

*State v. Hale*, 9 N.C. 582 (1823)

A battery committed on a slave, no justification, or circumstances attending it, being shewn, is an indictable offence. But every battery on a slave is not indictable, because the person making it may have matter of excuse, or justification, which would be no defence for committing a battery on a free person. Each case of this sort must, in a great degree, depend on its own circumstances.

This was an indictment charging the Defendant with having committed an assault on a slave, and with inhumanly beating, wounding, &c.

The Jury, below, found that the Defendant committed personal violence on the slave, mentioned in the indictment, by striking him, and whether this amounted to the offence charged, they referred it to the Court to decide. Whereupon, Daniel, Judge, rendered judgment for the Defendant, and the State, by Mr. Solicitor Troy, appealed.

TAYLOR, Chief-Justice.

The indictment, in this case, is for an inhuman assault and battery, but the special verdict states, that the Defendant struck the slave. The question, therefore, presented to the Court, is, whether a battery, committed on a slave, no justification, or circumstances attending it, being shewn, is an indictable offence.

As there is no positive law, decisive of the question, a solution of it must be deduced from general principles, from reasonings founded on the common law, adapted to the existing condition and circumstances of our society, and indicating that result, which is best adapted to general expedience. Presumptive evidence of what this is, arises, in some degree, from usage, of which the Legislature must have been long since apprised, by the repeated conviction and punishment of persons charged with this offence.

It would be a subject of regret to every thinking person, if Courts of Justice were restrained, by any austere rule of judicature, from keeping pace with the march of benignant policy and provident humanity, which for many years, has characterised every Legislative act, relative to the protection of slaves, and which christianity, by the mild diffusion of its light and influence, has contributed to promote; and even domestic safety and interest equally enjoin.

The wisdom of this course of legislation, has not exhausted itself on the specific objects to which it was directed, but has produced wider and happier consequences, in securing to this class of persons, milder treatment and more attention to their safety; for the very circumstance of their being brought within the pale of legal protection, has had a corresponding influence upon the tone of public feeling towards them; has rendered them of more value to their masters, and suppressed many outrages, which were, before, but too frequent.

It is, however, objected in this case, that no offence has been committed, and the indictment is not sustainable, because the person assaulted is a slave, who is not protected by the general criminal law of the State; but that, as the property of an individual, the owner may be redressed by a civil action.

But though neither the common law, nor any other code yet devised by man, could foresee and specify every case that might arise, and thus supersede the use of reason in the ordinary affairs of life, yet it furnishes the principles of justice adapted to every state and condition of society. It contains general rules, fitted to meet the diversified relations, and various conditions of social man. Many of the most important of these rules, are not set down in any statute or ordinance, but depend upon common law for their support; of this description is the rule, that breaking the public peace is an offence, and punishable by fine and imprisonment.

An assault and battery is not indictable in any case to redress the private injury, for that is to be effected by a civil action; but, because the offence is injurious to the citizens at large by its breach of the peace, by the terror and alarm it excites, by the disturbance of that social order which it is the primary object of the law to maintain, and by the contagious example of crimes.

The instinct of a slave may be, and generally is, tamed into subservience to his master's will, and from him he receives chastisement, whether it be merited or not, with perfect submission; for he knows the extent of the dominion assumed over him, and that the law ratifies the claim. But when the same authority is wantonly usurped by a stranger, nature is disposed to assert her rights, and to prompt the slave to a resistance, often, momentarily successful, sometimes, fatally so.

The public peace is thus broken, as much as if a free man had been beaten, for the party of the aggressor is always the strongest, and such contests usually terminate by overpowering the slave and inflicting on him a severe chastisement, without regard to the original cause of the conflict. There is consequently, as much reason for making such offences indictable, as if a white man had been the victim.

A wanton injury committed on a slave is a great provocation to the owner, awakens his resentment, and has a direct tendency to a breach of the peace, by inciting him to seek immediate vengeance. If resented in the heat of blood, it would probably extenuate a homicide to manslaughter, upon the same principle with the case stated by Lord Hale, that, if A. riding on the road, B. had whipped his horse out of the track, and then A. had alighted and killed B.

These offences are usually committed by men of dissolute habits, hanging loose upon society, who, being repelled from association with well disposed citizens, take refuge in the company of coloured persons and slaves, whom they deprave by their example, embolden by their familiarity, and then beat, under the expectation that a slave dare not resent a blow from a white man.

If such offences may be committed with impunity, the public peace will not only be rendered extremely insecure, but the value of slave property must be much impaired, for the offenders can seldom make any reparation in damages.

Nor is it necessary, in any case, that a person who has received an injury, real or imaginary, from a slave, should carve out his own justice; for the law has made ample and summary provision for the punishment of all trivial offences committed by slaves, by carrying them before a justice,

who is authorised to pass sentence for their being publickly whipped.--(1 Rev. C. 443.) This provision, while it excludes the necessity of private vengeance, would seem to forbid its legality, since it effectually protects all persons from the insolence of slaves, even where their masters are unwilling to correct them upon complaint being made.

The common law has often been called into efficient operation, for the punishment of public cruelty inflicted upon animals, for needless and wanton barbarity exercised even by masters upon their slaves, and for various violations of decency, morals and comfort. Reason and analogy seem to require that a human being, although the subject of property, should be so far protected as the public might be injured through him.

For all purposes necessary to enforce the obedience of the slave, and to render him useful as property, the law secures to the master a complete authority over him, and it will not lightly interfere with the relation thus established. It is a more effectual guarantee of his right of property, when the slave is protected from wanton abuse from those who have no power over him; for it cannot be disputed, that a slave is rendered less capable of performing his master's service, when he finds himself exposed by the law to the capricious violence of every turbulent man in the community.

Mitigated as slavery is by the humanity of our laws, the refinement of manners, and by public opinion, which revolts at every instance of cruelty towards them, it would be an anomaly in the system of police which affects them, if the offence stated in the verdict were not indictable. At the same time it is undeniable, that such offence must be considered with a view to the actual condition of society, and the difference between a white man and a slave, securing the first from injury and insult, and the other from needless violence and outrage. From this difference it arises, that many circumstances which would not constitute a legal provocation for a battery committed by one white man on another, would justify it, if committed on a slave, provided the battery were not excessive. It is impossible to draw the line with precision, or lay down the rule in the abstract; but as was said in Tacket's case, the circumstances must be judged of by the Court and Jury, with a due regard to the habits and feelings of society. But where no justification is shewn, as in this case, I am of opinion the indictment is maintainable.

HALL, Judge.

I concur in the opinion given. I think it would be highly improper that every assault and battery upon a slave should be considered an indictable offence; because the person making it, might have matter of excuse or justification on his side, which could not be used as a defence for committing an assault and battery upon a free person. But where an assault and battery is committed upon a slave without cause, lawful excuse, or without sufficient provocation, I think it amounts to an indictable offence. Much depends upon the circumstances of the case when it happens; these circumstances are not set forth in this case, and I think it material that they should appear. I therefore think the judgment of the Court below should be reversed, and a new trial granted for that purpose.

HENDERSON, Judge, concurred.