

***Speak to Your Dead, Write for Your Dead: David Galloway, Malinda Brandon, and a Story of American Reconstruction***

*Aderson Bellegarde François*

APPENDIX OF PRIMARY SOURCES

111 GEO. L.J. 31 (2022)

State

## SCHEDULE I. Free Inhabitants in the city of Nashville

in the County of Davidson State

of Tennessee enumerated by me, on the 10th day of October 1850. David C. Ford Ass't Marshal.

145

Dwelling-houses numbered in the order of visitation.	Families numbered in the order of visitation.	The Name of every Person whose usual place of abode on the first day of June, 1850, was in this family.	DESCRIPTION.			Profession, Occupation, or Trade of each Male Person over 15 years of age.	Value of Real Estate owned.	PLACE OF BIRTH. Naming the State, Territory, or Country.	Married within the year.	Attended School within the year.	Persons over 20 years of age who cannot read & write.	Whether deaf and dumb, blind, insane, idiotic, pauper, or convict.					
			Age.	Sex.	Color, Black, or mulatto.								1	2	3	4	
1	2	3	4	5	6	7	8	9	10	11	12	13	1	2	3	4	
1	794	896 Daniel Watkins	36	M	Wm	School Teacher		Tennessee						1	2	3	4
2		Chegi Watkins	38	F	Brown			North Carolina						5	6	7	8
3		Daniel Watkins	5	M	Brown			Tennessee						9	10	11	12
4		Slate A. Watkins	1	F	Brown			Tennessee						13			
5	795	897 Joshua Brown	25	M	Brown	none		Virginia						1	2	3	4
6		Susan Jones	25	F	Brown			Tennessee						1	2	3	4
7		Nancy Stewart	23	F				Tennessee						1	2	3	4
8		Mary G. McRae	16	F				Tennessee						1	2	3	4
9	796	898 Elizabeth Brown	48	F	Brown			Virginia						1	2	3	4
10		Elo A. Brown	27	M	Brown	none		Tennessee						1	2	3	4
11		Harvey D. Brown	19	M	Brown	none		Tennessee						1	2	3	4
12		Elizabeth D. Brown	17	F	Brown			Tennessee						1	2	3	4
13	13	H. G. Brown	16	M	Brown			Tennessee						1	2	3	4
14	14	L. G. Brown	13	F	Brown			Tennessee						1	2	3	4
15	15	Nancy G. Sullivan	27	F	Brown			Tennessee						1	2	3	4
16	16	James A. Sullivan	4	M	Brown			Tennessee						1	2	3	4
17	17	C. G. Stewart	8	F	Brown			Tennessee						1	2	3	4
18	18	D. B. Brown	6	M	Brown			Tennessee						1	2	3	4
19	19	Samuel Martin	26	M	B	Barber		Tennessee						1	2	3	4
20	797	899 L. R. Spain	38	M		Carpenter	1000	Tennessee						1	2	3	4
21		Sarah Spain	35	F				Tennessee						1	2	3	4
22		Thos Spain	9	M				Tennessee						1	2	3	4
23	798	900 Thos. McRae	61	M		Painter	1000	Germany						1	2	3	4
24		Elizabeth McRae	26	F				Tennessee						1	2	3	4
25	25	Wm McRae	9	M				Tennessee						1	2	3	4
26	26	Thos McRae	6	M				Tennessee						1	2	3	4
27	799	901 James Johnson	47	M		Stone Cutter		Virginia						1	2	3	4
28		Martha Johnson	37	F				Tennessee						1	2	3	4
29		Henry Johnson	17	M		Carpenter		Tennessee						1	2	3	4
30		Thos Johnson	14	M				Tennessee						1	2	3	4
31		Sarah Johnson	9	F				Tennessee						1	2	3	4
32	800	902 Margaret Chamber	46	F				England						1	2	3	4
33		Dorothy Chamber	44	F				Indiana						1	2	3	4
34		Ellen Lewis	22	F				Kentucky						1	2	3	4
35		Amy Smith	11	F				New York						1	2	3	4
36		Sam F. Jones	23	F				Pennsylvania						1	2	3	4
37		Mother Kelly	45	F				Ireland						1	2	3	4
38		Rosannah Stewart	30	F				Virginia						1	2	3	4
39		Wm. Henrichs	13	M				Tennessee						1	2	3	4
40		Mary Ober	14	F				Iceland						1	2	3	4
41		Bridget Ward	13	F				Iceland						1	2	3	4
42		Margaret McRae	13	F				Kentucky						1	2	3	4

9 m 9 m Gold

VV

1

SCHEDULE I. Free Inhabitants in the city of Nashville in the County of Davidson State  
of Tennessee enumerated by me, on the 14th day of October 1850. David L. Good Ass't Marshal.

Dwelling-houses numbered in the order of visitations.	Families numbered in the order of visitations.	The Name of every Person whose usual place of abode on the first day of June, 1850, was in this family.	DESCRIPTION.			Profession, Occupation, or Trade of each Male Person over 15 years of age.	Value of Real Estate owned.	PLACE OF BIRTH. Naming the State, Territory, or Country.	Married within the year.	Attended School within the year.	Persons over 20 years of age who cannot read & write.	Whether deaf and dumb, blind, insane, idiotic, pauper, or convict.
			Age	Sex.	White, Black, or mulatto. Color.							
1	2	3	4	5	6	7	8	9	10	11	12	13
1		Catherine Mc Cleary	17	F				Pennsylvania	✓			
2		Maudie Kelly	11	F				Georgia	✓			
3		Margaret Kelly	9	F				Illinois	✓			
4		Harold Kelly	5	F				Missouri	✓			
5		Virginia Samuels	13	F				Illinois	✓			
6		Virginia Samuels	8	F				Kentucky	✓			
7		Maryabell Samuels	10	F				Pennsylvania	✓			
8		Mary Delaney	10	F				Ireland	✓			
9		Delinda Brandon	7	F				Tennessee	✓			
10		Mary Steiner	7	F				Switzerland	✓			
11		Josephine Edwards	3	F				Tennessee	✓			
12		J. Jenkins	4	F				Tennessee	✓			
13		John Young	14	M				Ireland	✓			
14		Mary Johnson	4	F				Tennessee	✓			
15		Thomas Butler	33	M	none			Ireland	✓			
16		Concilia Lyons	45	M	none			Ireland	✓			
17		Jeremiah Colwell	22	M	none			Ireland	✓			
18		Chas Hunt	40	M	none			Ireland	✓			
19		Charles McCollister	38	M	none			Tennessee	✓			
20		Francis Mallory	32	M	none			Tennessee	✓			
21	801 903	James Cook	31	M	Stone Mason			Tennessee	✓			
22		A Bennett	32	M	Laborer			Tennessee	✓			
23		J. J. Robertson	34	M	none			North Carolina	✓			
24		John King	27	M	none			New York	✓			
25	802 904	Young Bradley	25	M	none			Tennessee	✓			
26		G. C. Mitchell	37	M	Clerk	✓		Virginia	✓			
27	813 905	Wm M. Johnson	43	M	Carpenter	✓	3,500	Kentucky	✓			
28		Mary C. Johnson	38	F				Virginia	✓			
29		Martha Johnson	14	F				Tennessee	✓			
30		Mary Johnson	10	F				Tennessee	✓			
31		John Johnson	9	M				Tennessee	✓			
32		Abraham Johnson	6	M				Tennessee	✓			
33		Narcissa Johnson	4	F				Tennessee	✓			
34		Sam'l Johnson	2	M				Tennessee	✓			
35	824 906	Michael Duray	31	M	none			Ireland	✓			
36		Catherine Duray	26	F				Ireland	✓			
37		Margaret Duray	7	F				Tennessee	✓			
38		John Duray	2	M				Tennessee	✓			
39	905 907	Chas Smith	45	M	Stone cutter	100		North Carolina	✓			
40		Mary C. Smith	37	F				Virginia	✓			
41		Chas H. Smith	10	M				Tennessee	✓			
42		Wm Smith	9	M				Tennessee	✓			

IN U.S.A. SISTER CLAUDIA ROSS, DUN TO SISTER CLAUDIA MILLER  
Nazareth Nashville

213

OLB- 1, n. 37  
OLB- 1, n. 213

Sister X returned  
to Nash

August 1, 1850

1850

My dear Sister Claudia,

I am almost afraid to ask you if your money will hold out yet two weeks, but now while I think of it, let me tell you what to do. You know Mr. Dies (Dise, as they call him), well he has never paid for his children's schooling yet. I sent him the bill, it is about 9 dollars, perhaps a little more. I wish you would ask him for it when you see him at market. I think you told me he was a butcher. May our good God protect you all. Do write and let me know how you all are-- what you are doing-- and all the news that you know will interest me.

Have you heard from our good Bishop since I came away? I feel twice as strong as I did in Nashville, but something whispers to me daily, that I am recruiting, to go elsewhere to labor. Well, God's holy will be done. I do feel resigned, the more so, the more I think of it.

We will return week after next. We must be home for the 15th of August if possible. Sister Ignatia will be home sooner than Sister Mary Vincent and I. We will wait until Mr. Schacht returns. Have you taken any letters out of the office for me since I left? Keep them, if so, for I fear I shall have no chance to send for them. Should I have an opportunity, I will write you a note for them, as I told you before I left. Write to me the very moment you read this, and do not put it off from day to day. Tell me when you write where the letters for me are from (if there are any). Now do write to me immediately.

