on that list. Adjournments were identified as occurring from February 2 to May 12; until August 11; until November 5; and from October 20 to November 10. For witnesses in the trial for Griffith's murder, see Witness List for the Prosecution, Jan. 30, 1821; Witness List for the Commonwealth and the Prisoner, May 4, 1821; and Recognizance to Appear for the Commonwealth, May 5, 1821. For the Shipley case see Witnesses for the Prosecution, Jan. 31, 1821; Witnesses Bound Over for the Commonwealth and the Defendant, Jan. term 1821; Witness List for the Commonwealth and the Prisoner, Jan. term 1821; and Witness Bills of Cost Taxed and the Amt., 1821. Adjournments were recorded in Court Docket [for arraigning and pleading], Jan. term 1821, 73; Empanelling of Jury, Nov. 5, 1821; and Court Docket, Nov. 14, 1821, 84–85, all Chester County Archives and Records Services.

[44] John Reed affidavit, for the trial for the murder of Griffith, Feb. 2, 1821. The Maryland legislature used a somewhat similar construction in a protest letter to the Pennsylvania legislature in 1823

In the trial itself, the defense reinforced Reed's claim to fairness in two rhetorical appeals, first casting aspersions on the honor of prosecution witnesses, then comparing them unfavorably with Reed's noble character and his status as a man defending his freedom. As reported in the *Village Record*, the first appeal, raised by Porter, called upon the Bible to assault the credibility and consistency of the witnesses: "In descanting on the discrepancy of the stories of the witnesses against the prisoner, he very happily introduced the Scriptural account of the mode in which Daniel detected the falsehood of the Elders in the case of Susannah." The second appeal, argued by Hemphill, resorted to the "Socratic and persuasive art of pleading . . . upon the vicissitudes of human life." The progeny of royalty, free and regal in his native land, Reed was now "claimed as a slave, and is a prisoner, standing a trial for his life . . . from the defence of his freedom."[45]

Reed's defense benefitted from more than mere rhetoric. He received antislavery legal counsel of the kind that had become common in cases involving fugitive slaves; the affidavit noted the benefit to his defense of being so "advised."[46] Presiding Judge Ross had successfully argued as an advocate before the Pennsylvania Supreme Court in *Respublica v. Blackmore* (1797) for a fugitive slave, Aberilla Blackmore, calling a slave's freedom "Heaven's best gift." Essential justice, he claimed in that case, made no color distinction, "but if a distinction must necessarily be set up, it ought infallibly to be in favor of liberty." Arguing a position that informed Reed's own defense, Ross had claimed in the same case at the Circuit Court level in 1790 that "we have a constitution, which declares all men free"; if another law declares free men slaves, "why do you boast of a constitution?"[47]

over the outcome of Reed's trial. The letter held that Griffith was deceived in his expectation of help from the inhabitants of Kennett Township, and "the consequence was a determination on his part to take his slave; and in attempting to do so, himself and his overseer lost their lives." The legislature acknowledged a taking by force but made no mention of either an effort or intent by Griffith to seek a certificate of removal—either before or after the seizing—or any requirement that he do so. A copy of the January 27, 1823, letter from the Maryland legislature to the Pennsylvania legislature is on deposit at Chester County Archives and Records Services.

[45] *West Chester (PA) Village Record*, May 16, 1821.

[46] John Reed affidavit, for the trial for the murder of Shipley, filed before Justice of the Peace John, Aug. 1, 1821, Chester County Archives and Records Services.

[47] Ibid.; Newman, *Transformation of American Abolitionism*, 60–85; Newman, "Lucky to be born in Pennsylvania," 417–20; Pennsylvania v. Aberilla Blackmore, Court of Common Pleas of the Fifth Circuit, Washington County, PA, 1790, ser. 4, Manumissions, Indentures & Other Legal Papers, box 4A, file "*Habeas Corpus* Actions" (reel 24), PAS Papers; 2 Yeates 234 (Pa. 1797). The Yeates version of the Blackmore case referred to a Mr. Ross; Newman, *Transformation of American Abolitionism*, 76–77, identifies counsel as John Ross (1770–1834) and as a member of the PAS. Defense counsel Dillingham was a Quaker.

The commonwealth's approach to the Reed trials, by contrast, was revealed in a letter written by Attorney General Darlington on January 20, 1821, ten days prior to the grand inquest indictment. Addressing himself to his son-in-law, Isaac Barnard, Darlington recounted a visit to his office by Edward Griffith, the brother of the deceased, and a Mr. Davis. They had come to retain the attorney general's services. "Considering the mass of testimony to be examined," he wrote, "they insist upon my having assistance—(a very pleasing circumstance) and have requested of you to accept of the enclosed as a retaining fee." This collaboration between a public prosecutor in Pennsylvania and a private party representing the family of the deceased in Maryland was facilitated by the class of the two visitors who, Darlington asserted, "both appear to be very much of gentlemen." Darlington appeared to find the offer somewhat unusual and "a very pleasing circumstance," though private prosecution was the standard in fugitive cases, and it was not uncommon for private prosecutors to assist public prosecutions. The presumed untowardness of the solicitation was covered by Griffith's genteel framing of the purpose of his visit: "Mr. Griffith says he has no anxiety but that the majesty of the laws should prevail, that if by the laws of Penns. the negro is entitled to an acquittal let it be so but that all the facts shall go before the tribunals of Justice." Like his visitors, Darlington assumed that the indictment was a foregone conclusion. He had already engaged "Mr. Duer who is assisting me to marshall the Evidence." Griffith's hand was apparent here as well, for he, too, had retained Duer, a revelation that did not appear to unsettle the attorney general, who simply commented, "I hope we thus shall be able among us to have the matter fairly investigated and they ask no more." The Griffith family was already preparing the ground for a reclamation application that it would make at the close of the two trials.[48]

The judge charged the jury for an hour and a half, according to a succinct statement in the newspaper, "from which it was apparent, that he had no doubt of the prisoner's guilt."[49] The defense had argued a case of self-defense in which the 1820 Act to Prevent Kidnapping provided possible mitigation for the murder. Griffith had no certificate of removal from an appropriate judicial officer; he had forcibly tried to seize Reed; and he had intended to remove him from the state without the delay of going

[48] Isaac Darlington to Isaac D. Barnard, Jan. 20, 1821, box 2, Townsend Family Collection 1794B, Historical Society of Pennsylvania.

