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Issue #3: *Henderson v. Jason*

[In *Hall v. Mullin*, we saw how one Black family used resources and familial ties to protect their freedom. *Burke v. Joe* emphasized how community ties and neighborhood memory could do the same work. 1851's *Henderson v. Jason*, reveals two more facets of how Black Marylanders defended themselves. First, *Henderson* demonstrates their use of creative, but risky, legal strategies to protect their freedom. It also offers an interesting companion to *Burke v. Joe*: While *Burke* showed the value of winning the goodwill of one's neighbors, *Henderson* demonstrates the importance winning over *powerful* people].

In 1847, a free Black man named Aaron Jason filed a bill of trover against William T. Henderson.<sup>1</sup> Trover is a civil action in which the plaintiff sues to recover property misappropriated by the defendant (called a conversion). It is akin to embezzlement in criminal law: the defendant had permission to use or possess the property but has exceeded that license in a way that thwarts the plaintiff's true ownership powers and rights. If the defendant is found liable, they must either return the property or compensate the plaintiff.

According to the bill, Henderson had trespassed against Jason by holding "said goods and chattels. . . of right to belong to. . . [Aaron Jason] . . . fraudulently intending, craftily, and subtly [sic] to deceive and defraud. . . [Aaron Jason]." What were these goods and chattels? Four of Aaron Jason's children: Bill, Asbury, Reuben, and Louisa.<sup>2</sup> From the surviving record, it is not clear how Henderson came into possession of the children, nor what spurred Aaron Jason to file his bill. Subsequent litigation indicates that the Jasons were all living as free persons "at the time of [their] seizure by [Henderson]," but Henderson's precise claim to the children goes unstated.<sup>3</sup>

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<sup>1</sup> *Henderson v. Jason* Trial Judgments at 8, MSA S832-86.

<sup>2</sup> *Id.* at 8-9.

<sup>3</sup> See *Jason v. Henderson* 7 Md. 430, 441 (Md. Ct. App. 1855).

What is clear is that Aaron Jason initially argued the children were slaves, and demanded Henderson either return the “said goods and chattels” or pay between \$3,000 and \$5,000 in damages.<sup>4</sup> On September 28<sup>th</sup>, 1849, the jury found for Aaron Jason and assessed \$1,245 of damages.<sup>5</sup> However, it seems Henderson was not going to pay, as the court’s writ of fieri facias (ordering a sheriff to confiscate assets for non-payment of a judgment) yielded no returns.<sup>6</sup> Aaron Jason thereafter filed a motion for new trial, which the court granted.<sup>7</sup>

However, Aaron Jason abandoned that suit and filed a petition for freedom on behalf of his children. A petition for freedom was a type of lawsuit alleging that the plaintiff was a free person unlawfully held as a slave. For example, if an enslaved person was freed by a slaveholder’s will, but the executor refused to release them, that enslaved person could file a petition for freedom asking the courts for help. Petitions for freedom were also filed when someone had been kidnapped into slavery. Sometimes that was Black Northerners, snatched from free soil and shipped down south where no one knew their status.<sup>8</sup> In other cases, such as the Jasons, the kidnapping took place closer to home.

Why the new trial at all, and why the new cause of action? The answer is likely damages. The trover jury awarded Aaron Jason \$1,245 in damages, but did not order Henderson to release the children. It is entirely possible that Henderson was simply collecting the money to pay off Aaron Jason before either selling or using the Jason children as his own slaves. At the time of filing, the

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<sup>4</sup> Approximately \$90,000 - 112,000 in 2022 dollars.

<sup>5</sup> *Henderson v. Jason* Trial Judgments at 9, MSA S382-86.

<sup>6</sup> *See id.* at 10, where Aaron Jason moves for the sheriff to seize Henderson’s property (a motion for fieri facias) sufficient to pay the damages.