Sister Christine will tell you the direction for your letter. I have written it in her letter. If Sister Christine collects the money I told her to, perhaps you had better get a barrel of flour. I will mention it to her in her letter. If you do not think of raising that calf, it had better be sold. I fear it will be more expensive to keep it than to buy a cow. However, you may do what you think proper. If my darling Bishop gets home before I do, give him my best love, for I do love him and ever shall. I wish all the world were like him. But then, I would be too happy and would perhaps forget my home in Heaven. Had I remained in Nashville, I should have written to him before this. Do the best you can, my dear Sister, and may heaven bless you. Pray for me every morning at Mass.

Adieu, and believe me yours  
truly and affectionately in Christ,

Xavier (Ross)

Forgive me for being so cross to you the night before I left. I was so worried.  
Pray God to forgive me too.

Sister Xavier did not return to Nashville. Instead when Mother Frances Gardiner's term of office was completed she replaced Sister Xavier at Nashville and Sister Xavier was appointed SS of St. Vincent Orphan Asylum in Louisville. She returned to Nashville in July 1851 and directed to separation of the group from Nazareth.

Sister Mary Vincent Kearney joined her in the group which separated.  
Sister Claudia and Sister Christine Coomes did not join the group but returned to Nazareth.

Sister Ignatia Cox left the Community from Nashville in Feb. 1851

Elliott, Nashville, Tenn.  
OLB-I, p. 126

1850 or 51? Not dated but probably  
Dec. 1850 or Jan. 1851

To: Dear Sister Claudia,

If I had no more letters to write than you have, I would certainly write to you. Have you forgotten me so soon? I hear you have been (I mean the Sisters) sitting up with the dear Bishop. How grieved I was to hear of his illness. He wrote me on my feast day telling me how unwell he had been ever since he returned home, but I thought it was only one of his bad colds. Since I hear that he has been dangerously ill. Do write to me and let me know how he is. How are you and all? I do not forget any of you. You, my dear Sister, do I remember every day with gratitude. You were always so kind to me when I was sick, I shall never have it in my power to repay you, but God will reward you for it was a real charity to be so kind and patient to one so weak and fretful.

I am strong now, still I have worn the handkerchief on my face nearly all winter. I am not as deaf as I was, but my miserable ears are ever aching if exposed to the least cold. How is Nannie and Kate and all? Give every one of the dear girls my best love and say "New Years Gift" to all for me. Best love to all the Sisters, Mother first, though she never thinks of me now. I wonder what I have done to her - remember me to Bell, Puss and Lou.

Pray for me every day,

Ever yours in Christ

From, Xavier (Ross)

I'll write to Sister Baptista in the course of a week.

#### Identifications

Sister Xavier Ross was writing from St. Vincent Orphan Asylum in Louisville. She had been SS. at Nashville from 1847-8/1850 when she was sent to Louisville and Mother Frances, who completed her 4th term of three years in 8/1850 was sent to Nashville as SS. The separation from Nazareth and the formation of a Diocesan Congregation was in the process. It was so far developed that Mother F. could do nothing to prevent it and she asked to be changed. Sister Xavier returned to Nashville in July 1851 and with five Sisters who chose to remain, formed the separate Congregation which eventually became the Sisters of Charity of Leavenworth (Kansas).

Bishop R.P. Miles was the 1st Bishop of Nashville.

Sister Baptista Craney was missioned in Nashville 1847-1851 and she joined the group which separated but returned to Nazareth 1/1853 after which she was known as Sister M. Julian or Julianna.

Nannie and Kate were probably orphans under the care of the Sisters in Nashville.

Bell, Puss, and Lou were slaves who had been sent from Nazareth to Nashville to assist the Sisters there.

Orphans  
Nash  
Slaves

SCHEDULE 1.—Free Inhabitants in 4th Ward City of Nashville in the County of Marion State  
of Tennessee enumerated by me, on the 20th day of August 1860. John J. White Ass't Marshal.  
Post Office

370

Dwelling-houses— numbered in the order of visitation.	Families numbered in the order of visitation.	The name of every person whose usual place of abode on the first day of June, 1860, was in this family.	DESCRIPTION.			Profession, Occupation, or Trade of each person, male and female, over 15 years of age.	VALUE OF ESTATE OWNED.		Place of Birth, Naming the State, Territory, or Country.	Married within the year.	Attended School within the year.	Persons ever and now disabled, deaf and dumb, blind, insane, idiotic, pauper, or convict.	
			Age.	Sex.	White or black, or mulatto.		Value of Real Estate.	Value of Personal Estate.					
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	530 579	Isaac Taylor	37	m	v	Dipping tallow	\$ 3000		Tennsiper				
2	531 580	Joseph Derby	53	m	v	Carpenter	\$		Georgia	x			
3		Lucinda do	38	f	v				"	x			
4		John G do	22	m	v	Farmer	\$		"				
5		Rhedy do	15	f	v				"				
6		Jane do	10	f	v				"				
7		Martha S do	11	m					"				
8		Louisa do	9	f	v				"				
9		James W do	7	m	v				"				
10		Louisa Edington	25	f	v	Prostitute	\$		Tennsiper				
11		Ellen Estes	20	f	no	v	\$		"				
12		Lemuria Hulsey	17	f	v	"	\$		Alabama				
13		Rachell Craig	20	f	v	"	\$		Indiana				
14		Nancy Bailey	22	f	v	"	\$		Tennsiper				
15		Mary Bennett	22	f	v	"	\$		"				
16		Elizabeth Portchier	7	f	v				"				
17		Malina Vins	22	f	v	Prostitute	\$		Tennsiper				
18		Mary Rizza	22	f	v	"	\$		"				
19	532 581	Bessie Scott	21	f	v	"	\$		"				
20	533 582	Patsy Owens	28	f	v	"	\$		So Carolina				
21	534 583	Martha Harrison	47	f	v				Tennsiper	4			
22		Eugene do	16	m					"				
23		James Healey	37	m	v	Day Laborer	\$		Kentucky				
24		Louisa Purdon	26	f	v				Tennsiper	4			
25	585	Sarah Owens	19	f	v	Prostitute	\$		So Carolina				
26		Elizabeth Rivers	15	f	v	"	\$		"				
27	535 585	Henny Lewis	24	m	v	Porter	\$		Tennsiper				
28		Sarah Rathbone	32	f	no	Levency	\$ 2000		So Alabama				
29		Jabitha Richardson	54	f	no	v			So Carolina				
30		Gallie do	27	f	no	v			Tennsiper				
31		Julia Ann do	11	f	no	v			"				
32		Calvin do	1	m	no	v			"				
33	536 587	Nancy Armstrong	34	f	v	Prostitute	\$		So Carolina	4			
34		Nancy Howell	17	f	v	"	\$		Tennsiper				
35	587 588	Eliza Brown	27	f	v	"	\$		So Carolina	4			
36		Sarah J do	4	f	v				Tennsiper				
37		Delita Anna	20	f	v	Prostitute	\$		"				
38	538 589	Bon Driver	77	m	c	Wife Collector	\$		Virginia				
39	589 590	Ellen Bass	29	f	no	Washwoman	\$		Tennsiper				
40	591	Edmund North	26	m	no	v	\$		Tennsiper				
		No. white males,	11	No. colored males,		No. foreign born,		No. blind,		No. idiotic,			
		No. white females,	29	No. colored females,		No. deaf and dumb,		No. insane,		No. paupers,			No. convicts,

1/3 1/3

SCHEDULE 1.—Inhabitants in ~~The 13th Ward~~, in the County of ~~District~~, State of ~~Illinois~~, enumerated by me on the 28 day of July, 1870.

Post Office: Wendell, Pa.

M. J. Sanders, Ass't Marshal.

# Marriage Record, 1871.

169

Goodwin William F.

To Issued Oct 13  
Margaret P. Goodrich

I solemnized the rite of matrimony between the within named parties on the 24<sup>th</sup> day of October 1871

L. B. Bigley D.P.

Goodwin John A.

To Issued May 29  
Rachel F. Waggoner

I solemnized the rite of matrimony between the within named parties on the 4<sup>th</sup> day of June 1871

G. N. Fugua

Gordon Joseph W.

To Issued Decr 26  
Lennie R. Weston

I solemnized the rite of matrimony between the within named parties on the 26<sup>th</sup> day of December 1871

G. G. Jones, Pastor First Bapt. Ch. Nashville

Graham Mitchell F.

To Issued Mar 23  
Francis Morris

I solemnized the rite of matrimony between the within named parties on the 23<sup>rd</sup> day of March 1871

A. J. Baird M.D.

Graves Joseph E.

To Issued May 13  
Sarah Frances Knepper

I solemnized the rite of matrimony between the within named parties on the 13<sup>th</sup> day of May 1871

A. R. Marshall M.D.

Greene Fredericks

To Issued Sept 26  
Mary Rosanna Logan

I solemnized the rite of matrimony between the within named parties on the 26 day of September 1871

W. H. Wilkinson D.O.

Gresham F.

To Issued Sept 28  
Katherine Elzinger

I solemnized the rite of matrimony between the within named parties on the 28 day of September 1871

C. A. Nalle Green, Dist Min Gov

Gunn Wm R.