[49] *West Chester (PA) Village Record*, May 16, 1821.

before a judge. Reed had a right to prevent forcible entry of his domicile, to defend himself against an assault, and to resist a seizure that lacked the support of legal removal. The jury delivered a verdict of not guilty, suggesting that it had little confidence in the prosecution's witnesses and its reading of the facts and that it refused to fault Reed for defending himself. Unimpressed with the judge's summary of the facts and his discussion of the law, the jury rejected his recommendation.

The Trial for Shipley's Murder

Reed's trial for the murder of Peter Shipley was presided over by Isaac Darlington, along with associate judges John Ralston and John Davis.[50] It was prosecuted by counsels Archibald T. Dick, William Alexander Duer, and Isaac Dutton Barnard and defended by counsels Thomas S. Bell and Benjamin Tilghman. There were thus several differences in the makeup of the court, compared with the previous trial: Attorney General Darlington had been elevated to president judge of the court; Dillingham, a Quaker who served as defense counsel in the previous trial, was now county prosecuting attorney, but was recused for a possible conflict and replaced by Attorney for the Commonwealth Dick. Barnard and Duer returned to assist the prosecution for a second time. The prosecution thus added a new chief prosecutor and left two of the previous trial's prosecutors in place. None of Reed's counsel from the earlier trial was returned; two new attorneys would plead his case, and Reed's legal team would be reduced by two members. The redistribution of counsel in the trial for Shipley's murder easily favored the prosecution, which had a significant advantage in experience as well as a former prosecutor in the president judge's chair. The overall number of counsel was thus pruned from seven to five, and only four lawyers made final arguments before the jury. The arguments were more concise and more balanced in terms of time as well. In spite of the fact that in jury selection the defense had as many as thirty-eight challenges for cause alone, it appeared that, on balance, the prosecution was well positioned for a guilty verdict. Indeed, its thirty-seven witnesses significantly outnumbered Reed's eleven, giving it greater than a three-to-one advantage; the thirty-four prosecution witnesses and nineteen defense

[50] *West Chester (PA) Village Record*, Nov. 21, 1821; Martin, *Chester (and Its Vicinity,) Delaware County*, 146, 464–65.

witnesses in the Griffith trial had given the prosecution there less than a two-to-one advantage.[51]

Reed clearly had problems with his witnesses in the trial for Shipley's murder. On August 1, his counsel, Benjamin Tilghman, having been "assigned for [Reed's] defense by reason of his being unable from poverty to employ counsel," applied to the court "for compulsory process for obtaining witnesses in his favor" and then for an order upon the county commissioners or other officers to undertake "the expense necessarily incurred in serving the said compulsory process and obtaining the attendance of the said witnesses." Even more noteworthy than Tilghman's application were three affidavits sworn and affirmed by the defendant, one on August 1 and two on August 4. The August 1 affidavit declared "that he [Reed] from poverty is utterly without the means or ability to procure the attendance of the witnesses who are material to his defense against the above charges, that several of the said witnesses reside at a distance from the court and are so poor as to be unable to attend and support themselves unless their expenses are paid." Here, the affidavit inserted the names John Hart, Hamesh Loller the elder, and Hamesh Loller the younger. It went on to complain that Reed had heard that most of his witnesses from the previous trial had been refused payment, "in consequence whereof the said witnesses have not hitherto attended at the present court, but have declared that they would not so attend." Indeed, 84 percent of the far greater number

[51] Seventy-three jurors had to be called to reach the final sworn panel, and three calls for new panels of prospective jurors had to be made. The numbers related to juries and witnesses were arrived at by comparing documents, reconciling overlaps, deletions, and additions, and weighing the purpose and nature of different lists. The documents included court dockets, jury lists, witness lists, recognizances, subpoenas, bound over witness lists, and witness bills from Jan. 27, 30, 31; Feb. 1; May 4, 5, 6, 8, 9, 10; Aug. 6; and Nov. 5, 1821. The combined number of witnesses in the indictment and trial lists for the Griffith case were sixty-four, for the Shipley case, sixty. Comparing the two trials, the overall picture was one of a differential in the number of prosecution and defense witnesses (favoring the prosecution) and the number of jury challenges (favoring the defense). For the juries for the Griffith case, Court Docket, May 1821, 75; Jury List and challenges, May 4, 1821; Jury List, May 6, 1821. For the Shipley case, Jury List, in the arraignment and pleading, Nov. 5, 1821; Jury List and Challenges, Nov. 5, 1821; Court Docket, Nov. 14, 1821, 85–86. For the witnesses in the Griffith case, see Witnesses Bound Over to the Commonwealth, Jan. 27, 1821; Witness List for the Prosecution, Jan. 30, 1821; Court Docket, Jan. term 1821, 72; Witness List for the Commonwealth and the Prisoner, Jan. 30, 1821; Recognizance to Appear for the Commonwealth, May 5, 1821; Recognizance to Appear for the Prisoner, n.d.; Witness Subpoena List for the Commonwealth, May 10, 1821. For the Shipley case, see Witnesses for the Prosecution, Jan. 31, 1821; Witnesses Bound Over for the Commonwealth and the Defendant, Jan. term 1821; Witness List for the Commonwealth and the Prisoner, Jan. term 1821; Witness Bills Taxes on Part of Commonwealth, Aug. 6, 1821; Witness Bills of Cost Taxed and the Amt., 1821, all Chester County Archives and Records Services. Full names of counsel and judges gleaned from *History of Chester County, Pennsylvania* . . . (Philadelphia, 1881), 369, 385–86.

of prosecution witnesses had been paid compared to 44 percent of the defense's witnesses. The affidavit pointedly reminded the court that Reed had been acquitted in the first trial, implying that the denied payment was tied to the prosecution's hope of greater success in the second trial. In any case, "without the benefit of [his witnesses'] attendance," Reed could not "safely proceed to trial" and thereby be secured the rights promised by the state constitution.[52]

The sworn affidavits of August 4 specified the role Reed's witnesses played in the defense's overall strategy, declaring that material witnesses would testify to specific points of his defense. The witness Harlan Gause, who was "so sick as to be unable to attend this court at the present time," would "explain and do away the effect of certain material evidence from Emmos Bradley Esq. tending to show that the defendant knew and acknowledged the person of Samuel G. Griffith." Judge Darlington in his charge to the jury would later discount Bradley's testimony on the basis of inconclusive proof. A second witness, a black man named John Hercules, according to the affidavits, would "contradict and explain certain evidence given by Jesse [?] Scott and Solomon Scott, witnesses for the Prosecution tending to show an intention on the part of the Prisoner to kill a man with a board then in his grave." This witness was meant to impugn a prosecution witness who, the *Village Record* indicated, had contended that Reed confessed to returning to the scene of the murder and beating Shipley repeatedly, "until he thought him quite dead." Without any evidence that Reed ever testified in court, the presumed confession and its corollary reliance on hearsay testimony became critical issues.[53] Justice of the Peace

[52] John Reed affidavit, for the trial for the murder of Shipley, filed before Justice of the Peace John, Aug. 4, 1821, Chester County Archives and Records Services.