<sup>7</sup> *Id.*

<sup>8</sup> Solomon Northrup of *Twelve Years a Slave* is a famous example of such kidnapping. Northrup was a free Black carpenter and violinist in Saratoga Springs, New York. After accepting a contract to play with a traveling circus, Northrup found himself drugged, bound and sold as a slave in Louisiana. However, Northrup obtained his freedom through other means, not a petition for freedom.

children were seventeen, eleven, thirteen and fifteen; all early on in their working years according to the sensibilities of the era.<sup>9</sup> Henderson probably figured that keeping the children would yield a larger profit, and so embraced the damages. Seeing that his verdict was a poisoned chalice, Aaron Jason moved for a new trial, then pivoted to a freedom petition to avoid a similar result.<sup>10</sup>

In this new suit, the plaintiffs first sought to establish that the children were all born of a free mother. In 1831, Mrs. Frances Warfield struck a deal with Aaron Jason: if Aaron took in and supported Rachel Jason (Aaron's wife and the petitioners' mother) and her two existing children (Sam and Arch), then Rachel (and only Rachel) would be freed. No fool, Aaron accepted the agreement and Rachel, Sam, and Arch moved in with him. No one would ever again lay claim to Rachel herself.<sup>11</sup> When Frances Warfield died in 1846, her estate did not include Rachel, nor Frances's executors or heirs attempt to repossess her.

This arrangement was no secret. An Alfred Warfield heard Frances Warfield repeatedly refer to Aaron and Rachel as free persons. The Jason household was only a few miles from Frances's home, well within the range of news and gossip. Meanwhile, the grand patriarch of the extended Warfield clan, Dr. Gustavus Warfield actually treated Aaron and the children as their physician. In his medical accounts book, Dr. Gustavus notes that "Aaron Jason, Freed by Beni Warfield" racked up \$4 in charges (no small amount for that time) during September 1838.<sup>12</sup> All of these were paid by

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<sup>9</sup> See *Henderson*, 9 Gill at 484 (noting that in 1851, William was 19, Reuben "thirteen or fourteen," Asbury 15, and Louisa 17 years old).

<sup>10</sup> For his part, it is possible Henderson did not contest the new trial motion in hopes of winning without damages, or a repeat verdict. Alternatively, any objections were overruled and not included in the appellate filings.

<sup>11</sup> It appears that, since the agreement was to free Rachel (and only Rachel) the two remained enslaved. In fact, France Warfield's executor, Eli G. Warfield, took Sam and Arch from the Jasons sometime after Rachel moved in with Aaron, indicating there was still some legal claim on the two.

<sup>12</sup> Medical Account Books of Dr. Gustavus Warfield. Maryland Historical Society, 13-16 Sept. 1834, MS 874

Aaron himself, not a proximate slaveholder.<sup>13</sup> Since William, Asbury, Reuben, and Louisa were all born *after* Rachel moved in with her husband, they would be free; Henderson had no claim to them.

Henderson responded with a multi-pronged attack on Rachel's freedom, and therefore the freedom of her children. First, there was no deed of manumission for Rachel. Like in *Burke v. Joe*, Frances Warfield hadn't filled out the necessary paperwork.

Henderson then attacked the Jasons' fulfillment of the agreement itself. In either 1832 or 1838, Frances Warfield's agent took Sam and Arch away from the Jasons and back into Frances' service. Since the agreement was that Aaron and Rachel would raise Arch and Sam, Henderson argued the Jasons failed their end of the bargain and Rachel's freedom was nullified. Rachel would therefore remain a slave.

Henderson then invoked Aaron Jason's bill of trover.<sup>14</sup> In that case, Aaron was seeking to recover *property*, specifically his enslaved children. Alfred Warfield had also testified for the Jasons in the bill of trover, stating that Rachel was *sold* to Aaron Jason, not sent to live with him.<sup>15</sup> Taken together, Henderson painted a picture where Rachel and the children were not free persons at all, but enslaved by their husband/father.

Despite the thoroughness and breadth of Henderson's arguments, each tribunal ruled in the Jasons' favor. The trover jury assessed damages, the petition for freedom jury found for their liberty, and the Court of Appeals affirmed the trial ruling without comment or opinion.