To Issued Jan 12  
Reubenella Payne

I solemnized the rite of matrimony between the within named parties on the 12 day of January 1871

A. J. Baird M.D.

Galloway David (col)

To Issued Aug 26  
Alinda Brandon col

I solemnized the rite of matrimony between the within named parties on the 26 day of August 1871

Amundson Shelly M.D.

Green Ephraim (col)

To Issued Decr 23  
Bettie Chadwell, col

I solemnized the rite of matrimony between the within named parties on the 23 day of December 1871

Green Parker

State of Tennessee

Plead at the Court House in the City  
of Nashville County of Davidson and State  
aforesaid it being the first Monday in September  
and the second day of September A.D. Eighteen  
hundred and Seventy two and in the 97<sup>th</sup>  
year of American Independence

Present the Hon Thos. A. Forazier Judge  
of the Criminal District composed of the  
Counties of Davidson and Rutherford  
when the Court was duly opened by James  
Everett Coroner of Davidson County.

Churchill Lanier Deputy Sheriff of Davidson  
County returned here into open Court the  
State Writ of Venire Facias which is in the words  
and figures following To-wit State of Tennessee  
To the Sheriff of Davidson County Greeting  
You are hereby commanded to summon  
the following good and lawful men Citizens  
of Davidson County who have been duly  
designated and appointed by the Judge  
of the Criminal Court to serve as Jurors  
for the next Term of the Criminal Court

2

for Davidson County to be held at  
Nashville on the first Monday in September  
A.D. 1872 To-wit 1 W R McFarland 2 Jeptha  
Warren 3 Jack Embry 4 Dr J M Pettit 5 H F  
Wright 6 A. C. Tucker 7 Alex Buchanan 8 J B  
Fugua 9 Sam S Wright 10 Jno W C Burnette  
11 Henry White 12 A L Watson 13 W L McKay  
14 Wm Morton 15 C O Ensley 16 Wm Spencer  
17 B F Cockrell 18 Wm Wilts 19 Geo W Jones  
20 W N Wade 21 C F Gleaves 22 T W Horn  
23 John McKinnie 24 Geo A Nelson 25 W M  
Dismukes 26 J H. Gulbreath 27 John Jackson  
28 H H. Holland 29 Jas Vista 30 H. Tomlin  
31 D C Rhodes 32 John Bains 33 Wm Anderson  
Witness J M McKeever Clerk of our said Court  
at office the first Monday in May <sup>A.D.</sup> 1872 and  
the 96<sup>th</sup> year of American Independence  
J M McKeever Clerk Endorsed State of Tennessee  
West Union Judicial Criminal Court September  
Term 1872 Issued Aug 21<sup>st</sup> 1872 Came to hand  
21<sup>st</sup> August 1872 Executed this process on all  
the within named Jurors except McFarland  
Embry, Pettit, Wright and White this 2<sup>nd</sup> Sept  
1872 Chas Lamer D. Sheriff

The names of the jurors were placed in a hat and were regularly drawn therefrom by a boy when the following good and lawful men of Davidson County were selected as a Grand Jury to serve for the present Term to wit 1 J H. Galbreath  
 2 Sam S Wright 3 A L Watson 4 Geo A Nelson  
 5 Dan Jackson 6 W L M Kay 7 F W Horn  
 8 A C Tucker 9 J B Fugue 10 Wm Wiles  
 11 Alex Buchanan 12 W H Dismukes 13  
 John H Kinnie, of then the Court appointed J H. Galbreath Foreman who together with the other Grand Jurors were duly sworn according to law and charged by the Court, retires to consider of Indictments and Presentments.

The Court appointed R B Sloan as officer to wait upon the Grand Jury.

And afterward to wait at the same term and on Wednesday October 2<sup>nd</sup> 1872 the following entry was made to wit

over

The Grand <sup>4</sup> J<sub>u</sub>ro<sub>r</sub>s came here into open Court and after being regularly called over presented the following Bill of Indictment and Presentment.

C<sub>o</sub>m<sub>a</sub>plaint Daniel Galloway bo<sup>ld</sup> & Malinda Brandon alias Malinda Vines for Intermarriage and cohabiting of Negro and White Persons which is in the words and figures following To wit State of Tennessee Davidson County September Term of the Criminal Court 1872 The Grand J<sub>u</sub>ro<sub>r</sub>s for the State of Tennessee duly elected impaneled sworn and charged to enquire for the body of the County of Davidson and State aforesaid, upon their oath aforesaid present that heretofore to wit on the 28<sup>th</sup> day of August 1871 Daniel Galloway a negro man and Malinda Brandon alias Malinda Vines a white woman in the County aforesaid wilfully, knowingly unlawfully and feloniously did intermarry that is to say; the said Daniel Galloway a negro man on the day and year and in the County aforesaid, did wilfully knowingly, unlawfully and feloniously marry and,

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take to wife, the said Malinda Brandon  
alias Malinda Nine a white woman contrary  
to the Statute and against the peace and dignity  
of the State. And the Jurors aforesaid upon  
their oath aforesaid do further present  
that on the day and year aforesaid and  
on divers other days and nights prior to  
finding the indictment, the said Daniel  
Galloway a Negro and the said Malinda  
Brandon alias Malinda Nine a white  
woman in the County aforesaid did unlaw-  
fully and feloniously live and cohabit  
together as man and wife, deriving and  
intending the morals of the good Citizens  
of the aforesaid County to debauch and  
corrupt contrary to the Statute and against  
the peace and dignity of the State. And  
the Jurors aforesaid upon their oath aforesaid  
do further present that on the day and year  
and in the County aforesaid, the said Daniel  
Galloway a mulatto man and the said  
Malinda Brandon alias Malinda Nine a  
white woman, wilfully, knowingly, unlawfully  
and feloniously did intermarry, that is to say

the said Galloway on the day and year and  
 in the County aforesaid, wilfully, knowingly  
 unlawfully and feloniously did marry and take  
 To wife the said Malinda Brandon alias  
 Malinda Vines Contrary to the Statute and  
 against the peace and dignity of the State  
 And the Jurors aforesaid, upon their oath  
 aforesaid do further present that on the day  
 and year  
 aforesaid and on divers other days and nights  
 prior to the finding of this indictment the  
 said Daniel Galloway a mulatto man and  
 the said Malinda Brandon alias Malinda  
 Vines a white woman in the County aforesaid  
 did unlawfully and feloniously live and  
 cohabit together as man and wife deriving  
 and intending the morals of the good  
 Citizens of the aforesaid County to debauch  
 and corrupt Contrary to the Statute and against  
 the peace and dignity of the State. And the  
 Jurors aforesaid upon their oath aforesaid  
 do further present that on the day and year  
 and in the County aforesaid the said Daniel  
 Galloway a man of mixed blood and the  
 said Malinda Brandon alias Malinda Vines

a white woman, unlawfully wilfully  
knowingly and feloniously did intermarry  
that is to say, the said Galloway on the day  
and year and in the County aforesaid  
wilfully knowingly unlawfully, and felonious-  
ly did marry and take to wife the  
said Malinda Brandon alias Malinda  
Vines, contrary to the Statute and against  
the peace and dignity of the State.  
And the Jurors aforesaid upon their oath  
aforesaid, do further present that on the  
day and year aforesaid and on divers  
other days and nights prior to the finding  
of this indictment, the said Daniel  
Galloway a man of mixed Blood and  
the said Malinda Brandon alias  
Malinda Vines a white woman in the  
County aforesaid did unlawfully and  
feloniously cohabit together as man and  
wife deriving and intending the morals  
of the good Citizens of the aforesaid County  
to corrupt and debauch, contrary to the  
Statute and against the peace and dignity  
of the State. A J Caldwell Atty Genl

Endorsed State of Tennessee against  
 Daniel Galloway Gold and Malinda  
 Brandon alias Malinda Vines, Intermarriage  
 and cohabiting of Negro and White person  
 F.G. Tigner Prosecutor J.B. Redick witness  
 sworn in open Court and sent before the  
 Grand Jury to testify in the above cause  
 this 26<sup>th</sup> day of September 1872  
 Sam'l Donelson Clerk By G.W. Frizzell D.C.  
 A J Caldwell Atty Genl a True Bill  
 John H. Galbreath Foreman of the Grand  
 Jury September 26<sup>th</sup> 1872

And afterwards to wait at the same term and  
 on Wednesday October 9<sup>th</sup> 1872 the following entry  
 was made to wait

State                              3 Intermarriage and cohabiting  
 No                              3 of Negro and White Person  
 Daniel Galloway Gold &              came the  
 Malinda Brandon alias Attorney Genl who prosecutes  
 Malinda Vines              3 for the State and the Defendants  
                                     in custody of the Sheriff  
 and from sufficient reasons disclosed to the lowest

in the affidavit of the Defendants, it is considered by the Court that a severance be granted in this cause. And thereupon the Defendant Daniel Galloway Col<sup>d</sup> being arraigned upon said indictment, pleaded not guilty to the same and for his trial puts himself upon the Country and the Attorney Genl doth the like and thereupon to try the issue joined, came a Jury of good and lawful men of Davidson County  
 To wit 1 S E Harv 2 J G Eastman 3 G P Smith  
 4 Jas Longmire 5 Eli L Woods 6 John Elrod  
 7 J W Colman 8 C O Enslby 9 Levi Morris 10 Wm  
 Anderson 11 Jas Stanley 12 Thos Cook who being duly elected, empannelled, tried and sworn the truth to speak of and concurring the issue joined and there not being time to conclude said cause, the jury were respite from the further consideration of the same until the meeting of the Court tomorrow morning at 9 o'clock  
 And thereupon the Defendant was remanded to jail.