[53] Ibid. Testimony that Reed recognized Griffith was one of the "principal points disputed" in the trial. *West Chester (PA) Village Record*, Nov. 21, 1821. Hercules was most likely a freeman, as slaves were prohibited from testifying against freemen (section 7 of the 1780 Gradual Abolition Act). The Pennsylvania Constitution of 1790 (section 9) gave the accused the right "to be heard" and to obtain witnesses but did not address testimony by slaves against freemen or of blacks against whites. Nineteenth-century changes in criminal procedures began to allow criminal defendants and blacks to testify in court (they could not "uniformly" do so until 1885 in Pennsylvania). At first they were not allowed to do so under oath; the assumption was that the witness was likely to lie on his own behalf and his statements could not thereby be taken as evidence. Prosecution witnesses could testify under oath and could offer hearsay about what the accused presumably did say. George Fisher, "The Jury's Rise as Lie Detector," *Yale Law Journal* 107 (1997): 668n441, 658, 662, 705; William E. Nelson, *Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760–1830* (Cambridge, MA, 1975), 113–15; Paul W. Kaufman, "Disbelieving Nonbelievers: Atheism, Competence, and Credibility in the Turn of the Century American Courtroom," *Yale Journal of Law and the Humanities* 15 (2003): 397; James Oldham, "Truth-Telling in the Eighteenth-Century English Courtroom," *Law and History Review* 12 (1994): 104, 107.

Taylor (who had arrested Reed, taken an affidavit from him, and appeared on the prisoner's witness list) certified that when Reed was arrested he confessed the facts of his crime; and a newspaper account on the trial for Shipley's murder reported that Reed told his story of the crime "immediately after the transaction to several." None of the documents in either of Reed's two trials, however, indicated that a confession had been admitted into evidence. Moreover, Judge Darlington in his charge to the jury allowed that the witness who claimed Reed had confessed "was mistaken."[54]

Two more witnesses, Thomas S. Valentine and James Hindman, according to the affidavits, would offer testimony to "contradict the evidence given by prosecution witness Richard Pearson . . . by proving that the said Pearson related the circumstances by being deposed . . . in a different manner, at another time (to wit when before the grand jury)." Throwing doubt on contradictions in the testimony of a surviving participant in the raid on Reed's house was a critical piece of defense strategy. Miner and Pearson had, after all, fled to Delaware after the incident and could be framed by the defense as kidnappers and fugitives from justice. Pearson was the more dangerous witness from the defense's perspective, as Miner was not listed as a witness after the initial January 31 indictment.[55] As for Miner, the August 4 affidavits reported that another witness, who did not appear, could address Miner's character to the effect that "the intention with which His [Miner's] attack was made upon [Reed's] house and home was illegal, by the law of Pennsylvania, felonious, and that [Reed] was justified" in resisting the attack.[56] Like the testimony against Pearson, this testimony spoke directly to the character of a participant in the raid and addressed the assailant's intent leading up to the killings.

[54] Joshua Taylor's name appears in the Griffith trial on the prisoner's witness list of May 4, as well as the general witness list attached to the Jan. 30 indictment and the Feb. 1 court docket list, 72. In a document dated Jan. 27, 1821, Taylor certified that Reed confessed to the facts of the crime on Dec. 15, 1820. Statement of a Dec. 15, 1820, confession, included in charging the defendant, for the trial for the murder of Griffith, Jan. 28, 1821, Chester County Archives and Records Services. Reed referred to a witness who would counter the two bystanders in an affidavit on Aug. 4, 1821; Reed's "story" and Judge Darlington's subsequent comment to the jury that the bystander's testimony was unsupported were reported in the *West Chester (PA) Village Record*, Nov. 21, 1821.

[55] John Reed affidavit, for the trial for the murder of Shipley, filed before Justice of the Peace John, Aug. 4, 1821. It could easily have been Reed's acquittal in the first trial that accounted for Miner not showing up on a later witness bill on which Pearson was listed. Whether or not that was the case, the prosecution and Pearson clearly had an incentive to strike a deal in the second trial. The prosecution was defensive about its performance in the previous trial, and Pearson could have traded his testimony to avoid being charged with a felony.

[56] John Reed affidavit, for the trial for the murder of Shipley, filed before a proxy, Aug. 4, 1821, Chester County Archives and Records Services.

The defense's concerns that eight of its witnesses had either not been paid for their previous attendance at court or could not be guaranteed to appear at the next court session was exacerbated by the fact that only one, Hart, appeared on the prisoner's witness list. The defense was thus left without support for central tenets of its case: that Reed did not recognize his master; that Reed had not confessed to beating Shipley, nor had he returned a second time to beat the already stricken victim; that the intent of Griffith's attack was felonious; that Reed was justified in resisting; that Pearson's testimony was suspect; and, finally, that Miner's character was questionable. Considering the differences in the verdicts between the two trials, the defense's dilemma seemed clear: when all of his witnesses testified in the first trial, Reed was acquitted; when his witnesses did not all testify in the second trial, he was convicted.

The issue of Reed's presumed confession and the defense's questioning of Miner's and Pearson's characters reflect on the extent to which character and status affected trials. While it is true, as Laura Edwards asserts, that assessments in legal cases depended upon local reputation and were an important element of the legal system and its judgments, the question of character was much more complicated.[57] A common belief in the eighteenth century was that blacks differed from whites not only by virtue of skin color and constitution but by virtue of polygenesis, the racial theory that asserted that blacks evolved as a separate species—or, if one read the narrative biblically, by virtue of the curse of Canaan, son of Ham, blackened as a sign of sin. If blacks were considered inferior to whites, that inferiority legitimized a denial of equal rights.[58] Demonstration of character, on the other hand, would serve as a means of accessing one's right to equal protection. It was clearly the PAS's intent to encourage both Congress and the courts to defend equal rights by arguing for the moral character of blacks, creating a portrait of a people who had suffered great deprivations at the hands of whites and yet were anxious to join in community with them to participate in building the economy and supporting the law of

[57] Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill, NC, 2009), 101.

