

## **Teaching Materials for “Putting Women Back Where They Belong: In Federalism and the U.S. History Survey” by Laura F. Edwards**

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The documentation of public matters in local courts is often short on detail. But, often, it's not the one case that matters; it's the continual repetition of patterns. The cases, below, are illustrative of the general kinds of issues that appeared in local courts.

### **Domestic Violence**

These are three cases in which wives complained about their husbands' excessive use of physical force. While these are from Granville County, North Carolina, this kind of case was common elsewhere in the United States as well. Courts tried some complaints like assault. But in all of these instances, court officials required the husband to post a peace bond, which required family and neighbors to put up money, on the promise of keeping the errant man in line. If he broke the peace again, they would forfeit their money. This legal form did not recognize the offense as a violation of a wife's rights. But it did make a husband's excessive use of force a violation of a public norm.

*State v. John Tindall*, 1795, box 7, Granville County Criminal Action Papers, North Carolina State Archives.

Warrant, July 1795, on complaint of Elizabeth Tindall: “that she is afraid that her Husband John Tindall of this County labourer will beat wound or kill her and hath therefore prayed security of the peace against him”; arrest ordered, to answer charges and to keep the peace

Bond, July 1795, given by John Tindall for 100 pounds; “The condition of the above obligation is such that whereas the said John Tindall stands charged with braking [sic] the peace with Elizabeth Tindall his wife & has been committed to Jail for want of Security. Now if the said John Tindall shall well & truly keep the peace with all the Good people of the State of North Carolina & more especially with his wife Elizabeth Tindal & shall make his personal appearance at our present Court . . . then the above obligation to be void or else to reamin in full force”; but then William Pannel, John Pulliam and John Longmire give bond in the amount of 10 pounds each on the same day

*State v. Patrick O'Briant*, 1800, box 8, Granville County Criminal Action Papers, North Carolina State Archives.

Complaint by Elisabeth O'Briant: “that Patrick O'Briant her Husband will treat, wound, maim or kill her, and hath therefore prayed security of the peace against him. I command you to cause the said Patrick O'Briant to come before me or some other Justice of this county to find sufficient security for his personable appearance at the next court to be held for this county, then and there to abide, and to do what shall be enjoined him by the sd. court, as also in the mean time

to keep the Peace, and especially towards the said Elizabeth O'Braint, and if the said Patrick O'Briant shall refuse so to do, that you then convey him to the Gaol aforesaid and deliver him safely to the keeper thereof, and you the said keeper, are also hereby commanded to receive the sd. Patrick O'Briant into yr custody, and him safely to keep int eh common Gaol untill he shall find such security as aforesaid, or untill he be otherways discharged, by due course of law . . . ."; 8 January 1800; William Gill, J.P.

Dennis O'Briant and William O'Briant gave bail of 150 pounds; 9 January 1800

*State v. William Mitchell*, 1810, box 10, Granville County Criminal Action Papers, North Carolina State Archives.

Peace Warrant, on complaint by Rachel Mitchell his wife, 23 November 1810

Bond given by William Mitchell, James Ritchens, and William Hayes for 100 pounds each, for William to appear at the County Court in Oxford, and "there enjoined him by the Court, and in the meantime keep the peace or be of good behavior towards the state and all the citizens thereof, and espacially towards his wife Rachael . . . "; his mark, the signatures of William Hayes and James Richards

### **Violence Committed by Third Parties**

Women also complained about violence committed by third parties against themselves and others. They actively involved themselves in the dynamics of their communities.

*State v. Francis Robinson*, 1826, box 21, Granville County Criminal Action Papers, North Carolina State Archives.

Complaint by Mary House to Thomas B. Littlejohn on 20 April 1821: that the two named men, both planters, did assault Lewis Anderson a free man of color at Anderson's house; arrest ordered and executed

Summons for Adnab Roberson and Nancy Valentine to testify for the defendant, Francis Roberson, issued May 1826; executed

Indictment, Court of Pleas and Quarter Sessions, May 1826: that he assaulted Lewis Anderson, a true bill

*State v. William Lockhart, Sr.*, 1804, box 7, Orange County Criminal Action Papers, North Carolina State Archives.