over

And afterwards to sit at the same term  
and on Thursday October 10<sup>th</sup> 1872 the following  
entry was made to suit

State                      2 Dint's marriage and Cohabiting

Ats                      2 of Negro and White Person

Daniel Gallaway Col<sup>d</sup> 2 came the

attorney Genl who prosecutes  
for the State and the Defendant in custody of the  
Sheriff and the Jury heretofore empanelled in this  
Cause and who were on yesterday resuled from  
the further consideration of the same until the  
meeting of the Court this morning came here into  
open Court and resumed its consideration. And

the jury, aforesaid upon their oath aforesaid  
do say that the Defendant is guilty in manner  
and form as charged in the indictment. And

the jury aforesaid upon their oath aforesaid do  
further say that the Defendant for his offence  
aforesaid shall be imprisoned in the Penitentiary  
of the State of Denmpu for a period of two years  
And thereupon the Jury were discharged and the Defendant

by his Counsel moved the Court for a new trial in this  
cause which motion is continued for argument. And  
thereupon Defendant was remanded to jail.

And afterwards to sit at the same term and  
on Saturday November 23<sup>rd</sup> 1872 the following  
entry was made to sit

State

3 Indemnification of Negro and

to

3 White Person.

Daniel Galloway (Att)

Came the attorney

General who prosecutes for the  
State and the Defendant in custody of the Sheriff  
and the motion heretofore entered in this cause  
for a new trial after argument of the Counsel  
and <sup>due</sup> deliberation of the Court is overruled  
And the Defendant by his Counsel moved the Court  
for an arrest of Judgment, which motion after argu-  
ment of Counsel and due deliberation of the Court  
is also overruled. And it being asked of the Defendant  
if he had anything further to say why the Court  
should not proceed to pronounce sentence upon him  
the Defendant had nothing further to say.

It is therefore considered by the Court in accordance  
with the finding of the Jury heretofore empannel'd  
in this cause that the Defendant for his offence aforesaid  
shall be imprisoned in the Penitentiary of the State  
of Tennessee for a period of two years, commencing

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from the 10<sup>th</sup> day of October 1872 subject to the  
rules and regulations of the same. That he be  
rendered infamous, incompetent as a witness  
in any Court of Justice in this State, incapable of  
exercising the privilege of the Elective Franchise  
or of holding any office of honor, profit, or trust  
in the same, and that he pay the cost of this  
prosecution for which execution shall issue.

From which judgment and ruling of  
the Court, the Defendant by his Counsel excepts  
in law, and pray an appeal to the next  
Term of the Supreme Court to be held at the  
Capitol in the City of Nashville on the first  
Monday in December next, which to him  
is granted And thereupon the Defendant  
was remanded to jail.

Bills of Cost

State Tax	2.00
Brandy	1.25
Att. Gen. W. J. Baldwin	10.00
G. W. Nelson - fee and cost of copy of 3 documents	
News & Jour. of San Francisco and 7 of 2nd class	
Billed to G. W. Nelson for 2 orders 50¢	
Appraiser and 7 of least value 75¢ after \$10.00	
Transit 3000 or 10¢ per 100 300 300	9.60
Offondans - 1 share	2.5
" Jas Everett - Camp Dring	1.80
Wines of mustard & Sherry 100 - 1 day	1.00
" S. O. S. Glazier 3 " 3.00	
" H. St. Higgins 10 "	10.00
	472.40

State of Tennessee

I, Samuel Donelson, Clerk of the Criminal Court for  
the County of Davidson in the State aforesaid, do certify  
that the foregoing is a correct transcript of the record and  
proceedings had in said Court, in the case heretofore pro-  
cuted and determined therein, between the State of Tennessee  
plaintiff and Daniel Galloway defendant as the same  
remain of record in said Court.



In testimony whereof, I hereunto subscribe  
my name and affix the seal of said Court at  
office, in Nashville, the 18<sup>th</sup> day of December  
in the year one thousand eight hundred  
and seventy two and in the 97<sup>th</sup> year  
of our Independence

Samuel Donelson

Clerk Criminal Court

Asian Gallery Interim  
List of Items  
The State of Thailand

Printed Dec. 19, 1972

8<sup>th</sup> Commercial

Printed Dec. 19, 1973

Print 13, 1973

Ex 84 21

Brief  
in  
the Case of  
Galloway  
vs  
State of Tennessee



Brief.

This case presents for decision a question which is not altogether a stranger in this Court. Were the matter which I have to discuss res integra before your Honors, it is quite probable that I should be somewhat more ~~confident~~ <sup>as to the result of</sup> in the struggle now commencing between the learned and able Attorney General, representing here the august State of Tennessee, and the humble <sup>accusee</sup> whose privilege it is on the present occasion to do what he can, to shield the unfortunate prisoner at your bar from the fearful sufferings and permanent disgrace ~~among~~ resulting from what ~~I cannot~~ (with all the respect which I entertain for this very dignified tribunal) I cannot ~~but regard as~~ a most deplorable misapplication of the principles of law by which ~~this case~~ this controversy is to be determined.

Were the present case one of that class involving mere rights of meum and tuum, the decision recently rendered by this Court in another part of the State, and promulgated

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for the first time, within the last month or two, which it will be my duty now to review (in a perfectly respectful and courteous manner, but, yet as I trust I shall be able to do, in a sufficiently frank and independent one also) could not, as I suppose, be reasonably regarded as precluding me, ~~upon any reasonable application of the~~ <sup>upon any reasonable application of the</sup> well-known principle of stare decisis, from the expression of such views as I entertain in opposition to an adjudication, under which it is not even possible that new civil rights have sprung into existence, the rude and uncalled-for disturbance of which might have the effect of seriously ~~disturbing~~ <sup>interfering with</sup> the ~~rested~~ rights of property, and more or less impairing <sup>weakness even</sup> the social fabric itself. Were this case even without the legitimate operations of

I've got well  
state decis. I'm not well  
urge as Judge Kent in his  
invaluable commentaries  
has done, that it will not do  
too rigidly to insist upon  
~~this~~ state decis princi-  
-ple, in view of the unpre-  
-dictable fact that ~~our~~ <sup>we</sup> see the  
history of judicial proce-  
-dings in our own country  
has been such ~~from~~ <sup>since</sup> the  
era of our National Inde-  
-pendence, as to ~~at least~~ <sup>the</sup> con-  
~~descive of the~~ bear evidence  
that the number of cases where  
in the well considered de-  
-cisions of the highest ap-  
-pellate tribunals <sup>or</sup> ~~the~~ overruled,  
could have been ~~admitted~~  
on reargument, amounted  
<sup>even</sup> to some thirty years ago, to  
more than a thousand,  
and would probably lie

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sound now, our proper examination, ~~to almost~~ <sup>almost to</sup> those duplicate that estimate.

= But, as I have already premised, this is not a case in which it is proper that the ~~political~~ <sup>of policy</sup> considerations which lie at the bottom of state decisis, can be at all appealed to. The question to be settled is emphatically one of constitutional liberty and equality; involving not only the safety and welfare of that ~~country~~ numerous class of our population who have recently emerged from a ~~long~~ <sup>and</sup> continued and debasing condition of ~~servitude~~, but also, as I conceive, the

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permanent quietude and  
prosperity of our whole party  
millions of free people.

"In truth the question be-  
fore your Honors in this  
case being one that has  
arisen under the Constitu-  
tion and Laws of the Union,  
that is to say under the  
"Supreme Laws of the  
Land, anything in the  
Constitution or Laws of  
the States to the contrary  
not ~~withstanding~~ notwithstanding," and your  
Honors, as other State judges,  
having been solemnly sworn  
to observe the same, (as you  
have certainly not been  
strictly to adhere to your  
once uttered ~~and~~ opinions)  
it seems to me most obvious

that the field of examination  
and scrutiny must be re-  
cognized as not having  
been as yet, to any inno-  
cent degree, abridged  
~~or obstructed~~ obstructed  
by any action of this Court  
~~which has been~~ hereto-  
fore had ~~been~~ held up  
on this subject.

But yet, may it please  
Your Honors, ~~although~~ though this  
all this is true, yet it  
would be indeed strange,  
did I not feel somewhat  
embarrassed in undertaken-  
king to discuss a question  
which has been already  
~~decided~~ adjudicated, before  
the very judges themselves from

~~the~~ whom that decision  
has emanated. I recollect  
that Huntley, in his  
justly renowned rhetorical  
work, has administered  
some very wholesome ad-  
monitions to ~~any~~ an  
advocate circumstances  
as I am at the present  
moment, from which I hope  
thus far at least to profit,  
that I shall, in no part  
of what I may now utter,  
fail to observe the rules of  
moderation and decorum.