[58] David Killingray, "Britain, the Slave Trade, and Slavery: An African Hermeneutic, 1787," *Anvil* 24 (2007): 130–31; Todd L. Savitt, *Medicine and Slavery: The Diseases and Health Care of Blacks in Antebellum Virginia* (Champaign, IL, 1978), 8, 10. American slave owners subscribed to a pseudo-scientific racism; mid-nineteenth-century medicine held that blacks treated as equals would be afflicted with "drapetomania," the disease of absconding slaves, as they would develop the desire to flee the service to which God had intended them. Samuel A. Cartwright, "Report on the Diseases and Physical Peculiarities of the Negro Race," *New Orleans Medical and Surgical Journal* 7 (1851): 691–715.

the land. By presenting black men and women as moral figures worthy of equal rights and as potential citizens capable of enjoying and making good use of those rights, the antislavery movement focused on eliminating racial laws to undermine the denial of civil rights, making a black person's status as a rights-bearing figure the center of legal arguments and strategies in court. In doing so, the movement proved responsive to a wave of black writers and speakers who publicly alluded to the Bible, the Declaration of Independence, and the Bill of Rights to speak of natural and divine justice, civic inclusion and common humanity, and the morality inherent in Christian and republican thought.[59]

Questions of Reed's free or slave status, his behavior, and his reputation in the community would have informed the trial. His affidavits made clear that he would call upon members of his family from his previous residence in Harford County, Maryland (his "freemen" uncles and his grandfathers), as well as William Knight, the slave owner who, he believed, had freed him in his late teens. His family members would presumably have affirmed Reed's good character in a familial context. Calling on a man who had been his master, meanwhile, suggested confidence that Reed's reputation would be credibly attested to by a person he had once served and who, as a property owner, should impress the court. Being vouched for by a white man replicated a strategy recommended by the PAS; a free black's testimony against whites would have proved problematic, and in cases involving a fugitive's freedom, documentary evidence was largely insufficient without a white person's testimony.[60] Reed's actions in the aftermath of the killings would also speak well of him. He had notified his neighbors on the same evening as the events occurred—openly telling his story to several people and claiming he had only been defending himself—and had not tried to escape. That many testified for Reed spoke well of his esteem within the

[59] Richard S. Newman and Roy E. Finkenbine, "Black Founders in the New Republic," *William and Mary Quarterly*, 3rd ser., 64 (2007): 86–92; Newman, *Transformation of American Abolitionism*, 86–106; H. Robert Baker, *The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War* (Athens, OH, 2006), 776–78. See Jacqueline Bacon, "Rhetoric and Identity in Absalom Jones and Richard Allen's *Narrative of the Proceedings of the Black People, during the Late Awful Calamity in Philadelphia*," *Pennsylvania Magazine of History and Biography* 125 (2001): 61–90; Elizabeth B. Clark, "'The Sacred Rights of the Weak': Pain, Sympathy, and the Culture of Individual Rights in Antebellum America," *Journal of American History* 82 (1995): 463–93.

[60] Eric Ledell Smith, "Notes and Documents: Rescuing African American Kidnapping Victims in Philadelphia as Documented in the Joseph Watson Papers at the Historical Society of Pennsylvania," *Pennsylvania Magazine of History and Biography* 129 (2005): 344; Franklin and Schweninger, *Runaway Slaves*, 189.

community and provided further support for his good character as a father, husband, laborer, and neighbor. On the one hand, Reed's submission to the authorities, either on his own or on the advice of others, might have been aimed at testing his claim to freedom and his right of self-defense in a state court rather than risk becoming a fugitive from justice. On the other hand, Reed might simply under the circumstances have had no other choice than to undergo prosecution for murder. Whatever the case, there was no evidence that neighbors had forcibly detained Reed or called upon the authorities to do so, nor, for that matter, that inhabitants of Kennett Township aided Griffith in his attempt to seize Reed.

As for Reed's individual rights, his affidavit of August 1 asserted the rights "he is advised the Constitution of this State stands pledged" (that is, the rights of free men posited in the Pennsylvania Constitution of 1790's bill of rights, Article 9). The affidavit called upon the court to honor the call of "eternal principles of justice" that "all men are born equally free and independent," and that their rights are "inherent and indefeasible," including the enjoyment and defense of one's life and liberty. Article 9, section 6's right to trial by jury was already ensured, and due process would afford Reed's rights to counsel, to know the accusation against him, "to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor," and to have an impartial jury. Critically, section 8 gave him the right to resist his intruders, as it provided, for "the people," security of one's person, home, and possessions "from unreasonable searches and seizures."[61]

The critical point for Reed's counsel would prove to be his right to self-defense, which would affect whether he ought to be charged with murder or manslaughter and whether there was mitigation of his crime. The prosecution argued that Griffith could not have violated an "act of Assembly"; the federal Fugitive Slave Act remained unmodified by Pennsylvania's antikidnapping law, which did not apply to a master reclaiming a fugitive slave but to "kidnapping, or man-stealing." A master could, at any time and any place, by himself or through an agent, seize his slave. Accordingly, the prosecution argued "that the slave had no right to resist his master—that his house was no protection—that therefore, the

[61] John Reed affidavit, for the trial for the murder of Shipley, filed before Justice of the Peace John, Aug. 1, 1821; Pennsylvania State Constitution of 1790, article 9, http://www.duq.edu/academics/schools/law/pa-constitution/texts-of-the-constitution/1790.

Master & the deceased Shipley his overseer, were in the exercise of a legal right—and Read [*sic*], in resisting, in the perpetration of a wrong."[62] By this argument, Reed knew his master; thus, in resisting the arrest he committed murder in the first degree.