Indictment, November 1804

Warrant, 29 September 1804: on complaint of Smith, identifies her as a free woman of color, that Lockhart assaulted her; no other details

Bond, for defendant, 29 September 1804

*State v. James McCann, John Archer, William Orr, Thomas Staton, John Merritt, Daniel Kelly, Thomas Moore, John Kelly, and Stephen Staton*, Fall Term, 1829, #15, Anderson County, Court of General Sessions, Indictments, 1828-1913, South Carolina Department of Archives and History.

Indictment, September 1829: for assaulting Margaret Nalley; not a true bill

Complaint, Margaret Nalley, 8 February 1829: on 8 February that the named men "at her house . . . did vilantly [sic] assault and abuse her"

*State v. J.W. Beson, D. Horton, B. Wilson, and J. Barkley*, Spring Term 1834, #3, Anderson County, Court of General Sessions, Indictments, 1828-1913, South Carolina Department of Archives and History.

Indictment, March 1834: for riot and assault of Polly Green; a true bill

Complaint, Polly Green, 16 September 1831: to John Anderson, "that John W. Beson did on the third day of June last past at night violently assault and abuse her the sd Polly Green by throwing Barkley Wilson against her and knocking her down with sd Barkely Wilson and doing it Repeatedly after she forbid him treating her so, without any provocation. . . ."; arrest ordered

She gives bond to try the case, 16 September 1831

Witnesses for the state: John C. Anderson, Reuben Smith, George Smith, Alfred Day, Thomas Borough, Samuel Green

Witness for the defendant: Daniel Horton, Mathew Gambrell, Saxon Anderson, William Anderson, and Lewis Sheritt

Warrant, George Smith, 16 September 1831: that he is a material witness in convicting the accused of "throwing down her chimney and roof off of her dwelling house"

*State v. Leroy H. Smith*, Spring Term 1831, #10, Anderson County, Court of General Sessions, Indictments, 1828-1913, South Carolina Department of Archives and History.

Indictment, September 1830: for assault and battery on Cynthia McMurry on 16 August; a true bill; pleads not guilty; found not guilty

Witnesses: Edmond Martin jr, no side given; Mason Fennel, for the defendant; William Pilgrim, for the state; John Hubbard, no side given; Mary Seath for the state; Benjamin Mulligan Sr., Alexander Oliver, Jane McCann for the defendant; Martin Constable for the defendant; James Whittaker for the defendant; William Robertson for the defendant;

Complaint, Cynthia McMurray, 16 August 1830: on this day "at her fathers plantation near the House Leroy Smith was concealed in high weeds & unknown to her the deponant he laid violent hands and struck her & threatened with [word illegible] oathes he would kill her & in the scuffle tore her frock & on her shouting for assistance & her family coming out he feld & she escaped & her further says she is afraid of his beating her"

On her bond she signs and so does Willliam McMurray, Esq., who is probably her father

## Property

Women also made claims to property. In the New York Municipal Court, the officials often identified the property as belonging to a married woman's husband; sometimes the wives did as well. But it was clear that was form language. Wives were the ones making the complaint, and they often either acted as if the property was their own or identified it as such. Women, including enslaved and married women, made claims to particular kinds of property—usually cloth, clothing, and food, and the tools necessary to make them. All of these items had particular status, because they were seen as essential to life. They were also items that many women made or that fell within their purview in the household economy. Here again, the courts did not affirm the property rights of married or enslaved women. But they did acknowledge that women possessed property and controlled it as their own.

*People v. Rosenah Gray, 3 June 1802, Indictment Papers, New York Municipal Archives.*

Gray is enslaved; she was indicted and acquitted of grand larceny, for stealing one piece of black striped satin worth forty dollars from Matthew Gill, a merchant