But yet know my as I  
do that the sagest and  
purest men that the world  
has yet known have some-  
times espoused an undue  
partiality for their own

opinions once deliberately  
 formed and publicly enun-  
 ciated, and have even  
~~not~~ occasionally given evi-  
 -dence also of ~~what is~~ a  
 certain pride of opinion which  
<sup>sternly</sup> forbids all acknowledge-  
 -men of error, even when that  
 error may be apparent  
 enough to others. — I  
 assure your Honors, that  
 had I not given more  
 whom I am now ad-  
 dressing especial credit  
 for more than ordinary  
 liberality of spirit and  
 an unswerving regard  
 for principle, I should  
 have hesitated long before

I ~~would have~~ ~~had~~ been ~~desirous~~ ~~to~~ ~~challenge~~ the correctness  
of the opinion to the ~~reas-~~  
~~on~~ ~~on~~ ~~ing~~ of which I shall  
presently direct my at-  
tention. I may be allowed  
to add before passing alto-  
gether from this delicate topic,  
that I have ever concurred  
with ~~Cato~~, <sup>Marcus Junius Cato</sup> That master  
genius of antiquity, as well  
~~I don't not that your Hon-~~  
~~ons do likewise, who, on one~~  
of the most solemn and  
perilous occasions of his  
public life, when compelled,

upon further examination,  
 to abandon an opinion  
 which ~~he had~~ to which  
 he had formal utterance  
 only the day before, when  
 vindicating himself against  
 the imagined discredit of  
inconsistency, used these very  
 remarkable words. Cuiusvis  
hominis est errare; nullius, nisi  
meiparatus, in errore ~~perseverare~~  
perseverare. Posteriores enim  
cogitationes (ut aiunt) Iapon-  
tones solent esse. Deinceps est cal-  
ligo, quam paulo ante dicit:  
diluxit, patet, videmus omnino,  
neque per nos solum, sed ad-  
mouemur a nostris"

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To much by way of proem;  
and now to the merits of  
the case.

The defendant has  
been arraigned and  
tried upon the follow-  
ing indictment.

(Here read indictment.)

Upon  
~~to~~ this indictment ~~not~~  
~~guilty was pleaded,~~ and  
the defendant was found  
guilty by the verdict  
of the jury, and <sup>an</sup> appeal  
was taken to this court.  
There is no Bill of Except-  
ions in the record, and  
the question therefore to be  
decided is simply this: Is  
the State of Tennessee

under which he was tried  
and found guilty in  
harmony with the 14<sup>th</sup>  
amendment of the Constitu-  
tion of the United States,  
and the acts of Congress  
made for the enforcement  
hereof?

Our Statute reads as  
follows:

(Here read it.)

The amendment of  
the Federal Constitution is  
as follows:

(Here read the amend-  
ment)

The first and second sections of the Civil Rights Law read as follows:

(Here insert)

The 16<sup>th</sup> and 17<sup>th</sup> sections of what is called the Enforcement Act reads as follows:

(Here insert)

Now, it seems to me to be conclusive of this controversy that the defendant has been tried and found guilty of performing an act, and is now menaced with long and severe punishment in the Penitentiary of Tennessee, for marrying a woman, ~~who~~, whose is a white man back for the marrying of whom by a white man no punish-

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-ment would be inflicted. Is  
thus equality before the law?  
Is this being "subject to like  
pains punishment, pains  
& penalties," ~~taxes~~, "of every kind,  
and none other, any law,  
statute, ordinance, regula-  
tion, or custom to the con-  
trary notwithstanding"?  
The inequality As to the  
inequality of the punish-  
ment. it seems to me there  
can be no doubt. Is this  
inequality the result of a  
law of the State of Tennessee,  
a statute, an ordinance,  
a regulation, or even  
a custom? Then the viola-  
tion of the <sup>law</sup> ~~law~~ is complete,  
and the legislative enact-  
ment of the State of Tennessee,  
which has brought about

This result is clearly repugnant to the Civil Rights Law, to the Enforcement Act, and to the XIV<sup>th</sup> Amendment of the Constitution of the United States for the enforcement of which these two enactments were adopted. That the Civil Rights Law and the Enforcement Act are both of them in conformity with, and fully authorised by the XIV<sup>th</sup> Amendment of that instrument I have not heard had been yet denied in this Court, and until they are, I shall

say nothing on this head.

But further may it please the Court, we take the ground that this defendant, when he entered into an agreement with the female who afterwards became his wife, made a contract with her, a mutual contract, which, being afterwards solemnised ~~as~~ by marriage, was not ~~as~~ by a contract, but became only one of increased sacredness and binding force. By the Civil Rights Act of ~~all~~ our colored citizens are authorised to make all contracts that white

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citizens may make. ~~Abey~~  
~~and white citizen~~ It  
is not disputed that a  
white citizen may make  
a contract to marry  
with a white woman.  
Then a colored citizen  
may do the same. If he  
shall do so, and so  
far from refusing to  
execute that contract  
he carries it into effect  
in the most solemn man-  
ner known to the law,  
who ~~will~~ will say that  
it is in the power of State  
legislation to abrogate  
it, and not only to do  
so, but even to punish

the parties thereto for faithfully carrying the same into effect? Can this be done without setting at defiance the <sup>xiv</sup> Amendment of the Federal Constitution, and the two acts adopted for the purpose of carrying the same into effect.

It is plain that the only way of escaping this conclusion is to assert, and to establish that marriage itself is not a contract at all in the meaning of the Federal Constitution,

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and therefore not protected by  
that instrument. And this  
is in truth precisely what  
has been gravely attempted  
in this Court, but as  
I must think, without  
the least approximation  
to the wished for ~~point~~  
result.

= These remarks bring me  
to that stage of the dis-  
cussion ~~in which~~ when  
it becomes necessary to  
examine with some care  
the argument ~~formerly~~  
made by the Attorney  
General in the case  
of <sup>John</sup> ~~John~~ the State  
of Tennessee, and the

opinion of this Court sustaining the constitutionality of ~~the~~ our State Law the validity of which I am now calling in question.

I should indeed do injustice to myself as well as to others did I not frankly admit that the argument of the learned Attorney General in the case reported in the volume which I now hold in my hand, as well as the opinion of the Court accompanying it are singularly marked with both learning and rhetorical finish, nor have I read either of them without renewed and increased admiration of the intellectual resources of the distinguished personages from whom they have emanated. I regret that upon a very careful consideration of the subject I do not find myself able to acquiesce in the conclusions to which the minds of these gentlemen have reached.

Before expressing in a more particular manner my grounds of dissent, I think it best to advise your Honors that I entirely agree with what has fallen from your Honors on a former occasion,

touching the importance of taking  
 into consideration, with a view to  
 a sound interpretation either of  
 a statute or a constitutional pro-  
 vision, the circumstances surround-  
 ing the body engaged in the busi-  
 ness of legislation. Law-making  
 proceeds at the moment that this  
 important function of civil life  
 may be put in exercise. Nor do  
 I at all disapprove of what the  
 Court has formerly said also, in  
 regard to the 10<sup>th</sup> section of the Constitu-  
 tion of the United States, 1<sup>st</sup> Article,  
 which prohibits the several  
 States "of the Union from the  
 passing of laws" impairing the  
 obligation of contracts," having  
 owed its origin to the fact that  
 at the time of the framing of  
 the Constitution there was some  
 apparent danger of several of  
 the States enacting laws in re-  
 pugnance of certain foreign  
 debts ~~then~~ contracted by them  
 before the commencement of our  
 Revolutionary contest ~~on~~ the  
 faithful payment of which

it was considered particularly desirable to secure. But ~~Dear~~  
~~Treasury does~~ are certainly not prepared to concede, by reason of the fact stated, that the meaning of the term contract thus used in the Federal Constitution was ~~a~~ <sup>an</sup> agreed to be limited by the framers of that instrument to "ordinary contracts of commerce and business." Though the wish to secure the payment of existing foreign debts, in any rate, and doubtless <sup>imperial</sup> ~~from~~ prompt the adoption of the prohibitory clause referred to ~~yet~~  
~~has~~ that is to say that the danger then supposed to be impending ~~may~~ of the repudiation of certain foreign debts ~~was~~ suggested to the minds of our fathers the necessity of providing specially against this evil, yet in performing this act of ~~simple~~ & mangled justice and wisdom, they were not content with pronouncing in specific terms against the ~~#~~ future invalidation of these particular debts, they chose

to use the most general and comprehensive language, so as to embrace every grade and quality of the evil designed to be suppressed. They, therefore, say: "No State" shall pass any law impairing the obligation of contracts." It would have been very & easy for them to limit the operation of the restriction intended to be imposed upon the States to "commercial and other business contracts." But this they not do, nor had they any thought of doing it. How did they, may it please your Honors, confine their restrictive action to contracts capable of specific enforcement, as ~~had~~ has been grossly urged here. But they preferred declaring, in the most sweeping and emphatic manner, that No State should pass any law impairing the obligation of contracts, — meaning of course, all to provide against the validation by

States of any contracts what-  
ever.

That this is the true  
view of the matter is made  
most evident by the action  
of the Supreme Court of the  
United States on various  
well known occasions; as,  
for instance, in the Dartmouth  
College case, when they decided  
that an ancient British  
Charter fell within the range  
of this very prohibitory clause;  
and also in the case of  
Peck vs. The State of Georgia,  
in which it was decided that  
a grant of lands, by a State  
Government, though fraudulently  
obtained, was protected by this  
same Constitutional provision,  
from adverse State legislation.  
Surely neither of these cases  
can be regarded as presenting  
for consideration a mere "commer-  
cial or other business contract."