The defense countered that Pennsylvania law did apply, that the circumstances of the attack left no doubt Griffith intended to take Reed out of the state without proving his claim before a judge, and that Griffith was, in fact, doing so when he was killed. Two matters were thus under dispute: whether slave owners and kidnappers could be treated alike and whether seizing and taking out of the state constituted a single, coterminous act or two acts to be considered separately. The defense had concluded that if Reed, not proven to be a slave, was thereby to be presumed a free man, the seizure was a kidnapping. If not a free man, the forceful seizure was still a felony by virtue of Griffith's failure to take Reed before a judge. The defense's legal logic began with the proposition that under the state act, taking any person "claimed as a slave out of the state without taking him before a judge to prove his right" was a felony. Its middle ground, barely sustainable, was that "no doubt could exist but that it was the intention of the party to take Read [*sic*] out of the State" based upon the "time and circumstances" of the seizure. Moving from the acceptable to the dubious, the argument concluded that because Griffith and his party intended to violate the act, "they were, therefore, in commission of a felony," which would have justified Reed's lethal resistance. Repeating the argument that won Reed an acquittal in the trial for Griffith's murder, the defense's position appeared to be the same as that of Judge Ross in a case decided in Norristown, and with which Judge Darlington in his charge to the jury disagreed; as Ross put it, "masters seizing their slaves and taking them out of the State without going before a judge" were guilty of a felony. Bypassing the law, acting by force, and breaking the peace by provoking a violent event were, according to the defense, all elements of *Griffith's* crime, not Reed's. The intent of the legislature in passing the 1820 Act to Prevent Kidnapping proved revealing here.[63] In fashioning the act, it had considered such seizures central to its debate, particularly as they related to the state's interest in preserving the public peace. The debate exposed an intense antipathy towards "instances of aggravated misconduct" that led to

[62] *West Chester (PA) Village Record*, Nov. 21, 1821.
[63] Ibid.

removals "attended by consequences . . . shocking and fatal" like the violent consequences of the attempt on Reed.[64]

The Final Verdict

As Reed's two trials had both come to a close, the *Village Record* gave a fuller exposition of the judge's charge to the jury, which, like Ross's in the trial for Griffith's murder, was an hour-and-a-half long. Judge Darlington opened by admitting his "regret" over the "delicacy of his situation," having served as attorney for the commonwealth in the earlier trial. It "was considerably diminished by the consideration that the jury were the judges of the law as well as the facts in the case before it." The judge was less comfortable "in respect to the construction of the Act of Assembly, of 1820, on which much reliance was placed." Both judges in the Reed trials were quite aware that the federal and state laws were at odds, and Judge Darlington gave "a full and lucid exposition of the whole law on the subject." His disagreement with a previous decision in another case by Judge Ross led him to charge the jury that the law could not have been intended to inflict the same penalty on a legitimate master reclaiming his slave as on the kidnapper of a freeman.[65] Because the law could not cover the rendition of a slave, he held with the prosecution that the state act applied only to "man-stealing" and not to a master reclaiming his runaway slave. Undermining Reed's self-defense in resisting the "commission of a felony," Darlington's position on the antikidnapping law would prove critical to the jury's verdict as a question of law. As a question of fact, however, the judge's instructions were more favorable to the defense. Darlington charged the jury that the testimony of two witnesses was suspect, suggesting that, for all its difficulties, the defense had successfully challenged hearsay, unconfirmed, and interested testimony. The judge first expressed "his opinion that there was not conclusive proof, that Read [*sic*] knew his master or overseer." Second, he asserted "very clearly that the witness who testified that the Prisoner confessed he returned and beat the deceased, until he thought him quite dead—was mistaken."[66] At least on the facts,

[64] "Pennsylvania Legislature, House of Representatives, Tuesday January 15: Kidnapping."

[65] *West Chester (PA) Village Record*, Nov. 21, 1821; William M. Meredith used this argument in the Pennsylvania legislature to argue in support of the 1826 antikidnapping act; "Legislature of Pennsylvania. February 13, 1826. Speech of Wm. M. Meredith, Esq.," *National Gazette and Literary Register*, Feb. 23, 1826.

[66] *West Chester (PA) Village Record*, Nov. 21, 1821.

with which he closed, Darlington's charge would have stood Reed in better stead.

Darlington's charge appeared to have relied upon establishing with the jury the kind of relationship that eluded Ross. He did so at the outset by conceding what at the time was in contention in American courts—that juries could judge both the facts and the law rather than follow a directed verdict from the judge or decide on the facts alone. The pretense of conceding the issue was immediately offset by his substantial discussion directing the jury's attention to the 1820 act. The newspaper report did not indicate that Darlington gave any guidance on the criminal law as it related to murder, other than discounting testimony on a possible confession by Reed that he had beaten Shipley to death. He thereby made the murder trial a deliberation over reclamation and the rights of the victim under the federal Fugitive Slave Act, as opposed to kidnapping. The murder, he implicitly charged, was to be understood in that context; the jury appeared to accept that implication as determinative in its verdict. Whereas the verdict in the second murder trial might have relied upon public reaction to the first trial's verdict or upon political influence brought before Congress and the Pennsylvania General Assembly, it was certainly informed by Darlington's deft handling of the jury and his framing of controlling law in the trial.

The jury rendered its verdict on November 13.[67] On November 14, Reed received the following sentence:

> That the defendant John Reed otherwise called Thomas undergo an imprisonment in the Gaol and Penitentiary House of Philadelphia for nine years from this day, and be confined kept to hard labor, fed, clothed and in all respects treated as the Act of Assembly in such case directs—that he give security for his good behavior for six months after the said term of imprisonment shall have expired himself in one hundred dollars and one sufficient surety in the like sum that he pay the costs of prosecution and remain committed until the whole of this sentence be complied with.[68]

Upending the decision in the first trial, the second jury's guilty verdict reached a conviction on manslaughter, rather than the commonwealth's original charge of murder in the first degree, accepting mitigation on Reed's part. The jury's receptiveness to Reed's case was likely influenced by

[67] Ibid.
[68] Court Docket, for the trial for the murder of Shipley, Nov. 14, 1821, 85–86.

concern for victims of kidnapping or sympathy for a right of self-defense and equal treatment for a suspected fugitive slave.