As we think about the efforts Aaron Jason took to save his children, it's worth meditating on the risks he took. We don't know why Aaron first filed a bill of trover, rather than starting with a freedom suit. He might have predicted Henderson's arguments from the freedom suit, and

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<sup>13</sup> *Id.*

<sup>14</sup> *Henderson v. Jason*, Trial Judgments 6.

<sup>15</sup> *Id.* See also *Henderson v. Jason*, 9 Gill at 485-86.

(correctly) guessed a jury was more likely to return his children via trover. Another possibility is that Aaron did not yet have the right witnesses to save his kids. Without them, the freedom suit became much more difficult, so he had to pursue the trover action. Regardless of why, he rolled the dice and almost paid dearly.

One key component of Aaron's eventual victory was the Warfield family. The Warfields were one of Maryland's wealthiest and most prominent families. They had arrived in one of the first waves of English colonization, alongside the Carrolls, Howards, and other families who would lend their names to Maryland's various counties.<sup>16</sup> Since their arrival, the Warfields had prospered, with Warfield-owned plantations liberally sprinkled across the map. Its scions were similarly prominent, flourishing in business, serving on blue ribbon commissions, and elected to office. The family took great pride in its military record during the Revolutionary War,<sup>17</sup> and remained prominent throughout the state's history. It is this august lineage that the Jasons asked for help and who comprised over half the witnesses listed on the trial docket.<sup>18</sup>

So why did the Warfields eventually get involved anyway? The freedom of a Black woman and her children had no real impact on their lives. In fact, Henderson was the creditor of one Reuben Warfield, so the confiscation might actually go to pay off some of their debts.<sup>19</sup> One option is that the Warfields did it out of goodness of their own hearts, as a tribute to the departed Frances

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<sup>16</sup> See Joshua Dorsey Warfield, *The Warfields of Maryland* 10 (1898).

<sup>17</sup> For their patriotism, the most successful Warfield Revolutionary would be Wallis Simpson (née Warfield), whose romance with Edward, Prince of Wales (later Edward VIII) eventually led to the latter's abdication from the British throne and couple's pseudo-exile to America.

<sup>18</sup> See *Henderson v. Jason*, Trial Docket, Howard District Court (Judgment Docket), MSA C64-84.

<sup>19</sup> See *Warfield v. Owens*, 4 Gill 364, 365 (Md. Ct. App. 1846).

and to prevent a family from being destroyed. There is nothing denying this possibility, and slaveholders' paternalist<sup>20</sup> ideology might even encourage such assistance.

However, a more likely motivation was to avoid embarrassment and a loss of (social) credit. Aaron and Rachel cleverly leveraged the Warfields' prominence against them. If Henderson's allegations were true, then France Warfield had brought great shame to the family at large. First, it was undisputed that Frances Warfield allowed the Jasons to live together and as free persons. However, this hands-off attitude was frowned upon by white society, and actually illegal under Maryland law. Free Black Americans were slaveholders' perpetual bogeyman, supposedly stirring up slaves' discontent, encouraging runaways, and burdening the public coffers with charity cases. The Warfields couldn't claim Rachel had run away, as Frances would know if one of her bondspersons just upped and left with her two children. Even if Rachel had escaped without her knowledge, Frances obviously knew where Aaron and Rachel lived, and could have easily dispatched her agents to retake Rachel. After all, she did so with Sam and Arch.

Carelessly contributing to Maryland's free Black population threatened not only bad press for Frances and the Warfields, but also criminal sanctions. Under the law of 1787, allowing an enslaved person to live as free was a crime, punished by a fine of \$20 per month and confiscation of the enslaved person by the state for the rest of the year.<sup>21</sup> Unless Howard District and Anne Arundel county were subject to special, increased fees, Frances Warfield would have owed the state approximately \$3,360 (~\$126,000 in 2022)<sup>22</sup> in fines just for Rachel.<sup>23</sup> William, Asbury, Reuben, and

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<sup>20</sup> Paternalism is an idea where those in a position of authority restrict the freedoms or responsibilities of their subordinates "for their own good." The idea is that people with less authority just are not equipped or prepared for responsibilities, and so should not be burdened with them. Generally, it treats adults as children in certain ways.