But, may it please your House,  
 even if there be no cogency  
 in the argument just stated,  
 yet there is another view of  
 the subject which will be  
 found absolutely unau-  
 thorable. ~~For we hold that~~

I will state it in as few  
 words as possible. As it has  
 been judged proper on  
 the part of the representatives  
 of the State, in order to ascer-  
 tain the true meaning of  
 the word "council" in the  
<sup>debtors</sup> 10<sup>th</sup> Article of the 1<sup>st</sup> Article of  
 the Constitution of the Uni-  
 ted States to ~~enter~~ enter  
 into an examination of  
 historic ~~of~~ facts contemporane-  
 ous with ~~the~~ the framing  
 of that instrument, in order

to ascertain the precise pur-  
poses held in view by the  
makers of the Constitution  
in the adoption of that doc-  
ument; so, in the present case,  
in order to find out the  
true interpretation of the  
14<sup>th</sup> Constitutional Amendment  
and ~~the~~ of the acts adopted  
by Congress for its enforcement,  
we are compelled to take into  
our consideration the facts  
in our civil history concom-  
ipaneous with these impor-  
tant proceedings. And what  
were these facts? Why a bloody  
and exhausting war of four  
years continuance had been  
going on, in which the con-  
tinued existence of domestic  
slavery in this Republic was  
the main issue to be settled.  
This issue resulted in the down-  
fall of African Slavery in

This continental; but not with-  
out the most effectual and  
spiritual aid having been  
supplied by our four millions  
of people of African descent  
and devotion to the effe-  
mation of their deliverance  
from what had seemed,  
up to the breaking out of  
this same war, a state  
~~of tolerable insensibility~~ of intolerable  
bondage. When the war  
was over, as was to have  
been expected, the system of  
slavery having meanwhile  
been completely swept into  
extinction, the government  
of the United States which  
stood solemnly pledged  
to the protection of their  
newly found freedom, took

very early steps for the purpose of consummating the great work which had been commenced. Great and peculiar difficulties ~~surmounting~~ had to be encountered, all of which are perfectly familiar to your Honors. It may be, though I think that your Honors will scarcely be prepared to announce, in view of of the facts of our recent history, that ~~all~~ the ~~good~~ white citizens of ~~the~~ what had been recently recognised as the Slave-holding States of the South, none prompt and voluntarily have accorded to the colored race all the liberties and immu-

nities which they now enjoy,  
~~without~~ had no amend-  
 ments of the Federal Con-  
 stitution been & adopted,  
 and no Civil Rights Act  
 been passed. But certain  
 it is, that such was not the  
 view of the subjects enter-  
 tained by those who had  
 been victorious in the war,  
 and who were then propound-  
 ing the legislative power  
 in Washington City. With  
 a view of "making assurance  
 double sure," and, as it were,  
 "taking a broad offal,"  
 it was determined, so far  
 to encroach upon the "rights  
 of the States, originally "al-  
 to them  
 terred" in the Federal con-  
 stitution,

situation, as to not to draw  
 this whole subject from  
 local cognizance and  
 to place it under the con-  
 trol of the Federal  
Constitutional Government.  
 This could only be done  
 legitimately by amending  
 the Constitution of  
 the Union in the manner  
 which has been done  
 and adopting appropriate  
 Congressional legislation  
 to carry these amendments  
 into effect. But Perhaps it  
 would have been wiser  
 on our part, had we of  
 the South, in a prompt  
 and seasonable manner,  
 so soon as we ascertained  
 that Slavery was ~~to~~ forever

extinct, gracefully yielded  
to the necessity of the case  
and saved Congress from  
the necessity of securing  
perfect co-equality of all  
civil rights to the members  
of the African race, by  
adequate action on the  
subject in each of the  
States wherein slavery had  
recently ceased to exist.  
Such perhaps would have  
been the motions of a  
wise, far-seeing, and all-pro-  
viding statesmanship. Un-  
fortunately though for us  
of the concurring section  
no such views as these were  
widely entertained; and

hence the conclusion of  
things which we now find  
existing.

Now, in the view  
of the facts thus briefly stated,  
let me ask of your Honors,  
what opinion are we per-  
mitted to entertain touch-  
ing the purposes and  
intention of Congress in  
adopting the Civil Rights  
Law? Was it not ~~the~~<sup>ob</sup> intention  
~~that~~ the intention of this  
body to secure absolute  
equality of all races  
before the law, both  
in a criminal and civil  
sense? Was it not the intention  
of Congress to give

the fullest protection in  
 its power to a particular  
 class of our population, fewer  
 in numbers than the white  
 race, often less intelligent,  
 left ~~as~~ by the war generally  
 in a most forlorn state  
 of poverty and helplessness,  
 and by reason of  
 these facts, and of many  
 others which I might men-  
 tion, exposed, as was be-  
 lieved to be the case,  
 to the continued apprehensions  
 of the dominant race  
 by whom they had so  
 long been held in bondage.  
 When we read the XIV  
 Constitutional Amend-

ment and the existing  
 statutes by the light of  
 these facts, I<sup>t</sup> really can-  
 not see how any man  
 can doubt the incor-  
 rectness of our statute  
 under which the unfor-  
 tunate prisoner at your  
 bar is now held in custo-  
 dy.

But ~~t~~ in order to evade the  
 force of these arguments, it is  
 urged in this Court that  
 marriage is not a contract,  
 but a status only. To which  
 I respond that it is not  
 only a contract — a con-  
tract consummated,  
 but a status also, if  
 so you choose to call  
 it, though I should deem  
 it more accurate to say

that by force of name or, as a contract, a particular  
status or condition is  
generated, indicating the  
relation in which the  
parties stand to each  
other and to the world  
in general. Your Honour will  
recollect that this is precise  
explanation which Black-  
stone gives of the word estate,  
which he says is derived  
from the Latin term status,  
or condition.

I shall not now weary your  
Honours with the citation of  
numerous authorities on this  
point. They are already fa-  
miliar to you the Court.  
But I may just mention  
Blackstone, Bishop, Messrs Sc-  
-est, 2<sup>nd</sup> year, & 4<sup>th</sup> Comstock,  
all of which I have had to

have been very judiciously brought to the notice of the Court in as the State of Tennessee. There are numerous other authorities, besides, which ~~not~~ were cited in that case, from which I shall not now occupy the time of the Court in reading.

But the Attorney General has formerly taken the ground that a marriage of the kind now under consideration, cannot be a contract, because prohibited. To this I have only to respond that if marriage be a contract, the Statute prohibiting it is necessarily unconstitutional, and therefore no impediment to the making of such a contract; unless indeed the Civil Rights Law be unconstitutional, which this Court has not heretofore determined to be the 2 case, and, as I suppose, is not likely to do so.

in future.

It will not do to compare this contract to a gaming or other immoral contract, which is worse, because contra bonos mores; for this argument, as your Honors will not fail to perceive is a grap pectio principii; for it remains to be proved that any contract whatever is contra bonos mores which is clearly authorized by a constitutional law. To to contend is to take it for granted that the Civil Rights Law is unconstitutional which is seal-by the great point in the case.

The Attorney General says, in his printed argument, which lies before me, that making a contract of marriage is like purchasing a house and then

asked it says: "I buy a horse; my horse is not a contract." To which I answer certainly not: the horse is such a case does not become a contract, but the property of the owner, just as ~~the woman~~ a woman becomes, not a contract but a "wife" before of the marriage contract confirmed and solemnised according to the forms of law. When a man purchases a horse a satus is as certainly produced as by ~~a~~ marriage the satus of ownership, which so far from depothing the contract of purchase, solidifies and confirms it. To of all other contracts which can be mentioned. The contract & the satus are two things wholly distinct; neither can run into, or be a substitute for the other. The satus, in any case whatever resulting from a

contract does not operate to the displacement or extinction of the contract, but ~~its confirmation~~ is only a consequence resulting from it; the contract still remains for the protection of all the varied interests which may spring up under it.

"The ~~Attorney~~ learned Attorney General, in discussing this question on a former occasion, has propounded the question:

"Is the fee in land which I hold by deed, itself a deed, or is it a contract of which the deed is the evidence?" I shall, with the aid of Blackstone and Coke, answer this rather remarkable question, very readily: "The fee is certainly not the deed; nor the deed the fee; the deed is ~~not~~ the evidence of a contract, & is ~~not~~ a contract also, in the same sense in which a

legislative grant is a contract, & the fee is the estate held in the land covered, that is it indicates the status or condition in which the owner of land by purchase or contract stands to his land contracted for or purchased.

"He asks, the still more suspending question: "Was it (the fee) a contract when my vendor held it, when the ~~owner~~ Governor owned it?" To which I answer, the fee itself is no more a contract in the case mentioned than a wife is a contract in the marriage state; but the deed in such a case is just as much a contract as a legislative grant of land is, or a Charter of incorporation.

"He asks in the ~~case~~ same case, when did the fee become a contract, when it passed from the government, or, if not, when." I answer sicet; the party is impossible, implying an absurdity in Texas.