According to reporting in *Niles' Weekly Register*, the difference in the verdicts of the two trials arose "from differing constructions of the law that bears on the case." The jury in the Griffith case stood with state law to deny the slave owner's right to seize and take his slave out of the state, whereas the jury in the Shipley case trumped state law with federal law to assert the slave owner's right of self-help. If the first trial accepted that the "time and circumstances" of the attack were sufficient evidence of an intent to remove Reed from the state without a certificate, the second trial was unwilling to accept such evidence as dispositive in deciding whether Griffith would have gotten a certificate, or even needed to get one.[69] Courtroom differences proved equally daunting. The absence in the second trial of Judge Ross on the bench and of Dillingham from the prosecution team meant that two members of the court potentially sympathetic to Reed were no longer involved in his trial. Carrying over two prosecutors from the first trial, the prosecution profited from the opportunity to retool its trial strategy and had on the bench a judge, Darlington, who had been one of their number in the earlier trial. Together with the ability to capitalize on continued high interest in the two killings and what some members of the public would have considered a problematic acquittal in the first trial, the prosecution was able to get closer to its preferred verdict in its second try at convicting Reed. The appointment of a totally new defense team also posed a whole new set of challenges for the defense and, as the defense had feared, the absence of witnesses proved particularly debilitating to Reed's case. But Reed had received an impartial trial by jury, had been accorded procedural protections, and had been freed of at least the murder charge. The antikidnapping act had not been undermined, even if the defense's attempts to apply it to slave owners and to treat seizing and removing a slave from the state as a single act were stymied. Indeed, the act would be reaffirmed, if altered, in 1826.

In evaluating the sentence for killing Shipley, it is instructive, finally, to consider it in the context of its relative fairness. Based on comparison of sentences for 1829, for both blacks and whites for manslaughter and murder in the second degree in Pennsylvania, Reed's 108-month sentence

[69] "Master and Slave," *Niles' Weekly Register*, Dec. 1, 1821. "Time and circumstances" quote from *West Chester (PA) Village Record*, Nov. 21, 1821.

for manslaughter would have been well outside the recommended sentencing (24 to 72 months); it was even at the high end of the range for a recommendation for murder in the second degree (48 to 144 months) and well over the actual sentence served for either manslaughter (41 months) or murder in the second degree (93 months).[70] For all the trial's respect for a black man's rights, the Reed sentence represented a clear example of disparate racial sentencing.

In addition, for a laborer like Reed with a wife and a child, (probably) no property, and no means of income while he was incarcerated, the sentence his conviction carried was likely to prove onerous.[71] The peace bond of one hundred dollars that ensured his good behavior for six months after imprisonment was essentially a punishment without a crime. From the colonial period, peace bonds ensured good behavior going forward and involved both a specified period of time during which the subject was obliged to avoid misconduct and a specified sum of money for which sureties guaranteed payment. Pennsylvania used them to maintain the peace and to satisfy community pressures for harsher penalties into the first three decades of the nineteenth century, even when defendants were acquitted of their crimes.[72] Together with a second surety (that he satisfy the costs of the prosecution "in like sum"), Reed was faced with a burden that he was unlikely to satisfy without support from either the African American community or abolitionist sympathizers. The peace bond and the costs of the prosecution would require a form of servitude that would place him among those indentured for a considerable time. In the best of all possible cases, he was still to "remain committed" until all of his sentence was com-

[70] For comparison, in an 1808 trial, two black servants, John Joyce and Peter Matthias, were sentenced to death in Philadelphia for murder in the first degree. Peter Matthias, *Confession of Peter Matthias* (Philadelphia, 1808); John Joyce, *The Fate of Murderers* (Philadelphia, 1808). Had the jury found mitigation, as the jury in the Griffith case had, the sentence would still have been a punishment of "solitary confinement for 18 years." Joyce, *Fate of Murderers*, 9. Judge Darlington's sentence of nine years of hard labor was much more generous. Joyce and Matthias were the only black inmates of Walnut Street Jail to be executed between 1790 and 1834; ten other blacks throughout Pennsylvania received the death penalty. Leslie C. Patrick-Stamp, "Numbers That Are Not New: African Americans in the Country's First Prison, 1790–1835," *Pennsylvania Magazine of History and Biography* 119 (1995): 124; Howard Bodenhorn, "Criminal Sentencing in 19th-Century Pennsylvania," *Explorations in Economic History* 46 (2009): 290.

[71] In Chester County, the site of Reed's crime, 44 percent of blacks lived in white households, 10 to 15 percent lived in great poverty, and only 8 percent were landowners. Nash and Soderlund, *Freedom by Degrees*, 183, 187–93.

[72] Paul Lermack, "Peace Bonds and Criminal Justice in Colonial Philadelphia," *Pennsylvania Magazine of History and Biography* 100 (1976): 176–77, 180, 187–88, 190; see Rowe, *Embattled Bench*, 108–9, 148, 192, 204, 241–42, 259, 271, 279.

pleted, not so far a cry from the Maryland slave code's provision that even a free black could be sold into servitude if he failed to pay the fines and costs established by a court.[73]

The Reclamation Case

As a border state, Maryland was threatened by abolitionists' emancipation efforts. Labor shortages resulting from slave escapes and the reluctance of free blacks to hire themselves out encouraged reclamation efforts in spite of the possibility that a slave might be injured or killed in a recapture. Many slave owners calculated that the rewards of recapturing a fugitive would have offset the costs of travel, rewards, advertisements, and legal fees, as well as the time taken away from the plantation to conduct searches.[74] The Griffith family was among those who persisted in their reclamation efforts, motivated, no doubt, by the personal price they had already paid.

In a postscript to the two Reed trials, on November 14, the day Reed's sentence was delivered, Luke Griffith, Samuel's nephew, took up the gauntlet thrown down by his uncle and carried forward by his father, Edward. Emboldened by the county court's verdict, he came before Judge Darlington of the Chester County Court of Quarter Sessions as the administrator of his uncle's estate to claim Reed "as a fugitive from labour." The nephew's case depended upon three sources of support: the transfer of slaves as property in the will of Frances Garrettson, Samuel Griffith's aunt, a letter of administration whereby he was made executor of Griffith's estate, and a deposition by Dr. Elijah Davis certifying that Reed had belonged to "the late Samuel G. Griffith." Davis offered that John Reed was the slave Tom, that Tom was Griffith's "property and slave," and that Griffith was Reed's master at the time he absconded, asserting that "the Deponent is well satisfied that the said Negro Tom is the fugitive slave of the said Samuel G. Griffith now deceased." Davis claimed to have been "acquainted with the mother of the said negro Tom whose name was Nan" (not, as newspaper accounts had reported, Maria or Muria), who was herself a slave in Maryland. Reed, he claimed, was born in Harford County and lived there until he absconded. Finally, Davis provided relevant facts to

[73] L. C., *Slavery Code of the District of Columbia*, sections 24 and 39.