<sup>21</sup> See Act of 1787, *supra* footnote 88; See also, *General Assembly (Laws)*, Ch. 104, 4 Feb. 1817, MdHR 820905-2, 2/2/6/12 (raising the fine up to \$12 per month for allowing an enslaved person to live as free, and \$20 for hiring someone living-as-free); Brackett, *The Negro in Maryland* at 105.

<sup>22</sup> A rough calculation using historical Consumer Price Index data.

<sup>23</sup> Assuming Frances Warfield died in 1846.

Louisa would have added more on top. After Frances's death in 1846, her estate would have accrued at least another \$1,200 (~\$45,000 in 2022) in fines for the five years between Frances' death and Henderson's attempts to re-enslave the children.

Faced with such financial and social embarrassment, it makes sense that the Warfields would come out in force for the Jasons. A ruling against the Jasons was tacitly a ruling against Frances Warfield's character. It also reflected poorly on the Warfield men. According to Southern mores, a strong, proper patriarch would have controlled Frances's "mischief" and kept her on the straight and narrow. The proceedings cast doubts on the Warfield men's fitness and character. The only way out was to support the Jasons' suit and offer what they knew.<sup>24</sup> If Rachel was manumitted, then no fines, no failure on Frances's part, no mud on the Warfield name. Aaron and Rachel skillfully leveraged this fear of bad publicity to tie the Warfields' influence to their cause.

But even with the Warfields' support, how could Rachel and Aaron overcome Henderson's physical evidence (the absence of a manumission deed)? The Warfields' social credit was the real prize, as it allowed the Jasons to create a new reality. As we discussed in *Burke v. Joe*, credit was essential to determining truth.<sup>25</sup> Much of Southern law relied on subjective, personal information and reports; who said something mattered almost as much as what was said.<sup>26</sup> In assessing who to believe or how to interpret physical evidence, the witness's credit was a key metric in determining

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<sup>24</sup> This is not to say the Warfields were at all lying. On balance, it does seem like Frances Warfield just dispensed with the formalities of a deed. However, that does not mean the Warfields were ignorant of the stakes here.

<sup>25</sup> Edwards, *The People and Their Peace* at 111-14.

<sup>26</sup> *Id.* at 112. As does today's though we dress it up differently.

reliability.<sup>27</sup> With a sufficient credit balance, witnesses created truth simply by repeating their belief and understanding.<sup>28</sup>

Through the Warfields, the Jasons constructed their freedom. Frances was a reputable woman. She had the attributes and pedigree to marry into the Warfield family.<sup>29</sup> She was rich enough not only to own slaves, but to entirely forgo Rachel's labor and productivity. She had fulfilled her maternal duties, having borne eight children, each of whom went on to maintain the Warfield name.<sup>30</sup> She played her role well. Was it likely that such a personage had entirely neglected to submit a deed of manumission, as required by law and society? Was it not more likely that the deed had simply been lost to time and untidy bureaucracy? When buttressed by her surviving relatives, Rachel's freedom was laundered from assumption to clear reality. This helps explain the presence of Dr. Gustavus Warfield. His testimony does not add anything beyond a bare endorsement that he knew Aaron and Rachel to live as free man and wife; it was redundant with Alfred's evidence. However, as the well-respected county physician and Warfield patriarch, the doctor's strong credit reinforced that proposition. If he knew Aaron and Rachel to be free, then so it was. Without these strong, credit-rich supporters, the Jasons would not have been able to overcome the absence of a deed. They needed powerful patrons as a bulwark against human predators, physical evidence, and legal presumptions.

Taken together, *Henderson* shows that freedpersons knew how to leverage slaveholders' fears and privileges against them. By tying the Warfields' credibility and reputation to their own case, the Jasons secured a powerful ally against a would-be enslaver.

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 114.

<sup>29</sup> See *The Warfields of Maryland* at 22. Originally Frances Dorsey, of another prominent Maryland family.

<sup>30</sup> *Id.* at 22.