I agree with the Attorney General, in another part of his argument, most cordially when he says: "The marriage relation and the contract creating it are distinct things." I go further in explanation and say that the contract to marry, of which the Attorney General speaks, as in every similar case is a mere executory contract; the solemnization of the marriage is the confirmation of that contract, and is the first step towards its future execution; and the marital relation resulting from the marriage ~~is~~ constitutes the mutual relation of the parties to that marriage, after the mutual state has been established between them. No such indeed would be the conjugal connection to the parties to it, if the obligatory force of the marriage contract should be decided as having been extinguished by the very act of its confirmation; and ~~equally~~

still more woful the conclusion  
of that hostility, false afterwards  
coming into existence under  
the shelter and protection of  
that contract, and who im-  
mediately upon their birth  
have a ~~insurance interests~~  
tender and valuable sprout-  
ing into existence under its  
safe-guard. Such a doctrine  
as this would naturally bar-  
barize every infant in the  
land!!

The Attorney General further  
says: "Marriage is the performance  
of the contract of marriage;  
a refusal to perform it is the  
breach." This is very true of ~~other~~  
marriage contracts in fact.  
No, but most of those in present,  
is not a failure to comply with  
the marriage obligations after  
the marriage a breach thereof,  
and may not judicial remedies  
be resorted to for its enforcement?  
But it has also been argued  
in this Court that ~~a~~ decree of

"in the sense in which marriage  
is dealt with by a decree of divorce  
~~divorce~~  
it is not a contract, but one of  
the domestic relations?" Will  
some one be good enough  
to explain to me what is meant  
by a Decree or brevile matrimonii? Is not the ceremony mat-  
rimonii? Is not the ceremony mat-  
rimonii culum here spoken of most  
clearly the ceremony  
or obligation of the nupti-  
al compact?

The opinion of Chief Sec-  
tary Robertson of Kentucky is  
quoted against us; what is  
it? (Here inserted)

Does not this learned Judge  
say expressly that marriage  
is a contract? But he says it  
is sub genere; to say; it is indeed  
a distinct and peculiar con-  
tract; & the most important  
and important of all contracts,  
for it is the very foundation of  
civil society itself.

It is further contended on the part of the State that no contracts can be regarded as alluded to by the Constitution of the United States except such as may be specifically enforced. Then why is not so expressed in the Constitution? Are the most sacred rights of the citizens to be destroyed by mere subtlety of construction?

It is urged that the martial selection was never interfered with before by Congress, & it is therefore inferred, ~~proven~~, that it was not intended to do so by the late enactments. Just the same argument might be made in regard to a thousand other matters which are now ~~under~~ placed under the protection of the Federal government, of which the separate States originally had exclusive cognizance! Will our countrymen of the South never be able to realize the fact that certain gross and vital amendments have been recently made in the Constitution and the Laws of the United States, to which we, as good

opinion has been set forth.  
If I do not say more  
in commendation of  
it, it is simply I do not  
find it in my power con-  
siderately to do so.

There will be a  
large number of other  
things which you may wish  
to say, but I will not trouble  
you with them at present.  
I have written to you  
from time to time, and  
will do so again, but  
I will not trouble you  
with many details at  
present. I will however  
mention one or two  
things which you may  
have omitted. In  
the first place, I would  
recommend that you  
do not publish your  
work in full, but  
only in a condensed  
form, and that you  
keep the original  
work in reserve  
until you have  
published a few  
chapters, and  
then you can  
make use of it  
as occasion  
requires. This  
will give you  
more time  
and opportunity  
to complete  
your work  
in a better  
manner, and  
will also  
enable you  
to make  
use of  
any  
new  
information  
which  
may  
come  
to  
light  
during  
the  
process  
of  
writing.

good & loyal citizens are bound to submit or leave the country over which the Constitution, in its amended state, is collected to hold unimpeded sway?

"One of the remarks, of the learned Attorney General ~~was~~ in the case of the Hite is

~~He~~ is really quite anxious. He says: "Really these laws were ~~not~~ intended to affect the white man, not the negro." Then why not let the unfortunate prisoners now in custody be at once discharged, if the penal law under which he is prosecuted was not intended to apply to him?

"Again, he says: "The negro was not understood to be hurt by the maltreatment of the white race; but it was the deterioration of the white race that was against policy." Is this not clearly such a des-

paraging dissemination a-  
gainst the whole class of oab-  
colored citizens as emphate-  
cally forbidden by the  
Civil Rights Act. While they  
are fated to suffer the de-  
privation of their dearest  
rights, & be subject  
in addition to peculiar  
criminal penalties, because  
of a particular race and  
lineage, on the reason of their  
former condonation of secession.

It has been said here that in  
our State marriage is solemnized,  
not contracted!" But I say, most  
emphatically, it is here both  
contracted and solemnized; &  
I have already stated my  
reasons for so understanding  
the matter. What Mr. Bishop  
says on this head I cordially concur  
in: "Marriage is the particular  
glory of the social system, and  
hence, it is not a mere contract between  
~~two~~ men and women". To say I, it is not  
merely a contract between men and

However, but it is with a con-  
tract solemnised and sealed  
in the most formal and im-  
pressive manner; as it were,  
in the presence and with the  
sanction of God himself;  
as appears by those thrilling  
and emphatic exclamations  
with which it is ever accompa-  
nied: "Those whom God has  
joined together, let no man  
put asunder!"

It has been also gravely said here that  
marriage is called in some of the States a civil  
contract, for the want of a better phrase? With  
due reverence, I cannot think so; our language  
is exceedingly copious; & nothing would have  
been more easy than to use different terms, if  
indeed a different idea was intended by  
conveying. The fact that it is almost universally  
spoken of as a civil contract, is to my mind  
conclusive as to the common understanding  
of our countrymen on this subject.

Mr Madison has been relied on in this Court, on a former occasion, in support of the position that the State of Tennessee yet has entire and exclusive control of the business of marriage. This language, as cited, is: "To the States have been left the control of all matters that concern the lives, liberties, and properties of the people, and the internal order of the State." I have certainly a very high respect for the authority of Madison; but no one knows better than your Honors that this very sage and able Statesman, though in general eminently discreet in the use of language, on more than one noted occasion, fell into the use of phraseology the latitudinous scope of which

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he felt bound afterwards to re-  
strict and qualify. In truth  
of which statement I shall  
only now allude in referring  
to the famousburgess resolu-  
tions of 1798, which all the  
world took to mean nullifi-  
cation, if not secession, but  
in reference to which his  
famous letter to Edmund G.  
Everett attests that he had  
in his heart no such dan-  
gerous ideas. The truth is that  
the States of this Union  
never had exclusive control  
of everything appertaining to  
the lives, liberties, proprie-  
ties of the people, and God  
forbid that any such dan-  
gerous notion should ever be  
diffused in this country; that  
they are not supposed to

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have any such powers now  
every day's experience is at  
this moment impressively at-  
testing. The fact is, may it  
please your Honors, that it  
is high time we should  
realise the radical changes  
in the framework of our  
civil polity which great  
and memorable causes  
have been bringing a-  
bout during the last 12  
years. Of me still persist in  
going back on all occasions  
to what some are pleased  
to call the Constitutional  
landmarks of our fathers,  
and others the ancient moor-  
ings of the last. I very much  
fear that some malapert  
political wag may after a

while, venture to compare  
us to Rip Van Winkle, who,  
after a profound slumber  
of 20 years in a hollow of  
the Kaatskill mountains,  
during which the struggle  
for American indepen-  
dence had been going  
on, when waking up  
and descending to the vil-  
lage where he had previous  
lived as a loyal subject  
of his gracious majesty  
King George III, was very  
near being hanged, and  
punished for treason to  
the ~~new~~ Republic and  
government for the utter-  
ance of the old Monarch-  
ical sentiments in which  
he had been reared.

In presenting such messas  
as these I intend ~~see~~ re-  
-ferring to command now  
to disapprove of the mode-  
-cations in our organic law  
which have been effec-  
-ted, but simply to ad-  
-vise, as ~~a~~ one of the safest  
and most gratiotic of  
the members of our other  
State Convention did  
some three years ago, a  
discreet and graceful  
acquiescence in the  
Constitution and Laws  
as they are.

I can not, for the life  
of me, see ~~less~~ what right  
any of us who have no  
legislative power to put  
in exercise, to discuss mere  
topics of ~~expediency~~  
political expediency in  
undertaking to settle the  
meaning of plainly out-  
-ten statutory enactments.  
As little can I perceive  
how it can be, impor-  
-tant before so august  
a judicial tribunal  
as that which I am now  
addressing, to discuss questions  
of mere social good taste, or

to demonstrate that the whole African race is of so low and semi-ambitious an origin that the least intermixture of the blood of that race with that which flows has flowed down to us,  
~~though~~ as the lowest-fully absent from pure Caucasian sources.

Such topics as these might perchance very properly find a place in some brilliant Congressional harangue, but, as I suppose have no right to introduce them

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- selves upon the solemn  
and painful deliberations  
of a Court of Justice.

Whether all the whole  
human family are de-  
rived from one man  
and one woman, as  
we have been taught  
to believe in the days  
of our infancy; whether,  
as Mr. Rotteck, the great  
German historian con-  
tends, there were four Ad-  
ams and four Eves from  
whom have sprung four  
distinct races; whether, as Mr.