Rosenah Gray: "a yellow woman wife of Joseph Gray being examined says that she lives in Thomas Street opposite Nathaniel Morrison's, That the piece of Striped Black Sattin would on a stick one end of which has a cut in with a saw also the piece of lead coloured silk wound on the same stick also any other piece of striped Black Sattin she bought of a pedlar last Friday evening, She paid seven shillings a yard for the last piece of striped Sattin ad six shillings a yard for the first above mentioned piece of sattin and also six shillings a yard for the lead colour'd silk. She also bought at the same time of the same pedlar fourteen yards of Mazarine Blue striped sattin for a dollar per yard, Also one piece of striped cotton for three shillings & six pence per yard, also two check muslin handkerchiefs for four shillings and six pence, also about half a piece of linen for which she paid about three shillings and four pence a yard, one full piece of Dark Callico for three shillings and six pence per yard, 14 yards of Red Callico for three shillings and six pence per yard. She also bought about six or seven weeks ago three yards and a quarter of Cloth for six shillings a yard. There was nobody but just herself in her house when she bought all the things above mentioned. She paid for the above articles in Dollars. She had Twenty Dollars of her own money all of which she paid away for the above articles and also four or five dollars of her husband's money he having about fifty dollars in the House. She does not know how many yards of Sattin & silk she bought. Her Husband paid Mr. John John T. Banta on Saturday evening last nine dollars six shillings and nine pence for groceries he had gotten of Mr. Banta on Credit. That on Saturday afternoon last she exchanged eight yards of the Lead Coloured Silk before mentioned with a young woman by the name of Sally who lives near Mr. Lappinard's [or Lassinard's] in the House of a Mr. Carpenter, for a silk quilt and a Dimity petticoat, which said quilt she gave to her Mother. That the Mazarine Blue Jacket and petticoat before mentioned to have been purchased of the said Pedlar, That Nancy Heron who lives in Broadway opposite M. Drohman's made the jacket and petticoat up ad has the gown now to alter it. She made them about three or four weeks ago, some time before examinant bought the same."; her mark

Matthew Gill, 183 Broadway: that a piece of black striped satin, worth 40 dollars, was taken from his store on the 15th, "that the stick of which the same was rolled together with some

of the said Sattin is now here and is said to have been found with the above named Rosenah who says she bought it last fryday of a pedlar. The Deponent further swears that he verily believes that the said Rosenah is the person who stole the same out of his store.”; his signature

Sarah Nadyne of Provoost Steet, sixth ward, “saith that on Friday or Satturday last the above named Rosenah Gray came to her house with as Deponent supposed nearly or quite a whole piece of Lead coloured silk. that Deponent exchanged with her and gave her a silk quilt & dimity petticoat for eight yards of the said Silk & for striped Black satin. She asked deponent six shillings a yard in money for the said silk and said that it together with sundry other articles which had sold had been given to her by Mr. Dorhman her master. That the said silk is now here in the state it was wehn Deponent got it. That the said Rosenah at the time Deponent got the said silk & sattin of her told Deponent that she had sold a whole piece of Curtain Callico to Mrs. Johnson who lives in Chapple Street in the sixth ward of said city.”; her mark

*People v. Mary Miller*, 3 October 1804, Indictment Papers, New York Municipal Archives.

indicted and acquitted of larceny, for stealing one hat worth two dollars, one pair of muslin sheets worth two dollars, and one fan worth 12 cents, from Peter Horton, but it's Prudence Horton who brings the case, even though it is attributed to her husband

Prudence Horton wife of Peter Horton, 17 East George Street: that about a month ago, the property in the indictment were stolen out of her room in the seventh ward; the hat was a Black Pelon hat; that the good are concealed in the dwelling house of Sarah Nadyne “in the particular custody of Mary Miller who lives with the said Sarah, to sit in the upper part of the House no 17 East George Street”; her mark

Mary Miller: “that the hat found in her House to day & which is claimed by the above named Prudence Horton is the property of this examinant and that she bought the said hat three years ago in Warren Street, the short gown found in her room she knows nothing about nor how it got into the Room of this Examinant and Sarah Nadyne Examinant does not know”; her mark

Sarah Nadyne: “she does not know how the said short gown got into the Room occupied by this examinant and the said Mary Miller, she does not claim the said short gown”; her mark

Prudence Horton further sworn: “that the hat and short gown this day found in the Room of the said Sarah Nadyne and Mary Miller are the the property of Peter Horton and were stolen from the House the Deponent lives in and believes that the said Mary Miller had stolen the same”

*State v. Alfred Tucker*, Fall Term, 1829, #22, Anderson County, Court of General Sessions, Indictments, 1828-1913, South Carolina Department of Archives and History.