[74] Newman, *Transformation of American Abolitionism*, 71; Fields, *Slavery and Freedom on the Middle Ground*, 36, 67; Franklin and Schweninger, *Runaway Slaves*, 190–92, 164, 167, 169; Newman, "Lucky to be born in Pennsylvania," 417.

identify the slave in question: that having been born in April 1794, he was as of 1821 twenty-seven years of age; that physically he was five feet eight inches, stoutly made, thick lipped, and "black but not of the darkest hue."[75]

According to the Garrettson will, Samuel Griffith had been bequeathed his aunt's plantation "with all the appurtenances thereunto belonging together with all [her] real Estate whatsoever." A condition, however, was stipulated, related to a lease of the plantation and its slaves that was held by Dr. Davis. Griffith's ownership was not to commence until the lease expired. Upon the termination of the lease, "all [Garrettson's] negroes and personal Estate property" would go to Griffith. One additional condition, identified as Garrettson's "particular will and desire," held that "all those my negroes and personal property not hereafter bequeathed" should be valued and that each of her two nieces should, after two years, be paid one-sixth that value by Griffith. Garrettson's slaves thus appeared to have been bound to the service of Griffith following their release under Davis's lease, assuming the conditions she established were met. The question remained whether the slave called "Tom the negro" was one of those transferred to Griffith. The only slaves mentioned in the will, by name or otherwise described, appeared under the lease section; these were: Jupiter, Roger, Jim, Orange, Aaron, Casas, and Doll and her daughters. No slave named Tom was described or named in this document.[76]

Beyond Reed's absence from the Garrettson will, two other facts of importance emerged from the documents provided by Luke Griffith to the Chester County court. The first was that Davis, who had accompanied Edward Griffith to assist the prosecution in the first Reed trial, no longer appeared to be a disinterested witness. Under the terms of the will, he was in possession of Garrettson's "negroes" until his lease of her plantation and her property expired. Griffith was thereby dependant to that extent upon Davis. Second, whereas Luke Griffith applied for a copy of the Garrettson will on July 24, over two months after the not-guilty verdict in Reed's first trial, he did not pursue his claim until the day of sentencing for the second verdict. Rather than give up his claim when strong resistance seemed likely,

[75] Record and Evidence in the Case of Negro Tom alias John Reed a Slave to Luke Griffith Nephew of Samuel Griffith, filed November 14, 1821, before Henry Flemming, clerk, Chester County Archives and Records Services.

[76] Frances Garrettson will, Dec. 27, 1806, copy witnessed by John Mooris, Presiding Judge of the Orphans Court, Harford County, Maryland, and certified by Thomas S. Bond, Register of Wills of the Orphans Court, Mar. 1821, in Record and Evidence in the Case of Negro Tom alias John Reed.

Luke Griffith waited for the guilty verdict before proceeding. When he did so, he was careful to follow the procedures laid out in section 4 of the 1820 Pennsylvania statute, providing the required birth, age, and physical description of the slave Tom and the will as documentary evidence, the very information and documentation that his uncle Samuel Griffith had not offered. The documents were certified by official parties, a register and a judge, who were themselves certified, interestingly, by each other.[77]

The Griffith family came up empty-handed. Samuel Griffith, acting on his own, had been killed; his brother had little to offer the attorney general; and the nephew's evidence had grave deficiencies. Garrettson's will failed to prove Reed's existence, let alone his free or slave status, and as an interested party in the great-aunt's transfer of property, Davis's testimony proved a dubious source of identification. Since requirements of the slave code, wills, licenses, and property records made recording a slave's status in one way or another a priority in Maryland's legal system, the failure to document that Reed had been anywhere recorded as a slave in that state meant that Pennsylvania could proceed with its own presumption that Reed was a freeman.[78] For his part, Reed had never presented papers to his pursuers or to the court that would indicate his status one way or another, although he presented himself as a free man in Kennett Township. His status in Pennsylvania was thus demonstrated by a negative—that is, because he was not registered as a slave under the Gradual Abolition Act, he was presumed free. In the end, Reed was apparently referred to the Walnut Street Jail to serve his sentence, suggesting either that Griffith failed to prove his claim or that reclamation would have to wait until Reed finished his sentence. The last that was heard of Reed was an undocumented suspicion that, having avoided rendition, he escaped detention in the Walnut Street Jail only to be recaptured and returned to serve his sentence.[79]

[77] Those officials were Thomas S. Bond and John Morris. All documents in Record and Evidence in the Case of Negro Tom alias John Reed.

[78] L. C., *Slavery Code of the District of Columbia*, sections 10, 17, 22, 32; David Skillen Bogen, "The Maryland Context of Dred Scott: The Decline in the Legal Status of Maryland Free Blacks, 1776–1810," *American Journal of Legal History* 34 (1990): 404–5, 408n101. Because certificates often did not describe the freed person and were sometimes signed by a master, the authorized parties who could issue a certificate were limited after 1805 to county court clerks from the county where the slave was freed.

[79] Kennedy, "Ex-Slave was Tried."

Conclusion

Reed's trials did not result in appeals and were not cited in other cases as legal precedent, suggesting that the trials had little influence on future decisions. They did, however, have an impact on the state of Maryland. Following the killing of Griffith and Shipley and the outcomes of the Reed trials, slave owners and the state of Maryland renewed their demands, again unsuccessfully, that Congress further protect slave owners' rights by passing further legislation to reinforce the Fugitive Slave Act.[80] A January 27, 1823, letter of protest from the Maryland legislature to the Pennsylvania legislature specifically warned that the verdict in the trial for Griffith's killing had caused "much public excitement" in Maryland as a threat to those who lived near the border of Pennsylvania, having provoked "the strongest inducement to their slaves to escape," or, if escape could not be achieved, "a motive to insurrection." The letter argued that Griffith "had a right to expect he would have little or no difficulty in securing his property" and that the legislature assumed that citizens of the United States would not violate the bonds that held the states together. In this they were both disappointed, as "unfortunately, the inhabitants of the village, governed by misguided philanthropy, instead of assisting gave him all the trouble they had it in their power to give."[81] Maryland approached the Pennsylvania legislature to achieve what it hoped would be a compromise between abolitionists and constitutionalists, resulting in the passage of Pennsylvania's 1826 antikidnapping act.[82] The 1826 act would still refuse the assistance of state aldermen and justices of the peace and would, in addition, repeal section 11 of Pennsylvania's 1780 Gradual Abolition Act, which had acknowledged the reclamation rights of slave owners and

[80] Leslie, "Pennsylvania Fugitive Slave Act of 1826," 433, 434–35.