Darwin contends, we  
are all ~~the~~ our origin,  
by some mysterious pro-  
cess, and in exceedingly  
remote ages to the foam  
of ocean, and appear-  
ing first as a sort of semi-  
organic animal, in the  
process of time, ~~first~~ he-  
came first reptiles, then  
fish, then reptiles, then  
monkeys, and then men,  
I am not at all con-  
cerned to know. You are  
tautologies to find out by  
what means the time-hon-  
ored Israelites in an aged

to sleep animals of different  
-ilar genera from ~~gender~~  
genders with each  
other. I may here add,  
that I venerate as much  
much as any other Ghus-  
taw man can do.

The policy pursued by  
by Schobak from about  
the time of raising up  
by circumcision and other  
ritual ceremonies, as  
pure-blooded and pe-  
-culian people; yet your  
Honors will I trust ex-  
-cuse me for suggesting that  
I am not able to discover

that, in the examination  
of the important Constitution-  
al question which is  
now before you before  
you for decision it is by  
any means essential to  
the ends of justice that  
you should be at all  
influenced by the fact that  
Father Abraham some four  
thousand years ago com-  
manded his servant to  
~~select~~ choose a wife for  
his son Isaac only a-  
mong ~~the people~~ his own  
kindred who dwelt in  
one of the Ghadels.

When it is frankly pro-  
tested here that the Amer-  
ican has no right to mar-  
ry and be given in  
marriage with the sons  
and daughters of our  
people," I have only  
to say that the legal  
right to make such  
contract must depend  
alone upon the true  
interpretation of the  
XIV amendment and the  
Civil Rights Act. It is not  
a question of taste, or pre-  
judice, but of Constitution-

- al Law. of persons of Afri-
- can derivation are to be allowed to marry at all, they must be allowed to marry among the sons and daughters of our people, since they are themselves an element of the great Populus Ameri-
- canus, made so by the Constitution and the su-  
cath ~~yes~~ year by the Su-
- preme Law of the Land.  
There was a time in England, when neither our Celtic nor our Anglo-Saxon ancestors were recognized as British

citizens, now were they  
allowed by law to inter-  
marry with the French  
Norman. Henry the 1<sup>st</sup>  
for he had to com-  
mit such an enor-  
mity was reviled and  
denounced by his Nor-  
man subjects, and his  
~~name~~ a dishonorable  
moniker has applied to  
him which he bore through  
life. This ~~most~~ mon-  
strous ~~injustice~~ depic-  
tion of civil rights our  
ancestors endorsed for  
centuries; but as Christ-

arity and cruelty atone a cl-  
-banced this dis honouring  
and unwise ~~distress~~. des-  
-cermination was gotten  
rid of. For centuries the  
Roman Plebeians were  
left in the same des-  
-honouring condition;  
but they also, in proop  
of time emerged from the  
stratagem of centuries, and  
under the protection of  
sage and salutary took  
their place side by side  
with the haughtiest Patrician  
in the land. & In regard

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to the African race, we  
have only followed in the  
wake of these well-known  
historic examples; and,  
for one, I rejoice in the  
belief ~~is~~ that unnumbered  
blessings are yet to flow  
from the complete eman-  
-cation of the children  
of so long-suspirious ~~soul~~  
and singularly amiable  
and unoffending seg-  
-ment of our People from  
all the impediments  
to happiness and moral  
advantage, which the op-  
-pressive tyranny of former

ages have on all sides  
surrounded them.

"I cannot believe ~~that~~  
that your House will  
consent to doom this  
unfortunate American  
citizen to long and  
degrading punishment  
in your State Peniten-  
tialy, for presuming to  
exercise the right, clear-  
ly accorded to him by  
Law, nor will you decide  
that the simple ~~entraunce~~  
marriage of a colored  
man with a white no-  
-man in the State of

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of Tennessee, is not only an  
act unauthorised by law,  
but as this Injunction  
boldly asserts is marked  
with the grossest and most  
indecent immorality.

— Your Honors will  
permit me to conclude  
by disclosing the earnest  
desire which I feel, for  
various public reasons  
not needful to be here  
specified, that the de-  
pendant at the bar,  
and the whole of that  
clay of our population  
to which he belongs,  
shall receive taxes at

hands of the Supreme  
Court <sup>justiced, according to law,</sup> of Liverpool, and  
that he will not be  
compelled to apply for  
the redress of all the  
outrageous <sup>repetitions</sup> which  
he has ~~already~~ en-  
dured, to the highest  
judicial tribunal  
of the nation; where,  
I am sure, that a  
speedy and a full  
deliverance will at  
last be accorded  
him and the last  
cause he "magnificently  
made honorable."

*Salloway David*

Sentenced by the Supreme Court  
of Tennessee for the Middle District at the December term  
1872, for the period of Two Years from January 1<sup>st</sup> 1873.  
Crime "Intercourse of Negro & white person"  
10 Years of Age & over in High  
weight 150 pounds Scars on Head from fractured skull  
Married wife on McElmores, late Nashville born at Columbia Tenn  
Quarry man by trade No Education Discharged Oct 10<sup>th</sup> 1874 on good time  
act

*Sarrow William C. Nolen*

Sentenced by the Circuit Court  
of Tipton County at the January term 1873, for the period of  
One & One-half Year from January 20<sup>th</sup> 1873 Crime "Burglary"  
12 Years of Age & over in High  
weight 102 pounds Small Scar in Forehead & in corner  
of left Eye Mother living near Covington Tipton Co Tenn  
born in Shelby Co Tenn Single No trade or Education

Discharged at Expiration of Sentence Jan 20<sup>th</sup> 1874

*Nelson John*

Sentenced by the Circuit Court  
of Bradley County at the January term 1873, for the  
period of Three & One-half Years from January 14<sup>th</sup> 1873.  
Crime "Grand Burglary"  
20 Years of Age & over in High  
weight 154 pounds Scar on right knee from Cut Single  
Parents living at Fairview Tenn born in in Fairview Tenn  
No trade or Education Discharged in Hospital July 17<sup>th</sup> 1873.

Commuted to 5 years  
from Jan 14, 1873 to Oct 25, 1873  
Died

Sentenced by the Circuit Court of  
Bradley County at the January term 1873, for the period of  
Ten Years from January 1st 1873 Crime "Burglary"  
22 Years of Age & over in High  
weight 168 pounds Name & several characters marked on left arm  
& with Indian Ink Single Parents living 10 Miles East of Madisonville  
Monroe County Tenn born in Monroe Co Tenn No trade or Education

Discharged on good time January 15<sup>th</sup> 1877 Nashville.



## CONVICT RECORD.

## TENNESSEE PENITENTIARY.

No.	NAME.	Date:	County.	Court.	Crime.	When Received	Date of Sentence.	Term, Years.	Age, Years.	Height, feet, inch.	Weight, Lbs.	Color of Eyes.	Color of Hair.	Complexion.	MARKS.	Station of Life.	Where Born.	Trade.	Education.	Religion.	REMARKS
	David Galloway	col	Davidson	Criminal	Unlawful Cohabitation	June 6 <sup>th</sup> 1882	May 31 <sup>st</sup> 1882	3	53	5' 7"	105	blk	blk	dark	scar on right cheek just below the cheek bone left part of left ear gone, <sup>to</sup> <sup>the</sup> <sup>left</sup> <sup>of</sup> <sup>the</sup> <sup>ear</sup> <sup>is</sup> <sup>a</sup> <sup>scar</sup> <sup>from</sup> <sup>a</sup> <sup>fracture</sup> <sup>of</sup> <sup>the</sup> <sup>scull</sup> about 3 in above left eye	single married man	none	none	none	none	sent to Cockville Farm
	Geo Hodge	col	Davidson	Criminal	Larceny	June 6 <sup>th</sup> 1882	June 6 <sup>th</sup> 1882	1	19	5' 4 1/2"	140	blk	blk	brown	scar under right ear, scar from burn single line on back of right hand	single	none	none	none	Discharged at Nashville line May 5 <sup>th</sup> 1883.	
	Bowling Townsend	col	Davidson	Criminal	Larceny	June 6 <sup>th</sup> 1882	June 5 <sup>th</sup> 1882	5	20	5' 5"	140	blk	blk	dark	scar on chin, jaw & throat on right side single line one directly under the chin, scar on right of the head near the back part	single	slim	none	none	none	Discharged June 14 <sup>th</sup> 1884 at Nashville.
	Malinda Galloway	white	Davidson	Criminal	Unlawful Cohabitation	June 6 <sup>th</sup> 1882	May 30 <sup>th</sup> 1882	2	38	5' 6"	140	blue	sandy	fair	Ballet Girl tattooed on right arm just below elbow	single	thin	none	thin	none	Discharged at Nashville line May 29 <sup>th</sup> 1884.
	David Lock	White	Hawkins	Criminal	Murder Voluntary Murder Man Slaughter	June 9 <sup>th</sup> 1882	May 27 <sup>th</sup> 1882	2	34	5' 8 1/2"	155	gray	blk	dark	scar on left side of neck from cut, married man little finger on left hand broken off or middle joint	single	thin	none	thin	none	Discharged Feb. 16 <sup>th</sup> 1884 at Nashville.
	John Welch	col	Lauderdale	air and P.	Larceny	June 10 <sup>th</sup> 1882	May 29 <sup>th</sup> 1882	3	48	5' 9 1/2"	165	brown	gray	brown	scar across left thumb	single	Maryland	none	none	united	Reed Nov. 3 <sup>rd</sup> 1884 at Nashville.

DIED.