Indictment, September 1829: for stealing a “small quantity of bacon of the value of ten cents”; a true bill; not guilty; Tucker is a constable in 1829

Witnesses: William Ballard, Richard Skelton, James Burroughs, and Martha Skelton for the state; Mathew Tippon, William Crawford Sr., James Crawford, Thomas mcGregory, Evan Richardson, Thomas Dickson, Jeremiah D. Gee for the defendant

Complaint, Esther Watson (a free white woman who heads up her own household), 28 August 1829: that on the night of the 27th, some bacon was taken “out of her meethouse and

that she has probable cause to suspect and doth verily believe that Alfred L. Tucker is the person that did take it”

*State v. Brummer*, #142, Trial Papers, Court of Magistrates and Freeholders, Anderson County, South Carolina Department of Archives and History.

There are lots of issues in this case, but it gets to central issues about public law and enslaved women. Polly claimed thread that she made as her own, and her master filed a complaint on her behalf when it went missing. The suspect had a business selling baskets, and seems to have appropriated Polly’s thread in payment for a debt owed by her husband—an analog to coverture, which gave husbands ownership over their wives’ property. Polly, in other words, faced two sets of presumptions: that she cannot own property because she was enslaved, and that she cannot control property because she was a wife, even though coverture did not apply, since enslaved women could not be legally married. But she kept her thread. It is easy for students to leave with the impression that this outcome affirms enslaved women’s property rights. But that was not the case. The implications were more limited: the court righted a wrong, and gave the thread back to the woman who made it, with the clear assent of her master. Polly, though, still made a clear statement about what belonged to her and why.

Complaint, 7 August 1843: Aaron Vandiver (the master of Polly): that "two hanks of spun cotton . . . was taken from one of his negroe houses"

Arrest of Brummer, a slave owned by John McFall, 7 August 1843, on the complaint of Aaron Vandiver: that the last of June or first of July, "he missed from his negro houses two hanks of spun cotton, one of a blue colour & the other white."

Trial, by a court with a magistrate and freeholders, who are property-holding white men who have been called up to serve. The magistrate summarized the evidence:

Polly, a woman slave: "The spun cotton belonged to her, She [word illegible; but probably dyed] the cotton on Saturday, five or six weeks ago, not being dry enough, on Sunday morning, she hung it out to dry, Brummer said to her this is mighty pretty cotton, & examined, she owed Brummer twenty five cents for a Basket she bought of him last fall, which he was to pay in [illegible], was going on with Brummer, at the Barns they met Drury her husband. She then had her hanks, that Drury owed Brummer & Brummer went back to the house with Drury for to get his pay from Drury, does not know what he payed Brummer with, Brummer had been at the house twice since she missed the hanks, 5 cents in Blue hank, worth 25 cents, 4 cents in white hanks, worth 12 1/2 cents."

Cato: "Was sitting the side of the door on Sunday, Brummer was at their house, saw Brummer take a white hank of cotton from off the bed in the house, saw him with the blue hank in his pocket, after he carried out of the house, saw him looking at the blue hanks in the house, being negroe house, all the hanks of cotton, blue and white was in the house on the bed together, does not know how many hanks their [sic] was, saw the white hank in his pocket, did not see him take within of the hanks, told his mother the same evening that he had seen the hank in his pocket, before he heard that Mr. Cochran had seen any of the hanks with Brimmer."

Mr. James P. Cochran: "four or five weeks ago Brummer was at his house, saw a blue hank of spun cotton in his hat, asked him where he got the hank from, he made no reply, it was on

Sunday evening, about the time he was at Vandivers, and about a week before he heard of spun cotton being lost, he was told of it by Vandiver."

For Defense, although it doesn't say who: "Brummer has been in the habit of coming to his house frequently with Baskets to sell, that he bought two handle baskets from Brummer about two years ago, that he had left Baskets with his negroes to sell, as his negroes to told him, that he bought some Hamper Baskets from his negroes, that belonged to Brummer & paid them in flour for the baskets."

Outcome: Brummer found guilty; sentenced to 10 lashes.