[81] Letter from the Maryland legislature to the Pennsylvania legislature, Jan. 27, 1823, transcript at Chester County Archives and Records Services. Maryland's claim went unsubstantiated by newspaper reports related to the Reed case and by trial documents. The 1820 act was challenged in *Commonwealth v. Peter Case* (1824) in the Court of Quarter Sessions and Common Pleas, Huntingdon County, Pennsylvania. The prosecution argued it was irrelevant whether Hezekiah Cooper, a kidnapping victim, was a slave or not. The judge held "that colored persons, who were really entitled to freedom, would find, in the slave holding states, courts to protect them, and as able counsel to defend them, as in Pennsylvania." "The Huntingdon Case," *Niles' Weekly Register*, Oct. 2, 1824, 79–80; Leslie, "Pennsylvania Fugitive Slave Act of 1826," 434.

[82] Leslie, "Pennsylvania Fugitive Slave Act of 1826," 436–40; Newman, *Transformation of American Abolitionism*, 43; An Act to Give Effect to the Provisions of the Constitution of the United States, Relative to Fugitives from Labor, for the Protection of Free People of color, and to Prevent Kidnapping, 1826, *Acts of the General Assembly of the Commonwealth of Pennsylvania* (Harrisburg, PA, 1826).

prohibited the sheltering of runaways. But the act did address Maryland's concerns by providing procedures to accommodate slave renditions. Those procedures, tellingly, granted habeas rights to "said fugitives" (section 7), discounted the oath of owners as evidence (section 6), ensured records in hearings (sections 5 and 10), and required applications, warrants, affidavits, and evidence to ensure due process. The 1826 act would remain in place in Pennsylvania for another sixteen years, until it was declared unconstitutional in *Prigg v. Pennsylvania*.[83]

In conclusion, what we find in the John Reed trials is a snapshot in time in a changing landscape of law. Without any law specific to a fugitive slave that would have guaranteed him the right to a trial in Pennsylvania, Reed's most likely option would have been a hearing whose goal was to issue a certificate of removal rather than to determine his status before the law. Framed as a free black, by contrast, Reed could have fallen under the state antikidnapping act, granting him a trial before a jury where, as a kidnap victim, he would be the plaintiff. Reed was not, however, a promising candidate for a kidnapping case given the violent killings that had been committed and the state's interest in prosecuting breaches of the public peace. Reed would be tried for murder. Trumping the charge of fleeing from labor in a state that claimed him as property with the crime of murder in the state where he resided sidestepped or delayed the summary procedures of federal law and comity with another state's law and provided the due process procedures of a county criminal court. A key strategic aim of the counselors of the Pennsylvania Abolition Society was, after all, to get slaves a trial by jury, with the understanding that free-state jurors were likely to be more sympathetic to a fugitive slave and had the power, should they choose, to render a nullification verdict.[84]

In sum, in West Chester's county criminal court, Reed's status went undemonstrated. Addressing the violent deaths of Griffith and Shipley,

[83] The final response to the 1820 act occurred in *Prigg v. Pennsylvania*, 41 U.S. 539, 608–26 (1842), when its first section (reaffirmed in the 1826 act) was declared unconstitutional. In a dissent, Justice John McLean argued that a master may not violate the peace to seize his slave, that it was within the power of a state to maintain the peace and protect against acts of violence, and that the 1793 act of Congress did not mean that any resistance to a seizure by force would be illegal. Under McLean's reading, Griffith's breach of the peace in the Reed case would not have been permitted, and Reed would be justified in resisting. See Paul Finkelman, "Story Telling on the Supreme Court: *Prigg v. Pennsylvania* and Joseph Story's Judicial Nationalism," *Supreme Court Review* 1994 (1994): 247–94; H. Robert Baker, *"Prigg v. Pennsylvania": Slavery, the Supreme Court, and the Ambivalent Constitution* (Lawrence, KS, 2012).

[84] Newman, *Transformation of American Abolitionism*, 84.

Judge Darlington examined and weighed the facts related to the murder charge "with great perspicacity and impartiality," and Judge Ross "summed up and weighed the testimony" to remove all doubt of the prisoner's guilt.[85] Both courts relied upon the 1780 Gradual Abolition Act, section 7, which provided that black people, whether slave or free, should have their crimes treated "in like manner" as other inhabitants of the state, and upon the Pennsylvania state constitution of 1790, which granted all men the right to trial by jury, self-defense, and enjoyment of life and liberty. At the same time, Reed's murder trials both flew in the face of the 1819 *Wright* ruling that a fugitive be delivered without a formal trial and left unresolved differing views of the priority of the federal Fugitive Slave Act and the state's 1820 Act to Prevent Kidnapping.[86] The use of Miner and Pearson as witnesses in the two trials—and the fact that neither was indicted as a kidnapper under the 1820 act nor as a fugitive from justice under the 1793 act of Congress—suggests that, having been passed only months before the killings, the 1820 statute's controversial status and its relative youth might have prompted a compromise between the defense and the prosecution. Both sides would have been motivated to make such a compromise, the PAS by its pragmatic goal of assuring Reed the due process protections of a jury trial and the prosecution by its desire to avoid the unseemly complications that would arise from trying a case under a state law that could only conflict with what the *Wright* decision referred to as "the whole scope and tenor of the constitution and act of Congress."[87] The trials, nevertheless, navigated fugitive slave and personal liberty law in both the law and the facts in counsels' cases and in the judges' instructions to the juries, expressing the conflict of federal and state law through its pair of conflicting verdicts. Reed's jury trials and the defense's argument that he had a right to equal treatment and to self-defense represented, in the end, the kind of pragmatic legal strategy and struggle for equal protection that had come to typify Pennsylvania antislavery legal practice, proving a worthy addition to the list of slave cases that moved the nation progressively closer to true emancipation and equal rights law.

West Chester University LINDA MYRSIADES

[85] *West Chester (PA) Village Record*, May 16, 1821.
[86] "Master and Slave."
[87] Wright, otherwise called Hall, against Deacon, Keeper of the Prison, 5 Serg. & Rawle 62 (Pa. 1819).